



Robert P. Astorino
County Executive

Office of the County Attorney

Robert F. Meehan
County Attorney

33020

Date: March 26, 2013

To: The Honorable Board of Acquisition and Contract

From: Robert F. Meehan, County Attorney
Department of Law

Re: **Resolution authorizing the County of Westchester (the “County”) to enter into an agreement with Woodard & Curran Engineering P.A. P.C. for expert witness services, for a three (3) year period commencing March 15, 2013 and terminating March 14 2016, at a total cost to the County not-to-exceed One Hundred Thousand (100,000.00) Dollars, subject to appropriation**

Transmitted herewith is a resolution which, if approved by your Honorable Board, will authorize the County of Westchester (the “County”) to enter into an agreement (the “Agreement”) with Woodard & Curran Engineering P.A. P.C. (“Woodard & Curran”), for expert witness services in connection with the IFAS media escape events at the Mamaroneck Wastewater Treatment Plant (“MWWTP”), for a three (3) year period commencing March 15, 2013 and terminating March 14, 2016, at a total cost to the County not-to-exceed One Hundred Thousand (100,000.00) Dollars, payable pursuant to an approved Rate Schedule and subject to appropriation.

The proposed Agreement, if authorized by your Honorable Board, would provide for the provision of expert witness services in connection with possible anticipated litigation to recoup County costs in connection with the IFAS media escape at the MWWTP which occurred on three (3) separate occasions on or about January 20, January 25 and March 1-2, 2011. Pursuant to Woodard & Curran’s proposal and Rate Schedule, Woodard & Curran will conduct a full investigation and prepare a report summarizing the root causes of the IFAS media escape and allocate responsibility between the parties for a flat fee of \$83,200.00. Thereafter, its expert witness services will be paid at an hourly rate pursuant to the approved Rate Schedule.

Although this Agreement is exempt from the procedural requirements of the Westchester County Procurement Policy pursuant to Section 3(a)vii thereof as this Agreement is required for the services of expert witnesses for use in, or in anticipation of, an adjudicatory proceeding or litigation, the County issued a Request for Written Expression of Interest (“RFI”) on January 17, 2013. This RFI was

forwarded to six (6) qualified engineering firms and the County received two (2) responses from Woodard & Curran and Hazen & Sawyer, P.C. In consultation with the Department of Environmental Facilities, it was determined that Woodard & Curran's proposal was more detailed, they proposed a larger and more diverse investigative team, and that it had extensive experience with the design, construction and operation of wastewater treatment plants in general, and specifically with the IFAS treatment process being constructed at the MWWTP.

The goals and objectives of this proposed Agreement are to retain an expert who is knowledgeable in the area of the IFAS treatment process as well as the design, construction and operation of wastewater treatment plants. The goals and objectives are in the best interests of the County in terms of fiscal responsibility because without Woodard & Curran's expertise, the County may not be able to adequately determine causation and apportion blame to the various parties involved in the IFAS media escape events and thus, the County may not be able to subsequently bring an action against those parties to recoup the County costs which resulted from the same. The performance of this agreement will be tracked and monitored by the in-house attorney assigned to monitor this matter. If this resolution were not approved, the County would not have the expertise to bring an action against those parties responsible for the IFAS media escape events.

Accordingly, I recommend that your Honorable Board approve the attached resolution authorizing the Agreement with Woodard & Curran for expert witness services.

RFM/jpi
Attachment

RESOLUTION

Upon a communication from the County Attorney, be it hereby:

RESOLVED, that the County of Westchester (the "County") is hereby authorized to enter into an agreement with Woodard & Curran Engineering P.A. P.C. for expert witness services, for a three (3) year period commencing March 15, 2013 and terminating March 14, 2016, at a total cost to the County not-to-exceed One Hundred Thousand (100,000.00) Dollars, payable pursuant to an approved rate schedule and subject to County appropriation; and be it further

RESOLVED, that this Agreement is subject to County appropriations; and be it further

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 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 either to terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Contractor, then the Contractor shall have the right to terminate this Agreement upon reasonable prior written notice; and be it further

RESOLVED, that the that the County Executive or his duly authorized designee is hereby authorized to take such action and execute such documents as may be necessary and proper to effect the purposes hereof.

Agreement LAW # 914

Account to be Charged/credited	Year	Fund	Agency	Capital Project Or Org	Object/ Sub Object	Trust Account	Activity	Dollars
	2013	322	60	SLI01-00 -E	6120			\$100,000.00

Budget Funding Year(s) 2013-16 Start Date March 15, 2013 End Date March 14, 2016
 (must match resolution)

Funding Source Tax Dollars \$100,000.00
 State Aid _____
\$ 100,000.00
 (must match resolution) Federal Aid _____
 Other _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 04/18/2013 - JOMARY VEIRA, SECRETARY