

**40038**

DATE: April 28, 2014

TO: Board of Acquisition & Contract

FROM: Mae Carpenter, Commissioner  
Department of Senior Programs and Services

RE: Request for authority to:

- 1) amend an agreement to exercise the first of five (5) options to renew an agreement with Family Service Society of Yonkers (the "Contractor") pursuant to which the Contractor provides Guardianship Services for incapacitated individuals 60 years and older residing in Westchester County under Title III B of the Older Americans Act, and under Article 81 of the New York State Mental Hygiene Law, for an amount not to exceed \$45,000 in County tax dollars, for the period January 1, 2014 through December 31, 2014.
- 2) to add certain provisions to the renewed Agreement that are required by the New York State Office for the Aging ("NYSOFA") concerning equal access to services, non-discrimination and concentration of services on target populations, and to delete in its entirety the 2013 the Recipient Characteristics Definitions contained in Schedule "A", page 6 of the Agreement and replacing them with the 2014 Recipient Characteristics Definitions

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By resolution approved on April 25, 2014 (the "April 25<sup>th</sup> Resolution") your Honorable Board authorized the County of Westchester, acting by and through the Department of Senior Programs and Services (the "Department"), to enter into an agreement (the "Agreement") with the Contractor pursuant to which the Contractor provides Guardianship services for incapacitated individuals 60 years and older residing in Westchester County (the "Program") under Title III B of the Older Americans Act, and under Article 81 of the New York State Mental Hygiene Law, for an amount not to exceed \$45,000 in County tax dollars, for the program period January 1, 2013 through December 31, 2013, with the County having the sole option to renew the agreement for up to five (5) additional one-year periods, subject to the prior approval of your Honorable Board. The Agreement was subsequently executed.

The Department now seeks authority to exercise the first of its five (5) options to renew the Agreement with the Contractor to provide the Program services in an amount not to exceed \$45,000 in County tax dollars, for the program period January 1, 2014 through December 31, 2014.

Authority is also requested to amend the Agreement with the Contractor to add certain provisions required by NYSOFA concerning equal access to services, non-discrimination and concentration of services on target populations. By way of background, on July 17, 2012 NYSOFA issued its revised Equal Access and Targeting Policy (12-PI-08) clarifying the responsibilities of New York State's Aging Network Providers under federal and state laws regarding equal access to services and nondiscrimination in serving all cohorts of New York's

older adults and caregivers. The program Instruction also addressed the federal and state requirements for targeting activities to reach those unserved and underserved groups that are in greatest social and/or economic need. The Area Agencies on Aging (“AAAs”) were instructed that they are responsible for requiring all aging service providers under their respective planning and service area to comply with requirements for equal access (including language accessibility), nondiscrimination and concentration of services on target populations as required in the Older Americans Act (OAA), NYS regulations, other relevant laws, and NYSOFA policies. The AAAs were further instructed to include these requirements in each agreement made with such providers (OAA §306[a][4][A]) and to specify how the provider intends to meet specific objectives for satisfying the service needs of, and providing services to, low-income minority individuals, older individuals with limited English proficiency, and older individuals residing in rural areas (OAA §306[a][4][A]). The Department also seeks authority to replace the 2013 Recipient Characteristics and Definitions on page 6 of Schedule A in the original agreement with the 2014 Recipient Characteristics and Definitions. Accordingly, these requirements and revisions will be added to the contract amendment in the form of Appendix “A” and Appendix “B” respectively.

The renewal of this First Amendment is exempt from the Westchester County Procurement Policy pursuant to Section 3(a) xix thereof. However, it is subject to the Federal Common Grant Rules as such an RFP was done in 2013 for the procurement of the Program services. The Federal Common Grant Rules also require grantees to conduct a price or cost analysis prior to exercising a renewal option for contracts paid with grant funds. In an effort to comply with this requirement, the Department reached out to three agencies to solicit price quotations for the Program services: FSSY-Non-Indigent Guardianship Services, Texas Department of Aging and Disability Services – Staff Guardianship Program, and Texas Department of Aging and Disability Services – Contractor Guardianship Program.

**Analysis:**

The Contractor provides guardianship services to incapacitated individuals 60 years of age and older who are likely to suffer harm due to their inability to manage their personal needs and/or financial affairs. The guardianship services consists of comprehensive care management that include an intake process, initial assessment, care plan development and implementation, Guardianship information management and Guardianship case conferences. Legal representation is not a service component of the contract.

The Department currently contracts with the Contractor to provide guardianship services to a total of 17 individuals annually.

In Westchester County, the Contractor is the only not-for-profit agency providing Guardianship care management services to the indigents pursuant to the Court Order of the New York State Supreme Court and in compliance with the requirements of Mental Hygiene Law Article 81.

The Contractor also provides guardianship services to additional low income indigents not under contract with the Department. A market rate was obtained for these services from the Contractor. The average market rate monthly cost per client is about twice the cost for guardianship services under the current contract.

Guardian 81, Inc. Chester, NY is a private for profit vendor with an average monthly cost per client twice the cost from current vendor and with an hourly cost per client four and a half times higher.

The Guardianship in New York: Developing an Agenda for Change a 2012 Report of the Cardozo School of Law Conference indicates that New York State does not have a Public Guardian program to serve as guardian for those with limited income (<http://www.cardozo.yu.edu/MemberContentDisplay>).

On April 15, 2014, Nancy Sigler, Manager II of Protective Services for Adults stated that the Contractor is the only agency that they know of that provides guardianship services. There are a number of private attorneys who are on a court-appointed list that are willing and able to serve as guardians. Typically, in the absence of family, the courts appoint either the Contractor or one of these private attorneys. The Department did not obtain quotes from attorneys, because they provide a legal component that the Department does not contract for.

Therefore, since the Department's contract provides better prices for guardianship than other vendors for this service, and provides a better price for this service than could be obtained at present from the same vendor, it appears to WCDSPS to be most economically prudent to exercise the County's option under the current agreement for these services from the current vendor, Family Services Society of Yonkers for 2014.

**Recommendation:**

Based upon the foregoing analysis, the Department believes that it would be in the best interest of the County for your Honorable Board to amend the agreement with the Contractor because, in addition to the reasons stated above, the Contractor has performed well in providing Guardianship services over the past year.

Accordingly, I most respectfully recommend adoption of the attached proposed resolution.

MC/SJ

Att.

**RESOLUTION**

UPON COMMUNICATION FROM THE COMMISSIONER OF THE WESTCHESTER COUNTY DEPARTMENT OF SENIOR PROGRAMS AND SERVICES BE IT HEREBY:

RESOLVED, that the County of Westchester (the "County") is hereby authorized to exercise its first of five (5) options to renew an Agreement (the "Agreement") with Family Service Society of Yonkers ( the "Contractor"), pursuant to which the Contractor provides Guardianship services for incapacitated individuals 60 years and older residing in Westchester County under Title IIIB of the Older Americans Act, and under Article 81 of the New York State Mental Hygiene Law, for an amount not to exceed \$45,000 in County tax dollars, for the program period January 1, 2014 through December 31, 2014; and be it further

RESOLVED, that the County is hereby further authorized to add certain provisions to the renewal Agreement with the Contractor as required by the New York State Office for the Aging ("NYSOFA") concerning equal access to services, non-discrimination and concentration of services on target populations; and be it further

RESOLVED, that the County is hereby further authorized to amend the Agreement with the Contractor to delete in its entirety the 2013 Recipient Characteristics Definitions contained in Schedule "A", page 6 of the Agreement and replacing them with the 2014 Recipient Characteristics Definitions ; and be it further

RESOLVED, that except as specifically amended hereby, all remaining terms and conditions of the Agreement shall remain the same; and be it further

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

Account to be	Fund	Dept	Major Program, Program & Phase Or Unit or Org	Object/ Sub Object	Trust Account	Dollars
Charged	263	85	686P	4380	T686	\$45,000
Budget Funding Year(s) <u>2014</u> Start Date <u>1/1/14</u> End Date <u>12/31/14</u> (must match resolution)						
Funding Source		Tax Dollars	<u>\$45,000</u>			
		State Aid	<u>\$0</u>			
<u>\$45,000</u>		Federal Aid	<u>\$0</u>			
(must match resolution)		Other	<u>\$0</u>			

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/22/2014 - JOMARY VIEIRA, SECRETARY