

49556

Date: November 17, 2015

To: Honorable Board of Acquisition and Contract

From: Kevin Cheverko
Commissioner of Correction

Re: Authority to enter into an Agreement with David M. Bogard to Act as the Monitor to implement a separate voluntary agreement between the United States of America and the County of Westchester, acting by and through its Department of Correction ("DOC") for the purpose of clearly articulating and further complying with DOC's duties under the United States Constitution, in particular the Civil Rights of Institutionalized Persons Act, and to approve Michael Gatling and Judith Regina-Whitely as subcontractors for an amount not to exceed Six Hundred Sixty Five Thousand (\$665,000.00) Dollars, which shall commence upon the Effective Date of the separate agreement with the United States of America and terminate three years after said Effective Date, unless earlier terminated in accordance with the terms of said agreement with the United States.

By separate resolution, authority has been requested from your Honorable Board to approve a voluntary agreement between the United States of America and the County of Westchester, acting by and through its Department of Correction ("DOC") for the purpose of clearly articulating and further complying with DOC's duties under the United States Constitution, in particular the Civil Rights of Institutionalized Persons Act. Section IV of the agreement with the United States of America requires the selection of a Monitor who, among other things, "is ultimately responsible" for the findings regarding the County's compliance with the agreement. It also requires the County to bear the Monitor's fees and expenses. In order to legally pay those fees and expenses, the County must enter into a contract with the Monitor. After consideration of several candidates, the County and the United States of America agreed to select David M. Bogard as Monitor.

Mr. Bogard holds a JD degree and an MPA, and has more than 30 years in the corrections field, including:

- Six years as director of corrections in Arlington, Virginia;

- Six years as special assistant to the commissioner in the Philadelphia Prisons (jails) system;
- 20 years as a consultant, working with jail and prison systems throughout the country;
- Previous experience with compliance monitoring in Houston, TX (two city jails), United States Virgin Islands, and in Puerto Rico (five juvenile correctional facilities);
- Prepared several jail litigation compliance status assessments for defendants' counsel;
- Expert witness in numerous cases involving jail and prison operations; and
- Two terms as a Commissioner on the American Correctional Association's Commission on Accreditation for Corrections.

In addition, section IV of the agreement with the United States of America contemplates a "Monitoring Team" which allows the Monitor to hire or consult with qualified staff to fulfill the Monitor's duties required by the agreement. Mr. Bogard has proposed Michael Gatling and Judith Regina-Whitely as subcontractors who will act to assist him with his duties.

Michael Gatling is a security expert with more than three decades of hands-on correctional experience and consulting experience. He possesses a MS in Management and Development of Human Resources, and his experience and qualifications include:

- Former assistant director of the Arlington County Detention Facility, VA;
- Previous experience with compliance monitoring with the Puerto Rico juvenile corrections system and the jails in the United States Virgin Islands;
- 18 years as a corrections operations and security consultant, working with jail and prison systems throughout the country including Los Angeles County, California Department of Corrections and Rehabilitation, District of Columbia Department of Corrections, Richland County (SC), Alachua County (FL), New York City Department of Juvenile Justice, Camden County (NJ), Bernallio County (NM); and
- Compliance Monitor for privately operated jails and prisons contracted for by the DC Department of Corrections.

Judith Regina-Whitely has over 30 years of corrections and forensic health care experience. She holds a MS in primary health care nursing, a BA in psychology and is a nurse practitioner. Her experience includes:

- 18 years as a corrections health care consultant, working with jail and prison systems throughout the country including Richland County (SC), Alachua County (FL), Iowa Department of Corrections, and California Department of Corrections and Rehabilitation;
- Lead Healthcare Contract Monitor, Camden County Correctional Facility, NJ;

- Held positions as Mental Health Therapist, Forensic Program Director, Nursing Supervisor, Nursing Director, and Nurse Practitioner;
- Extensive consultative experience working with standards of ACA, NCCHC, JCAHO, and Medicaid requirements;
- Forensic Program Director, Fairfax-Falls Church Community Services Board (1983-1994); deployed to the Fairfax County Adult Detention Center to manage the mental health and substance abuse services provided to inmates; and
- Director of Nursing, Dominion Hospital, VA (1977-1980); managed and directed nursing services for both adolescent and adult mental health treatment units.

The proposed agreement with the United States of America requires the Monitor to prepare a compliance report approximately every six months until all provisions have been rated as substantial compliance for a period of 24 months (Agreement, provision 63). The Monitor's work is anticipated to begin in January 2015, with two reports prepared during the course of the next 12 months.

With respect to the *initial* monitoring report, the Monitoring Team will begin work with a substantial data and documents request being submitted to the DOC's project liaison. This request will cut across all 22 provisions of the Agreement with the United State of America and will include policies and procedures, training materials, training records, copies of existing reports, video recordings, logs, etc. The Monitoring Team will spend several weeks reviewing and assessing the documentation provided by DOC and determining the degree to which the documentation is supportive of compliance with elements of the 22 provisions. This will include verifying applicable professional standards and legal requirements specifically referenced in source documents such as WDOC's policies and procedures.

As the review and assessment of data and documents proceed, the Monitoring Team will develop an agenda for a site visit, which will enable the Team to evaluate actual practices in the jails. Ms. Regina-Whiteley will focus her efforts on the interviews, observations and file reviews pertaining to the 11 health care provisions, while Mr. Gatling and Mr. Bogard will divide the work between the 11 provisions that are operational in nature, including those addressing minors. It is anticipated that the three members of the Monitoring team will spend four-five full-days in the jails, including time spent on each of the three shifts. The site visit will include interviews with staff as follow-up on issues and documentation previously received in the data/document request. The Team will interview significant numbers of inmates, will observe operations, review logs and focus on the numerous indicia of compliance or non-compliance. Verification of WDOC data and documentation will be made through corroboration of efforts that include representative samplings, interviews, and reviews of inmate records.

After the site visit is concluded, the Monitoring team will begin the process of preparing the initial, baseline compliance monitoring report. In the event that any additional materials or documentation is required as a result of new information gleaned during the site visits, requests will be made for same to be provided by WDOC. The compliance report will evaluate the state of compliance for each provision based on the

scale set forth in the proposed Agreement with the United States of America, namely (1) substantial compliance, (2) partial compliance, or (3) non-compliance. All such ratings will be accompanied by and supported by the evidence relied on by the Monitoring team.

Subsequent compliance reports will be developed employing a similar process, adjusted where necessary to reflect the status of compliance as determined in the previous report(s). The Monitoring team will continue to review practices as needed to determine if they are consistent with the requirements of policies, procedures and training as described in all documents reviewed for compliance purposes and pursuant to the formal systems of accountability established by the WCDOC to comply with the Agreement.

The Agreement with the United States of America shall terminate three years from its Effective Date, if the Parties agree that the County has maintained substantial compliance with all the provisions of that agreement for a period of 24 months. Since the Monitor and his team will be evaluating the County's compliance under that Agreement, this Agreement with the Monitor will commence on the Effective Date of the agreement with the United States and will terminate three years later, unless terminated earlier in accordance with the terms of the agreement with the United States of America. The estimated not to exceed amount of Six Hundred Sixty Five Thousand (\$665,000.00) Dollars, shall be paid in accordance with approved annual budgets.

By separate resolution submitted to your Honorable Board of even date herewith, an exemption from the procedures of the County Procurement Policy was requested in accordance with section 3(a)xxi of said policy.

In order to implement the agreement between the United States of America and the County of Westchester, acting by and through DOC for the purpose of clearly articulating and further complying with DOC's duties under the United States Constitution, in particular the Civil Rights of Institutionalized Persons Act, I recommend approval of the annexed Resolution.

KC/JPI/me

