

**49567**

DATE: February 2, 2016

TO: Board of Acquisition & Contract

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

RE: Request for authority for the County of Westchester to:

- a) enter into an Agreement with the State of New York, acting by and through the New York State Office for the Aging, to accept a grant for up to an amount not-to-exceed \$2,094,699 to provide various nutrition programs for the elderly under Titles IIIC-1, IIIC-2, and the Nutrition Services Incentive Program ("NSIP") of the Older Americans Act for the program period commencing on January 1, 2016 and terminating on December 31, 2016; and
- b) amend inter-municipal and inter-agency agreements with the sixteen (16) entities set forth in the attached Schedule "A" in order to exercise the fourth of the County's four (4) options to renew the agreements for the provision of various nutrition programs for the elderly under Titles IIIC-1, IIIC-2, and NSIP of the Older Americans Act for a total aggregate amount not-to-exceed \$1,516,156 in Federal funds, payable pursuant to an approved budget, in the individual amounts also set forth in the attached Schedule "A," for the program period commencing on January 1, 2016 and continuing through December 31, 2016; and
- c) further amend the agreements with the 16 entities to add certain "Standard Assurances" including federal and state revised statutes, regulations, policies and contract requirements as mandated by the New York State Office for the Aging

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The County of Westchester, (the "County") acting by and through its Department of Senior Programs and Services (the "Department"), seeks authority from your Honorable Board to enter into an Agreement with the State of New York, acting by and through the New York State Office for the Aging ("NYSOFA") to accept a grant in an amount not-to-exceed \$2,094,699 to provide various nutrition programs (the "Programs") for seniors under Titles IIIC-1, IIIC-2 and the NSIP of the Older Americans Act, for the program period commencing on January 1, 2016 and terminating on December 31, 2016.

Additionally, by resolution approved on June 14, 2012 (the "June 14<sup>th</sup> Resolution"), your Honorable Board authorized the County, *inter alia*, to enter into inter-municipal and inter-agency Agreements (the "Agreements") with the seventeen (17) entities set forth in the attached Schedule "A" (the "Contractors") for the purpose of administering the aforementioned nutrition Programs for the elderly under the Title IIIC-1, IIIC-2 and the NSIP of the Older Americans Act, for a total aggregate amount not-to-exceed \$1,548,247 in Federal funds, payable pursuant to an approved budget, for the period

commencing January 1, 2012 through December 31, 2012, with the County having the sole option to renew the Agreements for up to four (4) additional one (1) year periods subject to the prior approval of your Honorable Board. The Agreements were subsequently executed.

Thereafter, by resolution approved on February 14, 2013 (the "February 14<sup>th</sup> Resolution"), your Honorable Board authorized the County, *inter alia*, to amend the Agreements with the Contractors to exercise the first of its four (4) options to renew the Agreements with the Contractors set forth in the attached Schedule "A" to provide the aforementioned nutrition Programs for the elderly, for a total aggregate amount not-to-exceed \$1,736,064 in Federal funds, payable pursuant to an approved budget, for the period commencing on January 1, 2013 and terminating on December 31, 2013 (the "First Amendments"). The First Amendments were subsequently executed.

Thereafter, by resolution approved on April 24, 2014 (the "April 24<sup>th</sup> Resolution"), your Honorable Board authorized the County, *inter alia*, to amend the Agreements with the Contractors to exercise the second of its four (4) options to renew the Agreements with the Contractors set forth in the attached Schedule "A" to provide the aforementioned nutrition Programs for the elderly, for a total aggregate amount not-to-exceed \$1,644,981 in Federal funds, payable pursuant to an approved budget, for the period commencing on January 1, 2014 and terminating on December 31, 2014 (the "Second Amendments"). The Second Amendments were subsequently executed.

Thereafter, by resolution approved on February 26, 2015 (the "February 26<sup>th</sup> Resolution"), your Honorable Board authorized the County, *inter alia*, to amend the Agreements with the Contractors to exercise the third of its four (4) options to renew the Agreements with the Contractors set forth in the attached Schedule "A" to provide the aforementioned nutrition Programs for the elderly, for a total aggregate amount not-to-exceed \$1,737,421 in Federal funds, payable pursuant to an approved budget, for the period commencing on January 1, 2015 and terminating on December 31, 2015 (the "Third Amendments"). The Third Amendments were subsequently executed except for the Third Amendment with YWCA of Yonkers which is still pending execution, and as a result, will be submitted under separate resolution.

The County now seeks authority to further amend the Agreements in order to exercise the fourth of its four (4) options to renew the Agreements with the 16 Contractors in the attached Schedule "A" for the purpose of administering the aforementioned nutrition Programs for the elderly, for the program period commencing on January 1, 2016 and terminating on December 31, 2016 for a total aggregate amount not-to-exceed \$1,516,156 in Federal funds to be paid pursuant to an approved budget, with the Contractors required to contribute an amount not to exceed \$399,310 in Contractor matching funds to the Programs, in the individual amounts set forth in the attached Schedule "A" (the "Fourth Amendments). Of the remaining \$578,543 in Federal funds, \$25,640 will be used to enter into a Fourth Amendment with YWCA of Yonkers under separate resolution as aforementioned and the remaining \$552,903 will be used directly by the Department to provide nutrition education and counseling, service activities and area agency administration.

In addition to exercising the fourth of its four (4) options to renew the Agreements, the County also respectfully requests authority to further amend the Agreements in order to incorporate certain "Standard Assurances" as mandated by the New York State Office for the Aging ("NYSOFA"), including but not limited to a revised list of federal and state statutes, regulations, policies and contract provisions applicable to the Program.

It should be noted that the Westchester County Board of Legislators, by Act No. 148-2013 adopted on August 12, 2013, authorized inter-municipal agreements with Westchester County municipalities, including the fifteen municipal entities (the "Contractors"), in connection with the Title III C Program.

With regard to the distribution of NSIP funding, the agreements with the Contractors will provide that the Department will be authorized to distribute such funding 1) contingent upon its receiving further State approval; and 2) by providing the Contractors with written confirmation that the State has authorized the distribution of such funds, without the need for the Contractors to

execute a supplemental agreement. This practice was approved by your Honorable Board in 2010 to avoid the administrative difficulties involved in distributing NSIP funds prior to the State-imposed deadline.

The grant agreement with NYSOFA does not constitute procurement. The exercise of the County's option under each of the sixteen (16) Agreements is subject to the applicable Federal Common Grant Rules. Under those rules, the exercise of a contract option qualifies as a procurement action, which can necessitate a price analysis that might include, for example, consideration of other prices for those services that can be obtained in the open market.

However, the Department previously determined that because of the nature and extent of the services being provided by each Contractor, the services provided under each Agreement are only available from those single sources. Accordingly, the Department procured each agreement on a non-competitive basis pursuant to the regulations then contained 45 CFR 92.36(d)(4). The Department has determined that, given the nature and extent of the services, the services being provided by each Contractor under each Agreement are still only available from those single sources. Therefore, it is not possible for the Department, for example, to inquire as to prices for these services in the open market as part of its price analysis. Rather, the Department has reviewed the terms of each option and determined that the prices contained in the options are reasonable based upon the services being provided.

During the III-C-1 2015 contract period, for example, 178,252 meals were provided to 3,777 congregate seniors. During the IIIC-2 2015 contract period, 279,195 meals were provided to 1,987 homebound seniors.

I certify that my department, a.) has copies of, or access to, all applicable laws, rules, regulations, grant applications, and grant agreements (including any master grant agreement), as well as any guidance or instructions received from the agency making the grant (the "Grant Terms"), b.) has reviewed the Grant Terms, c.) is aware of and understands all of the Grant Terms, and d.) can and will comply with all of the Grant Terms.

Except as specifically amended hereby, all remaining terms and conditions set forth in the Agreements, as amended, shall remain in full force and effect.

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

MC/SJ

## RESOLUTION

Upon communication from the Commissioner of the Westchester County Department of Senior Programs and Services:

- RESOLVED**, that the County of Westchester (the "County") is hereby authorized to enter into an agreement with State of New York, acting by and through the New York State Office \$2,094,699 to provide various nutrition programs (the "Programs) for the elderly pursuant to Titles IIIC-1, IIIC-2, and the Nutritional Services Incentive Program ("NSIP") of the Older Americans Act for the program period commencing on January 1, 2016 and terminating on December 31, 2016; and be it further
- RESOLVED**, that the County is hereby authorized to exercise its fourth option to renew the inter-municipal and inter-agency Agreements (the "Agreements") with the sixteen (16) entities listed in the attached Schedule "A" (the "Contractors") to provide the aforementioned nutrition Programs for the elderly under Titles IIIC-1, IIIC-2, and NSIP of the Older Americans Act for a total aggregate amount not-to-exceed \$1,516,156 in Federal funds to be paid pursuant to an approved budget, for the program period commencing on January 1, 2016 and terminating on December 31, 2016 and be it further
- RESOLVED**, that the Contractors are required to contribute an aggregate amount not to exceed \$398,911 Contractor matching funds to the Programs, in the individual amounts set forth in the attached Schedule "A" (the "Fourth Amendments"); and be it further
- RESOLVED**, that the County is further authorized to amend the Agreements with the Contractors by adding certain "Standard Assurances", including a revised list of federal and state statutes, regulations, policies and certain contract provisions as mandated by the New York State Office for the Aging; and be it further
- RESOLVED**, that with regard to the distribution of NSIP funding, the agreements with the Contractors will provide that the Department will be authorized to distribute such funding 1) contingent upon its receiving State approval; and 2) by providing the Contractors with written confirmation that the State has authorized the distribution of such funds, without the need for the Contractor to execute a supplemental agreement.
- RESOLVED**, that except as specifically amended hereby, all remaining terms and conditions set forth in the Agreements, as amended, shall remain in full force and effect; 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.

Agreement: \$1,548,247 17 Contractors  
 First Amendment: \$1,736,064 17 Contractors  
 Second Amendment: \$1,644,981 17 Contractors  
 Third Amendment: \$1,737,421 17 Contractors  
 Fourth Amendment: \$1,516,156 16 Contractors  
 Total: \$8,183,950

Account to be:

Fund	Dept.	Major Program Program & Phase, Unit	Object/Sub Object	Trust Account	Dollars
263	85	941R	9853	T 941	\$1,136,947
263	85	942R	9853	T 942	\$512,492
263	85	939Q	9853	T 939	\$270,200
263	85	939Q	9853	T 939	\$175,060
263	85	941R	4380	T 941	\$724,226
263	85	942R	4380	T 942	\$354,291
263	85	939Q	4380	T 939	\$262,579
263	85	939Q	4380	T 939	\$175,060
263	85	941Q+ 942Q	VARIOUS	T941&T942	\$578,543

Budget Funding Year(s): Unit 941R & 942R 2016 Start Date 1/1/16 End Date 12/31/16

(must match resolution)

Unit 939Q 2015 - 2016 Start Date 10/1/15 End Date 9/30/16

Funding Source

Tax Dollars \$ 0

State Aid \$ 0

\$2,094,699 Federal Aid \$ 2,094,699

(must match resolution)

Other \$ 0

## SCHEDULE "A"

MUNICIPALITY	NOT TO EXCEED FEDERAL FUNDS		NOT TO EXCEED FEDERAL FUNDS		CONTRACTOR MATCH		NET AMOUNTS	
	IIIC-1	IIIC-1 NSIP	IIIC-2	IIIC-2 NSIP	IIIC-1	IIIC-2	IIIC-1	IIIC-2
Cortlandt	\$12,956	\$5,479	\$20,836	\$10,280	\$4,792	\$7,707	\$23,227	\$38,823
Eastchester	\$55,623	\$23,522	\$16,952	\$8,363	\$20,573	\$6,270	\$99,718	\$31,585
Greenburgh	\$70,576	\$16,296	\$39,648	\$19,560	\$26,103	\$14,665	\$112,975	\$73,873
Mamaroneck	\$17,608	\$7,446	\$42,032	\$20,736	\$6,513	\$15,546	\$31,567	\$78,314
Mount Kisco	\$28,482	\$12,044	\$24,606	\$12,139	\$10,534	\$9,101	\$51,060	\$45,846
Mount Pleasant	\$25,081	\$10,606	\$14,659	\$7,233	\$9,277	\$5,422	\$44,964	\$27,314
Mount Vernon	\$65,947	\$27,886	\$52,593	\$25,946	\$24,391	\$19,453	\$118,224	\$97,992
New Rochelle	\$66,529	\$28,133	\$0	\$0	\$24,607	\$0	\$119,269	\$0
Ossining	\$28,793	\$12,176	\$26,644	\$13,145	\$10,649	\$9,855	\$51,618	\$49,644
Peekskill	\$51,524	\$21,789	\$14,123	\$6,968	\$19,057	\$5,224	\$92,370	\$26,315
Port Chester	\$60,113	\$25,420	\$6,403	\$3,160	\$22,234	\$2,368	\$107,767	\$11,931
Somers	\$15,747	\$6,660	\$13,449	\$6,635	\$5,825	\$4,975	\$28,232	\$25,059
White Plains	\$35,200	\$14,886	\$0	\$0	\$13,019	\$0	\$63,105	\$0
Yonkers	\$156,947	\$36,238	\$23,480	\$11,854	\$58,049	8,685	\$251,234	\$44,019
Yorktown	\$22,770	\$9,629	\$47,799	\$23,581	\$8,422	\$17,680	\$40,821	\$89,060
<u>Not for Profit Organizations:</u>								
Westchester Jewish Community Services	\$10,330	\$4,369	\$11,067	\$5,460	\$3,821	\$4,094	\$18,520	\$20,621
<b>TOTAL</b>	<b>\$724,226</b>	<b>\$262,579</b>	<b>\$354,291</b>	<b>\$175,060</b>	<b>\$267,866</b>	<b>\$131,045</b>	<b>\$1,254,671</b>	<b>\$660,396</b>

APPROVED BOARD OF ACQUISITION & CONTRACT - 12/25/2016 - U.S. MARSHAL, SECRETARY