

52721

DATE: September 8, 2016

TO: Board of Acquisition and Contract

FROM: John B. McCaffrey, Chief Information Officer  
Department of Information Technology

RE: AMENDING A RESOLUTION THAT AUTHORIZED THE COUNTY TO ENTER INTO AN AGREEMENT (IT-1399) WITH ORACLE AMERICA, INC., PURSUANT TO WHICH IT WOULD PROVIDE ON-SITE TECHNICAL SUPPORT SERVICES, IN ORDER TO MODIFY IT TO, A.) REFLECT A DIFFERENT PROCUREMENT BASIS INSTEAD OF USING NEW YORK STATE OFFICE OF GENERAL SERVICES CONTRACT NUMBER PM20940 AND, ACCORDINGLY, B.) SPECIFY THAT THE AGREEMENT WILL BE PAYABLE ON A DIFFERENT BASIS.

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By a resolution approved on August 25, 2016 (the "8/25/16 Resolution"), your Honorable Board authorized the County of Westchester (the "County") to enter into an agreement ("IT-1399") with Oracle America, Inc. ("Oracle"), pursuant to which Oracle would provide on-site technical support services, for a term commencing on May 26, 2016 and continuing through May 25, 2017, for a total amount not-to-exceed \$197,450, payable at the rates set forth in, and payable as required by, New York State Office of General Services ("OGS") Contract Number PM20940 ("OGS Contract PM20940").

Based upon this reliance on OGS Contract PM20940, the cover memo of the 8/25/16 Resolution specified, in describing the procurement basis for IT-1399, the following:

"The proposed agreement is exempt from the County Procurement Policy pursuant to Section 3(a)(i) thereof, as the County is making this procurement through Oracle's NYS OGS Contract Number PM20940, pursuant to New York General Municipal Law 104. It should be noted that the not-to-exceed amount requested for the proposed agreement is based upon the rates available through NYS OGS Contract Number PM20940."

After your Honorable Board's approval of the 8/25/16 Resolution, the County was informed by Oracle that, contrary to earlier assertions, OGS Contract PM20940 varies significantly from its predecessor OGS contract (PT64000), through which the County contracted with Oracle for these same services for the period from November 1, 2008 through May 25, 2016. Specifically, Oracle informed the County that OGS Contract PM20940 requires the County to go through a competitive process within that contract, such that the County cannot simply contract with Oracle on the basis of OGS Contract PM20940, New York General

Municipal Law 104, and Section 3(a)(i) of the County Procurement Policy.

For the period beyond May 25, 2017, the County already intends to conduct competitive procurement, whether through the OGS Contract PM20940 process or the County's own process.

For the period from May 26, 2016 through May 25, 2017, however, the Department of Information Technology ("DoIT") believes it to be in the County's best interests to contract with Oracle. If the County started the procurement process over for a contract for these services for this period, it would take a significant amount of time and leave the County without a contract for these vital services in the meantime. It would also open the possibility that a vendor other than Oracle might be selected, while the County is in the middle of several projects that rely upon Oracle's expertise in its own products. As explained in the cover memo of the 8/25/16 Resolution, Oracle personnel are not only familiar with Oracle tools and products, but also have access to Oracle's Internal Engineering with the knowledge of proprietary information (including source code) of the company. This is a significant advantage and added benefit of receiving the on-site technical support services from Oracle instead of another vendor. In addition, the Oracle employee who has provided work for the County under previous Oracle-County agreements for on-site technical support services is currently available to continue providing those services under a new Oracle-County agreement. This is another significant advantage and added benefit of receiving the on-site technical support services from Oracle instead of another vendor.

Discussions with Oracle have lead to Oracle agreeing to offer the County these on-site technical support services to the County at the discounted OGS Contract PM20940 rates, even if PM20940 is not used as the procurement basis due to the above-described complications.

Therefore, the County respectfully requests that your Honorable Board amend the 8/25/16 Resolution in order to accommodate the County procuring IT-1399 on the basis of the best interests of the County, as follows:

- a.) Modify the first "RESOLVED" clause of the 8/25/16 Resolution by replacing the text that reads:

"payable at the rates set forth in, and payable as required by, New York State Office of General Services ("NYS OGS") Contract Number PM20940 (the "Agreement"); and be it further"

with text that reads:

"payable pursuant to an approved budget, the rates for which shall not exceed those specified in New York State Office of General Services Contract Number PM20940 for such services (the "Agreement"); and be it further"

- b.) Modify the cover memo of the 8/25/16 Resolution by replacing its final paragraph with the following:

"Authority to exempt the proposed agreement from the requirements of the Westchester County Procurement Policy, pursuant to Section 3(a)(xxi) thereof, will be submitted to your Honorable Board by a separate resolution."

The County has submitted, by a separate resolution, a request for authority to exempt IT-1399 from the requirements of the Westchester County Procurement Policy, pursuant to Section 3(a)(xxi) thereof.

Except as described above, all terms and conditions of the 8/25/16 Resolution shall remain the same and in full force and effect.

I respectfully recommend adoption of the proposed resolution.

JBM/bdm/nn

APPROVED BOARD OF ACQUISITION & CONTRACT - 10/06/2016 - JOAN COCCIPRDI, SECRETARY

## RESOLUTION

UPON A COMMUNICATION FROM THE CHIEF INFORMATION OFFICER,  
DEPARTMENT OF INFORMATION TECHNOLOGY, BE IT HEREBY

**RESOLVED**, that the resolution approved on August 25, 2016 (the "8/25/16 Resolution"), which authorized the County of Westchester (the "County") to enter into an agreement ("IT-1399") with Oracle America, Inc. ("Oracle"), pursuant to which Oracle would provide on-site technical support services, for a term commencing on May 26, 2016 and continuing through May 25, 2017, for a total amount not-to-exceed \$197,450, payable at the rates set forth in, and payable as required by, New York State Office of General Services Contract Number PM20940, is hereby amended as follows:

a.) The first "RESOLVED" clause of the 8/25/16 Resolution is modified by replacing the text that reads:

"payable at the rates set forth in, and payable as required by, New York State Office of General Services ("NYS OGS") Contract Number PM20940 (the "Agreement"); and be it further"

with text that reads:

"payable pursuant to an approved budget, the rates for which shall not exceed those specified in New York State Office of General Services Contract Number PM20940 for such services (the "Agreement"); and be it further"

b.) The cover memo of the 8/25/16 Resolution is modified by replacing its final paragraph with the following:

"Authority to exempt the proposed agreement from the requirements of the Westchester County Procurement Policy, pursuant to Section 3(a)(xxi) thereof, will be submitted to your Honorable Board by a separate resolution."

; and be it further

**RESOLVED**, that except as specifically amended hereby, all terms and conditions of the 8/25/16 Resolution shall remain the same and in full force and effect; and be it further

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

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Agreement: **IT-1399**

Account to be Charged/Credited:

Year	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
2016	101	16	6000	4420		N/A
2017	101	16	6000	4420		N/A

Budget Funding Year(s): 2016-17 Start Date: May 26, 2016 End Date: May 25, 2017  
(must match resolution)

Funding Source Tax Dollars: N/A  
State Aid: \_\_\_\_\_  
Federal Aid: \_\_\_\_\_  
Other: \_\_\_\_\_  
\$ N/A  
(must match resolution)

APPROVED BOARD OF ACQUISITION & CONTRACT - 10/06/2016 JOAN COCCARDI, SECRETARY