

61414

Date: February 12, 2018

To: Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority for the County to enter into an agreement with Bleakley Platt & Schmidt, LLP, pursuant to which it will provide legal services and representation to the County, in an “of counsel” capacity to the County Attorney, as needed, in connection with the civil case of *County of Westchester v. Unity Mechanical Corp., The Netherlands Insurance Company, and Excelsior Insurance Company*, Supreme Court, Westchester County Index No. 59897/16.

Authority is respectfully requested from your Honorable Board for the County of Westchester (the “County”) to enter into an agreement with Bleakley Platt & Schmidt, LLP (“Bleakley”), pursuant to which Bleakley will provide legal services and representation to the County, in an “of counsel” capacity to the County Attorney, as needed, in connection with the civil case of *County of Westchester v. Unity Mechanical Corp., The Netherlands Insurance Company, and Excelsior Insurance Company*, (the “Services”) Supreme Court, Westchester County Index No. 59897/16 (the “Case”), for a term commencing on February 9, 2018 and continuing until the conclusion of the Case, for an amount not-to-exceed \$100,000.00, payable pursuant to an approved budget that includes specified hourly rates (the “Agreement”).

On February 6, 2018, the County issued a request for qualifications for the Services, in accordance with Section 7 of the County’s Procurement Policy, soliciting responses from the following three (3) entities that customarily provide such services (the “RFQ”):

1. Bleakley
2. McCarthy Fingar LLP
3. Smith, Buss, & Jacobs, LLP

The County received a response to the RFQ from each of the above-listed entities. I reviewed and evaluated each of the responses and I determined that it is most advantageous to the County to enter into the proposed Agreement with Bleakley.

It should be noted that the Services relate to the County’s liability and casualty self-insurance program (“6-n Counsel Services”), which was established, under Chapter 295 of the Laws of Westchester County, in accordance with New York State General Municipal Law §6-n

(the "County's 6-n Program"). It should also be noted that, by a request for proposals issued by the County on September 8, 2018 (the "RFP"), the County solicited agreements with law firms and practitioners ("Attorneys"), pursuant to which the Attorneys would provide the County with legal services and representation to the County, in an "of counsel" capacity to the County Attorney, as needed, in connection with civil litigation in which the County is or may become involved pursuant to the County's 6-n Program.

By a resolution approved on December 14, 2017, and based upon the RFP, your Honorable Board authorized the County to enter into an agreement for 6-n Counsel Services with each of twenty-eight (28) Attorneys. The County is in the process of executing such agreements authorized by that resolution as is necessary and appropriate (the "6-n Agreements"). However, the Case presents a unique claim issue that is not typically required as part of the 6-n Counsel Services. Therefore, given the particular nature of the Case and the Services, the County determined that it would perform a separate procurement, via the RFQ, as described above. However, the proposed Agreement will be very similar to the 6-n Agreements. Unlike the 6-n Agreements, though, the proposed Agreement will be solely for the Services for the Case, rather than an open-ended contract for services as-needed, and it will terminate upon the conclusion of the Case.

It should also be noted that Section 295.31(2)(c) of the Laws of Westchester County permits expenditures from the County's Liability and Casualty Reserve Fund for, "[e]xpert or professional services rendered in connection with investigation, adjustments, settlement or defense of claims actions or judgments". Accordingly, all costs incurred under the proposed Agreement will be charged to the County's Liability and Casualty Reserve Fund.

The proposed Agreement will serve a public purpose by providing the County with access to experienced attorneys to serve as additional resources for the Case, under the County's 6-n Program.

The goal and objective of the proposed Agreement is to provide the County with access to experienced attorneys to serve as additional resources for the Case, under the County's 6-n Program.

The goal and objective of the proposed Agreement is in the best interests of the County in terms of fiscal responsibility, as the County having access to experienced attorneys who can serve as additional resources in the Case, under the County's 6-n Program, can help the County limit its liability and costs concerning to the Case and any related or underlying matter(s).

The goal and objective of the proposed Agreement will be tracked and monitored by the Office of the County Attorney.

I respectfully recommend the adoption of the attached resolution.

JMN/bdm/nn

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 Bleakley Platt & Schmidt, LLP ("Bleakley"), pursuant to which Bleakley will provide legal services and representation to the County, in an "of counsel" capacity to the County Attorney, as needed, in connection with the civil case of *County of Westchester v. Unity Mechanical Corp., The Netherlands Insurance Company, and Excelsior Insurance Company*, (the "Services") Supreme Court, Westchester County Index No. 59897/16 (the "Case"), for a term commencing on February 9, 2018 and continuing until the conclusion of the Case, for an amount not-to-exceed \$100,000.00, payable pursuant to an approved budget that includes specified hourly rates (the "Agreement") and be it further

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

RESOLVED, that the Agreement is also subject to further financial analysis of the impact of the New York State Budget ("State Budget") proposed and adopted during the term of the contracts. The Agreement shall contain a provision that 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 the State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s) to conduct an analysis of the impacts of any State Budget on County finances. After such analysis, the County shall retain the right to either terminate the 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 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.

Account to be
Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub- Object	Trust Account	Dollars
615	59	0693-3710	4923		\$100,000.00

Budget Funding Year(s): 2018 Start Date: 02/09/18 End Date: Conclusion of the case
(must match resolution)

Funding Source Tax Dollars: _____
State Aid: _____
\$100,000.00 Federal Aid: _____
(must match resolution) Other: 6-n

APPROVED BOARD OF ACQUISITION & CONTRACT - 02/15/2018 - LISA MRUJAN SECRETARY