

62112

Date: March 22, 2018

To: Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority to exempt from the Westchester County Procurement Policy and Procedures, pursuant to Section 3(a)(xxi) thereof, an agreement with Duncan, Weinberg, Genzer & Pembroke, P.C. for the provision of all legal services and representation, and related technical, consulting, and expert witness services, that are necessary or advisable for any matters or proceedings involving issues concerning energy or utilities, including, but not necessarily limited to, matters involving and proceedings before the New York State Public Service Commission, the New York Independent System Operator, the Federal Energy Regulatory Commission, and the Nuclear Regulatory Commission.

Authority is hereby requested from your Honorable Board to exempt from the Westchester County Procurement Policy and Procedures an agreement between the County of Westchester (the "County") and Duncan, Weinberg, Genzer & Pembroke, P.C. ("DWGP"), pursuant to which DWGP will provide the County with all legal services and representation, and related technical, consulting, and expert witness services, that are necessary or advisable for any matters or proceedings involving issues concerning energy or utilities, including, but not necessarily limited to, matters involving and proceedings before the New York State Public Service Commission ("NYS PSC"), the New York Independent System Operator ("NYISO"), the Federal Energy Regulatory Commission ("FERC"), and the Nuclear Regulatory Commission ("NRC"), for a term of one (1) year, commencing upon execution, with the County having the option to extend the term of the agreement for three (3) one (1) year periods thereafter, utilizing all of the same pricing, terms and conditions.

Matters and proceedings before the NYS PSC, the NYISO, FERC, and the NRC are complex, most always involve highly technical matters and numerous sophisticated parties with specialized representation and experts. Accordingly, it is highly advisable for the County to have specialized outside counsel, such as DWGP, available for such matters and proceedings.

That is why the County had an agreement with DWGP, from April 23, 2013 through April 22, 2017, pursuant to which DWGP provided all legal services and representation, and related technical, consulting, and expert witness services, that were necessary for the County for

administrative proceedings before the NYS PSC (the “2013-2017 Agreement”).

The 2013-2017 Agreement was procured through a request for proposals, which was issued pursuant to Section 7 of the County’s Procurement Policy and Procedures. Despite the RFP being posted to the County’s website for RFPs, advertised in the New York Law Journal, and sent to a number of firms the County believed to have the necessary expertise, the County received only two (2) proposals. The County came to learn that it received so few proposals because many of the relatively small number of firms with expertise in this field of law already have long-standing relationships with other governmental entities.

Based upon those limitations of the marketplace, the fact that the Office of the County Attorney found DWGP’s services, under the 2013-2017 Agreement, to be very satisfactory; and a determination that it would be prudent for the County to retain DWGP’s services before another governmental possibly retains them and leaves the County searching for a replacement firm of such quality, I recommended to the County’s Board of Legislators that it once again authorize the County to enter into an agreement with DWGP for services as outside counsel. Act No. 2018-24, which authorized the County to enter into the proposed agreement with DWGP, was adopted by the County’s Board of Legislators on March 12, 2018 and approved by the County Executive on March 14, 2018.

Accordingly, it is proposed that the best interests of the County would be served by exempting the proposed agreement from the Westchester County Procurement Policy and Procedures, pursuant to Section 3(a)(xxi) thereof. Therefore, a resolution to exempt this procurement is hereby submitted for your consideration.

I respectfully recommend the adoption of the attached resolution.

JMN/bdm/nn

