



George Latimer
County Executive

Department of Finance

Ann Marie Berg
Commissioner

69700

DATE: May 10, 2019

TO: Board of Acquisition and Contract

FROM: Ann Marie Berg
Commissioner, Department of Finance

SUBJECT: Authority to exempt from the Westchester County Procurement Policy and Procedures, pursuant to Section 3(a)(xxi) thereof, an amendment to the agreement with each of two (2) firms, pursuant to each of which each firm was to provide audit and review services, for the period from January 1, 2013 through December 31, 2018, in order to extend the term of each agreement by one (1) year, to a new expiration date of December 31, 2019.

By a resolution approved on June 20, 2013, your Honorable Board authorized the County of Westchester (the "County") to enter into an agreement with each of O'Connor Davies, LLP (now known as PKF O'Connor Davies, LLP; "PKFOD"); Mitchell & Titus, LLP ("Mitchell & Titus"); Wei, Wei & Co., LLP ("Wei Wei"); and Albrecht, Viggiano, Zureck & Company, P.C. (collectively, the "Agreements" and the "Firms"), pursuant to each of which each of the Firms was to provide audit and review services, for the period from January 1, 2013 through December 31, 2014 (the "Initial Term"), for a collective not-to-exceed amount of \$800,000.00 for the Agreements, with the County having the option to renew each agreement for up to two (2) additional two year periods thereafter (each an "Option Term"). The Agreements were subsequently executed.

By a resolution approved on April 2, 2015, your Honorable Board authorized the County to exercise its first option under each of the Agreements and thereby extend the term of each of the Agreements by two (2) years, through the first Option Term, to a new expiration date of December 31, 2016, for a collective not-to-exceed amount of \$800,000.00 for the Agreements during the first Option Term. The first option was exercised, and the agreement term thereby extended, only under the agreement with each of PKFOD; Mitchell & Titus; and Wei Wei.

By a resolution approved on May 25, 2017, your Honorable Board authorized the County

to exercise its second option under each of the Agreements and thereby extend the term of each of the Agreements by two (2) years, through the second Option Term, to a new expiration date of December 31, 2018, for a collective not-to-exceed amount of \$800,000.00 for the Agreements during the second Option Term. The second option was exercised, and the agreement term thereby extended, only under the agreement with each of PKFOD and Mitchell & Titus (the "Current Firms").

The Agreements were procured by a request for proposals that was issued by the Department of Finance (the "Department") on January 4, 2013 pursuant to Section 7 of the County's Procurement Policy (the "RFP"). The RFP specified a two-year initial term and two option terms of two years apiece. The Department intended, and the Department believes that the circumstances of the RFP made it clear to all prospective proposers, that the RFP was soliciting audit services for records pertaining to, a.) 2013 and 2014, via the initial term stated in the RFP, which would be performed in 2014 and 2015; b.) 2015 and 2016, via the first option term stated in the RFP, which would be performed in 2016 and 2017; and c.) 2017 and 2018, via the second option term stated in the RFP, which would be performed during 2018 and 2019. Since 2013, the Firms and the County proceeded based upon that understanding in performing under the Agreements.

However, despite that understanding, the agreement with each of PKFOD and Mitchell & Titus, as extended by the exercise of both County options, (the "Current Agreement") did, in fact, expire on December 31, 2018. That expiration date was one year earlier than intended (i.e., one year too early to allow for the audit of records from 2018 during 2019), and that resulted from a misunderstanding as to when the Agreements should have commenced. Specifically, that misunderstanding caused the Agreements to be written, and authorized, with the Initial Term of each commencing on January 1, 2013 rather than January 1, 2014, and the Option Terms of each following thereafter, ending on December 31, 2018.

In order to align the terms of the Current Agreements with the intentions of the County and the Current Firms, and in order to ensure that the County can receive from the Current Firms, during 2019, the necessary audit services of records from 2018, the term of each of the Current Agreements would have to be extended by one (1) year, to new expiration dates of December 31, 2019 (collectively, the "Amendments").

Although the audit services performed under the extensions would only be performed for records from 2018, those extensions would nevertheless constitute procurement to the extent that they would add a year to the existing terms of the Current Agreements.

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

I respectfully recommend approval of the attached resolution.

AMB/DK/bdm/nn

RESOLUTION

Upon a communication from the Commissioner of the Department of Finance, be it hereby:

RESOLVED, that pursuant to Section 3(a)(xxi) of the Westchester County Procurement Policy and Procedures, it is hereby determined that application of the procedural requirements contained therein, including the necessity of soliciting proposals, is neither cost effective nor expedient, and accordingly, not in the best interests of the County of Westchester in connection with the procurement of an amendment to an agreement with each of O'Connor Davies, LLP (now known as PKF O'Connor Davies, LLP) and Mitchell & Titus, LLP (collectively, the "Firms"), pursuant to each of which each of the Firms was to provide audit and review services, for the period from January 1, 2013 through December 31, 2018, (collectively, the "Agreements") in order to extend the term of each of the Agreements by one (1) year, to a new expiration date of December 31, 2019.

APPROVED BOARD OF ACQUISITION & CONTRACT ADMINISTRATION, SECRETARY