

72666

DATE: November 15, 2019

TO: Honorable Members of the Board of Acquisition and Contract

FROM: Hugh Greechan, Jr., P.E.
Commissioner of Public Works and Transportation

SUBJECT: Authority for the County of Westchester (the "County") to enter into an agreement with Ameresco, Inc. (the "Contractor") pursuant to which the Contractor will provide qualified professional operators for the 24 X 7 operation of the County's Central Heating Plant (CHP) that serves critical facilities that must operate 24 X 7 all year, located on the County's Valhalla, New York campus for a five (5) year term in a total amount not to exceed Four Million Nine Hundred Sixty Two Thousand Eight Hundred Ninety Four (\$4,962,894) Dollars commencing on December 1, 2019, with the County's option for one five (5) year renewal for an additional total amount not to exceed of Five Million Five Hundred Thirty Three Thousand Two Hundred Eighty Seven (\$5,533,287) Dollars. (Agreement No. 19-922)

Authority is hereby requested for the County, acting by and through its Department of Public Works and Transportation (the "Department"), to enter into an agreement with the Contractor pursuant to which the Contractor will provide qualified professional operators for the 24 X 7 operation of the CHP that serves critical facilities that must operate 24 X 7 all year, located on the County's Valhalla, New York campus for a five (5) year term in a total amount not to exceed Four Million Nine Hundred Sixty Two Thousand Eight Hundred Ninety Four (\$4,962,894) Dollars commencing on December 1, 2019, with the County's option for one five (5) year renewal for an additional total amount not to exceed of Five Million Five Hundred Thirty Three Thousand Two Hundred Eighty Seven (\$5,533,287) Dollars (the "Agreement"). Under the Agreement, the County will pay one twelfth (1/12) of the following annual fees on a monthly basis after services are rendered: Year 1 - \$949,900; Year 2 - \$973,648; Year 3 - \$993,120; Year 4 - \$1,012,983; Year 5 - \$1,033,243. These annual fees include all overhead and expenses.

If the County should choose to exercise its renewal option with the future approval of this Honorable Board, the annual fees would be: Year 1 - \$1,059,074; Year 2 - \$1,085,550; Year 3 - \$1,107,261; Year 4 - \$1,129,407; Year 5 - \$1,151,995.

As you know, on February 28, 2019, your Honorable Board approved a resolution authorizing the Department to enter into an emergency agreement with the Contractor, pursuant to which the Contractor would provide operators for the CHP for a term of six (6) months based upon a rate of \$150.00/person hour, which included all overhead and expenses, for an amount not to exceed \$700,000 (the "February 28, 2019 Resolution"). The February 28, 2019 Resolution was based upon an

emergency declaration of the County that it did not have sufficient personnel to operate the CHP. The CHP is a complex, high pressure steam plant providing heat, hot water and air conditioning to critical public buildings located at the Grasslands campus, including, Woodfield Cottage juvenile detention facility, the Westchester Medical Center, the Public Health Laboratories, the Westchester Corrections Facility, and the Department of Social Services Grasslands Homeless Shelter.

Subsequently, by resolution adopted on August 9, 2019, your Honorable Board extended the emergency contract until November 30, 2019 to allow the County to conduct an RFP to enter into a long-term contract in order to address this continuing personnel shortage at the CHP and increased the total contract amount not to exceed to \$950,000.

On August 22, 2019, the County issued an RFP for this agreement on both the County's RFP website and on BidNet. In addition, the Department transmitted notice of the RFP to Ameresco and to several other firms that provide such services including, Sodexo, Aramark, Crothall, and Willdan. The RFP required that to submit a proposal, potential proposers had to attend a mandatory site visit on September 5, 2019. Three firms attended the mandatory site visit which were Ameresco, Willdan and Clean Air Quality Service. On October 10, 2019, the RFP deadline for submission of proposals, the Department only received one proposal from Ameresco.

In accordance with the terms of the RFP, under the Agreement, Ameresco will only provide operators for the CHP to address the continuing shortage of operating personnel at the CHP. The County will continue to be responsible for maintenance, repair, capital improvements and the purchase of supplies, materials and equipment.

The Agreement requires the Contractor to indemnify the County in the area of general indemnity. The Agreement contains a cap on liability for the Contractor, which will apply except in the case of gross negligence or willful misconduct. The cap on liability is that the aggregate liability of the Contractor under the Agreement in any contract year (whether based on negligence, breach of contract or otherwise) arising out of or in connection with the performance of the Contractor of its obligations under the Agreement (including without limitation payment of any liquidated damages) shall not exceed an amount equal to the payments for services for that contract year plus the proceeds of insurance maintained by the Contractor pursuant to the requirements of the Agreement. The contract requires the Contractor to maintain \$10,000,000 in commercial umbrella/excess insurance coverage and to name the County as additional insured.

In addition, the Agreement requires the County to indemnify, defend and hold the Contractor, its affiliates, officers, directors, employees, contractors and subcontractors ("Contractor Indemnified Party"), harmless against and from, any and all damages, losses, liabilities, claims, litigation, demands, proceedings, judgments, or suits of any kind or of any nature whatsoever (including reasonable legal, consultant, expert fees incurred in investigating, defending against, settlement or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against any Contractor Indemnified Party arising out of or relating to the presence of any Hazardous Materials which are (i) present on the facility prior to the commencement of Contractor's work, or (ii) improperly handled or disposed of by County or parties under County's supervision (other than Contractor, its subcontractors or any other parties under Contractor's supervision) or (iii) brought on to the facility or produced thereon by parties other than Contractor, its subcontractors or any other parties under Contractor's supervision. "Hazardous Materials" shall mean any chemical, material or substance in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste material, raw material, chemical, finished product, byproduct, or any other material or article, that is defined, listed or regulated or as to which liability could be imposed, under Applicable Law as a "hazardous" or "toxic" substance or waste or material, or as a "pollutant" or contaminant," (or words

of similar meaning or import) or is otherwise listed or regulated, or as to which liability could be imposed, under applicable laws; including without limitation, petroleum products, petroleum derived substances, radioactive materials, asbestos, asbestos containing materials, polychlorinated biphenyls, urea formaldehyde foam insulation, and lead-containing paints or coatings, including without limitation any "hazardous substance" or "petroleum" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801, et seq.), "hazardous wastes" as defined in the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 9601, et seq.), "toxic substances" as defined in the Toxic Substance Control Act as amended (15 U.S.C. §§ 2601 et seq.) and in the regulations adopted, published, and promulgated pursuant thereto, or in any other Laws.

The Agreement also provides that the Contractor will not assign or subcontract the Agreement without the written consent of the County. In the Agreement and this resolution, the Contractor seeks approval to use the following subcontractor to provide temporary staffing under the Agreement:

Aerotek, Inc.
7301 Parkway Drive
Hanover, MA 21076

Ameresco has responsibly met all the requirements of their existing contract with the County. Accordingly, I most respectfully recommend the adoption of the annexed proposed Resolution to ensure the continued safe 24 X 7 operation of the CHP and all of the vital facilities that it serves on the Valhalla Campus.

HG/jmr/ran
Encl.

RESOLUTION

Upon a communication from the Commissioner of the Department of Public Works and Transportation, be it hereby

RESOLVED, that the County of Westchester (the "County"), acting by and through its Department of Public Works and Transportation (the "Department"), is hereby authorized to enter into an agreement with Ameresco, Inc. (the "Contractor") pursuant to which the Contractor will provide qualified professional operators for the 24 X 7 operation of the County's Central Heating Plant (CHP) that serves critical facilities that must operate 24 X 7 all year, located on the County's Valhalla, New York campus for a five (5) year term in a total amount not to exceed Four Million Nine Hundred Sixty Two Thousand Eight Hundred Ninety Four (\$4,962,894) Dollars commencing on December 1, 2019, with the County's option for one five (5) year renewal for an additional total amount not to exceed of Five Million Five Hundred Thirty Three Thousand Two Hundred Eighty Seven (\$5,533,287) Dollars, which option shall be subject to the future approval of the Board of Acquisition and Contract (the "Agreement"), and be it further

RESOLVED, under the Agreement for the authorized five (5) year term, the County will pay one twelfth (1/12) of the following annual fees on a monthly basis after services are rendered: Year 1 - \$949,900; Year 2 - \$973,648; Year 3 - \$993,120; Year 4 - \$1,012,983; Year 5 - \$1,033,243 and such annual fees shall include all overhead and expenses, and, be it further

RESOLVED, the Agreement annual fees for the five (5) year County option term shall be: Year 1 - \$1,059,074; Year 2 - \$1,085,550; Year 3 - \$1,107,261; Year 4 - \$1,129,407; Year 5 - \$1,151,995 and the County will pay one twelfth (1/12) of such annual fees on a monthly basis after services are rendered, and, be it further

RESOLVED, that the Agreement will contain a general a cap on liability for the Contractor, which will apply except in the case of gross negligence or willful misconduct. The cap is that the aggregate liability of Contractor under the Agreement in any contract year (whether based on negligence breach of contract or otherwise) arising out of or in connection with the performance of Contractor of its obligations under the Agreement (including without limitation payment of any liquidated damages) shall not exceed an amount equal to the payments for services for that contract year plus the proceeds of insurance maintained by Contractor pursuant to the requirements of the Agreement, and, be it further

RESOLVED, the County is authorized to indemnify, defend and hold the Contractor, its affiliates, officers, directors, employees, contractors and subcontractors ("Contractor Indemnified Party"), harmless against and from, any and all damages, losses, liabilities, claims, litigation, demands, proceedings, judgments, or suits of any kind or of any nature whatsoever (including reasonable legal, consultant, expert fees incurred in investigating, defending against, settlement or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against any Contractor Indemnified Party arising out of or relating to the presence of any Hazardous Materials which are (i) present on the facility prior to the commencement of Contractor's work, or (ii) improperly handled or disposed of by County or parties under County's supervision (other than Contractor, its subcontractors or any other parties under Contractor's supervision) or (iii) brought on to the facility or produced thereon by parties other than Contractor, its subcontractors or any other parties under Contractor's supervision. "Hazardous Materials" shall mean any chemical, material or substance in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste material, raw material, chemical, finished product, byproduct, or any other material or article, that is defined, listed or regulated or as to which liability could be imposed, under Applicable Law as a

“hazardous” or “toxic” substance or waste or material, or as a “pollutant” or contaminant,” (or words of similar meaning or import) or is otherwise listed or regulated, or as to which liability could be imposed, under applicable laws; including without limitation, petroleum products, petroleum derived substances, radioactive materials, asbestos, asbestos containing materials, polychlorinated biphenyls, urea formaldehyde foam insulation, and lead-containing paints or coatings, including without limitation any “hazardous substance” or “petroleum” as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801, et seq.), “hazardous wastes” as defined in the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 9601, et seq.), “toxic substances” as defined in the Toxic Substance Control Act as amended (15 U.S.C. §§ 2601 et seq.) and in the regulations adopted, published, and promulgated pursuant thereto, or in any other Laws, and, be it further

RESOLVED, the following subcontractor is hereby approved to provide temporary staffing under the Agreement:

Aerotek, Inc.
 7301 Parkway Drive
 Hanover, MA 21076

and, be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized and empowered to execute and deliver any documents and take all actions necessary or appropriate to effectuate the purposes hereof

Agreement No. 19-922

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Bond Act No.	Dollars
2019	101	46	3400	4380	N/A	\$ 79,158.33
2020	101	46	3400	4380	N/A	\$ 951,879.00
2021	101	46	3400	4380	N/A	\$ 975,270.67
2022	101	46	3400	4380	N/A	\$ 994,775.25
2023	101	46	3400	4380	N/A	\$1,014,671.33
2024	101	46	3400	4380	N/A	\$ 947,139.42

Budget Funding Year(s) 2019-2024 Start Date 12/01/2019 End Date 11/30/2024
 (must match resolution)

Funding Source: Tax Dollars 100% County
 State Aid _____
\$4,962,894.00 Federal Aid _____
 (must match resolution) Other _____