

George Latimer
County Executive

64656

DATE: August 8, 2018

TO: Board of Acquisition and Contract

FROM: Kenneth W. Jenkins
Acting County Executive

Peter McCartt
Director of Energy Conservation and Sustainability

SUBJECT: Authority to exempt from the Westchester County Procurement Policy, pursuant to Section 3(a)(xxi) thereof, an agreement with NuEnergy, LLC, pursuant to which it will provide services concerning 'demand response' programs that relate to power usage at County facilities.

Authority is hereby requested from your Honorable Board to exempt from the Westchester County Procurement Policy an agreement between the County of Westchester (the "County") and NuEnergy, LLC ("NuEnergy"), pursuant to which NuEnergy will provide the County with services concerning 'demand response' programs that relate to power usage at County facilities (the "Services"), for a term of five (5) years, commencing on September 1, 2018, with the County having the sole option to extend the term of the agreement for up to two (2) two (2) year periods thereafter (the "Agreement").

Under the Agreement, the Services will include registering facilities of the County in certain 'demand response' programs for which the County and the said facilities are eligible, and professionally managing all aspects of the County's participation in those programs, including, without limitation, related monitoring, testing, and communications; the conduct of 'demand response' power-reduction events; and distribution of payments to the County.

In 2012, the City of New York (the "City") issued a request for proposals for various 'demand response' services, including services such as those that NuEnergy would provide to the County under the proposed Agreement (the "NYC RFP"). The NYC RFP resulted in the City entering into an agreement with NuEnergy (the "NYC Agreement"), pursuant to which NuEnergy would, in consideration of the 'demand response' services provided to the City, be entitled to retain seven and three-quarters percent (7.75%) of the amounts owed to the City based

upon its participation in 'demand response' programs, with the City being paid the remaining ninety-two and one-quarter percent (92.25%).

NuEnergen informed the County that it would be willing to honor, under the proposed Agreement, the cost terms from the NYC Agreement that the City procured via the NYC RFP. The County has determined that those cost terms are extremely favorable and quite likely better than any cost terms the County could currently competitively procure on its own. However, the County is unable to legally directly 'piggyback' on the City's procurement. Accordingly, the County must establish its own legal procurement basis for the proposed Agreement, under the terms of the Westchester County Procurement Policy and Procedures.

It should also be noted that, by foregoing a new competitive procurement for the Services, the County expects to have the opportunity to register facilities in one of the applicable 'demand response' programs in time to receive revenue during one of the higher-value summer months for that program.

Based on the foregoing, 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. Accordingly, a resolution to exempt this procurement is hereby submitted for your consideration..

PM/bdm/nn

APPROVED BOARD OF ACQUISITION & CONTRACT ADMINISTRATION
03/16/2016
USM/PAJ/SECRETARY

RESOLUTION

Upon a communication from the Acting County Executive and the Director of Energy Conservation and Sustainability, be it hereby

RESOLVED, that pursuant to Section 3(a)(xxi) of the Westchester County Procurement Policy, 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 (the "County") in connection with the procurement of an agreement with NuEnergen, LLC ("NuEnergen"), pursuant to which NuEnergen will provide the County with services concerning 'demand response' programs that relate to power usage at County facilities (the "Services"), for a term of five (5) years, commencing on September 1, 2018, with the County having the sole option to extend the term of the agreement for up to two (2) two (2) year periods thereafter.

APPROVED BOARD OF ACQUISITION & CONTRACT ADMINISTRATION
STAMPED: EUSTACE J. SECRETARY