

85236

DATE: May 23, 2021

TO: The Honorable Board of Acquisition and Contract

FROM: Thomas Gleason
Acting Commissioner-Sheriff
Department of Public Safety

RE: **Authority for County of Westchester (the “County”) to terminate its current interagency agreement (“LESO Agreement”) with the State of New York, acting by and through its Division of Criminal Justice Services (“DCJS”), pursuant to which the County participates in a United States Department of Defense program, known as the LESO Program, whereby State and local law enforcement agencies can receive surplus demilitarized equipment for law enforcement activities at no cost to the County, and to enter into a new LESO Agreement using DCJS’ new form of agreement revised in 2021.**

By Resolution of Your Honorable Board on October 11, 2018, the County of Westchester (the “County”) acting by and through its Department of Public Safety (the “Department”) was authorized to enter into an agreement (“2018 Agreement”) with the State of New York, acting by and through its Division of Criminal Justice Services (“DCJS”), in order for the County to be eligible to benefit from the LESO program as defined below. The 2018 Agreement was executed on October 17, 2018.

On April 9, 2021, DCJS notified the Department that DCJS has updated their form agreement and requested that the County sign the new form agreement in order to continue to participate in the LESO Program. By its terms, the 2018 Agreement (as well as the 2021 Agreement) can only be terminated by either party, provided the other party receives a thirty (30) day notice (in writing) or as otherwise stipulated. The County and DCJS will stipulate by letter that the 2018 Agreement will terminate effective upon the execution of the 2021 LESO Agreement.

The Secretary of Defense is Authorized by 10 USC Section 2576a to transfer to state law enforcement agencies personal property that is excess to the needs of the Department of Defense (“DOD”) that the Secretary determines is suitable for use by the agencies in law enforcement activities, including counterdrug, counterterrorism, and border security activities. This authority is delegated to the Defense Logistics Agency (“DLA”) and is administered by DLA Disposition Services, Law Enforcement Support Office through a program known as the “1033 Program” or the “LESO Program”.

Pursuant to the LESO Program, The State of New York (the “State”), acting by and through its Division of Criminal Justice Services (“DCJS”), entered into an agreement with DLA on or about September, 2016 in order to for the State to avail itself of this program. The proposed 2021

Agreement, if authorized by Your Honorable Board, will allow the County to continue avail itself of the program.

The 2021 Agreement will create no entitlement for the County to receive DOD property but will qualify the County to do so as an authorized LESO program participant. Once the 2021 Agreement is executed, the County will continue to be eligible to request and receive, at no cost, demilitarized equipment which covers a wide spectrum of items used by the United States military including, but not limited to, clothing, furniture, office supplies, tools, medical and rescue equipment, and vehicles. Any request by the County for such equipment must be made by the Department upon 30 days advance notice to the County Executive and Board of Legislators. The County will not utilize this program to obtain any military weapons.

Once equipment is transferred, LESO retains title or ownership of the property and retains the right to recall it at any time. However, ownership and title to certain specified equipment will transfer to the County after one year from the date it was shipped to the Department.

As with the 2018 Agreement, the proposed 2021 Agreement will contain an indemnification clause as follows (The County is referred to as the LEA):

“The State/LEA is required to maintain adequate liability insurance to cover damages or injuries to persons or property relating to the use of property issued under the program. Self-insurance by the State/LEA is considered acceptable. The USG [United States Government] assumes no liability for damages or injuries to any person(s) or property arising from the use of property issued under the program. It is recognized that State and local law generally limit or preclude the State/LEA from agreeing to open ended indemnity provisions. However, to the extent permitted by State and local laws, the State/LEA shall indemnify and hold the USG harmless from any and all actions, claims, debts, demands, judgments, liabilities, cost, and attorney’s fees arising out of, claimed on account of, or in any manner predicated upon loss of, or damage to property and injuries, illness or disabilities to, or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including States, local and interstate bodies, in any manner caused by or contributed to by the State/LEA, its agents, servants, employees, or any person subject to its control while the property is in the possession of, used by, or subject to the control of the State/LEA, its agents, servants, or employees after the property has been removed from USG control.”

The proposed Agreement is in the public’s best interest and will promote the safety and general welfare of the public by providing the Department with equipment at no cost which will enhance the Department’s ability to carry out its mission. The goals and objectives of this program are the enhancement of the public safety and security of the County’s residents, and said goals and objectives will be monitored by Department staff.

The Agreement is not procurement. Therefore, the terms of the County’s Procurement Policy do not apply.

Accordingly, authority is respectfully requested for the County to enter into this Agreement in accordance with the attached Resolution.

TG/SG/jrc
Attachment

RESOLUTION

Upon a communication from the Acting Commissioner of Public Safety, it is hereby

RESOLVED, that authority is hereby granted to the County of Westchester (the “County”), acting by and through its Department of Public Safety (the “Department”), ” to terminate its current interagency agreement (“2018 Agreement”) with the State of New York, acting by and through its Division of Criminal Justice Services (“DCJS”), pursuant to which the County participates in a United States Department of Defense program, known as the LESO Program, whereby State and local law enforcement agencies can receive surplus demilitarized equipment for law enforcement activities at no cost to the County, and to enter into a new agreement using DCJS’ new form of agreement revised in 2021 (the “2021 Agreement”); and be it further

RESOLVED, that the County will not utilize this program to obtain any military weapons; and be it further

RESOLVED, that the 2021 Agreement shall contain the following provision:

“The State/LEA is required to maintain adequate liability insurance to cover damages or injuries to persons or property relating to the use of property issued under the program. Self-insurance by the State/LEA is considered acceptable. The USG [United States Government] assumes no liability for damages or injuries to any person(s) or property arising from the use of property issued under the program. It is recognized that State and local law generally limit or preclude the State/LEA from agreeing to open ended indemnity provisions. However, to the extent permitted by State and local laws, the State/LEA shall indemnify and hold the USG harmless from any and all actions, claims, debts, demands, judgments, liabilities, cost, and attorney’s fees arising out of, claimed on account of, or in any manner predicated upon loss of, or damage to property and injuries, illness or disabilities to, or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including States, local and interstate bodies, in any manner caused by or contributed to by the State/LEA, its agents, servants, employees, or any person subject to its control while the property is in the possession of, used by, or subject to the control of the State/LEA, its agents, servants, or employees after the property has been removed from USG control.”; and be it further

RESOLVED, that the 2021 Agreement shall commence upon execution and may be terminated by either party, provided the other party receives a thirty (30) day notice (in writing) or as otherwise stipulated; and be it further

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

<u>Account to be Charged/Revenue</u>	<u>Fund</u>	<u>Dept.</u>	<u>Major Program, Program & Phase or Unit</u>	<u>Revenue</u>	<u>Trust Account</u>	<u>Dollars</u>
N/A						

Budget Funding Year(s): _____ Start Date: _____ End Date: _____
 Funding Source : _____
 (must match resolution) \$ _____