



George Latimer
County Executive

Department of Social Services

Leonard G. Townes
Commissioner

86075

DATE: June 25, 2021

TO: Board of Acquisition and Contract

FROM: Leonard G. Townes
Commissioner, Department of Social Services

SUBJECT: Authority to, 1.) enter into an agreement with LexisNexis Risk Solutions FL Inc., pursuant to which it will provide the County with data solutions for comprehensive background screenings of applicants for, and recipients of, various social service programs, for an amount not-to-exceed \$65,700.00, for a period commencing on June 1, 2021, or such later date as may be agreed by the parties, and continuing for three (3) years thereafter, with the County having the sole option to extend the term of the agreement for up to two (2) additional one (1) year periods thereafter, and 2.) enter into such agreements with LexisNexis Risk Solutions FL Inc.'s 'affiliates' as it may require as part of its provision of the services.

On March 24, 2021, the County of Westchester (the "County"), acting by and through its Department of Social Services ("DSS"), and in accordance with Sections 6 and 13 of the Westchester County Procurement Policy, issued a request for proposals that solicited proposals from vendors to provide the Services (the "RFP"). In response to the RFP, DSS received two (2) proposals. DSS had several individuals review the proposals and evaluate them based upon the evaluation criteria specified in the RFP. The result of that review and evaluation was that the proposal from LexisNexis Risk Solutions FL Inc. ("Lexis") received the highest score and was, accordingly, ranked first. DSS conducted an analysis of the proposed fees for the proposed Agreement and found that they are reasonable. Based on DSS's review of the proposal from Lexis, and Lexis's performance under previous contracts with the County, DSS is satisfied that it is a responsible vendor for these services.

Accordingly, authority is requested for the County to, 1.) enter into an agreement (the "Agreement") with Lexis, pursuant to which Lexis will provide the County with data solutions for comprehensive background screenings of applicants for, and recipients of, various social

service programs (the “Services”), for an amount not-to-exceed \$65,700.00, payable at a rate of \$1,825.00 per month, for a period commencing on June 1, 2021, or such later date as may be agreed by the parties, and continuing for three (3) years thereafter, (the “Initial Term”), with the County having the sole option to extend the term of the agreement for up to two (2) additional one (1) year periods thereafter on the same terms and conditions as the Initial Term, including the rate of \$1,825.00 per month for the Services, (each an “Option Term”) which would cause the total not-to-exceed amount for each Option Term to be \$21,900.00, and 2.) enter into such agreements, whether subsumed within the Agreement or otherwise, with Lexis ‘affiliates’ (the “Additional Agreements”), possibly including, but not necessarily limited to, LexisNexis Risk Solutions Inc., as may be required by Lexis as part of its provision of the Services (the Agreement and the Additional Agreements, collectively, being the “Overall Agreement”).

Lexis is requiring the County to include, in the various parts of the Overall Agreement, the following contractual protections for Lexis and/or its ‘affiliates’, as well as one provider of data that may be accessed by the County as part of its use of the Services (the “Protective Clauses”):

- 1.) “To the extent permitted under applicable law, Customer¹ shall remain solely liable for all costs associated therewith² and shall further reimburse LN³ for any expenses it incurs due to Customer’s failure to prevent such impermissible use or access of User IDs⁴ and/or the LN Services⁵, or any actions required as a result thereof.”
- 2.) “To the extent permitted under applicable law, Customer shall remain solely liable for claims that may arise from a Security Event⁶, including, but not limited to, costs for litigation (including attorneys’ fees), and reimbursement sought by individuals, including but not limited to, costs for credit monitoring or allegations of loss in connection with the Security Event.”
- 3.) “To the extent permitted by applicable law, Customer hereby agrees to

¹ In this context, the “Customer” is the County.

² This references the following type of situation: “...if Customer suspects, has reason to believe or confirms that a User ID or the LN Services (or data derived directly or indirectly therefrom) is or has been lost, stolen, compromised, misused or used, accessed or acquired in an unauthorized manner or by any unauthorized person, or for any purpose contrary to the terms and conditions herein.”

³ In this context, “LN” is defined as LexisNexis Risk Solutions FL Inc. “and each of its respective Affiliates who provide” certain data products, data applications and other related services to the County.

⁴ In this context, “User IDs” means “user identification numbers, and related passwords, or other security measures”.

⁵ In this context, “LN Services” means “certain data products, data applications and other related services” that are being provided to the County

⁶ In this context, a “Security Event” means “unauthorized acquisition or access of or to such personally identifiable information [including, but not limited to, social security numbers, driver’s license numbers or dates of birth], including but not limited to that which is due to use by an unauthorized person or due to unauthorized use”.

protect, indemnify, defend, and hold harmless LN from and against any and all costs, claims, demands, damages, losses, and liabilities (including attorneys' fees and costs) arising from or in any way related to any third-party claim based upon (a) use of information received by Customer (or any third-party receiving such information from or through Customer) furnished by or through LN; (b) breach of any terms, conditions, representations or certifications in [the portion of the Overall Agreement identified by LexisNexis as its 'Master Terms']; and (c) any Security Event.”

- 4.) “You⁷ agree to indemnify, defend, and hold LN harmless for any and all claims, damages, costs, fines and expenses that LN may incur as a result of you or your Authorized Users⁸ use of the Folders⁹ or any content uploaded to the Folders, excluding LN Materials¹⁰.”
- 5.) “[Y]ou will indemnify LN for any third party claims directed against LN that arise from the Security Event¹¹.”
- 6.) For data provided by Dun & Bradstreet, Inc. (“D&B”): “You¹² agree to indemnify, defend and hold harmless D&B from any claim or cause of action against D&B arising out of, or relating to, the use of the Information¹³ by individuals or entities which have not been authorized to have access to and/or use the Information.”
- 7.) For data provided from the Limited Access Death Master File (“DMF”) maintained by the National Technical Information Service

⁷ In this context, “You” means the County.

⁸ In this context, “Authorized Users” means persons including “employees, temporary employees, students, partners/members, and contractors dedicated to performing work exclusively for” the County, but not (without limitation) “external professional service providers such as attorneys, accountants, outsourcers and public relations firms”, “whom [the County] ha[s] identified to LN for purposes of issuing an LN ID.”

⁹ “Folders” are “a feature that will allow [the County’s] Authorized Users to create work folders or work spaces...from within research sessions that are associated solely with their respective LN IDs.”

¹⁰ In this context, the LexisNexis “Materials” are “the online services...and materials available therein” provided by LexisNexis.

¹¹ In this context, a “Security Event” is when the County, or any of its Authorized Users (as defined above), or any person the County or its Authorized Users permits to use the LexisNexis’s online services or who gains access through an Authorized User’s failure to properly secure his or her LN ID or computer, accesses or uses the online services and the materials available therein that are subject to either a variety of privacy, data protection, and other laws in a variety of jurisdictions or the licenses under which LexisNexis obtains such materials, in an unauthorized manner.

¹² In this context, “You” means the County.

¹³ In this context, “Information” means data provided by D&B.

(“NTIS”) of the United States Department of Commerce: “Recipient¹⁴ shall indemnify and hold harmless LN and NTIS and the Department of Commerce from all claims, liabilities, demands, damages, expenses, and losses arising from or in connection with Recipient’s, Recipient’s employees’, contractors’, or subcontractors’ use of the Limited Access DMF. This provision will include any and all claims or liability arising from intellectual property rights.”

Accordingly, the County requests, as part of its above-described request for authority to enter into the Overall Agreement, specific authorization to agree to the inclusion of the Protective Clauses.

The proposed Overall Agreement will serve a public purpose by enabling the County to receive the Services, which will provide assistance in the detection and prevention of fraud in various public programs.

The goal and objective of the proposed Overall Agreement is to enable the County to receive the Services, which will provide assistance in the detection and prevention of fraud in various public programs.

The goal and objective of the proposed Overall Agreement is in the best interests of the County in terms of fiscal responsibility, as the County receiving the Services will ensure that the County has access to useful tools designed to help reduce fraud and waste in various public programs.

The goal and objective of the proposed Overall Agreement will be tracked and monitored by the staff of the Department of Social Services.

I respectfully recommend the adoption of the attached resolution.

LGT/EC/bdm/nn

¹⁴ In this context, “Recipient” means the County.

RESOLUTION

Upon a communication from the Commissioner of Social Services, be it hereby:

RESOLVED, that the County of Westchester (the “County”) is hereby authorized to, 1.) enter into an agreement (the “Agreement”) with LexisNexis Risk Solutions FL Inc. (“Lexis”), pursuant to which Lexis will provide the County with data solutions for comprehensive background screenings of applicants for, and recipients of, various social service programs (the “Services”), for an amount not-to-exceed \$65,700.00, payable at a rate of \$1,825.00 per month, for a period commencing on June 1, 2021, or such later date as may be agreed by the parties, and continuing for three (3) years thereafter (the “Initial Term”), with the County having the sole option to extend the term of the agreement for up to two (2) additional one (1) year periods thereafter on the same terms and conditions as the Initial Term, including the rate of \$1,825.00 per month for the Services, (each an “Option Term”) which would cause the total not-to-exceed amount for each Option Term to be \$21,900.00, and 2.) enter into such agreements, whether subsumed within the Agreement or otherwise, with Lexis ‘affiliates’ (the “Additional Agreements”), possibly including, but not necessarily limited to, LexisNexis Risk Solutions Inc., as may be required by LexisNexis as part of its provision of the Services (the Agreement and the Additional Agreements, collectively, being the “Overall Agreement”); and be it further ; and be it further

RESOLVED, that the County is authorized to agree to the inclusion, in the various parts of the Overall Agreement, the following provisions:

- 1.) “To the extent permitted under applicable law, Customer¹⁵ shall remain solely liable for all costs associated therewith¹⁶ and shall further reimburse LN¹⁷ for any expenses it incurs due to Customer’s failure to prevent such impermissible use or access of User IDs¹⁸ and/or the LN Services¹⁹, or any actions required as a result thereof.”
- 2.) “To the extent permitted under applicable law, Customer shall remain

¹⁵ In this context, the “Customer” is the County.

¹⁶ This references the following type of situation: “...if Customer suspects, has reason to believe or confirms that a User ID or the LN Services (or data derived directly or indirectly therefrom) is or has been lost, stolen, compromised, misused or used, accessed or acquired in an unauthorized manner or by any unauthorized person, or for any purpose contrary to the terms and conditions herein.”

¹⁷ In this context, “LN” is defined as LexisNexis Risk Solutions FL Inc. “and each of its respective Affiliates who provide” certain data products, data applications and other related services to the County.

¹⁸ In this context, “User IDs” means “user identification numbers, and related passwords, or other security measures”.

¹⁹ In this context, “LN Services” means “certain data products, data applications and other related services” that are being provided to the County

solely liable for claims that may arise from a Security Event²⁰, including, but not limited to, costs for litigation (including attorneys' fees), and reimbursement sought by individuals, including but not limited to, costs for credit monitoring or allegations of loss in connection with the Security Event."

- 3.) "To the extent permitted by applicable law, Customer hereby agrees to protect, indemnify, defend, and hold harmless LN from and against any and all costs, claims, demands, damages, losses, and liabilities (including attorneys' fees and costs) arising from or in any way related to any third-party claim based upon (a) use of information received by Customer (or any third-party receiving such information from or through Customer) furnished by or through LN; (b) breach of any terms, conditions, representations or certifications in [the portion of the Overall Agreement identified by LexisNexis as its 'Master Terms']; and (c) any Security Event."
- 4.) "You²¹ agree to indemnify, defend, and hold LN harmless for any and all claims, damages, costs, fines and expenses that LN may incur as a result of you or your Authorized Users²² use of the Folders²³ or any content uploaded to the Folders, excluding LN Materials²⁴."
- 5.) "[Y]ou will indemnify LN for any third party claims directed against LN that arise from the Security Event²⁵."
- 6.) For data provided by Dun & Bradstreet, Inc. ("D&B"): "You²⁶ agree

²⁰ In this context, a "Security Event" means "unauthorized acquisition or access of or to such personally identifiable information [including, but not limited to, social security numbers, driver's license numbers or dates of birth], including but not limited to that which is due to use by an unauthorized person or due to unauthorized use".

²¹ In this context, "You" means the County.

²² In this context, "Authorized Users" means persons including "employees, temporary employees, students, partners/members, and contractors dedicated to performing work exclusively for" the County, but not (without limitation) "external professional service providers such as attorneys, accountants, outsourcers and public relations firms", "whom [the County] ha[s] identified to LN for purposes of issuing an LN ID."

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²⁴ In this context, the LexisNexis "Materials" are "the online services...and materials available therein" provided by LexisNexis.

²⁵ In this context, a "Security Event" is when the County, or any of its Authorized Users (as defined above), or any person the County or its Authorized Users permits to use the LexisNexis's online services or who gains access through an Authorized User's failure to properly secure his or her LN ID or computer, accesses or uses the online services and the materials available therein that are subject to either a variety of privacy, data protection, and other laws in a variety of jurisdictions or the licenses under which LexisNexis obtains such materials, in an unauthorized manner.

²⁶ In this context, "You" means the County.

to indemnify, defend and hold harmless D&B from any claim or cause of action against D&B arising out of, or relating to, the use of the Information²⁷ by individuals or entities which have not been authorized to have access to and/or use the Information.”

- 7.) For data provided from the Limited Access Death Master File (“DMF”) maintained by the National Technical Information Service (“NTIS”) of the United States Department of Commerce: “Recipient²⁸ shall indemnify and hold harmless LN and NTIS and the Department of Commerce from all claims, liabilities, demands, damages, expenses, and losses arising from or in connection with Recipient’s, Recipient’s employees’, contractors’, or subcontractors’ use of the Limited Access DMF. This provision will include any and all claims or liability arising from intellectual property rights.”

; and be it further

RESOLVED, that this Overall Agreement is subject to County appropriations; and be it further

RESOLVED, that this Overall Agreement is also subject to further financial analysis of the impact of any New York State Budget (the “State Budget”) proposed and adopted during the term of this Overall Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Overall Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Contractor, then the Contractor shall have the right to terminate this Overall Agreement upon reasonable prior written notice; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to execute any documents and take any actions reasonably necessary and appropriate to effectuate the purposes of this Resolution.

²⁷ In this context, “Information” means data provided by D&B.

²⁸ In this context, “Recipient” means the County.

Account to be Charged/Credited

	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
2021	101	22	4000	4420		\$12,775
2022	101	22	4000	4420		\$21,900
2023	101	22	4000	4420		\$21,900
2024	101	22	4000	4420		\$9,125

Budget Funding Year(s): 2021-2024 Start Date: 6/1/2021 End Date: 5/31/2024
 (must match resolution)

Funding Source	Tax Dollars: 35%
<u>\$65,700.00</u>	State Aid: 24%
(must match resolution)	Federal Aid: 41%
	Other: N/A

APPROVED BOARD OF ACQUISITION & CONTRACT - 07/22/2021 - V. RODRIGUEZ SECRETARY