



State of New Jersey

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

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KEVIN D. WALSH
Acting State Comptroller

March 21, 2024

Via Electronic Mail and U.S. Mail

The Honorable Philip D. Murphy
Governor of New Jersey

The Honorable Nicholas P. Scutari
President of the Senate

The Honorable Craig J. Coughlin
Speaker of the Assembly

Dear Governor Murphy, Senate President Scutari, and Assembly Speaker Coughlin:

Pursuant to the mandate of N.J.S.A. 52:15C-11(b), I submit this letter to advise you that Hudson County (County), is acting in violation of the Local Public Contracts Law (LPCL), N.J.S.A. 40A:11-1 to -60, by unlawfully attempting to procure a management firm to provide medical healthcare, mental healthcare, and fiscal management at the Hudson County Correction Center (HCCC) in the approximate amount of \$13.5 million for one year. Additionally, the County has failed to provide the Office of the State Comptroller (OSC) with a corrective action plan for complying with the law despite repeated directives from OSC. New Jersey law directs OSC to review and monitor procurements to protect taxpayer funds and ensure compliance with laws that protect the integrity of government processes and guard against fraud, waste, and abuse. In accordance with this duty, OSC has advised Hudson County that it shall not proceed with the proposed unlawful procurement and directed it to prepare a plan to comply with the law.

I further notify you that the County violated the notice provisions of N.J.S.A. 52:15C-10(b) and thus disregarded OSC's statutorily established oversight created by the Legislature by submitting this procurement to OSC more than three months after its commencement and

two months after it knew the lowest cost proposal exceeded OSC's statutory pre-advertisement review threshold of \$12.5 million.

As discussed more fully in the attached letter, on three occasions, OSC directed the County to prepare a corrective action plan to bring this procurement into compliance with the LPCL. The County refused to provide the plan. As a result, in the letter OSC issued today, OSC finds that the County's approach is failing to provide the level of transparency and competition required by law, instead using an approach that is more commonly used to annually retain a lawyer. The County is inappropriately using the professional services exception to bidding when the proper procurement method is competitive contracting, which specifically authorizes a fair and transparent evaluative procurement process for patient care services at a correctional facility. N.J.S.A. 40A:11-4.1(h).¹ The County's reliance on the professional services exception to hire a management firm to provide inmate patient care services at HCCC ignores the plain reading of the LPCL's definition of "professional services." The County's use of the professional services exception also renders meaningless N.J.S.A. 40A:11-4.1(h) and disregards the longstanding judicial policy of construing cases governed by the LPCL to curtail the discretion of local authorities by demanding strict compliance with public bidding guidelines.

Importantly, the competitive contracting procurement method requires both robust transparency and fair competition. Among other things, competitive contracting requires advertisement of the solicitation, the public opening of proposals, that the evaluation report become part of the public record and made available to the public prior to the contract award, and the publication of the contract in the contracting unit's official newspaper. By contrast, the professional services exception only requires publication of notice of the contract award in the County's official newspaper, thus limiting both competition and transparency.

Additionally, in a clear effort to bypass legal requirements and shoehorn the contract inappropriately into the professional services exception, the County seeks to create a contract that may be extended beyond the 12-month limitation of a professional services contract.

The LPCL was enacted to benefit New Jersey taxpayers and instill trust that public officials are making well-reasoned and unbiased decisions that serve the public good. Disregarding important public bidding requirements, as the County has done here, threatens to erode public confidence in the public bidding laws and their use by local officials.

Through this letter, we also notify the Acting Commissioner of the Department of Community Affairs and the Director of the Division of Local Government Services, who are

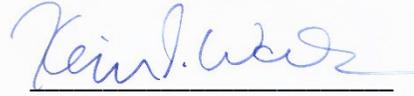
¹ In the alternative, the County could also issue a publicly advertised bid and award a contract to the lowest responsible bidder pursuant to N.J.S.A. 40A:11-4, for a term of up to three years, as permitted by N.J.S.A. 40A:11-15(29). However, competitive contracting affords the County more flexibility to ensure the selected contractor has the required expertise and experience to provide the services.

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both specifically authorized to assist local governments in matters affecting the administration of the LPCL.

Sincerely,



Kevin D. Walsh
Acting State Comptroller

c:

Jacquelyn A. Suárez, NJ Department of Community Affairs, Acting Commissioner
Michele Meade, Deputy Director, Department of Community Affairs, Division of Local
Government Services