

George Latimer
County Executive

June 6, 2023

Westchester County Board of Legislators
800 Michaelian Office Building
White Plains, New York 10601

Honorable Members of the Board of Legislators:

Transmitted herewith is an Act which, if approved by your Honorable Board, would authorize the County of Westchester (the "County"), acting by and through its Bureau of Purchase and Supplies ("Bureau"), to standardize the procurement of a Bell Model 407 helicopter for the Department of Public Safety's Aviation Unit ("Department").

By way of background, the Department's Aviation Unit currently operates two Bell Model 407 helicopters. The first helicopter, which was purchased in 2006 using capital funds, was competitively bid pursuant to Laws of Westchester County § 836.21(1) through the Bureau. The second helicopter, which was purchased in 2011 through the Bureau, was done so using grant funds received from the New York State Division of Homeland Security ("NYSDHS"), and was approved by NYSDHS as a "sole source" procurement.

The Department now seeks to replace the 2006 Bell Model 407 with a new Bell Model 407 helicopter. The new helicopter, like the one it will replace, will be funded with capital funds. As such, it should be competitively bid. Ordinarily, the competitive bidding laws prohibit municipalities from specifying a particular make or model of equipment in the bid specification, unless the brand name product represents an industry-wide standard and the specifications contain an "equivalency clause". However, General Municipal Law ("GML") Section 103(5) carves out an exception to this rule by permitting the governing board of a political subdivision to authorize, for reasons of efficiency and economy, the "standardization" of one brand. I have been advised that this means that instead of including a generalized description of the required item in the bid specification, the bid specification may specify a particular make or brand to the exclusion of all others. GML §103(5) provides in pertinent part as follows:

"Upon the adoption of a resolution by a vote of at least three-fifths of all the members of the governing body of a political subdivision or district therein stating that, for reasons of efficiency or economy, there is need for standardization, purchase contracts for a particular type or kind of equipment, material, supplies or services in excess of the monetary threshold fixed for purchase contracts in this section may be awarded by the appropriate officer, board or agency of such political subdivision or any such district therein, to the lowest responsible bidder or responsible offerer furnishing the required security after advertisement for sealed bids or sealed offers therefor in the manner provided in this section. Such resolution shall contain a full explanation of the reasons for its adoption."

The Department believes that, for the following reasons, there is a need for standardization in connection with the procurement of the new helicopter:

First, the Department's Aviation Unit currently has four (4) police pilots and plans to add more. All four (4) pilots require annual factory (Bell) recurrent training. This training consists of a refresher course, and a night vision goggle refresher course. The pilots utilize only a Bell 407 for this training. The recurrent training for four (4) pilots currently costs the County approximately \$110,000 per year or in excess of \$2 million over the expected lifespan of a Department aircraft. Adding a new aircraft manufacturer or model will effectively double this training cost over that same period of time to approximately \$4 million or more.

Second, the Department currently performs most of the required Bell 407 aircraft maintenance "in house." Tooling has been procured for servicing the Bell 407 aircraft and a unit member/mechanic has attended three (3) Bell factory repair courses. Adding another aircraft manufacturer or model will result in the Department incurring new training and equipment costs. The Department also has the ability to retain some spare Bell 407 parts that can be utilized on either aircraft (if both were Bell 407 helicopters). This reduces the time an aircraft is out of service. These parts will not be able to be utilized on a different manufacturer or model aircraft.

Third, there is an inherent safety risk when operating multiple models of aircraft in one fleet, particularly in a public safety capacity. The Department's missions, such as low level operation, firefighting, search and rescue, and night time, off-site confined landings are dangerous enough on their own. It is imperative that pilots and crew members be able to fall back on their training during these missions. The possibility of confusing procedures from different models of aircraft can become a serious liability, a liability that can be completely averted by operating one type of aircraft.

I have been advised that although GML § 103(5) still requires a public bid following standardization, a 1982 Opinion of the State Comptroller provides that "where a municipality has standardized on a particular item which in fact can be purchased only from a single source (such as the manufacturer or an agent with an exclusive franchise), a monopolistic situation would exist and bidding would not be required (1982 N.Y. Comp. LEXIS 678, citing Opns. St. Comp. 1978, No. 78-812, unreported)."

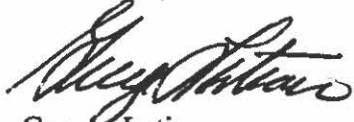
The Planning Department has advised that, based on its review, the proposed Act constitutes a "Type II" action under the State Environmental Quality Review Act ("SEQRA"), 6 NYCRR Part 617. As such, I have been advised that no further environmental review is required. Your Honorable Board may use such expert advice to reach its own conclusion.

It should be noted that although GML § 103(5) requires the adoption by your Honorable Board of a "resolution", Section 209.91(4) of the Laws of Westchester County requires approval by your Honorable Board for these types of matters by way of an Act.

As GML § 103(5) requires a vote of at least three-fifths of all the members of your Honorable Board, it is recommended instead that the proposed Act be adopted by a two-thirds vote which will satisfy the requirements of the statute.

For the reasons set forth above, I believe that in the interest of efficiency and economy, there is a need for standardization in connection with this procurement, and accordingly urge your Honorable Board to adopt the annexed Act.

Very truly yours,

A handwritten signature in black ink, appearing to read "George Latimer". The signature is fluid and cursive, with a large initial "G" and "L".

George Latimer
County Executive

GL/TR/jpg

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Executive recommending approval of an Act which, if adopted, would authorize the County of Westchester (the “County”), acting by and through its Bureau of Purchase and Supplies (the “Bureau”), to standardize the procurement of a Bell Model 407 helicopter for the Department of Public Safety’s Aviation Unit (the “Department”).

Your Committee is advised that the Department’s Aviation Unit currently operates two Bell Model 407 helicopters. The first helicopter, which was purchased in 2006 using capital funds, was competitively bid pursuant to Laws of Westchester County § 836.21(1) through the Bureau. The second helicopter, which was purchased in 2011 through the Bureau, was done so using grant funds received from the New York State Division of Homeland Security (“NYSDHS”), and was approved by NYSDHS as a “sole source” procurement.

The Department has advised your Committee that it now seeks to replace the 2006 Bell Model 407 with a new Bell Model 407 helicopter. The new helicopter, like the one it will replace, will be funded with capital funds. As such, it should be competitively bid. Ordinarily, the competitive bidding laws prohibit municipalities from specifying a particular make or model of equipment in the bid specification, unless the brand name product represents an industry-wide standard and the specifications contain an “equivalency clause”. However, General Municipal Law (“GML”) Section 103(5) carves out an exception to this rule by permitting the governing board of a political subdivision to authorize, for reasons of efficiency and economy, the “standardization” of one brand. Your Committee is advised that this means that instead of including a generalized description of the required item in the bid specification, the bid specification may specify a particular make or brand to the exclusion of all others. GML § 103(5) provides in pertinent part as follows:

“Upon the adoption of a resolution by a vote of at least three-fifths of all the members of the governing body of a political subdivision or district therein stating that, for reasons of efficiency or economy, there is need for standardization, purchase contracts for a particular type or kind of equipment, material, supplies or services in excess of the monetary threshold fixed for purchase contracts in this section may be awarded by the appropriate officer, board or agency of such political subdivision or any such district therein, to the lowest responsible bidder or responsible offerer furnishing the

required security after advertisement for sealed bids or sealed offers therefor in the manner provided in this section. Such resolution shall contain a full explanation of the reasons for its adoption.”

The Department has advised your Committee that there is a need for standardization in connection with the procurement of the new helicopter for the following reasons:

First, the Department’s Aviation Unit currently has four (4) police pilots and plans to add more. All four (4) pilots require annual factory (Bell) recurrent training. This training consists of a refresher course, and a night vision goggle refresher course. The pilots utilize only a Bell 407 for this training. The recurrent training for four (4) pilots currently costs the County approximately \$110,000 per year or in excess of \$2 million over the expected lifespan of a Department aircraft. Adding a new aircraft manufacturer or model will effectively double this training cost over that same period of time to approximately \$4 million or more.

Second, the Department currently performs most of the required Bell 407 aircraft maintenance “in house.” Tooling has been procured for servicing the Bell 407 aircraft and a unit member/mechanic has attended three (3) Bell factory repair courses. Adding another aircraft manufacturer or model will result in the Department incurring new training and equipment costs. The Department also has the ability to retain some spare Bell 407 parts that can be utilized on either aircraft (if both were Bell 407 helicopters). This reduces the time an aircraft is out of service. These parts will not be able to be utilized on different manufacturer or model aircraft.

Third, there is an inherent safety risk when operating multiple models of aircraft in one fleet, particularly in a public safety capacity. The Department’s missions, such as low level operation, firefighting, search and rescue, and night time, off-site confined landings are dangerous enough on their own. It is imperative that pilots and crew members be able to fall back on their training during these missions. The possibility of confusing procedures from different models of aircraft can become a serious liability, a liability that can be completely averted by operating one type of aircraft.

Your Committee is advised that although GML § 103(5) still requires a public bid following standardization, a 1982 Opinion of the State Comptroller provides that “where a municipality has standardized on a particular item which in fact can be purchased only from a single source (such as the manufacturer or an agent with an exclusive franchise), a monopolistic situation would exist

and bidding would not be required (1982 N.Y. Comp. LEXIS 678, citing Opns St Comp, 1978, No. 78-812, unreported).”

The Planning Department has advised that, based on its review, the proposed Act constitutes a “Type II” action under the State Environmental Quality Review Act ("SEQRA"), 6 NYCRR Part 617. Type II actions are those actions determined not to have a significant environmental effect and therefore no further environmental review is required. Your Committee concurs with this conclusion.

Your Committee is advised that although GML § 103(5) requires the adoption by your Honorable Board of a “resolution”, Section 209.91(4) of the Laws of Westchester County requires approval by your Honorable Board for these types of matters by way of an Act.

Your Committee is advised that as GML § 103(5) requires a vote of at least three-fifths of all the members of your Honorable Board, it is recommended instead that the proposed Act be adopted by a two-thirds vote which will satisfy the requirements of the statute.

Your Committee has carefully considered the annexed proposed Act and recommends its adoption.

Dated: _____, 2023
White Plains, New York

COMMITTEE ON

C: JPG 5/10/2023

FISCAL IMPACT STATEMENT

CAPITAL PROJECT #: BPS33

NO FISCAL IMPACT PROJECTED

SECTION A - CAPITAL BUDGET IMPACT

To Be Completed by Budget

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

Source of County Funds (check one):

Current Appropriations

Capital Budget Amendment

NOTE: NO FISCAL IMPACT - CHANGE OF PROCUREMENT. BOND ACT 30-2023 FUNDS THIS PROJECT.

SECTION B - BONDING AUTHORIZATIONS

To Be Completed by Finance

Total Principal

PPU

Anticipated Interest Rate

Anticipated Annual Cost (Principal and Interest):

Total Debt Service (Annual Cost x Term):

\$ -

Finance Department:

SECTION C - IMPACT ON OPERATING BUDGET (exclusive of debt service)

To Be Completed by Submitting Department and Reviewed by Budget

Potential Related Expenses (Annual): \$ -

Potential Related Revenues (Annual): \$ -

Anticipated savings to County and/or impact of department operations

(describe in detail for current and next four years):

SECTION D - EMPLOYMENT

As per federal guidelines, each \$92,000 of appropriation funds one FTE Job

Number of Full Time Equivalent (FTE) Jobs Funded:

N/A

SECTION E - EXPECTED DESIGN WORK PROVIDER

County Staff

Consultant

Not Applicable

Prepared by: Dianne Vanadia

Title: Associate Budget Director

Department: Budget

Date: 6/2/23

Reviewed By: 

DV
6/2/23

Budget Director

Date: 6/5/23

ACT NO. 2023 - _____

AN ACT authorizing the County of Westchester to authorize the Purchasing Agent to standardize the procurement of the Bell Model 407 helicopter in connection with the Department of Public Safety's procurement of a replacement helicopter for its Aviation Unit.

BE IT ENACTED by the Board of Legislators of the County of Westchester, as follows:

Section 1. In accordance with subdivision 5 of § 103 of the General Municipal Law of the State of New York, the County of Westchester (the "County"), acting by and through its Bureau of Purchase and Supplies, is hereby authorized to standardize the procurement of a replacement helicopter to be used by the Department of Public Safety (the "Department") by issuing a bid for a Bell Model 407 helicopter.

§2. This standardization is needed for reasons of efficiency and economy pursuant to NYS GML section 103 (5), as described below:

- The Department currently operates two Bell Model 407 helicopters
- Adding a new aircraft manufacturer or model will effectively double pilot training costs
- Adding another aircraft manufacturer or model will result in the Department incurring additional equipment and maintenance costs due to operating different aircraft makes/models.
- There is an inherent safety risk when operating multiple models of aircraft in one fleet, particularly in a public safety capacity, since confusing procedures from different models of aircraft can become a serious liability.

§3. The County Executive or his authorized designee is hereby authorized and empowered to execute any and all documents and take all actions necessary and appropriate to effectuate the purposes hereof.

§4. This Act shall take effect immediately.