



Legislation Text

File #: 17-0067, Version: 1

Dept/ Agency: Law

Action: () Ratifying (X) Authorizing () Amending

Purpose: Pre-Suit Settlement of Civil Litigation

Docket No.: N/A

Claimant: Axion Healthcare Solutions, LLC., 510 Thornall Street, Suite 110, Edison, New Jersey 08837

Claimant's Attorney: Daniel Gammerman, Esq., Corporate Counsel

Attorney's Address: 6800 Jericho Turnpike, Suite 110W, Syosset, New York 11791

Settlement Amount: \$ 905,040.76

Funding Source: 2016 and 2017 Budget/Grant Funding; Department of Health and Community Wellness

Additional Comments:

This resolution and settlement agreement resolves all outstanding invoices for Axion Healthcare Solutions, LLC for the non-professional staffing services it rendered from June 4, 2016 through December 31, 2016. It also authorizes a final payment, for services rendered from January 1, 2017 through and including January 22, 2017.

Invitation: Corporation Counsel

WHEREAS, the City of Newark, a municipality with its principle place of business at 920 Broad Street, Newark, New Jersey 07102, needed Temporary Personnel Services (non-professional staffing services) to provide for the continued operation of its medical centers; and

WHEREAS, Resolution 7R1c, adopted by the Newark Municipal Council at its February 20, 2013 Regular Meeting, authorized the Department of Health and Community Wellness, to enter into a contract with Axion Healthcare Solutions, LLC doing business as Axion Worldwide ("Axion"), and two other vendors, for a two year term commencing March 4, 2013 and terminating March 3, 2015, for an amount not to exceed \$5,000,000.00 for all three vendors; and

WHEREAS, Resolution 7R1c 2013 adopted by the Newark Municipal Council at its February 20, 2013 Regular Meeting, was, through a series of extensions, extended to June 3, 2016, while the procurement process for a new contract was ongoing; and

WHEREAS, on March 8, 2016, the City of Newark, through its Supervising Procurement Specialist, advertised to solicit bids for Temporary Staffing Services (Health Field and Related Services) to be provided to the Department of Health and Community Wellness; and

WHEREAS, the Division of Central Purchasing distributed fourteen (14) bid proposal packages in response to this advertisement; and

WHEREAS, on March 24, 2016 the Division of Central Purchasing received six (6) bids in response to this advertisement; and

WHEREAS, Axion has continued to provide Temporary Personnel Services (non-professional staffing services) from June 4, 2016 through December 31, 2016 in an effort to ensure and help the City meet its need for appropriate and necessary staffing and coverage; and

WHEREAS, Axion Worldwide LLC has submitted invoices for Temporary Personnel Non-Professional Services it provided to the Department of Health and Community Wellness; and

WHEREAS, the City's needs have changed and it has decided not to award contracts for Temporary Personnel Non-Professional Services because the City has determined it is in its best interests to bring these services in-house; and

WHEREAS, the City's decision not to award contract Non-Professional Services was made after Axion had been providing services; and

WHEREAS, Axion has submitted invoices totaling Nine Hundred Five Thousand, Forty Dollars and Seventy-Six Cents (\$905,040.76) (the "Claim") for services rendered from June 4, 2016 through December 31, 2016 for Temporary Personnel Non-Professional Services (See Demand for Payment letter and Invoices, attached); and

WHEREAS, the Business Administrator and the Department of Health and Community Wellness have confirmed that the City received the benefit of the Temporary Personnel Non-Professional Services from Axion; and

WHEREAS, the Business Administrator and the Department of Health and Community Wellness have confirmed that there are adequate monies available in the budget of the Department of Health and Community Wellness to pay the outstanding invoices for the Temporary Personnel Non-Professional Services; and

WHEREAS, Counsel for Axion and Corporation Counsel for the City of Newark ("Parties") desire to amicably resolve this matter; and

WHEREAS, the Parties have agreed to settle the matter for the payment by the City of Newark Nine Hundred Five Thousand, Forty Dollars and Seventy-Six Cents (\$905,040.76) ("Settlement Sum"), in exchange for Axion Worldwide LLC's execution of this Settlement Agreement and General Release as a full and complete release of the Claim, including any claims for attorney's fees; and

WHEREAS, as part of this Settlement Agreement and General Release, the City agrees to pay Axion for the additional services performed from January 1, 2017 through January 22, 2017 an amount not to exceed Ninety Four Thousand, Nine Hundred Seventeen Dollars and Zero Cents (\$94,917.00) within 30 days of the City's receipt of the invoices for these services; and

WHEREAS, Axion submitted invoices, totaling Twenty Seven Thousand, One Hundred Fifty-Nine Dollars and Thirteen Cents (\$ 27,159.13) for services rendered under an earlier contract or contract extension with the City, prior to June 4, 2016 (for Temporary Personnel Non-Professional Services); and

WHEREAS, payment of the Twenty Seven Thousand ,One Hundred Fifty- Nine Dollars and Thirteen Cents (\$27,159.13) is being processed under Axion’s contract extension with the City and is not included as part of the Settlement Sum and for which Axion will receive a separate payment (“Contract Payment”); and

WHEREAS, this Settlement Agreement and General Release neither admits nor should it be construed as an admission of liability or violation of any law, statute or regulation or a breach of any duty by the City of Newark, its agents, officers and/or employees whatsoever and is entered into to resolve this matter and prevent the incurring of additional costs and fees; and

WHEREAS, the City of Newark has determined that it is in the best interest of the taxpayers to settle and avoid the cost, expense, delay and uncertainty of litigation; and

WHEREAS, the Director of the Department of Finance has certified that there are adequate, appropriated monies available to pay the settlement.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

1. The Mayor or his designee, the Corporation Counsel, is hereby authorized, on behalf of the City of Newark to negotiate and execute a Settlement Agreement and Release, and any other documents, sufficient in form and content to the Corporation Counsel and to take whatever actions are necessary to effectuate the terms of the within resolution and settlement of this matter pursuant to the terms contained in the within Resolution.

2. The Municipal Council of the City of Newark authorizes the payment of a check made payable to Axion Healthcare Solutions, LLC , in the amount of Nine Hundred Five Thousand, Forty Dollars and Seventy-Six Cents (\$905,040.76) (hereinafter, the “Settlement Sum”) as payment for the Temporary Personnel Non-Professional Services rendered, and the benefit received by the City from June 4, 2016 through December 31, 2016. The check shall be mailed to c/o Axion Healthcare Solutions, LLC , 510 Thornall Street, Suite 110, Edison, New Jersey 08837 or wire transferred to an account in accordance with accurate information provided by the vendor, as consideration of and pursuant to the terms and conditions contained in the Settlement Agreement and Release annexed hereto. This Settlement Sum shall be paid immediately upon receipt of all necessary documents required by the Finance Director to process payment.

3. The City shall pay Axion an additional amount for the services performed from January 1, 2017 through January 22, 2017 an amount not to exceed Ninety Four Thousand, Nine Hundred Seventeen Dollars and Zero Cents (\$94,917.00) within 30 days of the City’s receipt of the invoices for these services ("Final Payment"). This Final Payment shall be paid immediately upon receipt of all necessary documents required by the Finance Director to process payment.

4. In exchange for the execution by Axion of the Settlement Agreement and Release, acceptable in form to the Corporation Counsel and after passage of this resolution and upon receipt by the Corporation Counsel and the Director of Finance of any and all other documents deemed necessary, the Director of Finance of the City of Newark is hereby authorized to issue the check made payable to Axion Healthcare Solutions, LLC .

5. The settlement and resolution does not admit nor should it be construed as an admission of liability or violation of any law, statute or regulation or a breach of any duty by the City of Newark, its agents, officers and/or employees whatsoever and is entered into based upon recommendations of Counsel and to eliminate all risks and future litigation costs.

6. The Corporation Counsel shall file a copy of the Certification of Funds for the full amount of the settlement before a check is issued by the Director of Finance in the Office of the City Clerk.

7. The Corporation Counsel shall file a fully executed copy of the Settlement Agreement and Release in the Office of the City Clerk by Corporation Counsel.

8. This Resolution shall be effective upon adoption in accordance with applicable State law.

STATEMENT

This resolution authorizes the Corporation Counsel to resolve claims for outstanding invoices from Axion Healthcare Solutions, LLC, doing business as Axion Worldwide, 510 Thornall Street, Suite 110, Edison New Jersey 08837 without the need and expense of civil litigation. This Resolution and Settlement Agreement resolves all outstanding invoices for non- professional services rendered from June 4, 2016 through December 31, 2016 for a total Settlement Sum of \$ 905,040.76. The City shall pay Axion, a Final Payment for an amount not to exceed (\$94,917.00) for the services performed from January 1, 2017 through January 22, 2017. In return, Axion agrees to waive all claims against the City including attorneys' fees.