

52318

TO: Board of Acquisition and Contract

FROM: Thomas J. Lauro, P.E.
Acting Commissioner of Public Works and Transportation

DATE: June 28, 2016

SUBJECT: Resolution to Award to the Second Low Bidder
Contract No. **15-221**
Storm Damage Restoration
Bronx River Parkway Reservation
Westchester County, New York
Contractor: MVM Construction LLC
Amount: \$534,581.00

On May 11, 2016, six (6) bids were received and opened for Contract No. 15-221 for Storm Damage Restoration, Bronx River Parkway Reservation, Westchester County, New York, whereby Tony Casale, Inc. submitted the apparent low bid in the amount of \$388,562.64. However, on May 13, 2016, the apparent low bidder, Tony Casale, Inc., notified the County that it had made an unintentional omission of a substantial quantity of labor and materials and requested to withdraw its bid. Specifically, Tony Casale, Inc. made a mathematical error in entering their bid for Item 553.0201 - "Temporary Cofferdam (Type 2)" which resulted in an under bid of \$81,900.00.

Pursuant to New York General Municipal Law Section 103(11), a bid may be withdrawn by a bidder after a showing of the following: (1) the mistake is known or made known to the awarding officer, board or agency prior to the awarding of the contract or within three days after the opening of the bid, whichever period is shorter; and (2) the price bid was based on an error of such magnitude that enforcement would be unconscionable; and (3) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and (4) the error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place the public agency, board, officer, or subdivision in status quo ante.

The Department of Public Works and Transportation (the "Department") has performed a detailed analysis of Tony Casale, Inc.'s bid to verify the validity of this error and has determined that Tony Casale, Inc. has met all of the criteria set forth in GML Section 103(11), and thus, can withdraw its bid of \$388,562.64. The Department of Law has concurred, that based on the Department's determination that all the criteria set forth in GML Section 103(11) have been met, Tony Casale, Inc. may withdraw its bid.

Therefore, it is requested that the bid submitted by Tony Casale, Inc. be deemed withdrawn and that Contract No. 15-221 be awarded to the new low bidder, MVM Construction LLC in the amount of \$534,581.00.

June 28, 2016

The bids were reviewed by the Department and it was determined that MVM Construction LLC submitted the low bid in the amount of \$534,581.00.

The low bidder has been investigated and it has been found that MVM Construction LLC:

- Performed satisfactory work in the past for the County.
- Past experience has been investigated and found satisfactory.

Funds for this project are available in the:

- Capital Budget
- Non-Recurring Budget
- Operating Budget
- Grant Account

The objective of this contract is to repair damaged pathways and walls and restore the river edge.

This contract is in the public's best interest because it will provide for a greater utilization of the park.

The department will track scheduling and accomplishments by the contractor and perform on-site inspections to ensure the successful completion of this project.

Payment for this entire contract will be made from a grant from FEMA and will not impact the County tax levy.

It is my recommendation that Contract No. 15-221 be awarded to MVM Construction LLC in the amount of \$534,581.00.

JA

RESOLUTION

CONTRACT NO. 15-221

Upon communication from the Acting Commissioner of Public Works and Transportation, be it

WHEREAS, on May 11, 2016, six (6) bids were received and opened for Contract 15-221 for Storm Damage Restoration, Bronx River Parkway Reservation, Westchester County, New York; and

WHEREAS, the apparent low bidder, Tony Casale, Inc. made an unintentional omission of a substantial quantity of labor and materials, and therefore has requested that its bid proposal of \$388,562.64 be withdrawn in accordance with New York General Municipal Law Section 103(11); and

WHEREAS, the apparent second lowest bidder, MVM Construction LLC complied with all bid specifications; now, therefore, be it

RESOLVED, that it has been determined that Tony Casale, Inc.'s bid error meets all of the criteria set forth in New York General Municipal Law Section 103(11), and that Tony Casale, Inc. be permitted to withdraw its bid submitted on May 11, 2016 for Contract 15-221 in the amount of \$388,562.64; and be it further

RESOLVED, that Contract No. 15-221, for Storm Damage Restoration, Bronx River Parkway Reservation, Westchester County, New York be and is hereby awarded to MVM Construction LLC, 100 Oak Street, Mount Vernon, New York 10550, in the amount of \$534,581.00; and be it further

RESOLVED, that the County Executive or his authorized designee is hereby authorized and empowered to execute any and all documents necessary or appropriate to effectuate the purposes hereof.

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	263	20	307L	8040	T307	\$534,581.00

Budget Funding Year(s) 2016
(must match resolution)

Start Date: August 4, 2016

End Date: November 3, 2018

Funding Source: **Tax Dollars** _____

State Aid _____

\$534,581.00 **Federal Aid** 100% FEMA
(must match resolution)

Other _____