

64487

**TO:** Board of Acquisition and Contract

**FROM:** Hugh J. Greechan, Jr., P.E.  
Commissioner of Public Works and Transportation

**DATE:** August 7, 2018

**SUBJECT:** Resolution to Award to the Second Low Bidder  
Contract No. 15-531  
Superstorm Sandy Rehabilitation  
Glen Island Park Seawalls and Pavilions  
New Rochelle, New York  
**Contractor:** MVM Construction LLC  
**Amount:** \$4,826,913.00

On July 18, 2018, four (4) bids were received and opened for Contract No. 15-531 for Superstorm Sandy Rehabilitation, Glen Island Park Seawalls and Pavilions, New Rochelle, New York, whereby Custom Marine Inc. submitted the apparent low bid in the amount of \$2,372,293.58. However, on July 20, 2018, the apparent low bidder, Custom Marine 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. Custom Marine Inc. informed the County that incorrect calculations in preparing their bid resulted in an error in the amount of \$1,100,000.00.

Pursuant to New York General Municipal Law ("GML") Section 103(11), a bid may be withdrawn by a bidder after a showing of the following: (1) the mistake is known or made known to the awarding officer, board or agency prior to the awarding of the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from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place the public agency, board, officer, or subdivision in status quo ante.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 Custom Marine Inc.'s bid to verify the validity of this error and has determined that Custom Marine Inc. has met all of the criteria set forth in GML Section 103(11), and thus, can withdraw its bid of \$2,372,293.58. The Department of Law has concurred that based on the Department's determination all the criteria set forth in GML Section 103(11) have been met, and Custom Marine Inc. may withdraw its bid.

Therefore, it is requested that the bid submitted by Custom Marine Inc. be deemed withdrawn and that Contract No. 15-531 be awarded to the apparent second low bidder, MVM Construction LLC in the amount of \$4,826,913.00.

The bids were reviewed by the Department and it was determined that MVM Construction LLC submitted the low bid in the amount of \$4,826,913.00.

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

The objective of this contract is to repair substandard structure elements to the seawalls and pavilions.

This contract is in the public's best interest because it will promote the health and safety of the general public by repairing the damaged seawalls at Glen Island Park around the Harbor Club and the two pavilions.

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

It is my recommendation that Contract No. 15-531 be awarded to MVM Construction LLC in the amount of \$4,826,913.00.

This Resolution has been reviewed by the Law Department.

APPROVED BOARD OF ACQUISITION CONTRACT - 08/30/2018 - JOHN COCCARDI, SECRETARY

# RESOLUTION

## CONTRACT NO. 15-531

Upon communication from the Commissioner of Public Works and Transportation,

**WHEREAS**, on July 18, 2018, four (4) bids were received and opened for Contract No. 15-531 for Superstorm Sandy Rehabilitation, Glen Island Park Seawalls and Pavilions, New Rochelle, New York; and

**WHEREAS**, the apparent low bidder, Custom Marine Inc., made an unintentional omission of a substantial quantity of labor and materials, and therefore has requested that its bid proposal of \$2,372,293.58 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 Custom Marine Inc.'s bid error meets all of the criteria set forth in New York General Municipal Law Section 103(11), and that Custom Marine Inc. be permitted to withdraw its bid submitted on July 18, 2018 for Contract No. 15-531 in the amount of \$2,372,293.58; and be it further

**RESOLVED**, that Contract No. 15-531 for Superstorm Sandy Rehabilitation, Glen Island Park Seawalls and Pavilions, New Rochelle, New York be and is hereby awarded to MVM Construction LLC, 100 Oak Street, Mount Vernon, New York 10550, in the amount of \$4,826,913.00; and be it further

**RESOLVED**, that this contract is subject to County appropriations; 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	Bond Act No.	Dollars
	372	42	RGI0501C	6210-99	BA # 50-2018	\$4,826,913.00

**Budget Funding Year(s):** 2018      **Start Date:** September 13, 2018      **End Date:** September 12, 2021  
 (must match resolution)

**Funding Source:**      **Tax Dollars** 100% County

**State Aid** \_\_\_\_\_

\$4,826,913.00      **Federal Aid** \_\_\_\_\_

(must match resolution)

**Other** \_\_\_\_\_