

64789

TO: Board of Acquisition and Contract

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

DATE: August 20, 2018

SUBJECT: Resolution to Award to the Second Low Bidder
Contract No. 15-559
Mechanical Equipment Upgrades
Michaelian Office Building and 85 Court Street
White Plains, New York

Contractor: J & M Heating and Air Conditioning, Inc.
Amount: \$1,722,000.00

Subcontractor(s): B.A.C. Electrical Construction Co., Inc.

On July 11, 2018, two (02) bids were received and opened for Contract No. 15-559 for Mechanical Equipment Upgrades, Michaelian Office Building and 85 Court Street, White Plains, New York, whereby Clean Air Quality Service, Inc. submitted the apparent low bid in the amount of \$1,374,267.27. However, on July 12, 2018 the apparent low bidder, Clean Air Quality Service, Inc., notified the County of Westchester ("County") that it had made an unintentional omission of a substantial quantity of labor and materials and requested to withdraw its bid. Clean Air Quality Service, Inc. informed the County that incorrect calculations in preparing their bid resulted in an error in the amount of \$464,341.73.

Pursuant to New York General Municipal Law Section 103(11), a bid may be withdrawn by a bidder after a showing of the following: (1) the mistake is known or made known to the awarding officer, board or agency prior to the awarding of the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from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place the public agency, board, officer, or subdivision in status quo ante.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 Clean Air Quality Service, Inc.'s bid to verify the validity of this error and has determined that Clean Air Quality Service, Inc. has met all of the criteria set forth in GML Section 103(11), and thus, can withdraw its bid of \$1,374,267.27. 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, Clean Air Quality Service, Inc. may withdraw its bid.

Therefore, it is requested that the bid submitted by Clean Air Quality Service, Inc. be deemed withdrawn and that Contract No. 15-559 be awarded to the apparent second low bidder, J & M Heating and Air Conditioning, Inc. in the amount of \$1,722,000.00.

Two (02) contractors submitted a bid for this project. The project was advertised on the Empire State Purchasing Group website, in addition to the Journal News (Westchester-Putnam Edition), and was viewed by 33 entities on the Empire State Purchasing Group website website. In addition, e-mails were sent to those 33 entities and to an additional 365 suppliers and contractors.

The bids were reviewed by the Department and it was determined that J & M Heating and Air Conditioning, Inc. submitted the low bid in the amount of \$1,722,000.00, and has proposed the utilization of the following subcontractor: B.A.C. Electrical Construction Co., Inc. (Electrical Work), 648 Commerce Street, Thornwood, New York 10594.

The low bidder has been investigated and it has been found that J & M Heating and Air Conditioning, Inc.:

- 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 upgrade the mechanical equipment at the Michaelian Office Building and 85 Court Street for continuous and uninterrupted operation.

This contract is in the public's best interest because it will promote the health and safety of the general public by upgrading building ventilation systems by improving air quality and efficiency.

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. 15-559 be awarded to J & M Heating and Air Conditioning, Inc. in the amount of \$1,722,000.00.

This Resolution has been reviewed by the Law Department.

RESOLUTION

CONTRACT NO. 15-559

Upon communication from the Commissioner of Public Works and Transportation,

WHEREAS, on July 11, 2018, two (02) bids were received and opened for Contract No. 15-559 for Mechanical Equipment Upgrades, Michaelian Office Building and 85 Court Street, White Plains, New York; and

WHEREAS, the apparent low bidder, Clean Air Quality Service, Inc., made an unintentional omission of a substantial quantity of labor and materials, and therefore has requested that its bid proposal of \$1,374,267.27 be withdrawn in accordance with New York General Municipal Law Section 103(11); and

WHEREAS, the apparent second lowest bidder, P & M Heating and Air Conditioning, Inc., complied with all bid specifications; now, therefore, be it

RESOLVED, that it has been determined that Clean Air Quality Service, Inc.'s bid error meets all of the criteria set forth in New York General Municipal Law Section 103(11), and that Clean Air Quality Service, Inc. be permitted to withdraw its bid submitted on July 11, 2018 for Contract No. 15-559 in the amount of \$1,374,267.27; and be it further

RESOLVED, that Contract No. 15-559 for Mechanical Equipment Upgrades, Michaelian Office Building and 85 Court Street, White Plains, New York be and is hereby awarded to J & M Heating and Air Conditioning, Inc., 48 Grand Street, New Rochelle, New York 10801, in the amount of \$1,722,000.00; and be it further

RESOLVED, that the use of the following subcontractor also be approved: B.A.C. Electrical Construction Co., Inc. (Electrical Work), 648 Commerce Street, Thornwood, New York 10594; 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
	346	46	B009801C	6210-99	BA#45-2018	\$1,722,000.00

Budget Funding Year(s): 2018 **Start Date:** September 27, 2018 **End Date:** September 26, 2020
(must match resolution)

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

State Aid _____

\$1,722,000.00 **Federal Aid** _____

(must match resolution)

Other _____