

70332

TO: Honorable Board of Acquisition and Contract

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

DATE: June 19, 2019

SUBJECT: Authorization to default MVM Construction LLC in connection with Contract No. 17-535, Hunts Place Infrastructure Improvement Project, New Castle, New York, and authorization to enter into a Takeover Agreement with Aegis Security Insurance Company or its designee, and to take all necessary measures to complete this project.

On February 15, 2018, your Honorable Board awarded Contract No. 17-535, Hunts Place Infrastructure Improvement Project, New Castle, New York to MVM Construction LLC, 100 Oak Street, Mount Vernon, New York 10550 ("MVM") in the amount of \$1,269,013.00. The County of Westchester (the "County"), acting by and through its Department of Public Works and Transportation (the "Department") and MVM entered into a contract dated February 15, 2018 (the "Contract"). As part of the Contract, MVM provided a Performance and Payment Bond issued by Aegis Security Insurance Company as surety for this project.

MVM has failed to: comply with the terms and specifications of the Contract; provide sufficient properly skilled workers on the project site; provide necessary materials for completion of the project; and meet the deadlines contained in the Contract. Examples of MVM's failure to perform in accordance with the contract include: burying pipes prior to inspection and approval; use of improper fittings; failure to wrap piping in accordance with contract specifications; failure to use appropriate securing mechanisms (including hangars and/or thrust blocks); and performing plumbing work without use of a licensed plumber. Please note that this list is not intended to be inclusive of all deficiencies in MVM's performance. Upon discovery of the defects in the work by MVM, the County provided ample opportunity to cure the deficiencies. However, during the cure period, MVM continued to have problems staffing the job appropriately and continued to fail to perform to contract specifications.

As a result of the aforementioned issues, the work has not been completed in a timely manner. The County has attempted to resolve this matter with MVM, without success. As required by the terms of the Contract and by letter dated June 5, 2019, the County provided MVM with formal written notice that due to the above issues, the County would exercise its options under the Contract, including the right to terminate the Contract and proceed with default proceedings.

Despite these repeated failures by MVM, upon recommendation of the Department, MVM should be provided one final opportunity to cure its breach of the Contract. However, the County must be prepared to terminate the Contract as stated above in the event MVM does not cure its breach, particularly because MVM has already failed to complete the Contract within the allotted time.

Board of Acquisition and Contract
Authorization to Default MVM Construction LLC
Contract No. 17-535
Hunts Place Infrastructure Improvement Project
Page 2

Therefore, I recommend that the County declare MVM Construction LLC in default of the Contract, and that I, as Commissioner of the Department, be delegated the authority to terminate the Contract, if in my sole discretion MVM fails to diligently pursue curing the default in a timely manner. In the event the Contract is terminated, Aegis Security Insurance Company, 4507 North Front Street, Suite 200, Harrisburg, PA 17110, the surety for the Contract, will be directed to complete the remaining work. In addition, the County will be authorized to enter into a Takeover Agreement with Aegis Security Insurance Company or its designee (the "Surety"). Further, if the Surety does not promptly proceed to undertake the work, authority is requested to advertise for bids to complete the remaining work under the Contract.

This matter has been reviewed by the Law Department and a Resolution to accomplish the foregoing is attached.

HJG/DLV/dv

APPROVED BOARD OF ACQUISITION & CONTRACT - 00/20/2019 - JAMES H. JAJ, SECRETARY

RESOLUTION

Contract No. 17-535

Upon communication from the Commissioner of Public Works and Transportation,

WHEREAS, MVM Construction LLC, 100 Oak Street, Mount Vernon, New York 10550 (“MVM”), has failed to comply with the terms of Contract No. 17-535, Hunts Place Infrastructure Improvement Project, New Castle, New York (the “Contract”); and

WHEREAS, the Commissioner of Public Works and Transportation (the “Commissioner”), on behalf of the County of Westchester (the “County”) will seek a final opportunity to allow MVM to cure its breach of the Contract; now, therefore, be it

RESOLVED, that the County declares MVM in default of the Contract in accordance with the terms of the Contract; and be it further

RESOLVED, that the Commissioner, on behalf of the County, is authorized to terminate the Contract in its entirety if, in his sole discretion, MVM fails to diligently pursue curing the default in a timely manner; and be it further

RESOLVED, that if the Contract is terminated as set forth above, the County is authorized to proceed upon the bond issued by Aegis Security Insurance Company, 4507 North Front Street, Suite 200, Harrisburg, PA 17110, the surety for the Contract; and be it further

RESOLVED, that the Commissioner, on behalf of the County, is authorized to enter into a Takeover Agreement with Aegis Security Insurance Company or its designee (the “Surety”) in connection with the Contract, and to take all necessary measures to complete this Contract; and be it further

RESOLVED, that if the Surety does not promptly proceed to undertake the work, the County Executive or his duly authorized designee is hereby authorized to advertise for bids in the Journal News (Westchester-Putnam Edition) for the work required under the Contract; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby empowered to execute any and all instruments and take such actions as may reasonably be necessary to effectuate the purposes thereof; and be it further

RESOLVED, that this Resolution shall take effect immediately.

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Bond Act No.	Dollars
	318	19	BPL5015S	6210-99	BA #214-2014	

Budget Funding Year(s): 2019 **Start Date:** February 22, 2018 **End Date:** June 21, 2020
(must match resolution)

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

State Aid _____

\$ _____ **Federal Aid** _____
(must match resolution)

Other _____