

71307

August 22, 2019

TO: BOARD OF ACQUISITION AND CONTRACT

FROM: VINCENT F. KOPICKI, P.E.
COMMISSIONER

RE: Resolution to Award an Emergency Contract

CONTRACT NO. EF-1907
TIDE GATE REPLACEMENTS AND REGULATOR IMPROVEMENTS
NORTH YONKERS, CENTRAL YONKERS AND SOUTH YONKERS
SANITARY SEWER DISTRICTS, CITY OF YONKERS
WESTCHESTER COUNTY, NEW YORK

CONTRACTOR: ELQ Industries, Inc.
AMOUNT: Not to Exceed \$4,000,000.00

Attached for your consideration is a resolution, which, if approved by your Honorable Board, would authorize the award of Contract EF-1907 for Tide Gate Replacements and Regulator Improvements, North Yonkers, Central Yonkers and South Yonkers Sanitary Sewer Districts, City of Yonkers, Westchester County, New York on an Emergency Basis to ELQ Industries, Inc., 567 Fifth Avenue, New Rochelle, NY, 10801 in the amount not to exceed \$4,000,000.00 paid for on a time and material basis subject to appropriations. This Resolution is being submitted pursuant to the Emergency Declaration that was submitted to your Honorable Board on August 22, 2019.

The Department of Environmental Facilities has outlined the reason and nature of the Emergency Basis in a memorandum dated August 20, 2019 to your Honorable Board.

On February 13, 2019, the United States Environmental Protection Agency ("EPA") conducted a Compliance Evaluation Inspection which identified deficiencies with these tide gates and subsequently on March 21, 2019, issued an Administrative Compliance Order (CWA-02-2019-3021) that requires the repair and/or replacement of all tide gates no later than December 31, 2020.

Because of the time required to complete this work, failure to immediately undertake this project may result in a violation of EPA regulations, potentially resulting in significant financial penalties. This work will benefit the public as it enables the County to conduct its basic mission of providing proper sanitary sewage collection, thereby promoting public health policies and laws. Time is of the essence in order to achieve compliance with EPA regulations as quickly as

possible to minimize or avoid financial penalties. Design of the new tide gates is currently under way.

It was determined that due to the amount of river water and debris entering the existing tide gates, total replacement would be required. The existing tide gates were installed in the 1930's. They were previously rehabilitated in the 1990's.

In consultation with the Law Department and based on the facts related by Department of Environmental Facility's staff, it has been determined that this is a condition that was unforeseen, affects the life, health, safety and property of the County's inhabitants and requires immediate attention and therefore meets the legal requirements for an emergency contract. In order to facilitate proper operation of the tide gates and to protect the health and safety of the public and employees, the Department of Environmental Facilities declared an emergency situation. As an emergency, this situation cannot await competitive bidding. The Department, following its standard emergency contract protocols, selected the firm of ELQ Industries, Inc., to perform the work. The emergency work includes replacement of the existing tide gates with new similar size tide gates at each of the above locations as well as access improvements for maintenance and inspection purposes and to increase safety for personnel performing maintenance and inspection of the above regulators.

The Contractor selected by the Department has been investigated and found that:

has 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

MNRR

Operating Budgets

This contract is deemed to fulfill a public purpose as the services provided under this Contract promotes the public health and welfare by enabling the County to conduct its basic mission of providing proper sanitary sewage collection, thereby promoting public health policies and laws. The response and work will monitored by representatives of the Department of Environmental Facilities and Department of Public Works and Transportation throughout the work to make sure all applicable regulations, safety precautions and codes regarding the protection of persons and property are adhered to and that a cost-effective project is the end product.

It is recommended that Contract No. EF-1907 be awarded on an Emergency Basis to ELQ Industries, Inc. in the amount not to exceed \$4,000,000.00 paid for on a time and material basis subject to appropriations. In lieu of a performance and payment bond, the County will retain five percent (5%) of all contractor payments for work completed on an annual basis as security for the full and faithful performance of this work.

A proposed form of Resolution is attached.

RESOLUTION

Contract No. EF-1907

Upon communication from The Commissioner of the Department of Environmental Facilities, be it hereby

WHEREAS, an emergency condition developed as a result of the United States Environmental Protection Agency having conducted a Compliance Evaluation Inspection which identified deficiencies with tide gates in the North Yonkers, Central Yonkers and South Yonkers Sanitary Sewer Districts, City of Yonkers, and on March 21, 2019, issued an Administrative Compliance Order (CWA-02-2019-3021) that requires the repair and/or replacement of all tide gates no later than December 31, 2020.

RESOLVED, that Contract No. EF-1907 for Tide Gate Replacements and Regulator Improvements, North Yonkers, Central Yonkers and South Yonkers Sanitary Sewer Districts, City of Yonkers, Westchester County, New York is awarded on an Emergency Basis to ELQ Industries, Inc., 567 Fifth Avenue, New Rochelle, NY, 10801 in the amount not to exceed \$4,000,000.00 paid for on a time and material basis for a term commencing on September 1, 2019 and expiring on December 31, 2020; and be it further

RESOLVED, that the retention of five percent (5%) of all contractor payments by the County for work completed on an annual basis be deemed adequate and sufficient security for the full and faithful performance of this work in lieu of a performance bond; and be it further

RESOLVED, that this Agreement is subject to County appropriations; and be it further

RESOLVED, that this Agreement subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Contractor, then the Contractor shall have the right to terminate this Agreement upon reasonable prior written notice; 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	Dollars
322	60	SY-031-01-C	6120	116-2019	\$4,000,000

Budget Funding Year(s) 2019-2020 Start Date 09/01/2019 End Date 12/31/2020

(must match resolution)

Funding Source

Tax Dollars _____ **100%** _____

State Aid _____

Federal Aid _____

NTE \$4,000,000.00

(must match resolution)

Other _____

VFK/MP

APPROVED BOARD OF ACQUISITION & CONTRACT - 09/05/2019 - LISA M. JAS, SECRETARY