

48482

TO: Board of Acquisition and Contract

FROM: Jay T. Pisco, P.E.
Commissioner of Public Works and Transportation

DATE: September 15, 2015

SUBJECT: Resolution to Award to the Second Low Bidder
Contract No. **15-213**
Service Contract for Snow and Ice Removal
450 Saw Mill River Road, Ardsley,
375 Executive Boulevard and 2199 Saw Mill River Road, Elmsford, and
Public Safety Headquarters, Saw Mill River Parkway, Hawthorne,
Westchester County, New York
Contractor: Errico Landscaping
Amount: \$520,620.00

On August 19, 2015, three (3) bids were received and opened for Contract No. 15-213 for Service Contract for Snow and Ice Removal, 450 Saw Mill River Road, Ardsley, 375 Executive Boulevard and 2199 Saw Mill River Road, Elmsford, and Public Safety Headquarters, Saw Mill River Parkway, Hawthorne, Westchester County, New York, whereby Torenascape Inc. submitted the apparent low bid in the amount of \$513,000.00. However, on August 24, 2015, the apparent low bidder, Torenascape 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.

Pursuant to New York General Municipal Law Section 103(11), a bid may be withdrawn by a bidder after a showing of the following: (1) the mistake is known or made known to the awarding officer, board or agency prior to the awarding of the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from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place the public agency, board, officer, or subdivision in status quo ante.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 Torenascape, Inc.'s bid to verify the validity of this error and has determined that Torenascape, Inc. has met all of the criteria set forth in GML Section 103(11), and thus, can withdraw its bid of \$513,000.00. 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, Torenascape, Inc. may withdraw its bid.

Therefore, it is requested that the bid submitted by Torenascape, Inc. be deemed withdrawn and that Contract No. 15-213 be awarded to the apparent second low bidder, Errico Landscaping in the amount of \$520,620.00.

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The bids were reviewed by the Department and it was determined that Errico Landscaping submitted the low bid in the amount of \$520,620.00.

The low bidder has been investigated and it has been found that Errico Landscaping:

- 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 clear snow and ice from parking lots and pedestrian areas at various County facilities.

This contract is in the public's best interest because it will promote the health and safety of the general public by providing safe travel ways for both pedestrian and vehicular traffic at County facilities, thus addressing the County Executive's priority area: Safety and Security (SS).

As expenditures are made pursuant to this authorization, detailed records will be kept in the County's on-line financial system. These records will be easily accessible by Finance, Budget and department staff and will be reviewed regularly to ensure that funds are used appropriately.

This contract is for a term of three (3) years with one two (2) year renewal at the discretion of the County.

It is my recommendation that Contract No. 15-213 be awarded to Errico Landscaping in the amount of \$520,620.00, subject to appropriations.

RESOLUTION

CONTRACT NO. 15-213

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

WHEREAS, on August 19, 2015, three (3) bids were received and opened for Contract 15-213 for Service Contract for 450 Saw Mill River Road, Ardsley, 375 Executive Boulevard and 2199 Saw Mill River Road, Elmsford, and Public Safety Headquarters, Saw Mill River Parkway, Hawthorne, Westchester County, New York; and

WHEREAS, the apparent low bidder, Torenascape, Inc. made an unintentional omission of a substantial quantity of labor and materials, and therefore has requested that its bid proposal of \$513,000.00 be withdrawn in accordance with New York General Municipal Law Section 103(11); and

WHEREAS, the apparent second lowest bidder, Errico Landscaping complied with all bid specifications; now, therefore, be it

RESOLVED, that it has been determined that Torenascape, Inc.'s bid error meets all of the criteria set forth in New York General Municipal Law Section 103(11), and that Torenascape, Inc. be permitted to withdraw its bid submitted on August 19, 2015 for Contract 15-213 in the amount of \$513,000.00; and be it further

RESOLVED, that Contract No. 15-213, for Service Contract for Snow and Ice Removal, 450 Saw Mill River Road, Ardsley, 375 Executive Boulevard and 2199 Saw Mill River Road, Elmsford, and Public Safety Headquarters, Saw Mill River Parkway, Hawthorne, Westchester County, New York be and is hereby awarded to Errico Landscaping, P.O. Box 293, Hartsdale, New York 10530, in the amount of \$520,620.00; and be it further

RESOLVED, that as set forth in the Contract No. 15-213 bid specifications this contract is for a term of three (3) years with one two (2) year renewal at the discretion of the County; and be it further

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

RESOLVED, that this Agreement is also 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 an analysis of the impacts of any such State Budget on County finances. After such 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.

