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TO: Board of Acquisition and Contract

FROM: Vincent F. Kopicki, P.E.
Commissioner of Public Works and Transportation

DATE: April 11, 2017

SUBJECT: Resolution to Award to the Second Low Bidder
Contract No. 15-535
Roof Replacement
Various Parks Facilities
Westchester County, New York

Contractor: Nua Construction Corp. (*WBE*)
Amount: \$922,000.00

On March 17, 2017, three (3) bids were received and opened for Contract No. 15-535 for Roof Replacement, Various Parks Facilities, Westchester County, New York, whereby Sony NY Management & Construction Corp. submitted the apparent low bid in the amount of \$816,000.00. However, on March 21, 2017, the apparent low bidder, Sony NY Management & Construction Corp., notified the County that it had made an unintentional omission of a substantial quantity of labor and materials and requested to withdraw its bid. Specifically, Sony NY Management & Construction Corp. informed the County that in preparing its bid a mathematical error was made on the takeoffs for demolition, sheathing and soffit work resulting in an error in the amount of \$80,000.00.

Pursuant to New York General Municipal Law Section 103(11), a bid may be withdrawn by a bidder after a showing of the following: (1) the mistake is known or made known to the awarding officer, board or agency prior to the awarding of the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from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place the public agency, board, officer, or subdivision in status quo ante.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 Sony NY Management & Construction Corp.'s bid to verify the validity of this error and has determined that Sony NY Management & Construction Corp. has met all of the criteria set forth in GML Section 103(11), and thus, can withdraw its bid of \$816,000.00. 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, Sony NY Management & Construction Corp. may withdraw its bid.

Therefore, it is requested that the bid submitted by Sony NY Management & Construction Corp. be deemed withdrawn and that Contract No. 15-535 be awarded to the apparent second low bidder, Nua Construction Corp. in the amount of \$922,000.00.

The bids were reviewed by the Department and it was determined that Nua Construction Corp. submitted the low bid in the amount of \$922,000.00.

The low bidder has been investigated and it has been found that Nua Construction Corp.:

- 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 maintain the weather tightness of Parks' buildings.

This contract is in the public's best interest because it will extend the life of the existing structures.

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. 15-535 be awarded to Nua Construction Corp. in the amount of \$922,000.00.

This Resolution has been reviewed by the Law Department.

RESOLUTION

CONTRACT NO. 15-535

Upon communication from the Commissioner of Public Works and Transportation,

WHEREAS, on March 17, 2017, three (3) bids were received and opened for Contract 15-535 for Roof Replacement, Various Parks Facilities, Westchester County, New York; and

WHEREAS, the apparent low bidder, Sony NY Management & Construction Corp., made an unintentional omission of a substantial quantity of labor and materials, and therefore has requested that its bid proposal of \$816,000.00 be withdrawn in accordance with New York General Municipal Law Section 103(11); and

WHEREAS, the apparent second lowest bidder, Nua Construction Corp., complied with all bid specifications; now, therefore, be it

RESOLVED, that it has been determined that Sony NY Management & Construction Corp.'s bid error meets all of the criteria set forth in New York General Municipal Law Section 103(11), and that Sony NY Management & Construction Corp. be permitted to withdraw its bid submitted on March 17, 2017 for Contract 15-535 in the amount of \$816,000.00; and be it further

RESOLVED, that Contract No. 15-535 for Roof Replacement, Various Parks Facilities, Westchester County, New York be and is hereby awarded to Nua Construction Corp., 750 Saw Mill River Road, Ardsley, New York 10502, in the amount of \$922,000.00; 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	RGIP501C	6210-99	BA #164-2012	\$448,000.00
	372	42	RGIP502C	6210-99	BA #108-2014	\$474,000.00

Budget Funding Year(s) 2017
(must match resolution)

Start Date: May 18, 2017

End Date: May 17, 2019

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

State Aid _____

\$922,000.00 **Federal Aid** _____
(must match resolution)

Other _____