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TO: Board of Acquisition and Contract

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

DATE: September 17, 2019

SUBJECT: Resolution to Award to the Second Low Bidder
Contract No. 17-501-Rev.
Accessibility Improvements
White Plains TransCenter
City of White Plains, New York

Contractor: Wall Contractor Corp. (MBE)
Amount: \$395,277.00

On July 24, 2019 the County of Westchester ("County") received and opened four (4) bids for Contract No. 17-501-Rev. for Accessibility Improvements, White Plains TransCenter, City of White Plains, New York, whereby AJ Contracting of NY LLC submitted the apparent low bid in the amount of \$327,000.00. However, on July 26, 2019, the apparent low bidder, AJ Contracting of NY LLC 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, AJ Contracting of NY LLC informed the County that incorrect calculations in preparing their bid for the concrete sidewalks and driveways resulted in an error in the amount of \$25,000.00.

Pursuant to New York General Municipal Law Section 103(11), a bid may be withdrawn by a bidder after a showing of the following: (1) the mistake is known or made known to the awarding officer, board or agency prior to the awarding of the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from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place the public agency, board, officer, or subdivision in status quo ante.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 AJ Contracting of NY LLC's bid to verify the validity of this error and has determined that AJ Contracting of NY LLC has met all of the criteria set forth in GML Section 103(11), and thus, can withdraw its bid of \$327,000.00. 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, AJ Contracting of NY LLC may withdraw its bid.

Therefore, it is requested that the bid submitted by AJ Contracting of NY LLC be deemed withdrawn and that Contract No. 17-501-Rev. be awarded to the apparent second low bidder, Wall Contractor Corp., a MBE firm, in the amount of \$395,277.00.

The bids were reviewed by the Department and it was determined that Wall Contractor Corp. submitted the low bid in the amount of \$395,277.00.

The low bidder has been investigated and it has been found that Wall Contractor 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 provide pavement and sidewalk repairs, new ADA curb cut ramps, drainage repairs, and reconfiguration of a curb island for improved bus accessibility. Work also includes new pavement markings and delineation.

This contract is in the public's best interest because it will promote the health and safety of the general public by ensuring that the White Plains TransCenter can continue to operate safely.

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. 17-501-Rev. be awarded to Wall Contractor Corp. in the amount of \$395,277.00.

This Resolution has been reviewed by the Law Department.

APPROVED BOARD OF ACQUISITION & CONTRACT - 10/10/2019 - LISA MARIJAJ, SECRETARY

RESOLUTION

CONTRACT NO. 17-501-Rev.

Upon communication from the Commissioner of Public Works and Transportation,

WHEREAS, on July 24, 2019, four (4) bids were received and opened by the County of Westchester (“County”) for Contract No. 17-501-Rev. for Accessibility Improvements, White Plains TransCenter, City of White Plains, New York; and

WHEREAS, the apparent low bidder, AJ Contracting of NY LLC, made an unintentional omission of a substantial quantity of labor and materials, and therefore has requested that its bid proposal of \$327,000.00 be withdrawn in accordance with New York General Municipal Law Section 103(11); and

WHEREAS, the apparent second lowest bidder, Wall Contractor Corp., a MBE firm, complied with all bid specifications; now, therefore, be it

RESOLVED, that it has been determined that AJ Contracting of NY LLC’s bid error meets all of the criteria set forth in New York General Municipal Law Section 103(11), and that AJ Contracting of NY LLC be permitted to withdraw its bid submitted on July 24, 2019 for Contract No. 17-501-Rev. in the amount of \$327,000.00; and be it further

RESOLVED, that Contract No. 17-501-Rev. for Accessibility Improvements, White Plains TransCenter, City of White Plains, New York be and is hereby awarded by the County to Wall Contractor Corp., 768 Coney Island Avenue, Brooklyn, New York 11218, in the amount of \$395,277.00; 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
	365	44	T005501C	6210-99	BA #295-2016	\$339,740.00
	101	44	2100	4380	N/A	\$ 55,537.00

Budget Funding Year(s): 2019
(must match resolution)

Start Date: October 24, 2019

End Date: May 23, 2021

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

State Aid _____

\$395,277.00 **Federal Aid** _____
(must match resolution)

Other _____