

83736

TO: Honorable Board of Acquisition and Contract

FROM: Vincent F. Kopicki., P.E.
Commissioner of Environmental Facilities

DATE: March 24, 2021

SUBJECT: Authorization to default ACV Environmental Services, Inc. d/b/a ACV Enviro APV in connection with Contract No. EF-2001, Operation and Maintenance of Household Hazardous Material Recovery Facility, Valhalla Campus, Valhalla, NY, and authorization to enter into a Takeover Agreement with the surety Berkley Insurance Company or its designee, and to take all necessary measures to provide the contract services.

On March 26, 2020, your Honorable Board awarded Contract No. EF-2001, Operation and Maintenance of Household Hazardous Material Recovery Facility (H-MRF) in Valhalla, NY to ACV Environmental Services, Inc. d/b/a ACV Enviro APV (“ACV”) in the amount of \$2,045,088.00 for a term from April 1, 2020, through March 31, 2023, plus an option for an additional year. The County of Westchester (“County”), acting by and through its Department of Environmental Facilities (the “Department”) and ACV entered into a contract dated March 27, 2020 (the “Contract”). As required by the Contract, ACV provided a Performance and Payment Bond issued by Berkley Insurance Company as surety for this project.

ACV has failed to comply with the terms and specifications of the Contract in that it:

1. failed and/or refused to draft and/or maintain at the H-MRF an Operations Manual acceptable to the New York State Department of Environmental Conservation (“NYSDEC”) as required by 6 NYCRR § 360.16(c)(4). ACV’s default hereunder constitutes a material breach of Paragraph Fifteenth of the Contract, and Sections VII, XVI (D) and XVIII of the Bid Specifications;
2. failed and/or refused to maintain accurate records related to a 55-gallon hazardous waste containing drum at the H-MRF that resulted in NYSDEC issuing a violation to DEF on February 5, 2021. ACV’s default hereunder constitutes a material breach of Paragraph Fifteenth of the Contract, and Sections VII, XXXI and XXXII of the Bid Specifications; and

3. failed to seek prior approval of DEF, and provide to DEF the resume for at least one of its proposed personnel prior to implementing several staffing changes at the H-MRF in violation of Section XXIII (D) of the Bid Specifications. .

Please note that this list is not intended to be inclusive of all deficiencies in ACV's performance. On several occasions the Department communicated these issues to ACV and provided ample opportunity to cure the deficiencies. However, ACV's failings have continued, resulting in the New York State Department of Environmental Conservation recently issuing a violation to the Department due to ACV's failure to provide proper and appropriate responses and information regarding the status of on-site waste.

As a result of the aforementioned issues, the work has not been completed in compliance with the bid specifications. The County has attempted to resolve these matters with ACV, without success. As required by the terms of the Contract, on March 16, 2021, the County provided ACV with written notice and a demand that the above issues be resolved within 48 hours or the County would exercise its options under the Contract, including the right to terminate the Contract. To date, ACV has not cured its breach of the Contract.

Therefore, I recommend that the County declare ACV in default of the Contract, and that the Contract be terminated. Further, I recommend that the County be authorized to enter into a Takeover Agreement with the surety, Berkley Insurance Company, or its designee, and to take all necessary measures to provide the contract services.

Additionally, because the surety has not responded to the County's attempts to arrange an expeditious takeover of the Contract, an emergency situation has been created. Westchester County residents rely upon the services of the H-MRF to dispose of hazardous household chemicals. The absence of this outlet for safe and proper disposal could result in an environmental hazard. The Department has outlined the reasons and nature of the emergency basis in the Emergency Declaration, a copy of which is attached hereto. As described in the Emergency Declaration, the emergency work includes performance of all services required by the Contract for one year. A separate Resolution will be submitted to your Honorable Board to authorize the emergency contract.

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

VFK/DLV/dv

RESOLUTION

Upon communication from the Commissioner of Environmental Facilities,

WHEREAS, ACV Environmental Services, Inc. d/b/a ACV Enviro APV (“ACV”) has repeatedly failed to comply with the terms of Contract No. EF-2001, Operation and Maintenance of Household Hazardous Material Recovery Facility, Valhalla Campus, Valhalla, NY (the “Contract”); and

RESOLVED, that the County of Westchester (“County”) declares ACV in default of the Contract in accordance with the terms of the Contract; and be it further

RESOLVED, that the Contract is hereby terminated in its entirety; and be it further

RESOLVED, that the County is authorized to proceed upon the Performance and Payment Bond issued by Berkley Insurance Company, the surety for the Contract; and be it further

RESOLVED, that the Commissioner of Environmental Facilities, on behalf of the County, is authorized to enter into a Takeover Agreement with Berkley Insurance Company or its designee (“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 will be faced with an emergency situation and is therefore required to procure, on an emergency basis, a contractor to complete to perform all services required by the Contract for one year ; 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	Trust Account	Dollars
251	60	78-00-7810	4380		681696.00
251	60	7800-7810	4380		681696.00
251	60	7800-7810	4380		170424.00

Budget Funding Year(s) _____ 2021 _____ Start Date _____ End Date _____
 (must match resolution)

Funding Source Tax Dollars _____
 State Aid _____
 \$ _____ Federal Aid _____
 (must match resolution)
 Other _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 03/25/2021 - LISA M. [REDACTED] SECRETARY