

89762

DATE: December 22, 2021

TO: Honorable Board of Acquisition and Contract

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

SUBJECT: Authorization to terminate Contract No. 20-501 with Niram, Inc. for Infrastructure Rehabilitation, Playland Park, Rye, New York, and for the County of Westchester to exercise any/or all of its rights under the Contract, including without limitation, to enter upon the premises and take possession for the purpose of completing the work included under the Contract of all materials, tools and appliances thereon and to take all necessary measures to provide the Contract work.

On January 21, 2021, your Honorable Board awarded Contract No. 20-501 for Infrastructure Rehabilitation, Playland Park, in Rye, New York to Niram, Inc. (“Niram”) in the amount of \$24,883,000.00.

The County of Westchester (“County”), acting by and through its Department of Public Works and Transportation (the “Department”) and Niram entered into a written contract, dated January 21, 2021 for Contract No. 20-501 Infrastructure Rehabilitation, Playland Park, Rye, New York (the “Contract”). Pursuant to the Contract, Niram provided Performance and Payment Bond # PRF7665039 (the “Bond”) issued by Fidelity and Deposit Company of Maryland and Zurich American Insurance Company as Co-sureties (the “Co-Sureties”).

Niram has failed to comply with the terms and specifications of the Contract in that it: refused or neglected to supply a sufficient properly skilled work force and materials of a proper quantity to complete the work in accordance with the terms of the Contract; failed to proceed with the work with promptness and diligence; and failed to comply with the provisions of the New York Labor Law and the Federal Occupational Safety and Health Administration (OSHA) regulations creating safety deficiencies.

Please note that this list is not intended to be inclusive of all deficiencies in Niram’s performance.

On several occasions, the Department communicated these issues to Niram, had meetings with Niram and provided Niram with ample opportunity to cure the deficiencies. However, Niram’s failings have continued.

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As a result and as required by the terms of the Contract, the Commissioner of DPWT certified the acts of default in a letter to Niram, dated December 3, 2021. Five (5) days have passed since the default letter was received by Niram on December 6, 2021 and the acts of default have continued.

Moreover, in an effort to get the Contract work completed, the County notified the Co-Sureties of Niram's failure and neglect to fully perform and complete the work under the Contract and sought to invoke the Bond to have the Co-Sureties fully perform and complete the Contract work. To date, the Co-Sureties have refused to honor their promises made to the County under the Bond.

Therefore, I hereby certify that the acts of default are sufficient grounds to terminate the Contract. Accordingly, I recommend that your Honorable Board terminate the Contract. Further, I recommend that the County be authorized to exercise any/or all of its rights under the Contract, including without limitation, to enter upon the premises and take possession for the purpose of completing the work included under the Contract of all materials, tools and appliances thereon and to take all necessary measures to provide the Contract work.

Finally, due to the fact Niram defaulted under the Contract and the Co-Sureties have refused to promptly proceed to undertake the work, the Department will very likely be faced with an emergency situation to procure contractors to complete the remaining work under the Contract. The County will follow the Laws of Westchester County in order to declare an emergency.

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

HJG/m

RESOLUTION

Contract No. 20-501

Upon communication from the Commissioner of Public Works and Transportation,

WHEREAS, Niram Inc. (“Niram”) has failed to comply with the terms of Contract No. 20-501, Infrastructure Rehabilitation, Playland Park, Rye, New York (the “Contract No. 20-501” or “Contract”); and

WHEREAS, the Commissioner of Public Works and Transportation certified the acts of default under the Contract in a letter to Niram, dated December 3, 2021 (“Notice of Default”); and

WHEREAS, five (5) days have passed since Niram received the Notice of Default; and

WHEREAS, the Commissioner of Public Works and Transportation has certified that the acts of default are of sufficient grounds to terminate the Contract; and

WHEREAS, this matter has been discussed with the County Attorney’s Office; now, therefore, be it

RESOLVED, that Contract No. 20-501 between Niram and the County of Westchester (the “County”) be hereby terminated in its entirety; and be it further

RESOLVED, that the County be authorized to exercise any/or all of its rights under the Contract, including, without limitation, to enter upon the premises and take possession for the purpose of completing the work included under Contract of all materials, tools and appliances thereon and to take all necessary measures to provide the Contract work; and be it further

RESOLVED, due to the fact Niram defaulted under the Contract and the Co-Sureties have refused to promptly proceed to undertake the work as required by the Bond #PRF7665039, the County will very likely be faced with an emergency situation to procure contractors to complete the remaining work under the Contract; and be it further

RESOLUTION

Contract No. 20-501

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	Bond Act No.	Dollars
	372	42	RP23F01C	6210-99	BA #157-2020	
	372	42	RP02802C	6210-99	BA #161-2020	
	372	42	RP02803C	6210-99	BA #162-2020	
	372	42	RP04001C	6210-99	BA #159-2020	

Budget Funding Year(s): N/A **Start Date:** N/A **End Date:** N/A
(must match resolution)

Funding Source: **Tax Dollars** N/A

State Aid _____

\$N/A **Federal Aid** _____
(must match resolution)

Other _____

APPROVED BOARD OF ACQUISITION & CONTRACTS 01/23/2021 - RAYMOND SCULKY, SECRETARY