

County of Westchester

Board of Acquisition and Contract

Meeting Minutes

Thursday, December 30, 2021

11:00 AM

WebEx/CEO Conference Room A
Michaelian Office Building

SPECIAL MEETING OF THE BOARD OF ACQUISITION AND CONTRACT

Roll Call

Present: Mr. Kenneth W. Jenkins, Mr. Lawrence C. Soule, and Mr.
Benjamin Boykin

Attendees:

Deputy Commissioner of Finance	Cesar Vargas
Associate Chief Deputy County Attorney	Tami Altschiller
Board of Legislators	Mary Beth Gose
Board of Legislators	Lisa Hochman
Secretary BAC	Raymond Sculky
Assistant Secretary BAC	Joan Cocciardi

Mr. Jenkins presided.

Mr. Jenkins asked, "For the record has the Secretary to the Board gone to the reception area to invite any members of the public who wish to attend today's meeting to come to the conference room?"

Mr. Sculky said, "Yes, I have."

Mr. Jenkins said, "The County Board of Acquisition and Contract is meeting pursuant to Chapter 417 of New York State Laws of 2021, which allows public bodies to meet and take action without permitting in-person public access to meetings and authorizes such meetings to be held remotely by conference call or similar service, provided the public has the ability to view or listen and that such meetings are recorded and later transcribed. I understand that the Budget Director wishes to speak."

Mr. Soule said, "The Members of the Board of Acquisition and Contract received a memorandum from the Commissioner of Public Works and Transportation declaring an emergency situation that cannot await competitive bidding.

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

The County of Westchester, acting by and through its Department of Public Works and Transportation and Niram entered into a written contract, dated January 21, 2021, for Contract No. 20-501 Infrastructure Rehabilitation, Playland Park, Rye, New York. Pursuant to the Contract, Niram provided a Performance and Payment Bond, identified as Bond # PRF7665039, dated January 28, 2021, issued by Fidelity and Deposit Company of Maryland and Zurich American Insurance Company as Co-sureties. Your Honorable Board approved a resolution on December 23, 2021 terminating the Contract due to the acts of default committed by Niram under the Contract, which included, inter alia, the following:

1. Niram's refusal or neglect 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;
2. Niram's failure to proceed with the Work with promptness and diligence; and
3. Niram's failure to comply with the NYS Labor Law and OSHA regulations creating safety deficiencies.

Moreover, the County notified the Co-Sureties of Niram's acts of default 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.

As result of the above, an emergency situation has been created because the infrastructure rehabilitation work for Playland Park must be properly completed before Playland Park's opening day, which is scheduled on or about May 20, 2022.

The County and the Department are unable to open or operate Playland Park without the infrastructure rehabilitation work being completed because the work includes, inter alia, providing public restrooms and food facilities for the attending public.

Failure to replace Niram immediately with a contractor or contractors that will complete performance of the Contract work by the Contract completion date of April 29, 2022 will affect Playland Park, the public buildings and public property within the Park and the health and safety of the inhabitants of the County who visit the park.

In order to ensure proper operation of the Park and to protect the health and safety of the public and County employees, the Department declared an emergency situation. As an emergency, this situation cannot await competitive bidding. The Department has arranged alternate contractors who can complete the Contract work forthwith and before the Park opens.

The Department, following its standard emergency contract protocols, selected the firm of Mace Contracting Corporation, a MBE firm, 35 Portman Road, New Rochelle, New York 10801 to perform Contract 21-541 Emergency Infrastructure Work, Restroom Facilities and South Administration Building, Playland Park, Rye, New York.

Additionally, The Department, following its standard emergency contract protocols, selected the firm of Worth Construction Company, Inc., 24 Taylor Avenue, Bethel, Connecticut 06801 to perform Contract 21-542 Emergency Infrastructure Work, Playland Towers, North Administration Building and West Cross Axis Food Facilities,

Playland Park, Rye, New York.

The emergency work for contract 21-541 includes: the completion of the rehabilitation of the park's Main Restroom Facility, the completion of the reconstruction of the West Cross Axis Restroom Building, and, the completion of the rehabilitation of the South Administration Building.

The emergency work for contract 21-542 includes: the completion of the reconstruction of the Playland Towers, the completion of the rehabilitation of the North Administration Building, and, the completion of the reconstruction of the West Cross Axis Food Facilities.

As the full extent of the Emergency Infrastructure work will not be able to be ascertained until all existing conditions on the partially completed projects are quantified, the Department will at a later date submit resolutions to your Honorable Board requesting approval of Contracts 21-541 and 21-542."

Mr. Jenkins said, "I direct the Secretary to the Board of Acquisition & Contract to include the memo from the Commissioner of Public Works and Transportation as part of the minutes of today's meeting."

There being no further business, the Chair declared the meeting adjourned.

I have reviewed the foregoing minutes and have found them to be correct as written.

Signed: *Raymond Sculky*, Secretary

Dated: 12/30/2021