

MINUTES OF SEA CLIFF VILLAGE BOARD
October 31, 2013

The meeting of the Incorporated Village of Sea Cliff was held on Thursday, October 31, 2013 at 2:00 p.m. at Village Hall, to discuss various Village matters.

Present: Bruce Kennedy, Mayor
Peter Hayes Village Trustee
Edward Lieberman, Village Trustee
Marianne Lennon, Village Clerk
John Mirando, Village Administrator

Absent: Tom Powell, Village Trustee
Carol Vogt, Village Trustee

Mayor Kennedy offered the following resolution for adoption:

RESOLUTION NO. 69, YEAR 2013

WHEREAS, on August 12, 2013, in connection with the Scudders Pond Improvement Project, the Village advertised for bids to be submitted on or before September 4, 2013 and to be opened on September 4, 2013; and

WHEREAS, the Village received three bids, each of which included the required bid bond; and

WHEREAS, Biltwel General Contractor Corp., 31 Mary Pitkin Path, Shoreham, NY 11786 (“Biltwel”) submitted a bid in the sum of \$1,736,270.00, together with a bid bond dated August 30, 2013 issued by Biltwel, as principal, and Endurance American Insurance Company, as surety, for a sum equal to five percent (5%) of the bid bond (the “Bid Bond”); and

WHEREAS, the Biltwel’s Bid Bond sum is \$86,814.00; and

WHEREAS, on September 9, 2013, the Village awarded the Scudders Pond Improvement Project to Biltwel General Contractor Corp. as the lowest responsible bidder; and

WHEREAS, the Village’s project consultant notified Biltwel in writing of such award and requested that Biltwel attend a pre-construction meeting on September 17, 2013; and

WHEREAS, at the pre-construction meeting and in subsequent discussions, Biltwel advised that it has had difficulty obtaining the required performance and labor and materials bonds, but that the company was comfortable that it could perform the work for the their bid amount; and

WHEREAS, Biltwel has requested that the Village give Biltwel time to make further efforts at procuring the required bonds or providing the Village with substitute security; and

WHEREAS, time is of the essence on this project, and the construction period is to start on November 1, 2013 with a window that would permit construction up until April 1, 2013; and

WHEREAS, Biltwel has failed to provide the required predicate contract security to the Village and execute the contract within 10 days after notice of acceptance of Biltwel’s bid, as required by the bidding documents; and

WHEREAS, Biltwel is not in compliance with the terms of the bidding documents and in accordance with the bidding documents is subject to liability for any default resulting from its failure to execute the contract, including the liability set forth in the provision in the contract wherein the bidders shall forfeit to the Village, as liquidated damages, the security deposit accompanying the bid; and

WHEREAS, on October 7, 2013, the Board adopted a resolution providing for an extension of time for Biltwel to provide the required security and execute and deliver the contract to the Village no later than the close of business on October 11, 2013; and

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WHEREAS, Biltwel notified the Village that it was diligently working on obtaining the required security and will be meeting with its bond representative on October 17, 2013; and

WHEREAS, on October 15, 2013, based on Biltwel's representations, the Board adopted a resolution providing for an additional extension of time for Biltwel to execute and deliver the contract to the Village to no later than 4pm on October 17, 2013; and

WHEREAS, the Village desires to timely commence the contract to assure that the work commences and is completed within the permitted timeframe, and that monies made available to the Village through grants is not lost; and

WHEREAS, Biltwel failed to timely deliver an executed contract to the Village or provide the Village with the required performance and labor and materials bonds; and

WHEREAS, the bidding documents provide that upon the successful bidder's failure or refusal to execute and deliver the contract and bonds required within 10 days after the date of notice of acceptance of the bid, the successful bidder shall forfeit to the Village, as liquidated damages for such failure or refusal, the security deposited with the bid; and

WHEREAS, the Village expects to expend funds well in excess of Biltwel's bid amount and the amount of Biltwel's bid bond to complete the project;

WHEREAS, to complete the Scudders Pond Improvement Project in a timely manner without risking the loss of available grant funds, the Village will be seeking to award the contract to the next lowest bidder, whose bid was \$1,039,465.00 more than the Biltwel bid.

NOW, THEREFORE, BE IT RESOLVED that the Board declares Biltwel to be in default for failing to execute and deliver the contract and performance and labor and material bonds within the time required; and

BE IT FURTHER RESOLVED that the Village shall collect on the Bid Bond; and

BE IT FURTHER RESOLVED that the Village shall notify the Bid Bond principal and surety by certified mail of such default, shall demand payment be made immediately on account of Biltwel's default and shall take such action as is necessary to pursue its claim on the Bid Bond and for any and all damages resulting from Biltwel's default.

On a motion by Trustee Lieberman, seconded by Trustee Hayes and unanimously approved by those present, the resolution was hereby approved.

Meeting adjourned at 2:20 p.m.

Marianne Lennon
Village Clerk

