

# RESOLUTION OF THE CITY COUNCIL

No. 166

Approved April 24, 2017

RESOLVED, That the Members of the Providence City Council hereby Authorize Approval of the following Contract Award by the Board of Contract and Supply, in accordance with Section 21-26 of the Code of Ordinances.

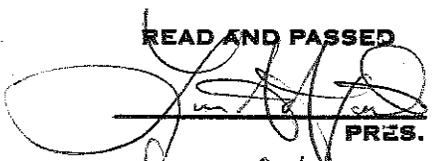
Dewcon, Inc.  
(Water Supply Board)

\$8.2 million dollars over two years

IN CITY COUNCIL

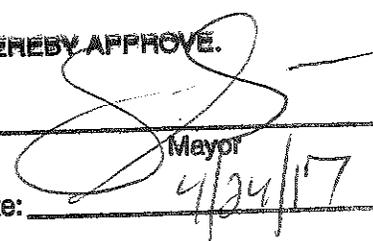
APR 20 2017

READ AND PASSED

  
PRES.

  
CLERK

I HEREBY APPROVE.

  
Date: 4/24/17  
Mayor

**MATTHEW M. CLARKIN, JR.**  
INTERNAL AUDITOR  
25 DORRANCE STREET, ROOM #307  
PROVIDENCE, RI 02903  
Phone: (401) 421-7740 EXT. 577  
Fax: (401) 351-1056  
mclarkin@providenceri.com



## City of Providence, Rhode Island Office of the Internal Auditor

March 6, 2017

Ms. Lori Hagen  
City Clerk's Office  
City of Providence  
25 Dorrance Street  
Providence, RI 02903

Dear Lori:

I am writing to request that the following requested contract award be submitted to the City Council and the Finance Committee for approval.

- *Providence Water Supply Board:* Approval of a contract with Dewcon, Inc. for the Replacement/Rehabilitation of Water Mains and Appurtenances and Associated Permanent Restoration of Streets and Sidewalks, Within the Providence Water Supply Board's Distribution System in a total amount not to exceed \$8.2 million over two years.
- *Providence Water Supply Board:* Approval of a contract with W. Walsh Company, Inc. for the Replacement/Rehabilitation of Water Mains and Appurtenances and Associated Permanent Restoration of Streets and Sidewalks, Within the Providence Water Supply Board's Distribution System in a total amount not to exceed \$5.6 million over two years.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew M. Clarkin, Jr.", written over a light blue horizontal line.

Matthew M. Clarkin, Jr.  
Internal Auditor



PROVIDENCE WATER

Tap Water Delivers

February 24, 2017

The Honorable Mayor Jorge O. Elorza  
Chairman, Board of Contract and Supply  
City Hall  
Providence, RI 02903

Dear Mayor Elorza:

**RE: REPLACEMENT/REHABILITATION OF WATER MAINS & APPURTENANCES  
AND ASSOCIATED PERMANENT RESTORATION OF STREETS & SIDEWALKS  
WITHIN THE PROVIDENCE WATER SUPPLY BOARD'S DISTRIBUTION SYSTEM  
(PW PROJECT 20172-CONTRACT 2-17)**

The Hon. Jorge O. Elorza  
Mayor

Ricky Caruolo  
General Manager

Date Of Bid Opening:

January 9, 2017

RECOMMENDED BIDDER:  
(Name and Address)

Dewcon, Inc.  
PO Box 439  
Basking Ridge, NJ 07920

AMOUNT RECOMMENDED:

\$8,200,000 over 2 years

This letter is requesting permission to award Replacement/Rehabilitation of Water Mains Project 20172-Contract 2-17 to the low bidder for an amount not to exceed \$8,200,000 over 2 yrs. I am recommending that you sign this award.

**BOARD OF DIRECTORS**

Xaykham Khamsvoravong  
Chairperson

Joseph D. Cataldi  
Vice Chairperson

Michael J. Correia  
Councilperson

Sabina Matos  
Councilperson

Lawrence J. Mancini  
Ex-Officio

Cristen L. Raucci, Esq.  
Member

Kerri Lynn Thurber  
Member

Carissa R. Richard  
Secretary

William E. O'Gara, Esq.  
Legal Advisor

	NAME	BASE	TOTAL
1	Dewcon, Inc.	NJ	See Attached
2	W.Walsh Co., Inc.	MA	See Attached
3	C.B. Utility Co., Inc.	RI	See Attached
4	D'Ercole Construction, Inc.	RI	See Attached
5	Biszko Contraction Corp.	MA	See Attached

(Additional sheet is ( ) is not (X) attached)

- (X) On the basis of said bids, we recommend the lowest qualified bidder, as identified on line 1 whose firm's bid has met the specifications.
- ( ) On the basis of said bids, we recommend the bidder identified on line 1 while not the apparent low bidder but after a review of the bids reveal that it is in the best interest of the City to reject the low bidder(s) because: (Please provide explanation)  
See Attached

Additional sheet is / is not attached  
MINORITY PARTICIPATION 0%

Account Code #848-848-52885

Respectfully Submitted,  
PROVIDENCE WATER SUPPLY BOARD

Ricky Caruolo  
General Manager

**MEMBER**

Rhode Island Water Works Assn.  
New England Water Works Assn.  
American Water Works Assn.  
Water Research Foundation

An EPA WaterSense Partner

(401) 521-6300

552 Academy Avenue  
Providence, RI 02908

www.provwater.com

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**BIDDER RECOMMENDATION SUMMARY**

**Project Description:** REPLACEMENT / REHABILITATION OF WATER MAINS AND APPURTENANCES within the PROVIDENCE WATER SUPPLY BOARD'S DISTRIBUTION SYSTEM Edgewood Area of Cranston  
**CONTRACT 2-17 (PW Project No. 20172)**

<b>Bidder's Name:</b>	Biszko Contracting Corp.	Dewcon, Inc.	W. Walsh Company, Inc.	D'Ercole Construction, Inc.	C.B. Utility Co., Inc.
<b>Bidder's Address:</b>	Clean & Line Bid 20 Development Street Fall River, MA 02721	Clean & Line Bid PO Box 439 Basking Rlcls, NJ 07920	Clean & Line Bid 32 Walton Street Attleboro, MA 02703	Replacement Bid 2800 Plainfield Pike Cranston, RI 02921	Replacement Bid 99 Tupelo St Bristol, RI 02809
<b>Base Bid Amount:</b>	\$ 6,498,560.00	\$ 6,149,602.50	\$ 6,985,860.00	\$ 4,788,608.70	\$ 3,253,860.00
<b>Corrected Math Errors</b>					
<b>Base Bid Amount:</b>	\$ 6,372,280.00	\$ 6,149,352.50	n/a		\$ 3,254,110.00
<b>Est. Base Bid (with Police &amp; Contingency):</b>	\$ 8,381,048.00	\$ 8,381,048.00	\$ 9,118,132.00		\$ 10,639,732.00
<b>Bid Bond:</b>	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00
<b>Surety Company:</b>	Travelers Casualty and Surety Company of America	Evergreen National Indemnity Company	Western Surety Company	Barkley Insurance Company	Harford Fire Insurance Company
<b>Comments:</b>	Second Lowest Bidder	Lowest Bidder	Third Lowest Bidder	Non Compliant - non-conforming, unbalanced, and conditional bid	Fourth Lowest Bidder
<b>Note:</b> Please refer to the attached sheets for additional comments.					
<b>Recommendation:</b>	Recommend award to lowest bidder, Dewcon, Inc., for the Replacement / Rehabilitation of Water Mains and Appurtenances within the PWWSB's Distribution System and replacement of Lead Services within designated Private Properties, as required and as directed by Providence Water				
	Award of Contract - 2-17 is recommended to Dewcon, Inc. for an overall total amount not to exceed \$ 8,200,000.00 over two (2) years.				
<b>Required Signatures:</b>	Engineering Project Manager				
	<i>Norman Riestein</i> Norman Riestein				2-24-17 Date
	CIP Manager				2/24/17 Date
	<i>Steve Santantello</i> Steve Santantello				
	Senior Manager of Engineering				2-24-17 Date
	<i>Peter LePage</i> Peter LePage				
	Deputy General Manager of Operations				2/24/17 Date
	<i>Gregg Gleason</i> Gregg Gleason				
<b>BIDDER RECOMMENDATION SUMMARY</b>					
<b>REPLACEMENT / REHABILITATION OF WATER MAINS &amp; APPURTENANCES within the PROVIDENCE WATER SUPPLY BOARD'S DISTRIBUTION SYSTEM</b>					
<b>CONTRACT 2-17 (PW Project No. 20172)</b>					
February 24, 2017					

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

BISZKO CONTRACTING CORP.,  
*Plaintiff,*

v.

CITY OF PROVIDENCE and  
PROVIDENCE WATER SUPPLY BOARD,  
*Defendants.*

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C.A. No. PC-2017-0504

**ORDER**

This matter first came before this Court for hearing on February 10, 2017. This Court rendered an initial decision on February 17, 2017. Plaintiff sought further relief, and on March 6, 2017, the Court heard arguments on the matter. On March 7, 2017, the Court rendered a decision. Pursuant to those decisions, the Court enters the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. On November 28, 2016, the City of Providence (the City) released Invitations to Bid for Providence Water Supply Board (Providence Water) Contracts 1-17 and 2-17 (the Projects or Contracts). These Invitations were advertised in the Providence Journal on December 2, 2016.
2. The invitations also noted there was a mandatory pre-bid conference, to be held on December 14, 2016. At this pre-bid conference, addenda to the bids were distributed, which reduced some quantities and converted the units for some requirements.

3. The City did not post the Invitations to Bid on the Rhode Island Municipal Bidder Notification System (RIMBNS), despite the fact that the City's Purchasing Department website states that "City of Providence Active bids can be viewed on the Active Solicitations listing page" on the RIMBNS, and that "[y]ou must obtain the packages via the website."
4. Biszko did not know about the Projects, as they were not listed on the RIMBNS. They only heard about them on Friday, January 6, 2017, and the bids were to be opened the next Monday, January 9, 2017.
5. Biszko went to City Hall and obtained the bid packages on CD. However, despite repeated inquiries, Biszko was told that there were no addenda.
6. The bids Biszko submitted lacked the changes covered by the addenda.
7. After opening Biszko's bids, Providence Water disqualified them due to Biszko's failure to attend the mandatory pre-bid conference. Biszko subsequently filed a bid protest, which was denied. Thereafter, Biszko sought relief in the Superior Court.
8. This Court found that Providence Water's disqualification of Biszko due to their failure to attend the pre-bid conference was arbitrary, amounting to a palpable abuse of discretion. That failure was the result of the City's not posting the Invitations on the RIMBNS, and amounted to punishing the victim for the City's own error.
9. This Court ordered Providence Water to consider Biszko's bids without regard to the pre-bid conference. This Court observed that there were several ways in which Providence Water could proceed. The Court identified the following non-

exhaustive list of options: "(1) reject all the bids and not go forward with the Projects in their current design; (2) rebid the Projects; (3) reevaluate Biszko's bids as originally submitted; or (4) consider Biszko's bids, adjusted to conform to the addenda, if there are mathematical calculations allowing for the conversion of units and for other necessary changes."

10. Providence Water evaluated Biszko's bids without considering the addenda. Providence Water determined that Biszko had the lowest bid price for Project 1-17. However, Providence Water did not change their original recommendations, which remained W. Walsh Company, Inc. for Contract 1-17 and Dewcon, Inc. for Contract 2-17.
11. Providence Water declined to recommend Biszko "for Project 1-17 in view of Biszko's past performance on Providence Water projects." Providence Water declined to recommend Biszko for Contract 2-17 in part because "Providence Water could not definitely determine whether Biszko was the lowest bidder" and "because of its prior experience with Biszko."
12. Providence Water's only prior experience with Biszko was one project, referred to as "Contract 7." Parkside Utility Construction, Inc., the general contractor for Contract 7, was responsible for many of the problems ascribed to Biszko. Despite warnings that the City might terminate Biszko as a subcontractor due to their performance on Contract 7, the City never began such proceedings. In fact, Biszko was paid in full for its subcontracting work on Contract 7.
13. The Defendants failed to adhere to state law in issuing and reviewing the bids. The Invitations to Bid failed to articulate the basis on which the contract would be

awarded. The Instructions to Bidders used inconsistent terminology in describing how the successful bidder would be selected. Providence Water's methodology for evaluating the qualifications of bidders was inconsistent and subjective, not objective as required by the municipal bid statute. Its analysis disregarded the objective criteria delineated in the Instructions to Bidders.

14. The analysis of Biszko's qualifications by Providence Water was neither fair nor reasonable.
15. While the Court did not mandate that Providence Water evaluate Biszko's bids with the addenda, it permitted the Defendants to do so. Providence Water chose to do that analysis and based on that analysis, Biszko's bid prices would have even been lower and it would have also had the lowest bid price for Contract 2-17. Specifically, that analysis calculated Biszko's corrected base bid amount as \$4,177, 680.65 for Contract 1-17 and as \$6,055,115.65 for Contract 2-17. That information was excluded from Providence Water's recommendations to the Board of Contract and Supply.

#### **CONCLUSIONS OF LAW**

1. There was no corruption or bad faith on the part of the Defendants with respect to their administration of the bid process concerning the Contracts.
2. The Defendants, by their failing to post the Invitations to Bid on the Vendor Website, their inattention to proper process, their failure to comply with state law, and their lack of a fair and reasonable analysis of Biszko's bids, acted so arbitrarily as to constitute a palpable abuse of discretion.

3. Since the Contracts have yet to have been awarded, the decision to award these two Contracts rests not with the Court but with the Board of Contract and Supply.
4. Because of the palpable abuse of discretion by the Defendants, the Court must ensure that the decision maker is provided with the information necessary to exercise its judgment.

It is hereby ORDERED, ADJUDGED AND DECREED:

1. Except as provided below, the preliminary injunction previously granted shall no longer be in effect.
2. Providence Water shall provide to the Board of Contract and Supply by close of business on March 15, 2017:
  - a. The above findings of fact and conclusions of law;
  - b. Copies of the Court's decisions dated February 17, 2017 and March 6, 2017.
3. Providence Water shall advise the Board of Contract and Supply by close of business on March 15, 2017 that taking into account the addenda for Biszko's bids results in corrected base bid amounts of \$4,177,680.65 for Contract 1-17 and \$6,055,115.65 for Contract 2-17.

ENTERED as an Order of this Court on this 10<sup>th</sup> day of March, 2017.

ENTER:

  
Richard A. Licht  
Associate Justice

3/10/17

BY ORDER:

  
Clerk

3/10/2017



CAMERON & MITTLEMAN<sup>LLP</sup>  
*Attorneys-at-Law*

Email: [gcicione@cm-law.com](mailto:gcicione@cm-law.com)

April 13, 2017

**VIA HAND DELIVERY**

City of Providence, Finance Committee  
City Hall, Committee Room "B", Room 305, Third Floor  
25 Dorrance Street  
Providence, RI 02903

**Re: Biszko Contracting Corp.  
Providence Water Supply Board Contracts 1-17 and 2-17**

Dear Members of the Finance Committee:

I write on behalf of my client, Biszko Contracting Corp. ("Biszko"), to provide you with certain information relative to its bids on the above-referenced Contracts, which contracts you are considering at your meeting tonight. In particular, we would like you to be fully aware of the ongoing litigation related to the bid process in this matter and the findings and decision of Superior Court Associate Justice Richard Licht relative to the process that was undertaken in securing and arriving at a recommendation for these bids.

Throughout this process, contested issues and irregularities arose which led the Court to make certain findings relative to the improper exclusion of Biszko from initial consideration and to the eventual determination that they were in fact the low bidder for both of the above-referenced Contracts.

Despite repeated findings and orders of the Court, we remain concerned that the Providence Water Supply Board has provided the City with incorrect or confusing information and we are concerned that this misinformation could lead to the City to spending an additional amount approaching \$250,000 on these projects.

The City of Providence has the opportunity to work with a long-established, financially strong and well-regarded contractor in Biszko. As importantly, the City has the opportunity to save its ratepayers and constituents **close to a quarter of a million dollars** over the course of these two projects.



City of Providence  
Finance Committee  
April 13, 2017  
Page 2

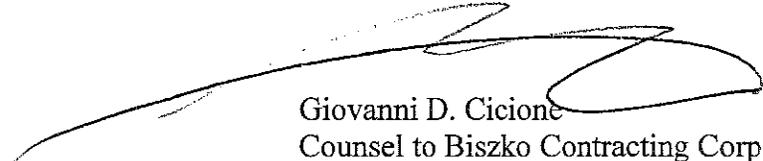
As the Court recognized, Biszko has bonding capacity for projects in excess of \$30,000,000. An assertion that it is not capable of completing this job not only defies credibility, but also is directly in conflict with the findings of the Rhode Island Superior Court.

We have enclosed a copy of the Court's Order, dated March 10, 2017, and would specifically refer the Committee to the findings in Paragraphs 14 and 15 on page 4 of that document. Additionally, we have attached two (2) Bidder Recommendation Summaries prepared by Biszko with respect to the above-referenced Contracts that outline the various bids for the projects and demonstrate that Biszko is, in fact, the low bidder for both Contracts. This is also confirmed in Paragraph 15 of the attached Court Order. We have also provided the Committee with a brief summary of Biszko's history and qualifications.

We are available to answer any additional questions and would be happy to discuss this issue further with the Committee and/or the Council at the appropriate times.

Thank you for your consideration.

Sincerely,

  
Giovanni D. Cicione  
Counsel to Biszko Contracting Corp.

GDC/tsg  
Enclosures

cc: William E. O'Gara, Esq. (via e-mail (wogara@pldolaw.com) only)  
Matthew C. Reeber, Esq. (via e-mail (mreeber@pldolaw.com) only)  
Samantha M. Clarke, Esq. (via e-mail (sclarke@pldolaw.com) only)  
Katherine A. Merolla, Esq. (via e-mail (kamlaw2344@aol.com) only)  
Thomas W. Heald, Esq. (via e-mail (twh@healdandleboeuf.com) only)  
Roger N. LeBoeuf, Esq. (via e-mail (rnl@healdandleboeuf.com) only)