

**BOROUGH OF RED BANK**

**COUNTY OF MONMOUTH**

**RESOLUTION NO. 15-320**

**RESOLUTION WITHDRAWING AWARD OF CONTRACT  
TO COMPASS CONSTRUCTION INC. FOR THE NORTH PROSPECT AVENUE BULKHEAD  
AND LIBRARY BULKHEAD REPLACEMENT PROJECT; AND AWARDING SAID  
CONTRACT TO PRECISE CONSTRUCTION, INC.**

Councilman DuPont offered the following resolution and moved its adoption:

**WHEREAS**, the Borough of Red Bank (the “Borough”) duly sought bids for the North Prospect Avenue Bulkhead and Library Bulkhead replacement project (the “Project”); and

**WHEREAS**, on November 10, 2015, five (5) sealed bids were received and opened for the Project; and

**WHEREAS**, Compass Construction Inc. (“Compass”) submitted the lowest bid in the amount of \$456,525.50 and its bid was deemed fully compliant with the specifications in all material aspects; and

**WHEREAS**, by letter dated November 12, 2015, the Borough’s Engineer recommended that the Contract for the Project be awarded to Compass; and

**WHEREAS**, by Resolution No. 15-294, the Borough Council awarded the Contract for the Project to Compass; and

**WHEREAS**, by letter dated December 11, 2015 to the Borough, Compass requested that its bid be withdrawn due to an alleged substantial mistake in Compass’s bid relating to the material costs for the sheeting; and

**WHEREAS**, Compass has indicated to the Borough that it cannot perform the Contract as bid because the alleged mistake was a major and material feature of the bid; and

**WHEREAS**, following the receipt of the bid withdrawal, the Borough Engineer contacted Compass to discuss and confirm the basis for the withdrawal of the bid; and

**WHEREAS**, the Borough Engineer has confirmed with Compass that the alleged mistake by Compass involves its desire to use materials not specified in the bid specifications; and

**WHEREAS**, as required by *N. J.S.A. 40A:11-23-3*, the Borough Engineer, the Borough’s Purchasing Agent and the Borough attorney have reviewed the request for the bid withdrawal, and have determined that Compass’s request to withdraw its bid does not satisfy the statutory criteria, including the fact that the withdrawal was not made within five (5) business days after the bid opening; and

**WHEREAS**, while the Borough could compel Compass to enter into the Contract for the Project, based on the Borough Engineer’s further communications with Compass regarding its bid and the alleged mistake, the Engineer is of the opinion that Compass cannot complete the Contract in accordance with the bid specifications for the amount of its bid, thus rendering its bid non-responsive; and;

**WHEREAS**, the Borough Engineer has recommended that the Borough withdraw its award of the Contract for the Project to Compass and award the bid to next lowest and responsible bidder Precise Construction, Inc; and

**WHEREAS**, the Borough Attorney has reviewed and considered the recommendations of the Borough Engineer regarding the Borough’s withdrawal of its award of the Contract for the Project to Compass, and has also reviewed the bid documents submitted by Precise Construction, Inc. (“Precise”), and has determined that Precise’s bid documents are in order,

and that the Contract for the Project can and should be awarded to Precise;

**WHEREAS**, the Borough desires to award the Contract for the Project to Precise as the lowest responsive and responsible bidder for a total contract price of \$497,005.00; and

**WHEREAS**, the Borough’s Chief Financial Officer has certified that the funds are available to award the Contract to Precise.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Red Bank as follows:

- 1. The Borough’s award of the contract for the Library Bulkhead and North Prospect Avenue Bulkhead replacement project is hereby withdrawn and rescinded; and
- 2. The Contract for the Library Bulkhead and North Prospect Avenue Bulkhead Replacement Project is hereby awarded to Precise Construction, Inc. in the total amount of Four Hundred Ninety Seven Thousand and Five Dollars ( \$497,005.00) as the lowest responsive and responsible bidder; and
- 3. That by withdrawing its award of the Contract to Compass, the Borough does not waive any claims against Compass, and hereby preserves and any all claims against Compass, including any claims against Compass's bid bond arising from Compass’s failure to comply with the statutory requirements for the withdrawal of its bid; and
- 4. The Mayor and the Borough Clerk are hereby authorized and directed to execute the Contract subsequent to execution by Precise Construction, and said officers, together with all other officers, professionals and employees of the Borough are hereby authorized and directed to take any and all steps necessary to effectuate the purpose of this resolution.

**BE IT FURTHER RESOLVED** that the Clerk forward a certified true copy of this resolution to Compass Construction, Inc., Precise Construction, Inc., and to the Borough Engineer.

Seconded by Councilman Zipprich and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Councilwoman Lee	( x )	( )	( )	( )
Councilwoman Burnham	( x )	( )	( )	( )
Councilwoman Horgan	( x )	( )	( )	( )
Councilwoman Schwabenbauer	( x )	( )	( )	( )
Councilman Zipprich	( x )	( )	( )	( )
Councilman DuPont	( x )	( )	( )	( )

Dated: December 16, 2015