

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
CSB CONTRACTORS, INC.,

Petitioner-Plaintiff,

-against-

THE VILLAGE OF AIRMONT, NEW YORK,

Respondent-Defendant,

-and-

CON SERV CONSTRUCTION INC.,
STEVEN J. MILLER ENTERPRISES, INC. and
ENVIRONMENTAL CONSTRUCTION INC.,

Interested Parties.
-----X


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Rockland County, NY
Paul Piperato County Clerk
SU-2014-002162

NOTICE OF PETITION

Index No.

RECEIVED

DEC 17 2014

VILLAGE OF AIRMONT
VILLAGE CLERK'S OFFICE
FILED SL

DEC 16 2014

ROCKLAND COUNTY
CLERK'S OFFICE

Upon the Petition herein duly verified on the 15th day of December, 2014, and upon all the papers and proceedings heretofore had herein, an application will be made, pursuant to Article 78 of the Civil Practice Law and Rules ("C.P.L.R."), at the Rockland County Courthouse, One South Main Street, New City, New York, on the 30th day of January, 2015, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to C.P.L.R. Article 78, directing that a Decision and Resolution of the Respondent-Defendant, The Village of Airmont, New York, on or about November 17, 2014, pertaining to an award of the 2015-2016 Snow Plan Contract, be deemed null and void, and granting such other, further and different relief as this Court deems just, proper and equitable.

PLEASE TAKE NOTICE that pursuant to C.P.L.R. Article 7804(e)(c), you are directed to serve and file any verified answer, memorandum of law and supporting affidavits or affirmations and the record, if any, at least five (5) days before the return date of this application

with the Clerk of the Court and serve upon the Petitioner-Plaintiff, together with your Answer and answering papers, a certified transcript of the record of the proceeding under consideration, together with the entire file containing the records of the Petitioner-Plaintiff herein held by Respondent-Defendant and referred to said proceedings as being in the record as official records kept by the Respondent-Defendant herein.

Dated: South Nyack, New York
December 16, 2014

FEERICK LYNCH MacCARTNEY, PLLC
Attorneys for Petitioner-Plaintiff
96 South Broadway
South Nyack, New York 10960
(845) 353-2000

By: 
Donald J. Feerick, Jr.

TO: The Village of Airmont, New York
251 Cherry Lane
Tallman, NY 10982

Mailing Address:
P.O. Box 578
Tallman, NY 10982

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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Interested Parties.
-----X

SUMMONS

Index No.: _____

Date Filed: _____

Petitioner-Plaintiff designates
Rockland County as the place
of trial.

Venue is proper in Rockland
because the offices of both
Petitioner-Plaintiff and
Respondent-Defendant are
located in said County.

FILED SL

DEC 16 2014

**ROCKLAND COUNTY
CLERK'S OFFICE**

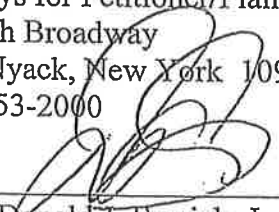
TO THE ABOVE NAMED RESPONDENT-DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Verified Petition and Complaint in this action and to serve a copy of your answer, or, if the Verified Petition and Complaint is not served with this Summons, to serve a notice of appearance, on the Petitioner-Plaintiff's attorney within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Petition and Complaint.

Dated: South Nyack, New York
December 16, 2014

Yours, etc.,

FEERICK LYNCH MacCARTNEY, PLLC
Attorneys for Petitioner/Plaintiff
96 South Broadway
South Nyack, New York 10960
(845) 353-2000

By: 
Donald J. Feerick, Jr.

Defendant's Address:

Village of Airmont, 251 Cherry Lane, Airmont, NY 10982

NOTICE(S):

The nature of this action is declaratory. The declaratory and equitable relief sought is as detailed in the Petition/Complaint attached hereto.

Upon your failure to appear, Judgment will be taken against you by default for the relief demanded in the Petition/Complaint.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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Petitioner-Plaintiff,

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Interested Parties.
-----X

VERIFIED PETITION
AND COMPLAINT

Index No.

FILED SL

DEC 16 2014

ROCKLAND COUNTY
CLERK'S OFFICE

The Petitioner-Plaintiff, CSB CONTRACTORS, INC., by its attorneys, Feerick Lynch MacCartney PLLC, as and for its petition and complaint against the Respondent-Defendant, and all Interested Parties, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. The Petitioner-Plaintiff brings this hybrid C.P.L.R. Article 78 proceeding and declaratory judgment action to redress an essential question regarding public bidding. Simply stated, if taxpayers are to benefit from the public bidding laws, the Decision and Resolution by the Village of Airmont, New York, made on or about November 17, 2014, to award the 2015-2018 Snow Plow Contract (the "Contract") to Con Serv Construction Inc. must be reversed. Otherwise, municipal officials will be provided with carte blanche to award public works projects to their favorite local contractor as opposed to the lowest responsible bidder.

Longstanding precedent in public works legislation prohibits such a result. Therefore, the determination to award the Contract allowing this result must be reversed.

THE PARTIES AND PROJECT CONTROVERSY

2. The Petitioner-Plaintiff, CSB Contractors, Inc. ("CSB"), is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York, having an office for the conduct of business located at 397 Spook Rock Road, Suffern, New York 10901.

3. Petitioner-Plaintiff CSB is the incumbent service provider under a Snow Plow/Salt Services Contract expiring on December 31, 2014. CSB submitted a contract bid under two separate invitation(s) to bid extended by the Village in 2014 for snow plow and salting services to be performed during 2015-2018 (the "Project"). CSB was denied the award for the work on the Project in favor of Con Serv Construction Inc. ("Con Serv") and complains herein as a result.

4. The Respondent-Defendant, the Village of Airmont, New York (the "Village"), is a municipal corporation of the State of New York, duly authorized to conduct municipal affairs and having jurisdiction over all financial matters involving the award of public projects within the Village of Airmont, County of Rockland, State of New York.

5. The Village acts by and through the Decisions and Resolutions of the Village Board of Trustees when conducting business including, but not limited to, awarding snow plow contracts.

6. The "Project" is the 2015-2018 Snow Plow and Salting Services Contract involving the public roads of the Village of Airmont located at 251 Cherry Lane, Airmont, New York 10982.

7. Con Serv is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York, having an office for the conduct of business at 260 Old Route 17, Hillburn, New York 10931.

8. Con Serv submitted a contract bid and was awarded the Contract for the work on the Project which is the subject matter of this proceeding.

9. Steven J. Miller Enterprises, Inc. ("SJM") is a foreign corporation, duly organized and existing under and by virtue of the laws of the State of New Jersey, having an office for the conduct of business at 28 Ramapo Valley Road, Mahwah, New Jersey 07430.

10. SJM submitted a Contract bid for the work on the Project and was denied.

11. Environmental Construction Inc. ("Environmental") is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York, having an office for the conduct of business at 73 Route 210, Stony Point, New York 10980.

12. Environmental submitted a Contract bid for the work on the Project and was denied.

JURISDICTION AND VENUE

13. This hybrid C.P.L.R. Article 78 and declaratory judgment action is brought pursuant to C.P.L.R. §§ 7803 (3) and 7806, as the declaratory and equitable relief is incidental to the primary relief sought by Petitioner-Plaintiff and Petitioner-Plaintiff might otherwise recover on the same set of facts in a separate action or proceeding brought in Supreme Court. See, e.g., Gross v. Perules, 72 N.Y.2d 231 (1998); Kovarsky v. Housing Development Adm. of NYC, 31 N.Y.2d 184, 191-192 (1972); Adams v. Welch, 272 A.D.2d 642 (3d Dep't 2000); Heinbach v. Mills, 54 A.D.2d 982, 982-983 (2d Dep't 1976) ("It is our view that a proper exercise of

discretion required that the proceeding be treated as a hybrid one for both Article 78 and declaratory relief.”).

14. Venue is proper in the County of Rockland pursuant to C.P.L.R. § 503(c), because Petitioner-Plaintiff maintains its principal place of business in said County, the Respondent-Defendant and the Interested Parties transact business in said County, and a substantial number of events or omissions giving rise to the controversy occurred in said County.

CHRONOLOGY OF RELEVANT EVENTS

15. In 2009, bidding and contract documents were prepared and released to the public for the 2010-2012 Snow Plow and Salting Services Contract for the Village of Airmont, New York (the “Prior Project”).

16. The bidding and contract documents were made available to all entities and persons interested in submitting bids for an award of contract work for the Prior Project.

17. Pursuant to the provisions of the General Municipal Law for the State of New York, at § 101 *et seq.*, the Village was required to award the contract for the Prior Project to the lowest responsible bidder.

18. Petitioner-Plaintiff CSB and Con Serv were the two contractors that submitted bid documents to the Village to perform the work for the Prior Project, and each had to satisfy bid specifications for snow plowing and Salting Services that called for seven (7) vehicles 33,000 lbs. with or more gross vehicle weight (“GVW”), heavy-duty type plow/spreader trucks, three (3) of which had to be four-wheel drive vehicles with a GVW of 36,000 lbs. or more, and each vehicle had to have PTO (power take off) mounted hydraulic systems, among other things.

19. CSB was the lowest responsible bidder for the Prior Project because: (1) CSB submitted a vehicle schedule listing company vehicles useable for snow removal and meeting the

requirements of the specifications; (2) it demonstrated a knowledge of local/highway snow and ice prevention techniques; (3) it had a proven history of handling municipal work; and (4) its bid met the technical requirements of the bid.

20. Con Serv was not the lowest responsible bidder because: (1) Con Serv submitted a vehicle schedule listing 18 company vehicles, and not all of the vehicles were usable for snow removal and/or did not meet the requirements of the specifications; (2) Con Serv did not indicate it had the requisite knowledge of local highway snow and ice prevention techniques; (3) Con Serv did not have a history of handling municipal work, as the largest project it handled was a private UPS lot in New Jersey; and (4) Con Serv did not otherwise meet the technical requirements of the bid specifications.

21. Since 2009, CSB has successfully and professionally handled the contract work for the Prior Project without any litigation ensuing, and the contract was duly extended for two, successive, one-year terms in 2013 and, again, in 2014, upon the concurrence of the Village and CSB.

22. In 2012 the contract work was competitively bid and the only bidder was CSB so the Village opted to extend the then existing contract for the Prior Project for 2013 rather than proceed to a new three-year contract with CSB.

23. In 2013 the contract work was competitively bid and the only bidder was CSB and so the Village opted to extend the then existing contract for the Prior Project from 2014 rather than proceed to a new three-year contract with CSB.

24. Upon information and belief, during a March 2014 Executive Session after questions arose pertaining to differing interpretations of the language of the contract regarding the continuing need for a performance bond, reimbursement for supplies for the Prior Project,

and what work was within the contract, Village Trustee Ralph Bracco stated to CSB, in sum and substance, that “[He] hired CSB and if CSB refused to do what [he] wanted, CSB would never plow snow in Airmont again,” and Trustee Bracco began efforts to secure an alternative vendor.

25. Thereafter, when the Village commissioned bidding and contract documents for the current Project and released them to the public, thereby making those documents available to all entities and persons interested in submitting bids for an award of contract work for the Project, the bid specifications required experience as a pre-condition; i.e, a history of similar services in the form of prior municipal work, and called for seven (7) vehicles 33,000 lbs. with or more GVW (gross vehicle weight), heavy-duty type plow/spreader trucks, three (3) of which had to be four-wheel drive vehicles with a GVW of 36,000 lbs. or more, and each vehicle had to have PTO (power take off) mounted hydraulic systems, among other things. Bids were required to be submitted by July 16, 2014.

26. On or about July 16, 2014, all bids were opened for the Project and it was discovered the Village had received only two bids, a bid from CSB that complied with specifications and a bid from Con Serv that was non-compliant with specifications. CSB’s bid was higher than Con Serv’s bid because it was compliant with bid specifications and market supply conditions.

27. On September 2, 2014, while the July 16, 2014 bids were still under consideration, the agenda for the monthly Board meeting contained no notice that the Contract for the current Project or its bid specifications or the experience or qualifications of bidders would be considered; however, Trustee Bracco had invited Con Serv to appear and a representative was invited into Executive Session to speak to the Board about Con Serv’s pending bid. The Village Attorney noted the Con Serv could not address potential changes in the

specifications noted its bid. No equivalent opportunity to address the Board was afforded to CSB. The Board opted to hire an industry expert to rewrite the bid specifications in favor of Con Serv to see if Con Serv could qualify.

28. Thereafter, by letter dated October 7, 2014, rather than award the Contract to CSB as the only compliant bidder, the Village rejected all bids submitted on July 16, 2014, and re-commissioned bidding and contract documents for the Project, hiring Rick Arlington Associates to rewrite the bid specifications.

29. The Village specifically revised the bid specifications pertaining to the vehicles. The Village advertised an invitation to bid that included the following specifications for the vehicles needed to perform the snow plowing and ice prevention services: seven (7) heavy-duty-type plow/spreader trucks were needed, four (4) of which had to be 26,000 lbs. GVW or more, and three (3) of which had to be four-wheel drive vehicles.

30. On or about October 7, 2014, the Village released the revised bidding and contract documents for the Project to the public, thereby making those documents available to all entities and persons interested in submitting bids for an award of Contract work for the Project. Bids were required to be submitted by October 30, 2014.

31. The notice to bidders stated that the Contract work for the Project would be awarded to the responsible bidder who proposed the lowest total cost of all items listed on the bid sheet. While the Village also reserved the right to reject any and all bids, such exercise had to be consistent with applicable law and could not deprive the residents and taxpayers of the services of the lowest responsible bidder.

32. By letter dated October 20, 2014, CSB submitted a request for clarification, in conformity with the directive provided in the notice to bidders, and asked if the new bid

specifications for vehicles that employed the term "heavy duty" established that a vehicle of "26,000 lbs. GVW or more" was required, because the industry definition of "heavy duty" covered only vehicles in excess of 26,001 lbs (i.e., US DOT Class 7 or 8).

33. By letter dated October 27, 2014, the Village responded to CSB's request for clarification by merely referring CSB to the bid package that created the uncertainty in the first place, and did not explain whether medium-type vehicles of less than 26,000 lbs. were permitted (i.e., Class 4, 5 or 6).

34. On or about October 30, 2014, all bids were opened for the Project and only four bids were received by the Village, including: (1) a bid from SJM in the annual sum of \$330,000 that was non-compliant with the bid specifications for vehicles; (2) a bid from CSB in the annual sum of \$350,000 that was compliant with bid specifications vehicles; (3) a bid from Environmental in the annual sum of \$450,000 that was non-compliant with bid specifications for vehicles; and (4) and Con Serv's "per annum bid price for total contract period \$1,210,000 Total" that was also non-compliant with bid specifications for vehicles among other things.

35. In particular, Con Serv's bid included a repeated submission of the private UPS site's plowing as establishing its experience in rendering similar services, despite the fact that the 2009 Con Serv bid had been deemed inadequate by the Village in this specific regard and no other municipal roadway experience was noted; Con Serv included four heavy-duty vehicles of 26,000 lbs. or more, inclusive of a 1995 International that was not four-wheel drive or equipped with hydraulics, but did not specify seven heavy-duty vehicles, and was thus non-compliant with that plain language of the bid specifications for vehicles that called for seven heavy duty vehicles.

36. Conserv's schedule of heavy-duty vehicles must be in substantial and material conformity to the bid specifications because heavier vehicles, when loaded, are less susceptible to slipping on snow or ice accumulations and provide better coverage in storm conditions than lighter vehicles. The contract work contemplated the rendering of services before, during and after storms. Any deviation is substantial and material with respect to vehicles because it affords an advantage or benefit to the non-compliant bidder over the other bidders.

37. On November 4, 2014, after bids were unsealed and while the October 30, 2014 bids were still under consideration, the agenda for the monthly Board meeting contained no notice that the Contract for the current Project or its bid specifications or the experience or qualifications of bidders would be considered; however, Trustee Bracco again invited Con Serv to appear and a representative provided a summary of the company during public comment to supplement its previously submitted bid, when no other bidders were present. During the November 4, 2014 meeting, when questioned by Deputy Mayor Valente whether Trustee Cohen was going to allow the other bidders to address the Board of Trustees, Trustee Cohen stated "No." This exchange is confirmed by the Village's audio recording of the meeting.

38. Notwithstanding the substantial and material non-compliance of Con Serv's bid with the prior experience requirement of the bid specifications for vehicles, the Village found Con Serv to be a responsible bidder, with the lowest total cost of all items listed on the bid sheet.

39. On or about November 17, 2014, the Village voted on the award of the Contract work for the Project and awarded the Contract work for the Project to Con Serv.

40. Upon information and belief, to date, no Contract has been executed by and between the Village and Con Serv for the Project.

41. CSB remains the lowest responsible bidder compliant with the requisite experience and vehicles meeting the vehicle specifications for the Contract work for the Project.

42. Additionally, CSB was not afforded any opportunity to resubmit its bid with less than seven heavy-duty vehicles of a GVW of 26,000 lbs. or more (as Con Serv had) to further establish its status as lowest responsible bidder before a decision was made.

ADDITIONAL REASONS PETITION SHOULD BE GRANTED

43. On or about September 2, 2014 and November 4, 2014, the Village Board met at a session that was not properly noticed pursuant to the Public Officers Law of the State of New York.

44. More specifically, at the September 2nd meeting, the Village took representatives of Con Serv into Executive Session and considered the award of this Contract based upon the subjective content of references.

45. Such action by the Village Board failed to comply with applicable laws of the State of New York concerning the award of public contracts, since every meeting of a public body shall be open to the general public, except that an Executive Session may be called and business transacted thereat when the matters involve public safety, proposed, pending or current litigation, collective bargaining, or matters concerning the appointment or employment status of a particular person.

46. The purpose of the Open Meetings Law is to prevent public bodies from debating and deciding in private matters that are required to be debated and decided in public; i.e., deliberations and decisions that go into the making of public policy.

47. Here, on September 2nd, the Village Board merely recited statutory categories for going into Executive Session without setting forth the precise reason for doing so and thereafter

rejected the two bids submitted on July 16, 2014, and opted to rewrite the bid specifications to favor Con Serv.

48. Given the overriding purpose of the Open Meetings Law, § 105 is to be strictly construed, and the real purpose of an Executive Session must be carefully scrutinized to avoid thwarting the mandate of the Open Meetings Law by thinly veiled references to the areas delineated thereunder.

49. Under the facts and circumstances presented, the Contract awarded for the Project to Con Serv must be declared null and void because the Village violated the Open Meetings Law and CSB has been harmed by the misconduct in the competitive bidding process employed by the Village.

50. By reason of the foregoing, the Contract should be awarded to CSB which is currently performing the contract work through December 31, 2014 and was the lowest responsible bidder. CSB should also be awarded costs and reasonable attorneys' fees.

51. In addition, on November 4, 2014, the Board considered at public comment and without advance notice to other bidders, the Con Serv bid and secured additional information not available from a reading of the sealed bid submitted.

52. On November 17, 2014, when CSB requested the opportunity to appear at the Board's monthly meeting and was put on the agenda, CSB was given the opportunity to comment on its experience and qualifications; however, while Con Serv was not on the agenda, Con Serv was afforded the right to be heard in rebuttal at Trustee Bracco's insistence, before the Board retired to Executive Session to debate and deliberate over who should be awarded the Contract.

53. Therefore, the Village's non-compliance with General Municipal Law §101 *et seq.* is fully demonstrated by the record in this proceeding. Further, this appears to be a deliberate plan to deny its current contractor, CSB, any chance of being awarded the Contract for the Project, in favor of Con Serv.

54. Accordingly, the Petition should be granted and the Village's Decision and Resolution to award the Contract to Con Serv should be declared null and void; and the Contract should instead be awarded to CSB; and CSB should be granted concomitant declaratory and equitable relief.

AS AND FOR A FIRST CLAIM FOR RELIEF
PURSUANT TO ARTICLE 78 UNDER THE COMPETITIVE BIDDING LAW

55. Petitioner-Plaintiff repeats, realleges and reiterates each and every allegation set forth in the foregoing paragraphs of this Petition and Complaint as though set forth at length herein.

56. Pursuant to General Municipal Law § 103, it is well established that the requirement of competitive bidding evinces a strong public policy of encouraging honest competition to obtain the best work at the lowest possible price, and to guard against favoritism, improvidence, extravagance, fraud and corruption, and to ensure the proper use of the public monies for the benefit of all residents and taxpayers.

57. Pursuant to the aforementioned statutory policy, General Municipal Law § 103 provides for competitive bidding via sealed bids after advertising the bid to responsible bidders and is designed to protect the public fisc; and, in this process, requiring bidders to demonstrate the successful completion of comparable work, i.e., experience with similar services in the form of municipal work, and requiring that bid specifications for vehicles be met when contemplating

the rendering of services in storm conditions, i.e., the suitability of equipment, are reasonable standards for Contract work for the Project.

58. The advertisement of bid specifications for experience and vehicles for the Project required specific references and equipment be listed.

59. Notwithstanding that CSB complied with the material requirements in said specifications, the Village rejected CSB's bids and awarded the Contract to Con Serv even though Con Serv did not comply with the material requirements and was not otherwise the lowest responsible bidder.

60. Because Con Serv did not meet the experience requirement or bid specifications for vehicles and did not otherwise satisfy the conditions of the bid, Con Serv should not have been awarded the Contract work for the Project.

61. The Village's Decision and Resolution made on November 17, 2014 regarding the Contract for the Project is not consistent with the mandate of the competitive bidding law and is infected by error and cannot stand.

62. By virtue of the foregoing, the actions of the Village in its decision and resolution made on November 17, 2014 are in violation of lawful procedure, an abuse of discretion, and arbitrary and capricious.

AS AND FOR A SECOND CLAIM FOR RELIEF
PURSUANT TO ARTICLE 78 UNDER THE OPEN MEETINGS LAW

63. Petitioner-Plaintiff repeats, realleges and reiterates each and every allegation set forth in the foregoing paragraphs of this Petition and Complaint as though set forth at length herein.

64. Pursuant to provisions of the Open Meetings Law, it is essential to the maintenance of a democratic society that the public business be performed in an open and public

manner and that parties be fully aware and be able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.

65. The members of the Village Board are public officers contemplated within the meaning of Article 7 of the Public Officers Law of the State of New York.

66. Pursuant to Public Officers Law § 104, appropriate public notice is required to be given with regard to public meetings as well as adjournment of such meetings.

67. Pursuant to Public Officers Law § 105, Executive Sessions can only be undertaken upon a majority vote of the total membership taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered. Said Executive Sessions are only permitted with regard to actions or matters that are set forth at Public Officers Law § 105(1).

68. Pursuant to Open Meetings Law § 106, minutes shall be taken at an Executive Session of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote with regard to such determination.

69. Pursuant to Open Meetings Law § 107, any person aggrieved by failure of a public body to comply with provisions of the Open Meetings Law can commence an Article 78 proceeding and is entitled as a prevailing party to be awarded costs and reasonable attorneys' fees.

70. The Village Board members' meeting in secret and the failure by the Village Board to duly conduct a proper public meeting on September 2, 2014, at which time the bid for the Contract work on the Project was under consideration and discussed or deliberated upon, was a violation of the Open Meetings Law.

71. The Village Board members' meeting and the failure by the Village Board to duly conduct a proper public meeting on November 4, 2014, at which time the bid for the Contract work on the Project was under consideration and discussed or deliberated upon, was a violation of the Open Meetings Law.

72. The Village Board members' meeting and the failure by the Village Board to duly conduct a proper public meeting on November 17, 2014, at which time the bid for the Contract work on the Project was under consideration and discussed or deliberated upon, was a violation of the Open Meetings Law.

73. The public and other bidders should have been afforded notice of what was occurring between the Village and Con Serv at all meaningful times and places.

74. Accordingly, the Village has violated the Open Meetings Law with regard to the Contract for the Project.

75. By reason of the foregoing, the actions of the Respondent-Defendant Village are in violation of lawful procedure, an abuse of discretion, and arbitrary and capricious.

76. CSB has and continues to incur attorneys' fees, costs and disbursements with regard to the initiation of this proceeding and CSB respectfully demands that said attorneys' fees, costs and disbursements be awarded by this Court pursuant to Public Officers Law § 107.

AS AND FOR A THIRD CLAIM FOR RELIEF
CONSPIRACY TO VIOLATE COMPETITIVE BIDDING LAWS

77. Petitioner-Plaintiff repeats, realleges and reiterates each and every allegation set forth in the foregoing paragraphs of this Petition and Complaint as though set forth at length herein.

78. General Municipal Law § 103-e prohibits the conspiracy to prevent competitive bidding on a contract for public work.

79. Pursuant to General Municipal Law § 103(7), when a person or corporation conspires to prevent competitive bidding on a contract for public work, such person is guilty of a misdemeanor as provided in § 103-e of the General Municipal Law.

80. The Village and Con Serv conspired with others to award the contract to Con Serv even though Con Serv did not have the requisite experience or vehicles and was not the lowest responsible bidder.

81. Discovery of the telephone, text, email and other contact shared by and between Trustee Bracco and representatives of Con Serv prior to and after the Village Board meetings on September 2, 2014, November 4, 2014 and November 17, 2014 may reveal the true extent of the conspiratorial misconduct involved.

82. By reason of the foregoing, the award of the bid to Con Serv was in violation of lawful procedure, an abuse of discretion, and arbitrary and capricious.

AS AND FOR A FOURTH CLAIM FOR RELIEF
FOR CONSTITUTIONAL VIOLATIONS

83. Petitioner-Plaintiff repeats, realleges and reiterates each and every allegation set forth in the foregoing paragraphs of this Complaint as though set forth at length herein.

84. It is well established that a determination regarding a lack of “responsibility” for a proposed public contractor on public works implicates a constitutional consideration.

85. When a low bidder has his bid rejected with the inevitable implication of non-responsibility, its commercial “good name, reputation, honor, or integrity is at stake”.

86. CSB has a liberty interest that includes the right to contract and its constitutional liberty interest was violated by the Village when the Village decided and resolved to reject the bid of the lowest responsible bidder and award the bid to Con Serv.

87. Accordingly, the Village has violated CSB constitutional rights, including, but not limited to, CSB's contract rights, and its right to procedural and substantive due process of law.

88. By reason of the foregoing, CSB has been damaged and is entitled to compensation from the Respondent-Defendant for all damages proximately caused by the conduct herein.

AS AND FOR A FIFTH CLAIM FOR RELIEF
FOR DECLARATORY RELIEF

89. Petitioner-Plaintiff repeats, realleges and reiterates each and every allegation set forth in the foregoing paragraphs of this Complaint as though set forth at length herein.

90. Based on the foregoing, the Village's Decision and Resolution to award the Contract to Con Serv should be declared null and void and the Contract should instead be awarded to CSB.

AS AND FOR A SIXTH CLAIM FOR RELIEF
FOR EQUITABLE RELIEF

91. Petitioner-Plaintiff repeats, realleges and reiterates each and every allegation set forth in the foregoing paragraphs of this Complaint as though set forth at length herein.

92. CSB is entitled to injunctive relief prohibiting termination of its current contract pending a resolution of the instant proceeding/action, among other things.

93. CSB is also entitled to an injunction, enjoining the Village and all others acting in concert with it from undertaking any and all action in furtherance of the conspiracy to violate the competitive bidding laws and/or Open Meetings Law, including any other individual or official act in furtherance of same.

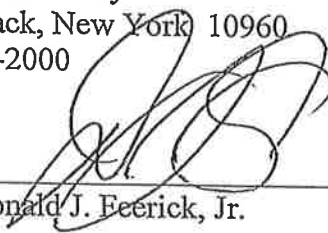
94. No prior application for this or similar relief has been sought from this or any other court of competent jurisdiction.

WHEREFORE, the Petitioner-Plaintiff respectfully requests a Judgment declaring that the award of the bid by the Village Board of Trustees of the Village of Airmont, New York, made on November 17, 2014, is null and void and should be set aside; for an Order directing that Petitioner-Plaintiff be awarded the Contract for the Project; and an award directing that costs and reasonable attorneys' fees be paid by the Village; and for such other and further relief, including equitable/injunctive, as this Court deems just and proper.

Dated: South Nyack, New York
December 16, 2014

FEERICK LYNCH MacCARTNEY, PLLC
Attorneys for Petitioner-Plaintiff
96 South Broadway
South Nyack, New York 10960
(845) 353-2000

By: _____


Donald J. Feerick, Jr.

FILED

DEC 16

ROCKLAND COUNTY
CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
CSB CONTRACTORS, INC.,

Petitioner-Plaintiff,

-against-

VERIFICATION

THE VILLAGE OF AIRMONT, NEW YORK,

Index No.

Respondent-Defendant,

-and-

CON SERV CONSTRUCTION INC.,
STEVEN J. MILLER ENTERPRISES, INC. and
ENVIRONMENTAL CONSTRUCTION INC.,

Interested Parties.
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FILED SL

DEC 16 2014

ROCKLAND COUNTY
CLERK'S OFFICE

STATE OF NEW YORK)
): ss:
COUNTY OF ROCKLAND)

GEORGE STOLL, being duly sworn, deposes and says: I am the President of CSB Contractors, Inc., the Petitioner-Plaintiff corporation in the action herein; I have read the annexed Petition and Complaint, know the contents thereof, and the same are true to my knowledge, except to those matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following: Books and records maintained at the offices of CSB Contractors, Inc.


GEORGE STOLL

Sworn to before me this
16th day of December, 2014.


Notary Public

EMILY ORLETTI
Notary Public, State of New York
No. 03-4515098
Qualified in Rockland County
Commission Expires Nov. 30, 20 17