

Resolution 21-093

AUTHORIZING A DEMAND FOR MEDIATION UPON TOMAR CONSTRUCTION SERVICES, INC. FOR CONTRACT NO. 40 FINAL CLARIFIERS REPAIR PROJECT

WHEREAS, on July 13, 2017, the Rockaway Valley Regional Sewerage Authority (“RVRSA”) awarded Contract No. 40 – “Final Clarifiers Repair Project” to Tomar Construction Services, Inc., having a business address of 18 Connerty Court, Suite B, East Brunswick, New Jersey 08816 (“Tomar” or the “Contractor”) as the lowest responsible bidder in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., having submitted a bid in the amount of \$5,594,000.00, subject to authorization to award by NJDEP, pursuant to Resolution 17-089 (the “Contract”); and

WHEREAS, NJDEP subsequently authorized the award of the Contract to Tomar; and

WHEREAS, the Contract included replacement of the sludge collection mechanisms in four final clarifier tanks, modification of the clarifier walls to accommodate the new sludge collection mechanisms, installation of baffles in each final clarifier tank, and replacement of the motor control center to be completed by June 6, 2019 (630 days after the issuance of the Notice to Proceed); and

WHEREAS, on March 14, 2019, RVRSA authorized the execution of Change Order No. 1 in the amount of \$56,882.67 for certain additions to the work including clarifier draft tube modifications and local control panel modifications, together with a 7-day non-compensable time extension for the completion of all the work by June 13, 2019; and

WHEREAS, on April 9, 2020, RVRSA authorized the execution of Change Order No. 2 in the amount of \$68,678.29 for certain additions to the work including launder slab additional reinforcing and waterstop, clarifier bridge access steps, drainage pump emergency repairs to Final

Clarifier No. 1, upper drain valve replacement to Final Clarifier No. 1, yard hydrant curb boxes and heat tracing end seal connections; and

WHEREAS, on April 9, 2020, RVRSA also authorized the execution of Change Order No. 3 in the amount of \$11,228.61 for certain additions to the work including perimeter site lighting at the final clarifiers and the chlorine contact tank; and

WHEREAS, the work required to be performed pursuant to the Contract and Change Order Nos. 1, 2 and 3 are collectively referred to herein as the Project; and

WHEREAS, on February 11, 2021, RVRSA adopted Resolution 21-035 entitled “Declaring Events of Default for Contract No. 40 ‘Final Clarifiers Repair Project’ And Unless Cured As Set Forth In This Resolution, Terminating Contract No. 40 For Cause” for all the reasons set forth in said Resolution; and

WHEREAS, thereafter, the parties attempted to voluntarily settle the matter, but settlement discussions have stalled since June, 2021; and

WHEREAS, RVRSA desires to authorize a demand for mediation be sent to Tomar in accordance with the Contract and the Local Public Contracts Law, N.J.S.A. 40A:11-50.

NOW, THEREFORE, BE IT RESOLVED by the Rockaway Valley Regional Sewerage Authority as follows:

1. A demand for mediation is authorized to be sent to Tomar Construction Services, Inc. for all claims in connection with Contract No. 40, Final Clarifiers Repair Project.
2. RVRSA desires to select the Honorable Victor Ashrafi, a retired Judge of the Superior Court of New Jersey, Appellate Division, who is presently “Of Counsel” with the firm of Riker, Danzig, Scherer, Hyland, Perretti, L.L.P., to be the mediator,

or in the event that Judge Ashrafi is not available, a different mediator upon recommendation of counsel with a mediation engagement letter from the mediator selected to be authorized by separate Resolution.

3. The Executive Director, staff and consultants of RVRSA are hereby authorized to take all other actions necessary or desirable to prepare and participate in the mediation and effectuate the terms and conditions of this Resolution.
4. This Resolution shall take effect immediately

CERTIFICATION

I do hereby certify that this Resolution was adopted at a regular meeting of the Rockaway Valley Regional Sewerage Authority held on August 12, 2021.

On motion of Commissioner Andes

Second by Commissioner Guadagno

And a Roll Call Vote as Follows:

Yeas: (7) Andes, Cegelka, Corbett, Farrell, Guadagno, Isselin, Schorno

Nays: (0)

Abstain: (0)

Absent: (3) Howarth, Recchia, Zuppa


Michael Guadagno
Board Secretary