

RESOLUTION 24-040

**RESOLUTION AWARING CONTRACT NO. 44
EMERGENCY GENERATORS REPLACEMENT PROJECT
TO FAI-GON ELECTRIC, INC. SUBJECT TO APPROVAL BY
THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**

WHEREAS, the Rockaway Valley Regional Sewerage Authority (hereinafter the “Authority”) issued a Notice to Bidders seeking sealed competitive bids for Contract No. 44 – “Emergency Generators Replacement Project”; and

WHEREAS, the Authority received seven (7) sealed competitive bids on January 31, 2024 at 10:00 a.m. from the following bidders:

<u>Bidder</u>	<u>Bid Price</u>
FAI-GON Electric, Inc. Piscataway, NJ	\$9,466,325.00
Thomas Controls, Inc. East Brunswick, NJ	\$11,125,000.00
McPhee Electric, Ltd. South Plainfield, NJ	\$11,194,321.00
Carbro Constructors Corp. Warren, NJ	\$11,619,606.00
Eli, Inc. Cranford, NJ	\$11,643,550.00
PKF – Mark III Newtown, PA	\$12,225,000.00
Railroad Construction Co. Paterson, NJ	\$12,459,000.00

WHEREAS, the bid submitted by FAI-GON Electric, Inc. included a listing of subcontractors which named the bidder as self-performing the electrical work, Mid Atlantic

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WHEREAS, the Redbank Valley Regional Sewer Authority (hereafter the Authority) issued a Notice to Bidder seeking sealed competitive bids for Contract No. 44 - Emergency Generator Replacement Project, and

WHEREAS, the Authority received seven (7) sealed competitive bids on January 31, 2024 as follows:

Bidder	Bid Price
Fai-Gon Electric, Inc. Piscataway, NJ	\$2,480,125.00
Thomas Controls, Inc. East Brunswick, NJ	\$1,127,500.00
North Jersey Electric, Ltd. South Plainfield, NJ	\$1,104,321.00
Central Construction Corp. Westfield, NJ	\$1,518,500.00
BEI, Inc. Camden, NJ	\$1,811,320.00
BEI - West III Brownsburg, PA	\$1,227,000.00
Radiant Construction Co. Barnegat, NJ	\$2,459,000.00

WHEREAS, the bid submitted by FAI-GON Electric, Inc. included a listing of subcontractors which named the bidder as sub-contractor for electrical work, Bill Adams

Mechanical for the performance of plumbing work and stated “N/A” for the performance of “steam powered plants, steam & hot water & ventilation apparatus and kindred work” and “N/A” for the performance of “structural steel and ornamental iron work”; and

WHEREAS, the Authority’s engineering consultant, Kleinfelder, has stated in its review letter dated March 1, 2024 that no subcontractors are required in the trades identified by FAI-GON as “N/A” on their list of subcontractors because there is no work required in Contract No. 44 “Emergency Generators Replacement Project” for either (1) “steam powered plants, steam & hot water & ventilation apparatus and kindred work” or (2) “structural steel and ornamental iron work”; and

WHEREAS, the bid submitted by FAI-GON Electric, Inc. included a signed and completed Federal Non-Debarment Certification for Parts I, II and III, but not for Part IV of that Certification as to contractor-controlled entities, if any; and

WHEREAS, N.J.S.A. 52:32-44.1(c) does not require the submission of a completed Federal Non-Debarment Certification at the time of the receipt of bid, but rather it must be completed and submitted to RVRSA prior to award of contract and the law requires the Authority to verify the Certification prior to award of contract by consulting the Federal System for Award Management; and

WHEREAS, after the receipt of bid, FAI-GON has submitted a fully completed Federal Non-Debarment Certification for all parts of the Certification and the RVRSA has consulted the Federal System for Award Management to ensure compliance prior to the Board’s consideration of this Resolution; and

WHEREAS, by letter dated February 2, 2024, Thomas Controls, Inc., the second lowest bidder, opines that the lowest bid contains material defects and that the lowest bidder is not a responsible bidder; and

WHEREAS, for the reasons set forth in the memorandum from the Authority's counsel, dated March 1, 2024, the arguments set forth in the February 2, 2024 letter from Thomas Controls, Inc. are without merit and the Authority's counsel states in its review memorandum, dated March 1, 2024 that the bid submitted by FAI-GON Electric, Inc. does not contain any material defects; and

WHEREAS, by letter dated March 1, 2024, the Authority's consultant Kleinfelder also addresses the issues raised in the February 2, 2024 letter from Thomas Controls, Inc. and recommends that the Authority award Contract No. 44 – "Emergency Generators Replacement Project" to FAI-GON Electric, Inc.; and

WHEREAS, funds to finance Contract No. 44 – "Emergency Generators Replacement Project" are available through the New Jersey Infrastructure Bank (the "I-Bank") as State Loan Project No. S340821-11, and the award of said contract to the lowest responsible bidder is subject to review and approval by the New Jersey Department of Environmental Protection; and

WHEREAS, the bidding documents include plans for the improvement to public property that were designed by Kleinfelder; and

WHEREAS, N.J.S.A. 59:4-6 provides that neither the public entity nor a public employee is liable for an injury caused by the plan or design of public property or any improvement thereto where the plan or design was approved in advance of construction or improvement by the Authority or a public employee exercising discretionary authority to give

such approval on its behalf where such plan or design was prepared in conformity with standards previously approved by the Authority; and

WHEREAS, the Authority desires to record its approval of said plans and design for Contract No. 44 – “Emergency Generators Replacement Project” for the purpose of plan and design immunity provided by N.J.S.A. 59:4-6.

NOW THEREFORE BE IT RESOLVED by the Rockaway Valley Regional Sewerage Authority in the County of Morris and the State of New Jersey on this 14th day of March, 2024 as follows:

1. All immaterial defects contained in the bid submission of FAI-GON Electric, Inc., if any, are waived and the Authority awards Contract No. 44 “Emergency Generators Replacement Project” to FAI-GON Electric, Inc., having a business address of 140 11th Street, Piscataway, New Jersey 08854 as the lowest responsible bidder in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., subject to approval of award by the New Jersey Department of Environmental Protection.
2. In the event that the New Jersey Department of Environmental Protection approves the award of Contract No. 44 “Emergency Generators Replacement Project” to FAI-GON Electric, Inc., the Executive Director is authorized to execute said contract and the bid security of all the remaining unaccepted bids shall be released and returned within three days, Sundays and holidays excepted, after the full execution of the contract and the approval of the contractor’s performance and payment bond.
3. The Executive Director shall complete and submit to the Office of State Comptroller, Contract Compliance Form A within 20 business days after award of said contract as a post-award notice for contracts valued at more than \$2.5 million but less than \$12.5 million, together with copies of all submissions required by said form.
4. The entire design, specifications, and plans prepared by Kleinfelder and to be utilized for Contract No. 44 – “Emergency Generators Replacement Project” are hereby approved for the purpose of the immunity to be provided to the Authority and its employees in accordance with N.J.S.A. 59:4-6.

5. The Executive Director, staff and consultants are authorized to take all appropriate actions to effectuate the terms of this Resolution and in the event the aforementioned approval by the New Jersey Department of Environmental Protection, to take measures to ensure that all appropriate documents, as required by Contract No. 44 – “Emergency Generators Replacement Project” are provided by FAI-GON Electric, Inc. prior to the issuance of a Notice to Proceed.
6. This Resolution shall take effect immediately.

CERTIFICATION

I hereby certify that this Resolution was adopted at a regular meeting of the Rockaway Valley Regional Sewerage Authority held on March 14, 2024.

On motion of Commissioner Andes

Second by Commissioner Cegelka

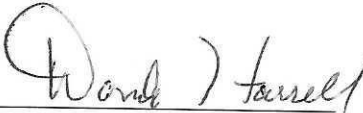
And a Roll Call Vote as Follows:

Yeas: (10) Andes, Cegelka, Corbett, Farrell, Howarth, Isselin, Laverty, Potter, Schorno, and Zuppa.

Nays: (0) None

Abstain: (0) None

Absent: (0) None



Donald Farrell
Board Secretary

**MARAZITI
FALCON, LLP**
ATTORNEYS AT LAW

240 CEDAR KNOLLS ROAD
SUITE 301
CEDAR KNOLLS, NEW JERSEY 07927

PHONE: (973) 912-9008
FAX: (973) 912-9007

Direct Dial: (973) 912-6816
Email: bcarney@mfhenvlaw.com
www.mfhlaw.com

JOSEPH J. MARAZITI, JR.
DIANE ALEXANDER¹
BRAD CARNEY
ANDREW M. BREWER
JOANNE VOS
ALYSE LANDANO HUBBARD
HEATHER A. PIERCE
ROBERT MELLINGER
ALEXANDRA KNOTH

OF COUNSEL
CHRISTOPHER H. FALCON

¹ Also admitted in NY

MEMORANDUM

TO: JoAnn Mondisini, Executive Director

FROM: Brad Carney, Esq.

DATE: March 1, 2024

RE: Bid Submission of FAI-GON Electric, Inc.
Contract No. 44
Emergency Generators Replacement Project

The lowest bid submitted on January 31, 2024 from FAI-GON Electric, Inc. (hereinafter “FAI-GON”) does not contain any material defects. Prior to considering contract award: (1) Part IV of the Federal Non-Debarment Certification needs to be completed by FAI-GON and submitted to RVRSA; and (2) RVRSA needs verify the information in the Federal Non-Debarment Certification by consulting the Federal System for Award Management.

It should be noted the list of subcontractors submitted by FAI-GON states that subcontractors for “Steam Powered Plants, Stem & Hot Water & Ventilation Apparatus and Kindred Work” and “Structural Steel and Ornamental Iron Work” are not applicable. According to the letter from RVRSA’s consulting engineer, Kleinfelder, to RVRSA, dated March 1, 2024, the scope of work does not require the use of those specialty trades. Therefore, FAI-GON’s list of subcontractors is complete at the time of receipt of bid.

Additionally, I note that while Part I, II and III of the bidder’s signed Federal Non-Debarment Certification was completed at the time of receipt of bid, Part IV of the Federal Non-Debarment Certification was not completed as to the bidder’s-controlled entities, if any. The law provides, however, that this certification must be completed and submitted to RVRSA prior to award of the contract, rather than at the time of bid receipt:

Prior to awarding any contract for public work, a person shall provide written certification to the contracting agency that neither the person nor the person’s affiliates are debarred at the federal level

from contracting with a federal government agency. The contracting agency shall not make, negotiate, or award a contract for public work to any person that does not provide such written certification as required by this subsection. The contracting agency shall verify the certification by consulting the federal System for Award Management, or its successor, prior to awarding a contract for public work.

N.J.S.A. 52:32-44.1 (emphasis added).

Therefore, I recommend that before RVRSA considers awarding Contract No. 44 for the Emergency Generators Replacement Project, Part IV of the Federal Non-Debarment Certification should be completed by FAI-GON and submitted to RVRSA and RVRSA should verify the certification by consulting the Federal System for Award Management.

Additionally, I have reviewed the letter from Thomas Controls, Inc, dated February 2, 2024 requesting that FAI-GON's bid be rejected. For the reasons set forth above, the letter from Thomas Controls, Inc. regarding FAI-GON's listing of subcontractors and the Federal Non-Debarment Certification are without merit.

Thomas Controls, Inc., further argues that even if not required by the present scope of work in the bid specifications, FAI-GON should have nonetheless identified subcontractors for "Steam Powered Plants, Stem & Hot Water & Ventilation Apparatus and Kindred Work" and "Structural Steel and Ornamental Iron Work" at the time of receipt of bid so that those subcontractors are known today in the event that a changed or unforeseen condition occurs in the future that would require the engagement of this work pursuant to a change order. Setting aside for the moment the impracticality of having a subcontractor provide bid pricing to a general contractor for an unknown scope of work at an unknown time in the future that is not guaranteed to occur, the Local Public Contracts Law does not require the listing of subcontractors in specialty trades identified pursuant to N.J.S.A. 40A:11-16 that are beyond the scope of work at the time of bid: "We believe that if a project's scope of work clearly identifies the need for services in those 'branches of work' identified by categories (1) through (4) of Section 16, a bidder must identify the subcontractor it will engage to do that work." Applied Landscape Technologies, Inc. v. Borough of Florham Park, 2013 WL 2371704 (App. Div. 2013).

Finally, Thomas Controls, Inc. argues that FAI-GON is not a "responsible" contractor for the work to be performed because their bid is in the amount of \$9,466,325 and the largest contract the FAI-GON identified performing was the Bayonne MUA worth \$6.8 million, with many prior projects not breaking \$1 million. The letter from RVRSA's consulting engineer, Kleinfelder, to RVRSA dated March 1, 2024, however, states that Kleinfelder contacted FAI-GON's references for: (1) the 950kW Emergency Generator project that was done for Middlesex County Correctional facility; (2) a 500kW Emergency Generator for Livingston WWTP; and (3) a 750kW Emergency Generator for the Elizabeth Police Department and "[a]ll of the references indicated that FAI-GON's work on their project was of high quality and that they would highly recommend FAI-GON for similar projects." Additionally, the Kleinfelder letter, dated March 1, 2024 states:

Kleinfelder has reviewed the project experience and qualifications submitted by FAI-GON in their bid proposal and contacted several of their references, all of which spoke highly of the quality of work as well as the knowledge and expertise of FAI-GON as an electrical contractor. The projects listed by FAI-GON in the Bidders Qualifications Statement and List of References included in their bid proposal are applicable and representative of the work to be provided under this construction contract. In addition to the project references contacted above, FAI-GON's bid proposal also listed

other projects of comparable size to the Emergency Generator Replacement Project, including a 2.5 MW Wind Turbine Project for the Bayonne Municipal Utilities Authority and a 1.2 MW 5 kV Generator, Transformer and Switchgear Project for the East Orange Water Commission. Based on their prior work experience, and the feedback received by their references, Kleinfelder is of the opinion that FAI-GON is both capable and qualified to complete the work under this construction contract.

Therefore, based on the foregoing, the arguments raised by Thomas Controls, Inc. are without merit.



March 1, 2024

VIA EMAIL

JoAnn Mondsini
Executive Director
Rockaway Valley Regional Sewerage Authority
RD #1, 99 Green Bank Road
Boonton, NJ 07005

**RE: EMERGENCY GENERATORS REPLACEMENT PROJECT
CONTRACT NO. 44
NJEIFP PROJECT NO. S340821-11
AWARD RECOMMENDATION**

Dear Ms. Mondsini:

On January 31, 2024, a total of seven (7) bids were received for the Emergency Generators Replacement Project, as shown in the attached Bid Tabulation Sheet.

The three lowest bids are listed in the table below and range from \$9,466,325 to \$11,194,321. The lowest bidder is approximately \$1.7 million less than Kleinfelder's estimated construction cost of \$11.2 million, whereas the next two (2) lowest bidders are within \$75,000 less than Kleinfelder's estimate.

Bidder	Total Bid Price ⁽¹⁾
FAI-GON Electric, Inc.	\$9,466,325
Thomas Controls, Inc.	\$11,125,000
McPhee Electric	\$11,194,321

(1) Total Bid Price is the sum of the six (6) individual bid items as shown in the attached bid tabulation.

The individual bid items are described below:

- Bid Item 1 – All work required by the Contract Documents except Bid Items 2, 3, 4, 5 and 6
- Bid Item 2 – Removal of Underground Storage Tank (UST)
- Bid Item 3 – Environmental Resource Protection and Restoration
- Bid Item 4 – Allowance: Repair Main Substation Transformer automatic tap changer
- Bid Item 5 – Allowance: SCADA integration by RVRSA's integrator
- Bid Item 6 – Allowance: Disposal of contaminated soils discovered during UST removal

The bid documents of the apparent low bidder, FAI-GON Electric, Inc. (FAI-GON), were reviewed in detail and were found to be complete and without defect.

Based on FAI-GON's bid being approximately \$1.7 million less than Kleinfelder's estimated cost of \$11.2 million and approximately \$1.6 million less than the apparent second low bidder's bid of \$11,125,000, Kleinfelder contacted the President of FAI-GON to discuss their bid. In summary, FAI-GON's President, Thomas Fair, indicated that FAI-GON has reviewed their bid in detail, and that they have no issues with their pricing and are confident that they can complete the project work at their bid price. Mr. Fair also indicated that they received competitive costs for the

generators, and that the generators will be from one of the specified manufacturers. Mr. Fair also indicated that they perform most of their own civil and excavation work, so they can be more competitive than a contractor that must subcontract this work.

Kleinfelder conducted a reference check and contacted the following references provided by FAI-GON in their bid proposal:

- Middlesex County Correctional Facility – 950 kW Emergency Generator
- Livingston WWTP – 500 kW Emergency Generator, 5 kV Transformer and Switchgear
- Elizabeth Police Department – 750 kW Emergency Generator

All of the references indicated that FAI-GON's work on their project was of high quality and that they would highly recommend FAI-GON for similar projects.

A Bid Protest was received on February 2, 2024 from Thomas Controls, Inc. (TCI), the apparent second lowest bidder, claiming FAI-GON's bid to be materially defective. In their protest TCI makes the following claims stating why they believe "FAI-GON's bid submission fails to meet the standard of lowest, most responsive, and response bidder":

1. FAI-GON failed to certify the Federal Non-Debarment Certification form under Part IV – Section C.

At the time of bid receipt, FAI-GON submitted a signed Federal Non-Debarment Certification with Parts I, II and III completed, but did not complete Part IV of that Certification. Based on discussions with RVRSA's attorney the law requires the submission of the completed Federal Non-Debarment Certification prior to contract award.

2. FAI-GON failed to list subcontractors for Structural Steel and HVAC/R work on the List of Subcontractors form

Kleinfelder's review of claim: The List of Subcontractors form requires bidders to list subcontractors for the following if the contract documents require that work to be performed:

- *Plumbing and Gas Fitting and all Kindred Work*
- *Steam Powered Plants, Steam and Hot Water and Ventilation Apparatus and Kindred Work*
- *Electrical*
- *Structural Steel and Ornamental Iron Work*

FAI-GON listed "Mid Atlantic Mechanical" as the subcontractor for the plumbing work and listed "Bidder" (i.e. FAI-GON) for the electrical work. They listed "N/A" for the Steam Powered Plants... Work and "N/A" for the Structural Steel and Ornamental Iron Work. There is no "Steam Powered Plants, Steam and Hot Water and Ventilation Apparatus and Kindred Work" or "Structural Steel and Ornamental Iron Work" included in the project under the Contract Documents; therefore, no subcontractors for this work are required to be listed in this form.

3. FAI-GON's bid submission for approximately \$9.47 million lacks the experience necessary to satisfy the responsibility clauses of the subject contract.

Kleinfelder's review of claim: Kleinfelder has reviewed the project experience and qualifications submitted by FAI-GON in their bid proposal and contacted several of their references, all of which spoke highly of the quality of work as well as the knowledge and expertise of FAI-GON as an electrical contractor. The projects listed by FAI-GON in the Bidders Qualifications Statement and List of References included in their bid proposal are

applicable and representative of the work to be provided under this construction contract. In addition to the project references contacted above, FAI-GON's bid proposal also listed other projects of comparable size to the Emergency Generator Replacement Project (Two 1.25 MW Generators and 4.16 kv Switchgear), including a 2.5 MW Wind Turbine Project for the Bayonne Municipal Utilities Authority and a 1.2 MW 5 kv Generator, Transformer and Switchgear Project for the East Orange Water Commission. Based on their prior work experience, and the feedback received by their references, Kleinfelder is of the opinion that FAI-GON is both capable and qualified to complete the work under this construction contract.

Despite TCI's Bid Protest, Kleinfelder is of the opinion that FAI-GON's bid satisfies the requirement as the lowest responsible bidder in conformance with N.J.S.A 40A:11-1 et seq. and N.J.A.C. 5:34. Therefore, and subject to review and concurrence by RVRSA's attorney, we recommend that RVRSA request authorization from the New Jersey Department of Environmental Protection to award a contract to FAI-GON for the Emergency Generators Replacement Project in the amount of \$9,466,325.

If you have any questions, please contact me at (609) 454-4554 or via email at CFerguson@Kleinfelder.com.

Sincerely,



Colin Ferguson, P.E.

Enclosure

cc: Bob Bocchino, RVRSA
Brad Carney, Esq. Maraziti, Falcon
Tim Bradley, KLF

