

**RESOLUTION: 23-044**

**RESOLUTION OF PASSAIC VALLEY WATER COMMISSION**

**RESOLUTION REQUESTING AUTHORITY TO REJECT THE BID FOR  
CONTRACT NO. 23-V-10 - LIQUID OXYGEN, AND COMMENCE  
NEGOTIATIONS**

**DATE OF ADOPTION: MARCH 22, 2023**

Introduced by Commissioner: **JOSEPH KOLODZIEJ**

Seconded by Commissioner: **CARMEN DE PADUA**

**WHEREAS**, on or about January 18, 2021, the Passaic Valley Water Commission ("PVWC") entered into a two-year contract with Airgas USA, LLC to supply liquid oxygen to the Little Falls Water Treatment Plant; and

**WHEREAS**, before that contract was set to expire, the PVWC solicited bids for a new contract to supply liquid oxygen, with a bid opening date of December 22, 2022, resulting in no responsible bids received; and

**WHEREAS**, on February 3, 2023 the PVWC re-solicited bids for liquid oxygen (Contract No. 23-V-10 "Liquid Oxygen") with a bid opening date of March 7, 2023 using substantially similar terms and conditions to the first bid; and

**WHEREAS**, the PVWC received a bid from its current vendor, Airgas USA, LLC, in response to the re-bid, however, upon the review by the Executive Director, Director of Engineering, Director of Purchasing, (and Counsel as to form and legality), the bid submitted by Airgas was found to contain defects due to Airgas' insertion of material qualifications and exceptions in blackline to the Bidding Documents it included with its Bid Submission, which defects might not be waivable by the PVWC or curable by AirGas; and

**WHEREAS**, the bid instructions also provided that the PVWC reserves the right to reject all bids if only one bid is received, which provides an addition ground to reject all bids in this case; and

**WHEREAS,** it is recommended that the Commission resolve to reject the lone bid by AirGas in response to Contract No. 23-V-10 "Liquid Oxygen" immediately; and

**WHEREAS,** it is further recommended that the Commissioners resolve to authorize PVWC Officers to take one of two steps, either rebid a second time or negotiate in lieu of bidding under N.J.S.A. § 40A:11-5(3); and

**WHEREAS,** when the PVWC solicits bids on two occasions and no bids are received, the PVWC has the option to negotiate a contract for goods and/or services with any of the bidders or any other vendor of its choosing in lieu of further public bidding provided that it follows the conditions set forth in the Local Public Contracts Law, N.J.S.A. § 40A:11-5(3);

**WHEREAS,** Liquid Oxygen is an essential component of PVWC's treatment process for production and delivery of clean disinfected drinking water to PVWC's consumers and customers, therefore, securing a contract as soon as possible with a vendor committed to supply this essential element to the PVWC under an agreement would be in the PVWC's best interest;

**WHEREAS,** the Commissioners of PVWC have considered the recommendations of PVWC's Executive Director, Chief Financial Officer, Director of Engineering, and Director of Purchasing (and PVWC's General Counsel as to form and legality) and have determined that it is appropriate and in the best interest of PVWC, its users and constituent municipalities, to adopt same as its act;

**WHEREAS,** the PVWC may not select the option of negotiation in lieu of further public bidding under N.J.S.A. § 40A:11-5(3) unless the Commissioners adopt a resolution authorizing this option by two-thirds affirmative vote;

**WHEREAS,** the Commissioners of PVWC have considered the recommendations of PVWC's Executive Director, Chief Financial Officer, Director of Engineering, and Director of Purchasing (and PVWC's General Counsel as to form and

legality) and have determined that it is appropriate and in the best interest of PVWC, its users and constituent municipalities, to adopt same as its act;

**NOW, THEREFORE, BE IT RESOLVED**, by Passaic Valley Water Commission, in the County of Passaic, New Jersey:

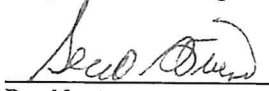
1. That appropriate officials and employees of the PVWC be and are hereby directed to proceed with either re-bidding for liquid oxygen supply or engaging vendors of liquid oxygen in negotiation in lieu of further public bidding pursuant to N.J.S.A. § 40A:11-5(3), in accordance with these findings and applicable law, and to perform such acts and execute such documents as are necessary to implement the terms and intentions of this Resolution as set forth hereinabove.

\* Out of Room

RECORD OF COMMISSION VOTE ON FINAL PASSAGE

	AYE	NAY	ABSTAIN	ABSENT
SANCHEZ, R.*	—	—	—	—
COTTON, R.	X	—	—	—
DEPADUA, C.	X	—	—	—
KOLODZIEJ, J.	X	—	—	—
LEVINE, J.	X	—	—	—
VAN RENSALIER, R.*	—	—	—	—
FRIEND, G.	X	—	—	—

Adopted at a meeting of Passaic Valley Water Commission.

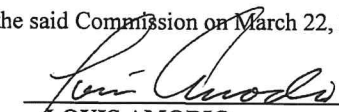
  
President  
GERALD FRIEND

  
Secretary  
RUBY N. COTTON

This Resolution, when adopted, must remain in the custody of the Administrative Secretary.

CERTIFICATION

I, LOUIS AMODIO, Administrative Secretary of the Passaic Valley Water Commission in the County of Passaic, and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy thereof of the foregoing Resolution duly passed and adopted by a majority of a legal quorum of the full membership of the Passaic Valley Water Commission at its duly noticed and convened meeting of the said Commission on March 22, 2023.

  
LOUIS AMODIO  
Administrative Secretary