



STATE OF NEW JERSEY
Board of Public Utilities
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WATER

BOROUGH OF FAIR LAWN SERVICES)	ORDER APPROVING A PUBLIC-
AGREEMENT FOR THE MAINTENANCE AND)	PRIVATE CONTRACT WITH THE
REPAIR OF THE BOROUGH OF FAIR LAWN'S)	BOROUGH OF FAIR LAWN AND
WATER STORAGE TANKS)	UTILITY SERVICE CO, INC.
)	
)	DOCKET NO. WO22100618

Parties of Record:

Ryan J. Scerbo, Esq., DeCotiis, FitzPatrick, Cole & Giblin, LLP, on behalf of the Borough of Fair Lawn
J. Shane Albritton, Esq., General Counsel on behalf of Utility Service Co, Inc.
Brian Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

In this matter, the New Jersey Board of Public Utilities (“Board”) considers a petition filed by the Borough of Fair Lawn (“Fair Lawn” or “Petitioner”) for approval of a public-private contract with Utility Service Company, Inc. (“USC” or “Company”).

BACKGROUND

Fair Lawn is a municipal corporation within the County of Bergen and an owner and operator of a water supply, transmission, and distribution system, pursuant to the County and Municipal Water Supply Act, N.J.S.A. 40A:31-1 et seq., that provides services to its citizens.

On October 3, 2022, pursuant to the New Jersey Water Supply Public-Private Contracting Act (“Water Act”) N.J.S.A. 58:26-19 to -27, Petitioner submitted an application (“Petition”) for approval of a contract with USC for maintaining and repairing water storage tanks.

Under the contract, the Petitioner agreed to engage USC to provide the professional service needed to maintain and sustain its four (4) water storage tanks as identified below:

- CADMUS 1-1MG GST Welded Steel Tank – 9-14 Cadmus Place
- CADMUS 2-1MG GST Welded Steel Tank – 9-14 Cadmus Place
- Westmoreland – 1.5MG GST Welded Steel Tank – 18-00 11th Street
- Gordon Place Tower – 1MG Elevated – 31-15 Gordon Place

The Petitioner filed the application in accordance with N.J.S.A. 58:26-24(f) and N.J.S.A. 58:26-25, with the Board, the New Jersey Department of Community Affairs, Division of Local Government Services, Local Finance Board (“DCA”) and the New Jersey Department of Environmental Protection (“DEP”) (collectively, “Agencies”).

TERMS OF THE PUBLIC-PRIVATE CONTRACT¹

Fair Lawn agreed to engage the Company to provide the services set forth herein to maintain and perform specific maintenance work on four (4) separate water storage tanks located in the Borough. The scope of work is as follows:

1. CADMUS 1-1MG GST Welded Steel Tank - In year 1, the Company shall be responsible for an exterior surface preparation and coatings specifications (full blast and overcoat), an interior water chamber surface prep with a full blast and full finish coat, as well as an installation of a PAX Active Mixing System to the interior. In years 2 through 20, the Company will provide inspection services of the tank, inspection services of the remote operated vehicle interior inspection as well as chemical clean and interior washout inspections. Also, during that previous span of time, in year 11 (2032), the Company will be responsible for an exterior overcoat prep & paint.
2. CADMUS 2-1MG GST Welded Steel Tank - In year 1, the Company shall be responsible for an exterior surface preparation and coatings specifications (full blast and overcoat), an interior water chamber surface prep with a full blast and full finish coat, as well as an installation of a PAX Active Mixing System to the interior. In years 2 through 20, the Company will provide inspection services of the tank, inspection services of the remote operated vehicle interior inspection as well as chemical clean and interior washout inspections. Also, during that previous span of time, in year 12 (2033), the Company will be responsible for an exterior overcoat prep & paint.
3. Westmoreland – 1.5MG GST Welded Steel Tank – In year 1, the Company shall be responsible for an engineering inspection and preventive maintenance, but in year 2, the Company shall be responsible for an exterior surface preparation and coatings specifications (full blast and overcoat), an interior water chamber surface prep with a full blast and full finish coat, as well as an installation of a PAX Active Mixing System to the interior. In years 3 through 20, the Company will provide inspection services of the tank, inspection services of the remote operated vehicle interior inspection as well as chemical clean and interior washout inspections. Also, during that previous span of time, in year 12 (2033), the Company will be responsible for an exterior overcoat prep & paint.
4. Gordon Place Tower – 1MG Elevated Tank – Besides year 3, year 6 and year 16, the Company is responsible for inspection services and preventive maintenance throughout the other years in the contract. In year 3, the Company must provide interior touch-ups of repaired-burn through areas as well as install a PAX Active Mixing System to the interior as well as a chemical clean and interior washout inspection. In year 6, the Company is responsible for an exterior overcoat prep and paint as well as an interior water chamber surface prep and full finish coat. In year 16 (2037), the Company will be responsible for an exterior overcoat prep and paint.

¹ If any of the terms of the Contract differ from the summary that is provided in this order, the terms of the Contract govern.

Annual Fees

The annual service fees are as follows:

Contract Year 1 -	\$1,605,288
Contract Year 2 -	\$1,605,288
Contract Year 3 -	\$1,605,288
Contract Year 4 -	\$105,877
Contract Year 5 -	\$109,625
Contract Year 6 -	\$113,506
Contract Year 7 -	\$117,524
Contract Year 8 -	\$121,684
Contract Year 9 -	\$125,991
Contract Year 10 -	\$130,452
Contract Year 11 -	\$135,070
Contract Year 12 -	\$139,852
Contract Year 13 -	\$144,803
Contract Year 14 -	\$149,928
Contract Year 15 -	\$155,236
Contract Year 16 -	\$160,731
Contract Year 17 -	\$166,421
Contract Year 18 -	\$172,312
Contract Year 19 -	\$178,412
Contract Year 20 -	\$184,727

On October 3, 2022, the Petitioner submitted a Hearing Report to DEP, which pursuant to N.J.S.A. 58:26-25(a), who must complete its review and submit its comments to the Board and DCA within 60 days of its receipt thereof. To date, the Board has received no comments from DEP and is unaware of any prevailing issues.

The municipal employees will not be affected by this water tank maintenance contract.

The Local Finance Board within the Division of Local Government Services in DCA is scheduled to consider approval of the contract at its December 14, 2022 agenda meeting.

Due to the timing of the Petition, the 60 day time period set forth in the Water Act for the Board to make a determination in this matter expired prior to the date of the Board's December Agenda meeting. In light of these circumstances, Fair Lawn filed a letter with the Board on October 17, 2022 agreeing to an extension to act on this matter by December 7, 2022.

New Jersey Division of Rate Counsel ("Rate Counsel") Comments

By letter dated November 23, 2022, Rate Counsel submitted a letter indicating that it had no objection to the Board approving the contract.

DISCUSSIONS AND FINDINGS

The Water Act authorizes public entities to enter into contracts with private firms for the provision of water supply services. Water supply services, as defined by the Water Act, means the financing, designing, construction, improvement, operation, maintenance, administration, or any combination thereof, of a water supply facility (i.e., water system). Public-Private Contracts for

water supply services must be submitted to the Board for review and approval. However, N.J.S.A. 58:26-25 confines the scope of the Board's review of such contracts to four specific areas. In its review of the contract under N.J.S.A. 58:26-25, the Board shall apply the following criteria in determining whether to approve the contract:

1. The private firm entering into the contract has the financial capacity and technical and administrative expertise to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning financial, technical and administrative capacity of the private firm are necessary and sufficient to protect the public interest.
2. The terms of the contract are not unreasonable. In determining whether the terms of the contract are not unreasonable, the Board shall review the fees and charges to be charged or assessed under the contract to determine that they are reasonable to the public entity, taking into consideration all of the obligations undertaken by the private firm and all benefits obtained by the public entity. In making this determination, the Board shall not use the traditional rate base/rate of return methodology.
3. The franchised customers of a public utility participating in a contract are protected from the risks of the proposed contract and that they are not subsidizing the contract. If a private firm is not a public utility, the Board shall ensure that under the terms of the proposed contract the users of water outside of the jurisdiction or service area that will receive water supply services under the contract are also protected from the risks of the contract and that water users outside the jurisdiction or service area are not subsidizing the contract through increased charges, rates or fees for the supply of water.
4. The contract contains the provisions required by paragraph (1) (2) and (6) of subsection e. of section 5 of P.L. 1995, c. 101 (C 58:26-23).

The Water Act further states that once the Board approves a proposed contract, the jurisdiction of the Board terminates until or unless the contract is amended to change the formula or other basis of determining charges.

The Courts have held that the Legislature has not conferred any jurisdiction on the Board to regulate water utilities operated by municipalities, as distinct from those privately owned, except in certain circumstances where such municipalities service residents in other municipalities. See Petition of South Lakewood Water Co., 61 N.J. 230 (1972). Pursuant to N.J.S.A. 40A:31-23(d)(1), the Board does not have regulatory oversight with respect to the setting of rates if the municipality services 1,000 customers or less outside its jurisdictional boundaries. In addition, it has been held that the sovereign powers of a municipality should not be subordinated to Board jurisdiction "by inference" or "lightly implied." Jersey City Incinerator Authority v. Dept. of Pub. Util., 146 N.J. Super. 243, 255-56 (App. Div. 1976). Rather, a grant of such power "must be firmly anchored in some clear legislative delegation of jurisdiction." Id. at 256. Furthermore, the Board's own enabling statute expressly limits the Board's jurisdiction over contracts of the type under review here to the parameters of the Public-Private Contracting Act. N.J.S.A. 48:2-13 states:

Except as provided in [N.J.S.A. 58:26-25] the Board shall have no regulatory authority over the parties to a contract negotiated between a public entity and a private firm pursuant to [N.J.S.A. 58:26-19] in connection with the performance of their respective obligations thereunder. Nothing contained in this title shall extend

the powers of the Board to include any supervision and regulation of, or jurisdiction and control over, any public-private contract for the provision of water supply services established pursuant to [N.J.S.A. 58:28-19].

In accordance with this legal mandate, the Board has limited the scope of its review to the four (4) criteria set forth above and, for reasons discussed below, concludes that the contract meets the applicable criteria. Because the Legislature has carefully circumscribed our authority over the rates to be charged to end-use customers and other issues, the Board does not make any determination with respect to issues related to the ultimate rates to be charged by the Petitioner to its residents for services.

Fair Lawn has absolute jurisdiction pursuant to N.J.S.A. 40A:31-1 et seq., to determine the terms and conditions under which it supplies water to customers within its municipal limits. Fair Lawn determined to enter into a contract for water tank maintenance pursuant to the Water Act.

Fair Lawn negotiated a contract with USC, which included the required provisions pursuant to N.J.S.A. 58:26-23(e). Fair Lawn chose USC for the following reasons:

1. USC has a track record of successful performance not only in New Jersey but in numerous states.
2. USC provided detailed and thorough inspection reports and recommendations for each tank.
3. USC's corporate company has the assets to provide backing in the event of an unstable economy and has the greatest amount of experience and qualifications.

Provided with the above information, Fair Lawn agreed to enter into a 20-year contract with USC to provide it with a long-term tank maintenance plan on the four storage tanks.

After review of the record herein, the Board **FINDS** that the statutory requirements listed have been met. Specifically, the Board **FINDS** as follows:

1. USC has the financial capacity, technical and administrative experience to ensure continuity of service over the term of the contract [N.J.S.A. 58:26-25(c)(1)]. USC provides a suite of additional global solutions, technologies, information systems and approaches to real-life challenges facing U.S. water and wastewater utilities.
2. The terms of the contract are not unreasonable given the services to be performed by USC [N.J.S.A. 58:26-25(c)(2)]. The Board believes that under the circumstances of this matter and as set forth in the contract, a 20-year term is appropriate.
3. N.J.S.A. 58:26-25(c)(3) is intended to protect franchise customers outside of Fair Lawn. All of Fair Lawn's customers are located within Fair Lawn's boundaries.
4. The contract contains provisions addressing the following:

N.J.S.A. 58:26-23(e)(1): There is no subsidization of customers outside the municipal boundaries.

N.J.S.A. 58:26(e)(2): The allocation of the risks of financing and constructing planned capital additions or upgrades to existing water supply facilities are incorporated; and

N.J.S.A. 58:26-23(e)(6): The employment of employees whose positions of employment will be affected by the terms of the contract are addressed.

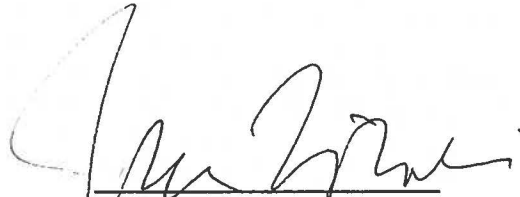
Based upon the above, the Board **HEREBY APPROVES** the contract between Fair Lawn and USC subject to the following provisions:

Any extension of the contract beyond the 20-year term or, pursuant to N.J.S.A. 58:26-25(c)(4), any amendment of the contract to change the formula or other basis of determining charges contained therein shall be subject to Board review and approval.

This Order shall be effective on December 7, 2022.

DATED: December 7, 2022

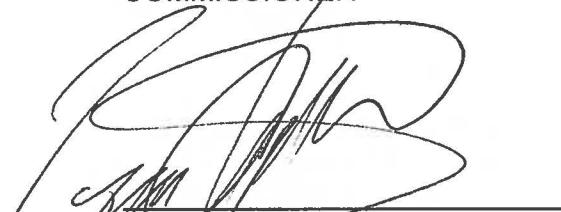
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ATTEST: 
CARMEN D. DIAZ
ACTING SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

BOROUGH OF FAIR LAWN SERVICES AGREEMENT FOR THE MAINTENANCE AND
REPAIR OF THE BOROUGH OF FAIR LAWN'S WATER STORAGE TANKS

BPU DOCKET NO. WO22100618
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