

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
**FORM 8-K**

**CURRENT REPORT**  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported) **June 8, 2023**

**EMCOR Group, Inc.**  
(Exact Name of Registrant as Specified in its Charter)

<b>Delaware</b> (State or Other Jurisdiction of Incorporation)	<b>1-8267</b> (Commission File Number)	<b>11-2125338</b> (I.R.S. Employer Identification No.)
<b>301 Merritt Seven Norwalk, Connecticut</b> (Address of Principal Executive Offices)	<b>06851-1092</b> (Zip Code)	
<b>(203) 849-7800</b> (Registrant's Telephone Number, Including Area Code)		

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Securities registered pursuant to Section 12(b) of the Act:**

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock	EME	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

**Item 3.03. Material Modification to Rights of Security Holders.**

To the extent required by Item 3.03 of Form 8-K, the information contained in Item 5.03 of this report is incorporated herein by reference.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On June 8, 2023, at the 2023 Annual Meeting of Stockholders (the "Annual Meeting") of EMCOR Group, Inc. (the "Company"), the Company's stockholders, upon recommendation of the Company's Board of Directors (the "Board"), approved amendments to the Company's Restated Certificate of Incorporation (the "Certificate of Incorporation") to provide for (a) Board authority to determine the number of directors comprising the Board; (b) exculpation of certain officers of the Company permitted by Delaware law; and (c) selection of an exclusive forum for certain claims. The Board had previously approved the amendment to the Certificate of Incorporation subject to stockholder approval. On June 8, 2023, the Company filed a Certificate of Amendment of Restated Certificate of Incorporation of EMCOR Group, Inc. (the "Amendment to Certificate of Incorporation") with the Secretary of State of the State of Delaware and the Amendment to Certificate of Incorporation became effective on June 8, 2023.

The foregoing summary description of the Amendment to Certificate of Incorporation does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Amendment to Certificate of Incorporation, attached hereto as Exhibit 3.1, which is incorporated herein by reference.

**Item 5.07. Submission of Matters to a Vote of Security Holders.**

On June 8, 2023, at the 2023 Annual Meeting of Stockholders of the Company, the stockholders of the Company voted on the following eight items:

1. Election of nine directors to serve until the Company's next Annual Meeting of Stockholders and until their successors are duly elected and qualified;
  2. A non-binding advisory resolution approving named executive officer compensation;
  3. A non-binding advisory resolution on the frequency of the non-binding advisory vote on executive compensation;
  4. An amendment to the Company's Restated Certificate of Incorporation regarding the size of the Board of Directors;
  5. An amendment to the Company's Restated Certificate of Incorporation to reflect Delaware law provisions allowing officer exculpation;
  6. An amendment to the Company's Restated Certificate of Incorporation to select an exclusive forum for certain claims;
  7. Ratification of the appointment of Ernst & Young LLP as our independent auditors for 2023; and
  8. A stockholder proposal regarding an independent board chairperson.
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The results were as follows:

Proposal 1. The nominees for director were elected based upon the following votes:

<u>Nominee</u>	<u>Shares For</u>	<u>Shares Against</u>	<u>Shares Abstaining</u>	<u>Broker Non-Votes</u>
John W. Altmeyer	42,117,288	832,149	37,391	928,819
Anthony J. Guzzi	41,334,279	1,600,483	52,066	928,819
Ronald L. Johnson	42,334,646	544,260	107,922	928,819
Carol P. Lowe	42,569,850	380,857	36,121	928,819
M. Kevin McEvoy	42,003,982	945,388	37,458	928,819
William P. Reid	42,532,092	417,433	37,303	928,819
Steven B. Schwarzwaelder	42,174,701	774,730	37,397	928,819
Robin Walker-Lee	42,359,963	590,821	36,044	928,819
Rebecca Ann Weyenberg	42,715,686	235,253	35,889	928,819

All of the Company's incumbent directors standing for election were re-elected.

Proposal 2. The proposal for stockholders to approve, on a non-binding advisory basis, the compensation of the Company's named executive officers was approved based upon the following votes:

Shares For	39,994,302
Shares Against	2,919,296
Shares Abstaining	73,230
Broker Non-Votes	928,819

Proposal 3. The stockholders voted, on a non-binding advisory basis, on whether the non-binding advisory vote on the compensation of the Company's named executive officers should occur every 1 year, every 2 years or every 3 years. The results were as follows:

<u>Shares for Every 1 Year</u>	<u>Shares for Every 2 Years</u>	<u>Shares for Every 3 Years</u>	<u>Shares Abstaining</u>	<u>Broker Non-Votes</u>
41,620,886	32,200	1,286,517	47,225	928,819

In light of the voting results for this Proposal 3, the Company's Board of Directors decided that the Company will include a stockholder advisory vote on the compensation of the Company's named executive officers in its future proxy materials on an annual basis.

Proposal 4. The proposal for stockholders to approve an amendment to the Company's Restated Certificate of Incorporation regarding the size of the Board of Directors was approved based upon the following votes:

Shares For	39,679,141
Shares Against	4,190,552
Shares Abstaining	45,954
There were no broker non-votes on this item.	

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Proposal 5. The proposal for stockholders to approve an amendment to the Company's Restated Certificate of Incorporation to reflect Delaware law provisions allowing officer exculpation was approved based upon the following votes:

Shares For	37,306,419
Shares Against	5,616,362
Shares Abstaining	64,047
Broker Non-Votes	928,819

Proposal 6. The proposal for stockholders to approve an amendment to the Company's Restated Certificate of Incorporation to select an exclusive forum for certain claims was approved based upon the following votes:

Shares For	37,627,991
Shares Against	5,302,923
Shares Abstaining	55,914
Broker Non-Votes	928,819

Proposal 7. The proposal for stockholders to ratify the appointment of Ernst & Young LLP as the Company's independent auditors for 2023 was approved based upon the following votes:

Shares For	42,759,269
Shares Against	1,120,313
Shares Abstaining	36,065
There were no broker non-votes on this item.	

Proposal 8. The proposal for stockholders to request that the Board of Directors of the Company adopt a policy and amend the Company's governing documents to require that separate individuals serve as Chair of the Board of Directors and as the Company's Chief Executive Officer was not approved, based upon the following votes:

Shares For	9,313,245
Shares Against	33,511,434
Shares Abstaining	162,149
Broker Non-Votes	928,819

#### Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
3.1	<a href="#">Certificate of Amendment of Restated Certificate of Incorporation of EMCOR Group, Inc.</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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## **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

### **EMCOR Group, Inc.**

Date: June 9, 2023

By: /s/ ANTHONY J. GUZZI  
Name: Anthony J. Guzzi  
Title: Chairman, President and  
Chief Executive Officer

**CERTIFICATE OF AMENDMENT  
OF  
RESTATED CERTIFICATE OF INCORPORATION  
OF  
EMCOR GROUP, INC.**

It is hereby certified that:

1. The name of the corporation (hereinafter referred to as the “Corporation”) is EMCOR Group, Inc.
2. The Restated Certificate of Incorporation of the Corporation is hereby amended by deleting Article SIXTH thereof and by substituting in lieu of said Article the following new Article:

“SIXTH: The Board of Directors of the Corporation shall consist of the number of directors as fixed from time to time by resolution of a majority of the directors then in office.”

3. The Restated Certificate of Incorporation of the Corporation is hereby amended by deleting Article NINTH thereof and by substituting in lieu of said Article the following new Article:

“NINTH: To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors and officers, no director or officer of this Corporation shall be personally liable to this Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer. Notwithstanding the foregoing, a director or officer shall be liable to the extent provided by applicable law (1) for any breach of the director’s or officer’s duty of loyalty to the Corporation or its stockholders, (2) for acts or omissions of the director or officer not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the General Corporation Law of the State of Delaware with respect to directors, (4) for any transaction from which the director or officer derived any improper personal benefit, or (5) for any action by or in the right of the Corporation, in the case of officers only. Neither the amendment or repeal of this Article, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article shall adversely affect any right or protection of a director or officer of the Corporation existing at the time of such amendment or repeal.”

4. The Restated Certificate of Incorporation of the Corporation is hereby amended by adding the following new Article TWELFTH:

“TWELFTH:

A. EXCLUSIVE FORUM. Unless the Board of Directors or one of its committees otherwise approves the selection of an alternate forum, the Court of Chancery of the State of Delaware (or, if, and only if, the Court of Chancery of the State of Delaware dismisses a Covered Claim (as defined below) for lack of subject matter jurisdiction, any other state or federal court in the State of Delaware that does have subject matter jurisdiction) shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for any (1) derivative claim brought in the right of the Corporation, (2) claim asserting a breach of a fiduciary duty to the Corporation or the Corporation’s stockholders owed by any current or former director, officer or other employee or stockholder of the Corporation, (3) claim against the Corporation arising pursuant to any provision of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation or the Amended and Restated By-Laws, (4) claim to interpret, apply, enforce or determine the validity of the Amended and Restated Certificate of Incorporation or the By-Laws, (5) claim against the Corporation governed by the internal affairs doctrine, or (6) other claim, not subject to exclusive federal jurisdiction and not subject to paragraph (D) below, brought in any action asserting one or more of the claims specified in clauses (A)(1) through (5) herein above (each a “Covered Claim”); provided, however, that the provisions of this paragraph (A) of Article TWELFTH of this Amended and Restated Certificate of Incorporation will not apply to claims brought to enforce any liability or duty created by the Securities Exchange Act of 1934, as amended.

B. PERSONAL JURISDICTION. If any person or entity (a “Claiming Party”) files an action asserting a Covered Claim in a court other than one determined in accordance with paragraph (A) above (each a “Foreign Action”) without the prior approval of the Board of Directors or one of its committees, such Claiming Party shall be deemed to have consented to (1) the personal jurisdiction of the court determined in accordance with paragraph (A) above in connection with any such action brought in any such court to enforce paragraph (A) above (an “Enforcement Action”) and (2) having service of process made upon such Claiming Party in any such Enforcement Action by service upon such Claiming Party’s counsel in the Foreign Action as agent for such Claiming Party.

C. NOTICE AND CONSENT. Any person or entity purchasing or otherwise acquiring any interest in the shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article TWELFTH of this Amended and Restated Certificate of Incorporation and waived any argument relating to the inconvenience of the forums referenced above in connection with any Covered Claim.

D. FEDERAL FORUM. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to this provision.”

5. The amendment of the Restated Certificate of Incorporation herein certified has been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

Executed on June 8, 2023

/s/ ANTHONY J. GUZZI  
Anthony J. Guzzi  
Chairman, President and Chief Executive Officer