
Meeting Date: June 5, 2024

Staff Contact: Dave Laughlin, Planning & Engineering Division Manager

TITLE: C-24-13 – Contract with D&R Tank for In-service Tank Inspections

ACTION: Recommend Approval

Summary:

The Albuquerque Bernalillo County Water Utility Authority issued the referenced Request for Proposals (RFP) to solicit proposals from qualified vendors for In-Service Tank Inspections

The RFP was posted on BidSync and advertised in the local newspaper. One (1) responsive offer was received and submitted for evaluation. The Ad Hoc Evaluation Committee reviewed, evaluated, and scored the response in accordance with the evaluation criteria published in the RFP.

Listed is the respondent's composite score with all applicable preferences applied as indicated in the scoring details.

<u>Offeror</u>	<u>Total Composite Score</u>
D&R Tank	805

The committee recommends the award of contract to D&R Tank as that company had the highest average composite score after final scoring and is qualified to perform the work. The Purchasing Department concurs with the Committee's recommendation.

Approval of this item shall also serve as delegation of authority for the Executive Director to approve all future amendments to this contract, if any.

FISCAL IMPACT:

Expected to exceed \$500,000.00



Memo

To: Mark S. Sanchez, Executive Director
Ege Richardson, Chief Engineer

From: Armida Magallanes, Purchasing Administrator *AMM*

Through: Candida Kelcourse, Purchasing Officer *OK*

Date: March 1, 2024

Re: Ad Hoc Committee for P2024000012, "In-Service Tank Inspections"

The following individuals are recommended to serve as members of the Ad Hoc Advisory Committee ("Committee") for the Request for Proposals for "In-Service Tank Inspections". This Committee will review and evaluate proposals and submit a ranked list of offerors to you for selection.

- Ege Richardson, Committee Chair
- German Andrade, Member
- Amelia Symonds, Member

I will manage the Request for Proposals and serve as a procedural advisor to the Committee. Subject Matter Experts may be added throughout the RFP process as deemed necessary by the Purchasing Department.

I respectfully request your approval of this Committee in order to start the Request for Proposals process.

APPROVED:

Mark S. Sanchez

Mark S. Sanchez
Executive Director
Date: 3/13/24 11:02 MDT

RECOMMENDED:

Ege Richardson

Ege Richardson
Chief Engineer
Date: 3/1/24 13:02 MST

Original: RFP File

**Composite Score Tabulation
P2024000012 In-Service Water Storage Tank Inspections**

EVALUATION CRITERIA	EVALUATION FACTORS (Max pts)	Offers
		D&R Tank
1. Company Experience	250	200
2. Staff Experience	250	225
3. Other Company Information	150	75
4. Approach to Completing all 66 in-service tank inspections	100	50
5. Clarity, Quality, and Organization of Proposal	50	25
6. Cost Proposal	200	100
TOTAL COMPOSITE SCORES		675
Resident/Native American Resident Business Preference	Up to 8%	80
Resident Veteran/Native American Veteran Business Preference	Up to 10%	
Recycled Content Goods Preference	Up to 5%	
Local Business Preference	Up to 5 %	50
Small Business Preference	Up to 5%	
Pay Equity Preference	Up to 5%	
18% Preference Max		130
TOTAL COMPOSITE SCORES WITH PREFERENCES		805
RANKING		1
		D&R Tank

DRAFT AGREEMENT
P2024000012 IN-SERVICE WATER STORAGE TANK INSPECTIONS
PROJECT NO.: 03090.00

THIS AGREEMENT is made and entered into on the date of the last signature entered below by and between the Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision, P.O. Box 568, Albuquerque, New Mexico 87103-0568 (hereinafter referred to as the "Water Authority"), and D&R Tank (hereinafter referred to as the "Contractor"), a New Mexico company, whose address is 1210 Prosperity SE, Albuquerque, NM 87105.

In consideration of mutual obligations stated herein, the parties agree as follows:

1. Scope of Services: The Contractor shall provide the services described in Exhibit A attached hereto (hereinafter the "Services") in a satisfactory and proper manner, as determined by the Water Authority.

2. Term of Agreement: This Agreement shall commence on the date of final execution by the Water Authority and continue for a period of four (4) years. This term may be extended by mutual written agreement of the parties up to the maximum number of years allowed by the Procurement Ordinance.

3. Compensation and Method of Payment:

3.1 *Compensation.* For performing the Services specified in Section 1 hereof, the Water Authority agrees to pay the Contractor up to the amount of _____ Dollars (\$_____), plus any applicable gross receipts taxes. Such amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing such Services.

3.2 *Method of Payment.* Such amount shall be paid to the Contractor in accordance with Exhibit B, Payment Schedule, upon receipt by the Water Authority of a properly documented invoice for payment as determined by the budgetary and fiscal guidelines of the Water Authority and on the condition that the Contractor has accomplished the Services to the satisfaction of the Water Authority. Applicable taxes will be stated separately on each invoice and paid by the Water Authority at current rates. Taxes may not be billed more than sixty (60) days after completion of the Services to which they apply.

3.3 *Appropriations.* Notwithstanding any other provisions in this Agreement, the terms of this Agreement are contingent upon the Water Authority Board making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Water Authority Board, this Agreement may be terminated at the end of the Water Authority's then current fiscal year upon written notice given by the Water Authority to the Contractor. Such event shall not constitute an event of default. All payment obligations of the Water Authority and all of its interest in this Agreement will cease upon the date of termination. The Water Authority's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

3.4 *Non-Exclusivity.* Unless specifically provided herein, this Agreement is not exclusive to the Contractor and the Water Authority may contract with other businesses to provide similar services at any time. In addition, if this Agreement is for the purchase of Services on an as needed basis, the Water Authority is not obligated to make any purchase of Services hereunder.

4. Independent Contractor: Neither the Contractor nor its employees are considered to be employees of the Water Authority for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 1. The

Contractor further agrees that neither it nor its employees are entitled to any benefits from the Water Authority under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the Water Authority under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5. Personnel:

5.1 The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement in a timely manner. Such personnel shall not be employees of or have any contractual relationships with the Water Authority.

5.2 All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

5.3 None of the work or Services covered by this Agreement shall be subcontracted without the prior written approval of the Water Authority. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. Indemnity: The Contractor agrees to defend, indemnify and hold harmless the Water Authority and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property to the extent arising out of or resulting from the negligent acts, errors, omissions, and performance by the Contractor under this Agreement or by reason of any asserted act or omission, neglect or misconduct of the Contractor or Contractor's agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7. Insurance: The Contractor shall not commence any work under this Agreement until the insurances required have been obtained and the proper certificates, riders or endorsements (or policies) have been submitted to the Water Authority.

7.1 *General Conditions.* The Water Authority will require the successful Offeror, referred to as the Contractor, to procure and maintain at its expense during the term of the Agreement resulting from the RFP, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations of the Contractor under the Agreement. Upon execution of the Agreement and on the renewal of all coverages, the Contractor shall furnish to the Water Authority a certificate or certificates in form satisfactory to the Water Authority as well as the rider or endorsement showing that it has complied with these insurance requirements. All certificates of insurance shall provide thirty (30) days written notice be given to the Risk Program Manager, Albuquerque Bernalillo County Water Utility Authority, P.O. Box 568, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. **With respect to all coverages required other than professional liability or workers' compensation, the Albuquerque Bernalillo County Water Utility Authority shall be named an additional insured.** All coverages afforded shall be primary with respect to operations provided.

7.2 *Approval of Insurance.* Even though the Contractor may have been given notice to proceed, it shall not begin any work under the Agreement until the required insurance has been obtained and the proper certificates (or policies) filed with the Water Authority. Neither approval nor failure to disapprove certificates, policies, or the insurance by the Water Authority shall relieve the Contractor of full responsibility to maintain the required insurance in full force and effect. If part

of the Agreement is sublet, the Contractor shall include any or all subcontractors in its insurance policies, or require the subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Contractor's insurance policies.

7.3 *Coverage Required.* The kinds and amounts of insurance required are as follows:

7.3.1 Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire Legal
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for the Water Authority by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of the Agreement.

7.3.2 Automobile Liability Insurance. An automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

7.3.3 Workers' Compensation Insurance. Workers' compensation insurance policy for the Contractor's employees, in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico, (the "Act"). If the Contractor has determined that it is not subject to the Act, the Contractor will certify, in a signed statement to that effect. The Contractor will notify the Water Authority and comply with the Act if it becomes subject to the Act during the term of the Agreement.

7.3.4 **Pollution Liability Insurance.** Pollution liability insurance in an amount not less than \$1,000,000.00 per claim and in the aggregate.

8. Reports and Information: At such times and in such forms as the Water Authority may require, there shall be furnished to the Water Authority such statements, records, reports, data and information, as the Water Authority may request pertaining to matters covered by this Agreement. Unless authorized by the Water Authority, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to the Agreement until the final product is submitted to the Water Authority.

9. Establishment and Maintenance of Records: Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the Water Authority with respect to all matters covered by this Agreement. Except as otherwise authorized by the Water Authority, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement and shall be available to the Water Authority until all applicable statutes of limitation have run. This Section 9 shall survive and continue beyond the termination of this Agreement or any of its provisions.

10. Audits: At any time during normal business hours and as often as the Water Authority may deem necessary, there shall be made available to the Water Authority for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the Water Authority to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

11. Publication, Reproduction and Use of Material: No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The Water Authority shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

12. Ethical Conduct: The Contractor warrants that it will perform the Services under this Agreement in compliance with the Ethical Conduct provisions (§2-390) and Unfair Business Practices provisions (§2-376) of the Procurement Ordinance, the Water Authority Code of Conduct, the Governmental Conduct Act (Sections 10-16-1 through 10-16-18, NMSA 1978), the New Mexico criminal statutes prohibiting bribes, gratuities and kickbacks, (Sections 30-41-1 through 30-41-3 NMSA 1978), and any other Water Authority or New Mexico laws, ordinances, rules and regulations, policies, procedures and administrative instructions applicable to ethical conduct. Contractor warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement.

13. Unfair Business Practices: The Contractor agrees to comply with the Unfair Business Practices provisions (§2-376) of the Procurement Ordinance and the New Mexico Unfair Practices Act, Section 57-12-1 et seq. NMSA 1978 (the "Act"). If during the term of this Agreement the Contractor has been found to engage in any Unfair Business Practices the Contractor agrees to report that finding to the Water Authority Central Purchasing Office. Unfair Business Practices are defined as a system or pattern of acts or practices that a federal or State enforcement agency has made a formal finding within the last three (3) years to be discriminatory, deceptive, fraudulent, or abusive (or similar terms) under the Act, or an applicable federal or State consumer protection law relating to the Scope of this Agreement or that have violated a relevant criminal statute, as evidenced by a public enforcement order or judgment, settlement with the enforcement agency or other formal finding by the relevant enforcement agency with regulatory enforcement authority under the applicable consumer protection law, or criminal conviction.

14. Compliance with Laws: In providing the Services outlined herein, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, State, and local governments, including, but not limited to the New Mexico Human Rights Act, Title VII of the federal Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and all federal, State and local statutes, regulations and executive orders relating to civil rights.

15. Changes: If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

16. Assignability: The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the Water Authority thereto.

17. Termination for Cause: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, and fail to cure any such default within fifteen (15) days after receipt of a notice of default from the Water Authority, the Water Authority shall thereupon have the right to terminate this Agreement without further notice to the Contractor. The notice of default shall specify the date of termination. In the event of termination for cause, all finished or unfinished documents, data, and reports prepared by the Contractor under this Agreement shall, at the option of the Water Authority, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Water Authority for damages sustained by the Water Authority by virtue of any breach of this Agreement by the Contractor, and the Water Authority may withhold any payments to the Contractor for the

purposes of set-off until such time as the exact amount of damages due the Water Authority from the Contractor is determined.

18. Termination for Convenience of the Water Authority: The Water Authority may terminate this Agreement at any time by giving at least thirty (30) days' notice in writing to the Contractor. If the Contractor is terminated by the Water Authority as provided herein, the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.

19. Construction and Severability: If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

20. Enforcement: The Contractor agrees to pay to the Water Authority all costs and expenses including reasonable attorney's fees incurred by the Water Authority in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

21. Entire Agreement: The RFP and Contractor's Proposal submitted in response to the RFP, and all Exhibits and other documents attached or referred to in this Agreement are hereby incorporated into and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms. In the event of a conflict, the documents shall have precedence as follows: Exhibits, Agreement, RFP and Proposal.

This Agreement and incorporated documents contain the entire agreement of the parties and supersede any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

22. Applicable Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the ordinances, rules and regulations of the Water Authority.

23. Approval Required: This Agreement shall not become effective or binding until approved by the Executive Director of the Water Authority.

24. Liability: Notwithstanding any provision herein to the contrary, neither Party shall be liable to the other or any third party for any incidental, indirect, punitive, or consequential damages arising out of or connected in any way to this Agreement or the work performed hereunder. As between the Parties hereto, the maximum aggregate liability for any and all claims and damages arising under this Agreement is limited to the total compensation value of the Agreement. Neither the Water Authority nor the Contractor shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of New Mexico Tort Claims Act (Section 41-4-1, et seq. N.M.S.A. 1978) and any amendments hereto. This paragraph is intended only to define the liabilities between the Parties hereto and it is not intended to modify, in any way, the Parties' liabilities as governed by common law or the New Mexico Tort Claims Act. By entering into this Agreement, the Water Authority and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any sovereign immunity, nor do they waive any limitation(s) of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

IN WITNESS WHEREOF, the Water Authority and the Contractor have executed this Agreement as of the last date written below.

**ALBUQUERQUE BERNALILLO COUNTY D&R TANK
WATER UTILITY AUTHORITY**

Approved By:

Mark S. Sanchez, Executive Director

Date: _____

By: _____

Title: _____

Date: _____

Reviewed by:

Christopher P. Melendrez, General Counsel

Date: _____