
Meeting Date: December 7, 2022
Staff Contact: Cody Stinson, Chief Information Officer

TITLE: C-22-41 – Approval of Contract with Wunderlich Malec Systems, Inc. as a result of P2023000001

ACTION: Recommend Approval

Summary:

The Albuquerque Bernalillo County Water Utility Authority issued the Request for Proposals (RFP) P2023000001, Collections and Storm Water PLC Upgrade, to solicit proposals from qualified vendors to upgrade and implement new remote site controls.

The RFP was posted on BidSync and advertised in the local newspaper. Three (3) responsive Offers were submitted for evaluation. The Ad-Hoc Committee reviewed, evaluated, and scored the responses in accordance with the evaluation criteria published in the RFP.

Based on the recommendation of the Ad-Hoc Committee, the Executive Director recommends the award of a contract to Wunderlich Malec, as this vendor has the highest composite score, is qualified to perform the work, and meet the requirements of the RFP. The highest total composite score possible, without preferences applied, is 1000. All scores listed are the combined average of all Committee members. Listed are all the respondents' average composite scores with small and/or local preferences and the NM Resident Preference applied for the offeror with an asterisk (*).

| <u>Offers</u> | <u>Total Composite Score</u> |
|------------------|------------------------------|
| Alpha Southwest | 874* |
| Prime Controls | 846 |
| Wunderlich Malec | 1001* |

Approval of this item will delegate signature authority to the Executive Director to enter into a contract with Wunderlich Malec for these services. Approval of this item shall also serve as delegation of authority for the Executive Director to enter into an agreement for Wunderlich Malec to provide these services as well as approve all future amendments to this agreement, if any.

FISCAL IMPACT:

\$6,746,056.00 (excluding taxes)

Memo

To: Mark S. Sanchez, Executive Director
Jon Ebia, Electrical Engineer

From: Candida Kelcourse, Purchasing Administrator *OK*

Through: Jonathan Daniels, Chief Purchasing Officer *JD*
Cody Stinson, Chief Information Officer *CRS*

Date: October 31, 2022

Re: Recommendation of Award, P2023000001, Stormwater PLC Upgrade

The Albuquerque Bernalillo County Water Utility Authority issued the referenced Request for Proposals (RFP) to solicit proposals from qualified vendors for insurance services.

The RFP was posted on BidSync and advertised in the local newspaper. Three (3) responsive offers were received and submitted for evaluation. The Ad Hoc Evaluation Committee reviewed, evaluated, and scored the responses in accordance with the evaluation criteria published in the RFP.

Listed are all the respondents' average composite scores with small and/or local preferences or the NM Resident Preference applied for the offeror with an asterisk (*). The largest total composite score possible, without preferences applied, is 1000.

| <u>Offeror</u> | <u>Total Composite Score</u> |
|------------------|------------------------------|
| Alpha Southwest | 874* |
| Prime Controls | 846 |
| Wunderlich Malec | 1001* |

The committee recommends the award of contract to Wunderlich Malec, as this company had the highest average composite score after final scoring and is qualified to perform the work.

I concur with the committee's recommendation.

Approved:

Mark S. Sanchez

11/1/22 13:11 MDT

Mark S. Sanchez
Executive Director

Date

Recommended:

Jon Ebia

11/1/22 12:44 MDT

Jon Ebia
Electrical Engineer

Date

Enclosures: Composite Score Sheet

**Composite Score Tabulation
P2023000001 PLC Upgrade**

| EVALUATION CRITERIA | EVALUATION FACTORS (Max pts) | Offers | | |
|---|------------------------------|------------|----------------|------------------|
| | | Alpha SW | Prime Controls | Wunderlich Malec |
| 1. Team Qualifications and Experience | 250 | 205 | 191 | 247 |
| 2. Quality, Reputation and Ability to Deliver Projects on Schedule within Budget | 250 | 201 | 196 | 247 |
| 3. Project Approach including Delivery Schedule | 250 | 182 | 209 | 231 |
| 4. Cost Proposal - The costs proposed by the Offeror to perform the tasks listed in the Scope of Services | 250 | 186 | 250 | 196 |
| TOTAL COMPOSITE SCORES | | 774 | 846 | 921 |
| 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% | 50 | | |
| Pay Equity Preference | Up to 5% | | | |
| 15% Preference Max | | 100 | 0 | 80 |
| TOTAL COMPOSITE SCORES WITH PREFERENCES | | 874 | 846 | 1001 |
| RANKING | | 2 | 3 | 1 |
| | | Alpha SW | Prime Controls | Wunderlich Malec |

**AGREEMENT
BETWEEN THE
ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY
AND
WUNDERLICH-MALEC SYSTEMS, INC.
P2023000001 COLLECTIONS & STORM WATER PLC UPGRADE**

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" or "Owner"), and Wunderlich-Malec Systems, Inc. (hereinafter referred to as the "Contractor"), a Minnesota corporation, whose address is 6101 Blue Circle Drive, Eden, MN 55343.

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 (Scope of Services and Drawings) 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 day indicated in the Notice to Proceed, as specified in the General Terms and Conditions, and continue for a period of _____. Changes to the Contract Time are allowed only as provided in the General Terms and Conditions.

Liquidated damages, in the amount per day of _____ Dollars (\$_____) will be assessed against the Contractor for each calendar day, or portion thereof, the Work has not achieved Substantial Completion after expiration of that portion of the Contract Time allotted for construction, including any approved extension of time granted. Further, liquidated damages, in the amount per day of _____ Dollars (\$_____) will be assessed against the Contractor for each calendar day, or portion thereof, the punch list items listed as incomplete and attached to the Certificate of Substantial Completion are not completed or corrected after expiration of the time allotted for completion and correction, including any approved extension of time granted. These liquidated damages are cumulative. See the General Terms and Conditions for Construction Contracts (rev. 12/10/2018), for additional information terms relating to liquidated damages.

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 Six Million Seven Hundred Fifty-Six Dollars (\$6,746,056.00), plus any applicable gross receipts taxes pursuant to Exhibit B. 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, Cost Proposal, 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. **Contract Documents:** The **Contract Documents** consist of the following and have precedence in the following order:

- Modifications to the Contract;
- The Agreement and its Exhibits;
- Contractor's Proposal (except as limited by Section 4.2 below);
- Addenda;
- The RFP Documents;
 - Appendix A (Scope of Services);
 - Appendix B (Drawings);
 - Special Instructions (Part II of the RFP), including the Additional Terms and Conditions, if any;
 - General Terms and Conditions;
 - Instructions to Offerors (Part I of the RFP);
 - The Proposal Form (Part IV of the RFP);
 - And all forms, and instructions in the RFP cited above, and the Advertisement for Proposals.

Any attachments to or documents referenced in are included in the documents listed above. All bonds, insurance certificates and forms provided by the Contractor are also made a part of the Contract Documents. These documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

4.1 Construction detail drawings shall govern over scaled dimensions and over other drawings. Dimensions given on plans or which can be calculated will govern over scaled dimensions.

4.2 Anything in the Contractor's Proposal which alters or provides a condition to the RFP Documents will not take precedence over the RFP Documents unless it is specifically so provided in the Agreement, or a Modification to the Contract, signed by the parties.

4.3 All definitions and terms set forth in the General Terms and Conditions and the Procurement Ordinance are applicable to the RFP Documents, and the Contracts and Work Order Contracts resulting from the RFP.

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. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

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

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

**ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY**

**CONTRACTOR: WUNDERLICH-
MALEC SYSTEMS, INC.**

Approved By:

Mark S. Sanchez, Executive Director

Date: _____

By: _____

Title: _____

Date: _____

Reviewed by:

Charles Kolberg, General Counsel

Date: _____

WAGE DECISION