Albuquerque Bernalillo County
Water Utility Authority

Agenda Item No. 8f

Meeting Date: August 23, 2023
Staff Contact: Mark Holstad, Chief Engineer

TITLE: **C-23-18 – Approving increase of Price Agreement Contract CE002273 - EWT Holdings III Corp**

ACTION: **Recommend Approval**

SUMMARY:
This product was procured pursuant to the authority contained in Section 19 of the Rules Governing Procurement for The Albuquerque Bernalillo County Water Utility Authority (Water Authority). Resolution R-18-14 requires Board approval for any purchase in an amount exceeding $500,000.

The Water Authority's Collection staff is recommending additional funding to be added to the price agreement cap to allow for continued purchase of Bioxide & Alkagen through the end of the contract term. These chemicals are utilized for odor control in the wastewater system. The estimated expenditure under this price agreement is expected to exceed $500,000; however, actual expenses will be incurred as product is ordered.

If approved by the Board, the purchase order will be adjusted to include the increased contract cap. Approval of this item shall also serve as delegation of authority for the Executive Director to approve all future amendments to this contract.

FISCAL IMPACT:
The Water Authority has budgeted funds to cover this agreement.

PURCHASE ORDER NO..
CE002273
Printed 04/06/2023

PR# R0006634
Change Order: 001

INQUIRIES TO:
Albuquerque Bernalillo Water Utility Authority
PURCHASING SECTION
PO BOX 568
ALBUQUERQUE, NM 87103-0568
PHONE NO: 505-289-3227

INVOICE TO:
INVOICES MUST BE EMAILED TO:
VENDORINVOICES@ABCWUA.ORG

VENDOR:
EWT HOLDINGS III CORP
EVOQUA WATER TECHNOLOGIES LLC
28563 NETWORK PLACE
CHICAGO, IL 60673

SHIP TO:
WASTEWATER
4201 2ND ST SW
ALBUQUERQUE, NM 87105

Vendor Contact:

Buyer Name	Reference #	CCN:	Ship Via	Effective Date	Expiration Date
JOSE GARCIA	OEP2023-062		Common	01/12/2023	01/11/2024

IN ACCORDANCE WITH THE PRICING TERMS OF EWT HOLDINGS III CORP. QUOTE DATED 12/21/2022, AND PURSUANT TO ABCWUA TERMS & CONDITIONS.

LINE	QTY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
0001	1.00	EA	Full-Service Odor Control (FSOC) program, which includes BIOXIDE, PRI-SC and ALKAGEN twice a month service, VaporLinks, access to Link2Site and technical support and loaner equipment. -Chemical & Service for one year Jan. 1, 2023 - Dec. 31, 2023 (1) BIOXIDE PRICING $5.703 PER GALLON DELIVEREDIN 4000 GALLON BULK LOADS WITH MAXIMUM OF 2 DROPS PER LOAD. INCLUDES DELIVERY FEES **ADDITIONAL DROPS WILL BE PROVIDED AT AN ADDED COST OF $70.00 PER DROP. DELIVERY SURCHARGES WILL BE CHARGED ON FREIGHT COST PER GALLON** (2) BIOXIDE PLUS 71 PRICING WILL BE PROVIDED IF REQUIRED (3) ALKAGEN PRICING $4.77 PER GALLON DELIVEREDIN 4000 GALLON -EQUIPMENT & SERVICES INCLUDED IN THE PRICE OF CHEMICAL	$1,350,000.00	$1,350,000.00

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LINE	QTY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
				TOTAL	**$1,350,000.00**

Vendor Name: MICHAEL TREFY
Vendor Email: michael.trefry@evoqua.com

Water Name: MARK GALLEGOS
Water Email: mgallegos@abcwua.org

THE WATER AUTHORITY CURRENTLY HAS 10 FEED SITE LOCATIONS FOR ODOR CONTROL WHERE WE CURRENTLY HAVE EXISTING EVOQUA WATER TECHNOLOGIES EQUIPMENT (TANKS, MONITORS, & PUMPS). CHEMICALS FOR THE EWT EQUIPMENT ARE PROVIDED BY EWT (BIOXIDE, PRI-SC) AND ARE PROPRIETARY TO EWT. ADDITIONALLY, THE VAPOR LINK & LINK2SITE TECHNOLOGY NEEDED FOR THE EQUIPMENT IS PROPRIETARY TO EWT. EWT IS THE SOLE PROVIDER OF THESE CHEMICALS AND TECHNOLOGY. BECAUSE THE WATER AUTHORITY ALREADY HAS THE EXISTING EWT EQUIPMENT IT IS NECESSARY TO UTILIZE EWT TO MATCH THIS EQUIPMENT.

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REF. Section 7(A)(21) Purchases of Tangible Personal Property, and ancillary Services such as installation, training, modification or maintenance, where required to match equipment currently in use and where standardization is in the best interest of the Water Authority and where a unique or novel application (available from only a single provider) is required to be used, with all such purchases justified in writing and approved by the Chief Procurement Officer [Section 2-361(a)(26)];

IN ACCORDANCE WITH THE PRICING TERMS OF EWT
HOLDINGS III CORP. QUOTE DATED 12/21/2022,
AND PURSUANT TO ABCWUA TERMS & CONDITIONS.

FOB destination. Freight is to be prepaid and added to the invoice.

Authorization to Proceed: Purchasing Officer signature on this Purchase Order indicates authorization to proceed pursuant to the Rules Governing Procurement for the Albuquerque/Bernalillo County Water Utility Authority.

This purchase order shall be for the term specified above and may be extended at the discretion of the Water Authority to the extent allowed by the Procurement Ordinance, the Rules or other applicable authority.

Jonathan Daniels
Purchasing Officer

Buyer Name	Reference #	CCN:	Ship Via	Effective Date	Expiration Date
JOSE GARCIA	OEP2023-062		Common	01/12/2023	01/11/2024

Albuquerque Bernalillo County Water Utility Authority (Water Authority)

TERMS AND CONDITIONS

IMPORTANT: READ CAREFULLY BEFORE PROVIDING GOODS, SERVICES OR CONSTRUCTION. FAILURE TO DO SO WILL NOT RELIEVE VENDOR OF RESPONSIBILITY TO PERFORM OR DELIVER IN ACCORDANCE WITH ALL APPLICABLE PROVISIONS.

1. General: This purchase order is authorization to provide the goods, services or construction described on its face in accordance with the Terms and Conditions set out below and any attached offer submitted by Vendor and accepted by the Water Authority. These constitute the terms of the contract between the parties. If this purchase order results from a formal solicitation or separate contract, all or part of those documents are also made a part of the contract as specified in those documents referenced in this purchase order and will control over any conflicting provisions in these Terms and Conditions. Unless otherwise provided, this is an indefinite quantity contract; it is not exclusive to Vendor; the Water Authority may make similar purchases from other vendors as needed; and the Water Authority is not obligated to make any amount of purchases under the contract.

2. Packing, Shipping and Invoicing: Department name AND purchase order number MUST be on all invoices, packages, packing slips, bills of lading, etc. The Department's count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing slip. Vendor will bear all risk of loss or damage until delivery to the Water Authority. Shipment is F.O.B. Destination unless purchase order states otherwise.

3. Delivery and Inspection: Delivery will be strictly in accordance with the Water Authority's delivery schedule and instructions. Final inspection and acceptance will not be deemed to be a waiver by the Water Authority of its right to (a) cancel, reject or return, at Vendor's risk and expense, all or any portion of the goods, services or construction, or (b) make a claim for damages. Payment prior to inspection does not constitute acceptance.

4. Payment Terms/Discounts: Payment terms are net thirty (30) days unless otherwise specified in the contract. Discounts, if offered, will be computed from the date of actual delivery or receipt of invoice, whichever is later.

5. Taxes: All applicable gross receipts taxes are assumed to be included unless otherwise specified. The Water Authority will furnish, on request, a Non-Taxable Transaction Certificate. Determination of whether the tax is due and payment of the tax is the responsibility of the Vendor. Applicable taxes should be included in each invoice and may not be billed more than sixty (60) days after providing the goods, services or construction to which the taxes apply.

6. Commercial Warranty: Vendor agrees that it will provide the Water Authority with the most favorable commercial warranties which Vendor gives to any customer for the goods, services, or construction and that the rights and remedies provided herein will extend to the Water Authority and are in addition to and do not limit any rights afforded to the Water Authority by law or under this contract. Vendor agrees not to disclaim warranties of fitness for a particular purpose or merchantability. All of Vendor's representations and warranties, both express and implied, constitute conditions of this contract. In the event that the goods, services or construction are found to be defective or fail within the warranty period, Vendor will, at its own expense, promptly remedy the defects.

7. New Material: All items provided under this contract will be NEW and of most current production, unless otherwise specified.

8. Indemnification: Vendor agrees to indemnify and hold harmless the Water Authority, its Board, officers, agents and employees against any and all damages, claims, expenses or other liability, including attorneys' fees, arising out of any (a) alleged or actual infringement or misappropriation of any copyright, patent, trademark, trade secret or other right based upon the goods, services or construction provided by Vendor pursuant to this contract; (b) negligence or willful misconduct of Vendor; (c) Vendor's failure to perform fully its obligations herein in a timely manner; or (d) breach of any of Vendor's representations and warranties herein.

9. Insurance: Vendor will maintain in effect during the term of the contract, insurance of the kinds, in the amounts and in the form specified by the Water Authority, including, but not limited to: Commercial General Liability Insurance, Business Automobile Liability Insurance, and Workers' Compensation Insurance. As proof that such insurance is in effect, Vendor will furnish certificate(s) of insurance in a form satisfactory to the Water Authority prior to providing goods, services or construction under the contract.

10. Right to Audit/Inspection of Plant: Vendor will maintain complete and accurate records of all financial transactions associated with this contract, including, but not limited to, invoices and other official documentation which sufficiently support all charges under this contract. Vendor will retain such records for six (6) years after final payment, or longer if required by law. Authorized representatives of the Water Authority may inspect and copy records pertaining to this contract at the Vendor's business office during normal business hours. Vendor will include this audit provision in any subcontracts that it may issue under this contract. The Water Authority may inspect, at any reasonable time, Vendor's plant or place of business related to the performance of this contract.

11. Default: The Water Authority will have the right to cancel all or any part of this contract without cost to the Water Authority if the Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor liable for any excess cost incurred by the Water Authority due to Vendor's default. Vendor will not be liable if failure to perform the contract arises out of causes beyond the control and without the fault or negligence of Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Water Authority determines that the supplies or services to be furnished by the subcontractor were obtainable from other sources. The rights and remedies of the Water Authority provided in this paragraph are not be exclusive and are in addition to and do not limit any rights afforded to the Water Authority by law or under this contract.

12. Termination: The Water Authority will also have the right to terminate the contract upon the occurrence of any one or more of the following events: (a) if sufficient appropriations are not made by the Water Authority Board. Such event will not be an event of default and the contract may be terminated at the end of the Water Authority's then current fiscal year upon written notice given by the Water Authority to Vendor; (b) without notice to Vendor, upon receipt of a notice of debarment of or ineligibility to receive funds by Vendor from any agency of the federal government or the State of New Mexico or a local public body of the State. (c) if Vendor is found to have engaged or is engaging in Unfair Business Practices as described in Section 2-376 of the Water Authority Procurement Ordinance; or (d) at any time for convenience by giving at least thirty (30) days' notice in writing to Vendor. In such event, Vendor will be paid under the terms of the contract for all goods, services or construction provided to and accepted by the Water Authority prior to the effective date of termination.

13. Assignment/Changes: Neither the contract, nor any interest therein, nor claim thereunder, may be assigned or transferred by Vendor, except as expressly authorized in writing by the Water Authority. No such assignment or transfer will relieve Vendor from the obligations and liabilities under this contract. The terms of the contract may not be changed without the prior written approval of the Water Authority.

14. Compliance With Laws: In performing the contract, Vendor will comply with all applicable laws, ordinances and codes of the federal, State and local governments, including, but not limited to the New Mexico Governmental Conduct Act, 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. In addition, Vendor certifies that (1) it has not, either directly or indirectly, entered into action in restraint of free competitive bidding; (2) it will comply with the Ethical Conduct provisions (§2-390) and Unfair Business Practices provisions (§2-376) of the Water Authority Procurement Ordinance; and (3) 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 contract. Vendor will obtain and maintain, and furnish to the Water Authority upon request, any and all permits, licenses, approvals, certificates and other documents required by the Water Authority, or otherwise required by applicable law.

15. Governing Law: This Contract is governed by the laws of the State of New Mexico without regard to principles of conflicts of law. Any and all actions or proceedings relating to the subject matter of this contract will be maintained by and subject to the jurisdiction of State and federal courts located in Bernalillo County, New Mexico, which courts will have exclusive jurisdiction for such purposes.

IMPORTANT NOTICE: Before accepting a purchase order, always check for authenticity and require identification. The Water Authority will not be liable for purchases made by unauthorized individuals. (Rev. 07/01/2018)

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