



# Contract Documents for UV Disinfection System Equipment

Solicitation #2019-4

## City of Pflugerville Central Wastewater Treatment Plant Expansion

### List of Documents

1. Notice of Award
2. 00 52 23 Agreement
3. 00 01 10 Table of Contents
4. 00 01 15 List of Drawings
5. Exhibit A 00 42 26 Price Proposal
6. Exhibit B
  - a. 00 45 23 Proposal Form
  - b. 00 45 01 Compliance to State Law on Nonresident Bidders
  - c. 00 45 02 Compliance to State Sales Tax Code
  - d. 00 45 03 Conflict of Interest Questionnaire
  - e. 00 45 04 Non-Collusion Affidavit
  - f. 00 45 17 Technical Requirements and Attachments 1 through 10 to 00 45 17
  - g. 00 61 13 Performance Bond
  - h. 00 61 16 Payment Bond
7. 00 72 00 General Conditions
8. 00 72 01 Insurance Requirements
9. 00 73 00 Supplementary Conditions
10. Bid Bond
11. Exhibit C – Technical Specifications
12. Exhibit D – Drawings



ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

Contractor: \_\_\_\_\_  
*(typed or printed name of organization)*

Signature: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Date: \_\_\_\_\_  
*(typed or printed)*

**00 52 23      AGREEMENT**

This Agreement is between **the City of Pflugerville, Texas** (Buyer) and Xylem Water Solutions, USA, Inc.(Seller). Buyer and Seller agree as follows:

**ARTICLE 1 – GOODS AND SPECIAL SERVICES**

- 1.01 Seller must provide all Goods and Special Services in accordance with the Procurement Contract Documents. The Goods and Special Services are generally described as follows:  
Central Wastewater Treatment Plant Expansion UV Disinfection System Equipment Phase 1.

**ARTICLE 2 – THE PROJECT**

- 2.01 The Project for which the Goods and Special Services under the Procurement Contract Documents may be the whole or only a part is generally described as Central Wastewater Treatment Plant Expansion, Phase I.

**ARTICLE 3 – DESIGN PROFESSIONAL AND PROJECT CONSTRUCTION MANAGER**

- 3.01 The Design Professional (“Engineer”) for this Procurement Contract is:  
**Freese and Nichols, Inc.**  
**10431 Morado Circle, Suite 300**  
**Austin, TX 78759**
- 3.02 The Project Construction Manager (“Contractor” or “PCM”) for this Procurement Contract is:  
**[Name of Contractor]**  
**[Office Address]**  
**[City, State, Zip Code]**

**ARTICLE 4 – POINT OF DESTINATION**

- 4.01 The Goods are to be delivered to the Point of Destination identified in the Procurement Contract Documents.

**ARTICLE 5 – SPECIAL TERMS AND CONDITIONS FOR EQUIPMENT PURCHASE**

- 5.01 The project will require the purchase of specialized equipment, based on the final engineering design for the Wastewater Treatment Plant Expansion. Due to the highly specialized nature of the required equipment, the Buyer and Seller hereby agree to the following special terms and conditions:
  - A. Assignment of Agreement to construction contractor: Concurrently with the execution of the Construction Agreement between Buyer and construction contractor all rights, interests and responsibilities (“contractual obligations”) belonging to the Buyer shall be assigned to the Contractor
  - B. Equipment Purchase Order Date: The Contractor Equipment Purchase Order Date is September 30, 2019. The construction contractor shall place the Equipment Purchase Order on or before the Equipment Purchase Order Date. Should the construction

contractor fail to purchase the required equipment within the allotted timeframe, then construction contractor shall be responsible for any additional costs and expenses incurred.

- C. Key Personnel. The personnel named below will be defined as Key Personnel and will be dedicated to the project and shall only be substituted with the Buyer's prior approval.
  - 1. Key Personnel:
    - a. Andrew J. Thomas- Project Manager
    - b. Caleb Brown - Representative for Installation Checks and Start-up and Training
    - c. Key Personnel shall not be replaced without the prior written approval of the Buyer. Any Key Personnel replacement proposed by the Seller shall be an individual as qualified and experienced or better qualified and experienced than the Key Personnel individual replaced. Seller shall provide evidence to demonstrate qualifications and experience.
  - D. Bonds: At the time this Agreement is executed Seller shall provide a bid bond for 5% of contract value to Buyer to be held as security until the 100% payment and performance Bonds are delivered to Phase 1 Contractor. The bid bond shall be effective from the date this Agreement is executed until 100% payment and performance bonds are provided by Seller to Phase 1 Contractor.

## ARTICLE 6 – PROCUREMENT CONTRACT TIMES

### 6.01 Procurement Contract Times

- A. Shop Drawings required by the Procurement Contract Documents will be submitted to Buyer for Design Professional's review and approval within 30 days after the date when the Procurement Contract Times commence to run as provided in the General Conditions.
- B. Date for delivery of templates, baseplates, anchor bolts or other materials required for construction prior to the delivery of other Goods per Paragraph 5.01.C must be determined within 30 days after approval of Shop Drawings.
- C. The Goods are required to be delivered complete and ready for assembly and installation within **[specify duration; to be decided during negotiations with Contractor]** calendar days after the date when the Procurement Contract Times commence to run as provided in the General Conditions.
- D. Date for Furnishing Special Services: The furnishing of Special Services to Buyer will commence within 30 days after Buyer's written notice to Seller following Buyer's receipt of delivery of the Goods and must be completed within 14 days thereafter. This may require multiple visits depending on the Seller's delivery schedule.

### 6.02 Time is of the Essence

- A. All time limits for Milestones, if any, the delivery of Goods and the furnishing of Special Services as stated in the Procurement Contract Documents are of the essence of the Procurement Contract.

### 6.03 Liquidated Damages

- A. Buyer and Seller recognize that times specified for Milestones and deliveries of Goods for installation as stated in the Procurement Contract Documents are of the essence of the

Procurement Contract. Buyer and Seller recognize that the Buyer will suffer financial loss if the Goods are not delivered ready for installation within the times specified in Paragraph 6.01 and as adjusted in accordance with the General Conditions. Buyer and Seller also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Buyer if complete acceptable Goods are not delivered on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty):

1. Seller will pay Buyer One thousand dollars (\$1,000) for each day that expires after the time specified in Paragraph 6.01 for delivery of Goods suitable for installation until the Goods are delivered and ready to install. Maximum liquidated damages will not exceed fifty percent (50%) the value of the Procurement Contract.
2. The Buyer will determine whether the Goods have been delivered ready for installation within the Procurement Contract Times. Assessment of liquidated damages by the Buyer does not waive the Buyer's right to assess or collect additional damages which Buyer may sustain by the failure of the Seller to perform in accordance with the terms of the Procurement Contract.

#### **ARTICLE 7 – PROCUREMENT CONTRACT PRICE**

- 7.01 Buyer will pay Seller for completion of the Goods and Special Services in accordance with the Procurement Contract Documents at the amounts shown in the attached in Section 00 42 26 Price "Proposal." attached as Exhibit A Price Proposal.

#### **ARTICLE 8 – PAYMENT PROCEDURES**

- 8.01 Submittal and Processing of Payments: Submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by the Contractor as provided in the General Conditions.
- 8.02 The Buyer will make progress payments related to this Procurement Contract for Goods and Special Services.

- A. Payment is based on achieving Procurement Contract Milestones described below and the Schedule of Values for these Milestones. Seller will provide a schedule showing when each Application for Payment will be delivered to the Contractor for review and approval in accordance with the Procurement Contract Documents, and the anticipated amount of the Application for Payment in accordance with Section 2.08 of 00 72 00 General Conditions.

**[Specify milestones and % of Contract Price; to be negotiated with Contractor]**

| Milestone | % of contract price |
|-----------|---------------------|
|           |                     |
|           |                     |
|           |                     |
|           |                     |

- B. Payment will be made for the amount determined per Paragraph 8.02.A, less the total of payments previously made, and less set-offs determined in accordance with the General Conditions.

**ARTICLE 9 – SELLER’S REPRESENTATIONS**

9.01 The Seller makes the following representations:

- A. The Seller has examined and carefully studied the Procurement Contract Documents and the other related data identified in the Proposal Documents.
- B. The Seller has visited the Point of Destination and the Site and is familiar with and is satisfied as to the general, local, and Site conditions that may impact the cost, process, or furnishing of the Goods and Special Services.
- C. The Seller is familiar with Laws and Regulations that may impact providing Goods and Special Services.
- D. The Seller has considered the:
  - 1. Information known to Seller;
  - 2. Information commonly known to sellers doing business in the locality of the Site;
  - 3. Information and observations obtained from visits to the Site; and
  - 4. The Procurement Contract Documents.
- E. The Seller has considered the items identified in Paragraphs A through D above with respect to the effect of such information, observations, and documents on:
  - 1. The cost, and schedule for providing Goods and Special Services;
  - 2. The means, methods, techniques, sequences, and procedures to be employed by Seller; and

3. Seller's safety programs.

- F. Based on the information and observations referred to in the preceding paragraphs, Seller agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for providing the Goods and Special Services at the Procurement Contract Price, within the Procurement Contract Times, and in accordance with the other terms and conditions of the Procurement Contract Documents.
- G. The Seller has correlated the information known to the Seller, information and observations obtained from visits to the Site, reports and drawings identified in the Procurement Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Procurement Contract Documents.
- H. The Seller has given the Contractor written notice of all conflicts, errors, ambiguities, or discrepancies that the Seller has discovered in the Procurement Contract Documents, and the written resolution provided by the Contractor is acceptable to the Seller.
- I. The Procurement Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for providing the Goods and Special Services.
- J. Seller's entry into this Procurement Contract constitutes an incontrovertible representation by Seller that without exception the Procurement Contract Price in the Agreement is based upon providing the Goods and Special Services required by the Procurement Contract Documents.
- K. Seller represents and acknowledges that Seller has fully read and understands the terms and conditions for eligibility to contract with the Buyer pursuant to Chapter 38 of the City of Pflugerville's Code of Ordinances, all of which are incorporated herein by reference for all purposes, and hereby certifies that Buyer is currently in compliance with these local requirements and shall remain in compliance with the same throughout the duration of this Agreement. Seller further acknowledges that failure to remain in compliance is a material breach of this Agreement.
- L. Seller represents and acknowledges that the Seller does not boycott Israel and will not boycott Israel during the term of this Agreement.

**ARTICLE 10 – PROCUREMENT CONTRACT DOCUMENTS**

10.01 Contents:

- A. The Procurement Contract Documents consist of the following:
  - 1. Specifications, forms, and documents listed in Section 00 01 10 "Table of Contents" except as specifically excluded in Paragraph **10.02**.
  - 2. Drawings listed in **Section 00 01 15 "List of Drawings."**
  - 3. Addenda (Numbers 00 91 01 to 00 91 **03**, inclusive).
    - a. Addendum No. 1 issued November 1, 2018
    - b. Addendum No. 2 issued November 20, 2018
    - c. Addendum No. 3 issued November 20, 2018



4. Documentation required by the Procurement Contract Documents and submitted by Seller prior to Notice of Award and including Price Proposal; Bid Bond; 00 42 23 Proposal Form; 00 45 01 Compliance to State Law on Nonresident Bidders; 00 45 02 Compliance to State Sales Tax Code; 00 45 03 Conflict of Interest Questionnaire; 00 45 04 Non-Collusion Affidavit; 00 45 17 Technical Requirements and Attachments 1 through 10 to 00 45 17; 00 61 13 Performance Bond and 00 61 16 Payment Bond all included as Exhibit B.
- B. F. The following are also Procurement Contract Documents which may be delivered or issued on or after the Effective Date of the Procurement Contract:
1. Notice to Proceed.
  2. Contract Amendment(s).
  3. Change Order(s).
  4. Field Order(s).
  5. Change Directive(s).
- C. There are no Procurement Contract Documents other than those listed above in this Paragraph. The Procurement Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

10.02 Proposal Requirements:

- A. The following Proposal Requirements are not Procurement Contract Documents:

| Section  | Title                    |
|----------|--------------------------|
| 00 11 19 | Request for Proposals    |
| 00 21 16 | Instructions to Offerors |
|          |                          |
|          |                          |
|          |                          |
|          |                          |
|          |                          |
|          |                          |
|          |                          |
| 00 45 16 | Qualifications Statement |
|          |                          |

**ARTICLE 11 – WAIVER OF CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY**

11.01 Buyer, Seller and Contractor waive against each other, and against the other’s officers, directors, members, partners, and employees any and all claims for or entitlement to special, incidental, indirect, punitive, or consequential damages, loss of use, loss of profits and revenue, and loss of reputation

arising out of, resulting from, or related to the Contract. Further, with the exception of (i) damages awarded respective to Seller's indemnity obligations under provisions 5.03, 5.04, 5.06, 5.07, 5.11, 5.12, 7.08 and 13.02 or (ii) other claims covered by Seller's insurance to the limits defined in 00 72 01 Item 1.01, the parties agree that the total liability of each party to the other for claims, costs, losses and damages arising from this Contract shall be limited to the amount established in the Agreement as the Contract Price. The foregoing cap on liability does not apply to or limit any claim by either party against the other based on the following: (a) costs, losses, or damages asserted by third parties for destruction of tangible property, bodily injury, sickness, disease, or death or (b) gross negligence or willful misconduct.

The Effective Date of the Procurement Contract is \_\_\_\_\_ .

Buyer: \_\_\_\_\_  
*(typed or printed)*

Seller: \_\_\_\_\_  
*(typed or printed)*

By: \_\_\_\_\_  
*(individual's signature)*

By: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

*(Attach evidence of authority to sign.)*

Address for giving notice:

Address for giving notice:

City of Pflugerville, Texas  
100 E Main Street, Suite 100  
Pflugerville, TX 78691-0589

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated representative:

Designated representative:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

**END OF SECTION**

**00 01 10      TABLE OF CONTENTS**

| Section            | Title   |
|--------------------|---|
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| 00 01 15           | List of Drawings  |
| 00 42 23           | Proposal Form   |
| 00 42 26           | Price Proposal  |
| 00 43 13           | Bid Bond  |
| 00 45 01           | Compliance to State Law on Nonresident Bidders            |
| 00 45 02           | Compliance to State Sales Tax Code                        |
| 00 45 03           | Conflict of Interest Questionnaire                        |
| 00 45 04           | Non-Collusion Certification                               |
| 00 45 05           | Prohibition on Contracts with Companies Boycotting Israel |
| 00 45 16           | Technical Proposal  |
| 00 45 17           | Technical Requirements                                    |
| 00 52 23           | Agreement   |
| 00 61 13           | Performance Bond  |
| 00 61 16           | Payment Bond  |
| 00 72 00           | General Conditions  |
| 00 72 01           | Insurance Requirements                                    |
| 00 73 00           | Supplementary Conditions                                  |
|                    |   |
| <b>Division 01</b> | <b>General Requirements</b>                               |
| 01 11 00           | Summary of Work   |
| 01 29 00           | Application for Payment Procedures                        |
| 01 31 00           | Project Management and Coordination                       |
| 01 31 13           | Project Coordination                                      |
| 01 31 14           | Change Management   |
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|--------------------|--|
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| 01 79 00           | Training of Operation and Maintenance Personnel          |
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| 26 05 19           | Wires and Cables (1000 Volts and Above)                  |
| 26 05 33           | Raceway, Boxes and Fittings                              |
| 26 22 13           | Distribution Dry-type Transformers                       |
| 26 29 86           | Mechanical Manufacturer's Provided Control Panels (MEMs) |
| 26 43 13           | Low Voltage AC Surge Protection Devices (SPDs)           |
|                    |  |
| <b>Division 46</b> | <b>Process Equipment</b>                                 |
| 46 66 56           | UV Disinfection System                                   |

**END OF SECTION**

**00 01 15 LIST OF DRAWINGS**

| Sheet No. | Sheet Title |
|-----------|-------------|
| 01        | Site Plan   |

**END OF SECTION**

# EXHIBIT A

**EXHIBIT A**  
**PRICE PROPOSAL**

**ARTICLE 1: PRICE PROPOSAL FOR UV DISINFECTION SYSTEM EQUIPMENT FOR THE CITY OF PFLUGERVILLE WASTEWATER TREATMENT FACILITY EXPANSION AND UPGRADE PROJECT.**

- 1.01 To: City of Pflugerville  
100 East Main Street, Suite 100  
Pflugerville, TX 78660
- 1.02 The undersigned Offeror proposes to furnish all equipment as described 46 66 56 UV Disinfection System
- 1.03 The undersigned declares that it is the Offeror or by holding the position below indicated is authorized to execute this Price Proposal on behalf of the Offeror and that all representations made on this Price Proposal are true and correct
- 1.04 The undersigned acknowledges that the Price Proposal is based on the requirements of the RFP and as amended by any Addenda during the procurement period and accepts the terms and conditions contained in this Price Proposal.

**ARTICLE 2: EQUIPMENT PRICES**

- 2.01 Offeror will provide the equipment described 46 66 56 UV Disinfection System
- 2.02 Price
- A. Phase 1: The Lump Sum amount of Six hundred ninety-nine thousand five hundred (in words).  
\$ 699,500 (numerical).

This lump sum amount will be valid for a time period up to and including **September 30, 2019** which is the anticipated date for purchase order by Phase 1 Contractor.

**ARTICLE 3: ASSIGNMENT OF AGREEMENT TO CONSTRUCTION CONTRACTOR**

- 3.01 The Agreement that will be executed between the Owner and Equipment Supplier will be assigned to the Contractor. The assignment will occur concurrently with the execution of the construction agreement by the Owner with the Contractor.
- 3.02 Contractor shall both have the Equipment Purchase Order Date in the assignment which will require that the Equipment Purchase Order be placed on or before the Equipment Purchase Order Date. If the Contractor fails to meet this requirement, the Contractor shall be responsible for any additional costs and expenses.

**ARTICLE 4: ACKNOWLEDGEMENT**



**OFFEROR AND EQUIPMENT SUPPLIER NAME: Xylem Water Solutions, USA, Inc.**

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Name of Individual

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Title

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Signature

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Date