



Contract Documents for Circular Clarifier Sludge Collector Equipment – Phase 2

Solicitation #2019-3

City of Pflugerville Central Wastewater Treatment Plant Expansion

List of Documents

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 - 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
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CITY OF PFLUGERVILLE NOTICE OF AWARD

To: WesTech Engineering, Inc.
3665 S. West Temple
Salt Lake City, UT 84115

Project Description: Circular Clarifier Sludge
Collector Equipment for Central Wastewater
Treatment Plant Expansion - Phase 2

The OWNER has considered the COMPETITIVE SEALED PROPOSAL submitted by you for the described WORK in response to its Request for Proposals dated October 31, 2018.

You are hereby notified that your PROPOSAL has been accepted for items in the amount of \$ 439,135.00 (Four hundred thirty-nine thousand, one hundred thirty-five dollars).

You are required by the Instructions to Offerors to execute the Agreement and furnish the required Certificates of Insurance within fifteen (15) calendar days from the date of this notice to you.

If you fail to execute said Agreement within fifteen (15) calendar days from the date of this Notice, said OWNER will be entitled to consider all OWNER'S rights arising out of the OWNER'S acceptance of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

Note, that you are also required to complete and submit a Certificate of Interested Parties (Form 1295) to the OWNER as required by Texas Government Code Chapter 2252 and the Contract with the formal Contract Agreement.

Finally, you are required to return, as acknowledged, a copy of the NOTICE OF AWARD to the OWNER.

Dated this _____ day of _____, 2019.

Owner: City of Pflugerville

Signature: _____
(individual's signature)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

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 FOR PHASE 2

This Agreement is between **the City of Pflugerville, Texas** (Buyer) and **Wes Tech Engineering, 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 Circular Clarifier Sludge Collectors Phase 2.

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 2. The anticipated date that the Phase 2 Contractor will be assigned this Agreement is on or about September 2021.

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. Due to the requirement that Phase 1 has to be completed before Phase 2 can be implemented, a price for Phase 2 equipment will need to be subject to the “Escalation Methodology”, described more thoroughly in Exhibit A Escalation Methodology and Formula for Phase 2 Price.
 - B. Assignment of Agreement to Phase 2 Contractor: Concurrently with the execution of the Phase 2 Construction Agreement between Buyer and Phase 2 Contractor all rights, interests

and responsibilities (“contractual obligations”) belonging to the Buyer shall be assigned to the Phase 2 Contractor

- C. Equipment Purchase Order Date: The Phase 2 Contractor Equipment Purchase Order Date is October 26, 2021 . The Phase 2 construction contractor shall place the Equipment Purchase Order on or before the Equipment Purchase Order Date. Should the Phase 2 construction contractor fail to purchase the required equipment within the allotted timeframe, then the Phase 2 construction contractor shall be responsible for any additional costs and expenses incurred.
- D. Termination for Convenience: The Buyer has the right to, in its sole discretion, to terminate for convenience the Phase 2 equipment purchase at any time prior to the assignment of the Agreement to the Phase 2 Contractor by providing written notice. If Buyer exercises its right to terminate for convenience such termination will be without any penalty or cost whatsoever.
- E. 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. Antoniou I. Musca, Project Manager
 - b. Mark Raines, 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.
- F. Bonds: At time of this Agreement assignment, Seller shall provide a bid bond for 5% of contract value to Phase 2 Contractor to be held as security until the Phase 2 Equipment Purchase Agreement is executed at which time 100% payment and performance bonds will be provided by Seller to Phase 2 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 6.01.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 Seven hundred and fifty dollars (\$750) 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 twenty percent (20%) the value of the Procurement Contract. Seller shall not be liable to pay liquidated damages for Buyer caused delays in accordance with the Agreement and shall only be liable for its proportionate share of responsibility for any delays. Such remedies shall also not be enforced unless Buyer suffers an economic loss as a result of Seller's late delivery, however, Buyer's written statement of loss shall be sufficient evidence to support a Liquidated Damages claim, unless Seller is in possession of contradictory evidence that conclusively proves otherwise.
 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 PCM 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 PCM 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.

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 PCM 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 PCM 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.
 - A. 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 **[04]**, inclusive).
 - a. Addendum No. 1 issued November 9, 2018
 - b. Addendum No. 2 issued November 14, 2018

- c. Addendum No. 3 issued November 19, 2018
- d. Addendum No. 4 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; 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 in 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

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

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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
Division 01	General Requirements
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
01 33 00	Document Management
01 33 02	Shop Drawings
01 33 04	Operation and Maintenance Data
01 64 10	Contractor Installed Goods and Special Services

Section	Title
01 70 00	Execution and Closeout Requirements
01 75 00	Starting and Adjusting
01 78 36	Warranties and Service Agreements
01 79 00	Training of Operation and Maintenance Personnel
Division 26	Electrical
26 05 50	NEMA Frame Induction Motors, 600 Volts and Below
Division 46	Process Equipment
46 43 21.01	Circular Clarifier Sludge Collectors (Phase 2 Retrofit)

END OF SECTION

00 01 15 LIST OF DRAWINGS

Sheet No.	Sheet Title
01	Site Plan
02	Existing Clarifier Plan
03	Existing Clarifier Section

END OF SECTION

EXHIBIT A

EXHIBIT A

PRICE PROPOSAL-PHASE 2

ARTICLE 1: PRICE PROPOSAL FOR PHASE 2 CIRCULAR CLARIFIER SLUDGE COLLECTORS 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 43 21 Circular Clarifier Sludge Collector.
- 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 PRICE

- 2.01 Offeror will provide the equipment described 46 43 21 Circular Clarifier Sludge Collector.
- 2.02 Phase 2 Price
- A. Phase 2: The Lump Sum amount of Four hundred and thirty-nine thousand one hundred and thirty-five (in words).
- \$ 439,135 (numerical).
1. ("Base Price" Phase 2 Equipment). This amount shall be used in the Price Adjustment Methodology described in Article 3 below

ARTICLE 3: PRICE ADJUSTMENT METHODOLOGY

- 3.01 On the date that the Phase 2 equipment purchase order ("Equipment Purchase Order Date") is received by the Equipment Supplier, the Owner will pay the lesser of: (1) the amount calculated using the Price Adjustment Methodology described below or (2) the more recent of (a) sale price of similar equipment made within 90 days of the Equipment Purchase Order Date in a competitive environment or (b) pending offer made in a competitive environment. The information related to (2) (a) or (b) will be provided by Seller to Buyer in a certified letter which will include the price and other evidence and information as appropriate as to meeting the requirements of this Section. To avoid any doubt, Owner will pay the lesser amount of (1), (2)(a) or (2)(b).

3.02 Price Adjustment Methodology

- A. The price adjustment methodology will be based on the following indices from the U. S. Department of Labor, Bureau of Labor Statistics (BLS)- Producer Price Index (PPI), and Consumer Price Index (CCI):
 - 1. Stainless Steel (“SS”) = Commodity Data PPI: 10250466 – Nickel, Nickel base alloy mill shapes
 - 2. Other Material (“OM”) = Industry Data PPI: 3339 – General Purpose Machinery Manufacturing
 - 3. Motors (“M”) = Industry Data PPI: 335312 – Motor and Generator Manufacturing
 - 4. Other Services (“OS”) = Consumer Price Index: All Urban Consumers, Urban, Professional Services, South
- B. The Supplier’s equipment price will be allocated to no more than 4 PPI/CPIs to characterize the best representation of the separate components that comprise the goods and services. By way of example the table below will describe this concept:

ARTICLE 4: EQUIPMENT SUPPLIER PRICE COMPONENTS	% of Total Cost	Indices
Stainless Steel (“SS”)	80%	PPI Index- SS
Other Materials (“OM”)	5%	PPI Index -OM
Motors (“M”)	10%	PPI Index- M
Other Services (“OS”)	5%	PPI- OS
Total Cost (“Base Price”)	100%	

Formula to be used to adjust Base Price to the Adjusted Price at a Future Date

$$\text{Adjusted Price} = (\text{Base Price} \times .80) (\text{PPI-SS on Purchase Order Date/PPI-SS Base Price Date}) + (\text{Base Price} \times .05) (\text{PPI-OM Purchase Order Date/PPI-OM Base Price Date}) + (\text{Base Price} \times .10) (\text{PPI-M Purchase Order Date/PPI-M Base Price Date}) + (\text{Base Price} \times .05) (\text{PPI-OS Purchase Order Date/PPI-OS Base Price Date})$$

4.01 Assignment of Agreement to Construction Contractor

- A. The Agreement that will be executed between the Owner and Equipment Supplier will be assigned to the Phase 2 Contractor. The assignment will occur currently with the execution of the construction agreement by the Owner with the Phase 2 Contractor.
- B. Phase 2 Contractor shall have Equipment Purchase Order Date in the respective assignment which will require that the Equipment Purchase Order be placed on or before the Equipment Purchase Order Date. If the Phase 2 Contractor fails to meet this requirement, the Phase 2 Contractor shall be responsible for any additional costs and expenses.

ARTICLE 5: ACKNOWLEDGEMENT

OFFEROR AND EQUIPMENT SUPPLIER NAME: Wes Tech Engineering, Inc.

Name of Individual

Title

Signature

Date