

<p>Allen Park Belleville Brownstown Twp. Dearborn Heights Ecorse Lincoln Park</p>	<p style="text-align: center;">Downriver Utility Wastewater Authority</p> <p style="text-align: center;">25605 Northline Road • Taylor, Michigan 48180</p>	<p>River Rouge Riverview Romulus Southgate Taylor Van Buren Twp. Wyandotte</p>
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SOLICITATION: BIOSOLIDS DRYERS MANUFACTURER SERVICES via PROGRESS DESIGN-BUILD PROJECT DELIVERY

ADDENDUM NO. 1, DATED NOVEMBER 5, 2019

This addendum is hereby made part of the Request for Proposal for the above-named solicitation and shall be taken into consideration by all firms preparing a submittal on this solicitation. Acknowledgement of this addendum must be notated on the solicitation.

CHANGES TO THE SOLICITATION (This section replaces in kind)

Item No. 1: In Section 1.07 ACCEPTANCE TESTING AND PERFORMANCE, the project understanding is updated as follows:

- The Acceptance Test will be done for the ‘worst case’ season (glycol or summer). The Performance Test shall be done for the opposite season. The Technology Supplier shall specify, in their proposal response, the season for Acceptance Testing and provide data-driven reasoning for their recommendation.
- The Technology Supplier shall provide appropriate, full-time on-site representation during both the Acceptance and Performance Testing periods.

Item No. 2: In Section 3.7 SCHEDULES, the procurement and project timeline provided in the RFP are **tentative**. The final project timeline shall be as agreed upon by the awarded Design-Build entity, Technology Supplier, and DUWA. The Technology Supplier shall provide reference to their equipment submittal(s) and lead-time requirements within their proposal response.

Item No. 3: In Section 3.7 and 4.3.f., DUWA will conduct site visits/tours after the proposal due date, but before award of contract. DUWA will complete tours at their own discretion and may not visit each Offeror’s installation.

Item No. 4: In Section 4.1 and 4.3.h, DUWA will conduct interviews at their own discretion. Not all Offerors may be invited to interview.

Item No 5: In Section 5.2.6, the indicative pricing shall be valid for one hundred and twenty (120) days from the Proposal Submission date.

Item No. 6: Attachment D shall be removed and replaced in its entirety. The Technology Supplier’s equipment will be Owner-procured directly by DUWA from the Technology Supplier. See attached for the minimum required General Conditions between Technology Supplier and DUWA. The original RFP’s Attachment D: *Minimum Required General Conditions Between Dryer Manufacturer and Design-Build Entity* is no longer applicable.

Item No. 7: The Technology Supplier is advised that an Addendum No. 1 has also been released for the *Progressive Design/Build Services for a Thermal Biosolids Drying System at the Downriver Wastewater Treatment Facility* RFP. Please note, the terms ‘Dryer Manufacturer’, ‘Technology Supplier’, and ‘Equipment Supplier’ are considered synonymous across the two RFPs.

SAMPLE TERMS AND CONDITIONS

1. DEFINITIONS.

a. "Contract" means these Terms and Conditions and attached Exhibits, together with any Order, and the Progressive Design Build Agreement ("PDB Agreement") between the Downriver Utility Wastewater Authority ("DUWA") and Buyer (attached as Exhibit A), and the Contract Documents incorporated in it. Supplier assumes toward Buyer all obligations and responsibilities that Buyer assumes toward DUWA; Buyer has the benefit of all rights and remedies against Supplier that DUWA has against Buyer.

b. "Contract Documents" means that term as defined in the PDB Agreement, the Request for Proposal ("RFP") for Biosolids Dryer Manufacturer Services, and Supplier's response to the RFP.

c. "Goods and Services" means the equipment, materials and services described in an Order and purchased by DUWA under this Contract.

d. "Order" means any written purchase order, release, contract, or agreement that attaches, incorporates or references these Terms.

e. "Project" means the design and installation of a thermal biosolids drying system as set forth in the Progressive Design Build Agreement between DUW and ____, attached as Exhibit B.

f. "Terms" means these terms and conditions for the purchase of Goods and Services.

2. ACCEPTANCE. Supplier's acceptance of this Contract occurs when (a) Supplier confirms acceptance of the Contract in writing or (b) Supplier commences performance of the Work, provided that DUWA may, in its sole discretion, unilaterally cancel the Contract without cost or liability prior to receiving Supplier's written, unqualified, unconditional acceptance hereof. Supplier's acceptance of this Contract shall be unqualified, unconditional, and subject to and expressly limited to these Terms. DUWA shall not be bound by any terms additional to or at variance with these Terms that may appear in Supplier's quotation, acknowledgment, confirmation, invoice, product data sheet, or in any other document or in any communication from Supplier to DUWA, regardless of when and/or in what form those additional or varying terms are provided to or otherwise made available to DUWA. All previous offers are hereby rejected by DUWA. DUWA's acceptance of and/or payment for the Goods or Services shall constitute acceptance of such Goods or Services subject to the provisions hereof only, and shall not constitute acceptance of any counterproposal submitted by Supplier not otherwise accepted by DUWA in a signed writing. The Contract constitutes the entire agreement between DUWA and Supplier, and shall supersede all prior negotiations, discussions, and dealings. Supplier cannot modify the Contract except by a writing signed by both Supplier and DUWA.

3. PRICE/TAXES. All prices and terms are firm and fixed. This Contract does not contain an open price or quantity term and shall not be filled at prices or quantities higher than identified in the Order. No additional charges will be allowed for import duties, transportation, packaging, returnable containers, and/or documentation, unless the parties otherwise agreed in writing. Unless specifically stated otherwise in the Order, all sales, use, excise, or similar taxes are deemed included in the Contract price and shall be itemized on all invoices.

4. PAYMENT. The following are conditions precedent to DUWA's payment to Supplier for the Goods or Services: Supplier's timely and proper delivery of the Goods and performance of the Services; verification that the quality of Goods or Services conform to the Contract requirements and are not defective; DUWA's receipt of a correct invoice; and DUWA's receipt of payment from its customer for the Goods or Services. If an invoice includes provisions additional to or at variance with these Terms, those

provisions are hereby rejected by DUWA and of no effect, regardless of whether Supplier ships the Goods covered by the invoice, DUWA accepts the Goods covered by the invoice, and/or DUWA pays any part of the invoice. If an invoice subject to cash discount is not mailed on the date of shipment, the discount period will be calculated from the date DUWA receives the invoice; if an invoice is improperly executed with regard to the terms and conditions of the Order, the discount period shall not commence until DUWA receives a proper invoice.

5. DELIVERY. Time is of the essence. Deliveries shall be made at the time and in the manner DUWA specifies. If Supplier does not comply with DUWA's delivery schedule, DUWA, in addition to any other available remedy, may at its option approve a revised delivery schedule or terminate the Order. In either case, DUWA may hold Supplier accountable for all losses and damages arising from Supplier's failure to comply with DUWA's delivery schedule. Whenever any actual or potential delay may occur that threatens to delay delivery, Supplier shall immediately notify DUWA. Supplier shall endeavor at its cost to mitigate the effects of such delay, including expediting delivery.

6. CHANGES. DUWA may make changes regarding the specifications of any Goods to be manufactured for DUWA, the methods of shipment or packing, the place and/or schedule of delivery; and/or the size or amounts of the quantities ordered. If any such change increases or decreases the cost of or the time required for performance of an Order, an equitable adjustment will be made in the Contract price or delivery schedule, or both. Any claim by Supplier for adjustment is irrevocably and unconditionally waived and released unless asserted in writing within ten (10) calendar days from Supplier's receipt of DUWA's requested change.

7. TRANSPORTATION/PACKAGING. On all shipments, Supplier shall promptly notify DUWA of the shipping point and the initial carrier; and, if DUWA is to assume freight charges, routing must be secured before shipment. Irrespective of the shipping terms, until the Goods are physically delivered to DUWA at the Project (or other destination DUWA authorizes in writing) and accepted by DUWA, all risk of loss or damage to the Goods (irrespective of cause) shall be on Supplier. Supplier is liable for damages and costs incurred by DUWA resulting directly or indirectly from improper packaging. No charges will be allowed for packaging, boxing, crating, returnable containers, drayage, cartage, demurrage, or dunnage. Shipments sent C.O.D. without DUWA's prior written consent will not be accepted and will be at Supplier's sole risk.

8. INSPECTION AND REJECTION. All Goods and Services will be subject to inspection and rejection or acceptance by DUWA during manufacture, after delivery at final destination, and at such times as operating tests, if any, are required. DUWA may also reject any Goods and Services found to be defective, non conforming, or failing to meet any warranty. Upon rejection, DUWA may return such goods to Supplier, at Supplier's sole risk and expense, for rework and/or replacement, in which case Supplier agrees to ship conforming goods as DUWA directs. If DUWA determines, in its sole discretion, that Supplier is unable to rework or replace the Goods within the time DUWA requires, DUWA may rework or have another supplier rework the Goods; return the Goods to Supplier for full credit and obtain replacement goods from an alternate source, at Supplier's expense; or produce replacement goods, at Supplier's expense. Services found to be defective, nonconforming, or failing to meet any warranty shall be re performed at Supplier's expense. DUWA's rights under this Article are in addition to any other rights that it may have under this Contract or otherwise.

9. TERMINATION AND CANCELLATION. (A) Termination for Convenience: DUWA may terminate all or any part of this Contract or any Order at any time for any reason for its convenience by notifying Supplier in writing. Upon such a termination, DUWA's liability shall not exceed the actual and

reasonable costs of furnishing the Goods or Services to the date of termination. DUWA shall not be liable for loss of anticipated profit, unabsorbed overhead, interest on claims, unamortized depreciation, or general administrative burden charges, or similar items. Termination for Convenience is not a breach of contract and shall not limit or affect the right of DUWA to terminate this Contract or any Order for cause, or otherwise limit any other remedy of DUWA. (B) Termination for Cause: Without incurring any liability for damages to Supplier, DUWA may terminate this Contract or any Order, in whole or in part, including reducing the quantity of Goods to be delivered hereunder, if: (i) the Goods or Services do not conform to the specifications or requirements of DUWA or its customer; (ii) Supplier fails to meet DUWA's delivery schedule; (iii) Supplier is insolvent, a petition is filed for reorganization of Supplier or for its adjudication as a bankrupt, Supplier makes an assignment for the benefit of creditors, a receiver or trustee is appointed for any of Supplier's assets, or any other type of insolvency proceeding of Supplier is commenced; (iv) Supplier breaches this Contract or any Order, including without limitation the breach of any warranty, or takes or fails to take action that, in DUWA's sole discretion, creates a reasonable possibility that Supplier will not timely fulfill its obligations under this Contract or any Order and does not correct such breach, failure, or action within ten (10) days (or such shorter period of time as is commercially reasonable under the circumstances) after receipt of written notice from DUWA; (v) any representation by Supplier was materially false or misleading; (vi) there is an allegation that the Goods or Services infringes any patent, trademark, or copyright, or violates any statute, ordinance, or administrative order, rule, or regulation. Supplier shall be liable to DUWA for all costs and damages arising out of or relating to the termination and the events giving rise to it. If it is determined that a for cause termination was not warranted, the termination will be deemed one for convenience pursuant to the terms of this Article. (C) No Waiver: No termination is a waiver by DUWA of any other right or remedy it may have. DUWA's rights and remedies shall survive the termination or expiration of this Contract.

10. QUALITY ASSURANCE. Supplier will maintain a quality assurance system that is adequate to detect and prevent shipment of nonconforming Goods or Services. DUWA may evaluate the adequacy of Supplier's quality assurance system. Upon request, Supplier shall provide DUWA with appropriate quality assurance documentation, manuals, or certifications.

11. WARRANTIES. Supplier warrants to DUWA that the Goods and Services furnished shall be: (a) new, of good quality, and free from latent and patent defects in material, design, and workmanship; (b) merchantable and fit and sufficient for their intended purpose(s); (c) in strict accordance with the principal contract and the contract documents, including the plans and specifications, and with Supplier's samples, if any, previously approved by DUWA; and (d) free of any third party claim. DUWA's approval of Supplier's samples, prototypes, or first articles is not a waiver by DUWA of any express or implied warranties or requirements of the Contract or of any Order. If Supplier delivers defective or non conforming items or breaches a warranty, DUWA may, at its option and in addition to any other rights or remedies it may have, recover from Supplier any costs of repairing or removing such items from property, equipment, or products in which such items have been incorporated and any additional costs for reinstallation, re inspection, and re testing, and (a) return the items at Supplier's sole risk and expense and recover from Supplier the price paid therefore and, if elected by DUWA, purchase or manufacture similar items and recover from Supplier the costs and expenses thereof; (b) accept or retain the items and equitably reduce their price; or (c) require Supplier, at Supplier's sole expense, to promptly replace or correct the items. If Supplier fails to promptly replace or correct such items as DUWA directs, DUWA may repair them or have them repaired at Supplier's expense or purchase or manufacture similar items and recover from Supplier the costs and expenses thereof. In any case, DUWA may hold Supplier accountable for all losses and damages caused by Supplier's failure to comply with Supplier's warranty obligations. DUWA NONE OF THE REMEDIES AVAILABLE TO DUWA FOR THE BREACH OF ANY OF THE FOREGONG

WARRANTIES MAY BE LIMITED EXCEPT TO THE EXTENT AND IN THE MANNER AGREED UPON BY DUWA IN A SEPARATE WRITTEN AGREEMENT, SIGNED BY SUPPLIER AND DUWA, SPECIFICALLY AND CONSPICUOUSLY DESIGNATING SUCH LIMITATION. All provisions of this Article shall survive inspection or acceptance of, payment for, and use of the Goods and Services and completion, termination, or cancellation of this Contract.

12. PERFORMANCE AND WARRANTY BONDS. On or before the date of Contract acceptance, Supplier must provide financial security for the performance of its obligations under this Contract, including the warranty period, through a performance bond that guarantees the performance of the Goods and Services for the benefit of DUWA. Supplier must secure such bonds from a company holding Certificates of Authority as acceptable sureties on Federal Bonds and as Acceptable Reinsuring Companies as published in the Department of Treasury Circular 570.

13. INDEPENDENT CONTRACTOR. Supplier is an independent contractor. DUWA shall have no control over Supplier's means, methods, or techniques. Neither Supplier nor any of Supplier's employees, agents, or servants shall be entitled to receive any benefits to which DUWA's employees are entitled.

14. DRAWINGS AND DATA. All drawings, data, designs, engineering instructions, models, specifications, or other technical information, written, oral, or otherwise, supplied by or on behalf of DUWA or prepared by Supplier specifically in connection with performance of an Order ("DUWA Information") shall be and remain DUWA's property. DUWA Information shall not be furnished to others without DUWA's prior written consent.

15. INSURANCE. Supplier shall, at all times material hereto, maintain in full force and effect, and shall furnish DUWA with current certificates of coverage of Supplier for, workers' compensation insurance, commercial general liability insurance, motor vehicle insurance, and such other insurance sufficient for Supplier to meet and perform its indemnity and other obligations hereunder. Supplier shall maintain all such insurance coverage for the benefit of Supplier's own employees, shall name DUWA as an additional insured on all policies (excluding workers' compensation), and shall furnish DUWA with certificates of renewal coverage.

16. INDEMNITY. To the fullest extent permitted by applicable law, Supplier shall indemnify, defend, and hold harmless DUWA and its agents, directors, shareholders, officers, employees, affiliates, parents, subsidiaries, sureties, insurers, independent contractors, invitees, and customer(s) from and against any and all demands, claims, suits, actions, causes of action, liabilities, losses, damages, judgments, and expenses, including without limitation attorney fees, expert witness fees, and court and/or mediation and/or arbitration costs and fees, which, in whole or in part, arises out of, relates to, or is actually or allegedly caused by any of the following: (a) Supplier's breach of this Contract; (b) strict liability or negligence premised on an actual or alleged defect in the Goods and/or Services; (c) property damage, death, and/or personal injury that arises out of, relates to, or is actually or allegedly caused by an act or omission of any of the following: Supplier, Supplier's subcontractors, suppliers, manufacturers, materialmen, anyone directly or indirectly employed by any of them, and/or any person or entity for whose acts any of them may be liable (collectively, the "Supplier Parties"); (d) a claim of a violation of any OSHA, federal, state, or local standard, law, rule, order, or regulation which arises out of, relates to, or is actually or allegedly caused by an act or omission of any of the Supplier Parties; (e) the use of DUWA's personnel or equipment; (f) any Workers' Compensation claim or claim under similar laws, and any payment made by DUWA under any Workers' Compensation Act or similar law, based upon injuries, sickness, disease, death, or disability claimed by an employee of DUWA or of any of the Supplier Parties, which arises out of, relates to, or is

actually or allegedly caused by an act or omission of any of the Supplier Parties; (g) any claim that the manufacture, use, sale, or resale of any of the Goods or Services infringes any patent, copyright, trademark, trade name, brand or slogan, or constitutes unfair competition. Supplier's defense/indemnity/hold harmless obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party (including, for example, an employee of Supplier) under any Workers' Compensation Act, Disability Benefits Act, or other Employee Benefit Act. Supplier's obligations under this Article shall survive inspection or acceptance of, payment for, and use of the Goods and Services and completion, termination, or cancellation of this Contract.

17. NO WAIVER/RIGHTS CUMULATIVE. Any waiver or failure of DUWA to require strict compliance with the terms of the Contract must be in writing, signed by DUWA, and shall not be deemed a waiver of DUWA's right to insist upon strict compliance thereafter. DUWA's rights and remedies under the Contract are cumulative and are in addition to any other rights and remedies available at law, in equity, or otherwise.

18. ASSIGNMENT. Neither this Contract nor any of Supplier's rights and obligations are assignable by Supplier without DUWA's prior written consent.

19. CONFORMANCE AND COMPLIANCE WITH LAWS. Supplier certifies and represents that, in performing the Contract, it will be bound by, and at its own cost comply with, all applicable laws, orders, codes, rules, and regulations, including without limitation equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety, tax, and fair labor standards. Any law, order, code, rule, or regulation that is applicable to this Contract is hereby incorporated into the Contract as if fully re written herein. Supplier warrants that the Goods will be produced in compliance with the Fair Labor Standards Act of 1938, as amended.

20. NON SEGREGATED FACILITIES. Supplier certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. Supplier agrees that a breach of this certification is a violation of the Equal Opportunity Clause of the Contract. "Segregated facilities" means any waiting rooms, work areas, restrooms, and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

21. EQUAL EMPLOYMENT OPPORTUNITY. If this Contract is subject to 41 CFR 60 1.4(a), 60 300.5(a) and 60 741.5(a), DUWA shall abide by the requirements of those regulations, and they are hereby incorporated by reference into this Contract. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

22. GOVERNING LAW. This Contract and all claims and/or controversies relating to and/or arising out of it, regardless of the nature of the cause of action, shall be governed by Michigan law. Any claim and/or controversy arising out of or relating to this Contract and/or the project, whether based in contract, statute, tort, equity, or otherwise, shall be resolved by binding arbitration in Taylor, Michigan, administered by the American Arbitration Association.

23. NOTICES. Any notice required or permitted to be given by DUWA or Supplier must be in writing and signed by the authorized representatives of the party and addressed to the other as follows:

If to DUWA:

Rick Sollars, Chairman
Downriver Utility Wastewater Authority
25605 Northline Road
Taylor, MI 48180

With copies to:

OHM Advisors
c/o Lambrina Tercala
34000 Plymouth Road
Livonia, MI 48150
Lambrina.tercala@ohm-advisors.com

James G. Fausone
Fausone Bohn, LLP
41700 W. Six Mile Road, Ste. 101
Northville, MI 48168
jfausone@fb-firm.com

If to SUPPLIER:

Name
Address
Contact Information

Notices may be delivered by hand, or by prepaid registered mail or by facsimile and shall be deemed to have been served: (i) if by hand, at time of delivery; (ii) if by prepaid registered post, three (3) business days after mailing; (iii) if by facsimile, on the date printed on the facsimile transmission report produced by the sender's machine.