

SOUTHERN SALES COMPANY TERMS AND CONDITIONS

Date: 7-01-18

1. **ACCEPTANCE.** This contingent proposal is submitted by Southern Sales Company, as Seller, to Buyer subject to the terms and conditions hereinbefore and hereinafter set forth, and is contingent on Seller's final approval of additional factors such as Buyer's credit. This proposal may only be accepted on the exact terms set forth herein, and no additional terms or modifications shall be accepted. This proposal shall become an agreement binding on Buyer and Seller when signed by Buyer and then later approved in writing by Seller, and shall become the entire and sole agreement of the parties pertaining to the subject matter of the agreement, mutually withdrawing, canceling, or otherwise waiving, terminating, and excluding any and all oral, written, express, or implied representations, guarantees, warranties, agreements, or understandings not set forth in full herein, or in the general provisions or specifications made a part of this agreement. All of Seller's obligations are subject to Buyer's continued credit acceptability by Seller through the time of shipment. Each individual signing this document warrants that he or she has proper authority to do so.
2. **PRICES.** Prices quoted in this proposal are firm for a period of 3 months from the date hereof, provided (a) Seller has not revoked the price or proposal, (b) a Buyer's signature below constituting an acceptable order is received by Seller within 30 days from date of proposal, (c) anytime after 30 days of Seller's approval, Buyer agrees to accept delivery of any or all of the equipment on a "when-ready" basis, and (d) Buyer agrees to make payment for all equipment listed herein on terms and conditions set forth herein for all partial and/or complete shipments. Otherwise, prices may be revised to reflect Seller's selling prices in effect on the date of shipment. If shipment is, for any reason, deferred beyond 12 months from the date of Buyer's acceptance, the prices set forth herein are subject to change to conform to Seller's prices prevailing on the date of shipment but not to exceed an escalation of 2% per month from the expiration of the aforesaid period to the date of shipment.
3. **ITEMS INCLUDED.** This proposal includes only those items specified herein and does not include installation, field erection, accessory or related materials such as controls, piping, printed matter, etc., nor any other item not specifically listed herein.
4. **SUPERVISION AND SERVICE.** If Buyer desires field service for checking the installation and/or instruction in operation of the equipment in excess of that set forth in this proposal, Buyer agrees to pay a per diem rate of \$1,000.00 including travel time and \$0.70 per mile travel expense (from Seller's Nashville office).
5. **DELIVERY.** Buyer shall pay delivery costs "FOB POINT OF SHIPMENT." All claims for damage, delay and/or shortage arising from such shipment shall be made by Buyer directly solely against the Carrier. Buyer agrees that shipment schedules and/or delivery dates set forth in this proposal represent nothing more than Seller's best estimate of time required to ship after receipt of acceptable order and final approval data. No liability, direct or indirect, is assumed by Seller for failure to ship as scheduled. Buyer grants Seller the right to make partial shipments and Buyer agrees to pay promptly according to the terms of this agreement for all material or equipment shipped. Buyer shall notify Seller of any nonconformity within 15 days after receipt of the equipment or within 15 days after the nonconformity could have been reasonably discovered, whichever date is earlier.
6. **CANCELLATION, SUSPENSION OR DELAY.** Orders resulting from this proposal may be canceled, suspended or delayed at any time prior to shipment - but only upon Buyer's prior payment to Seller of Seller's reasonable charges for cancellation, suspension or delay, which charges shall include expenses already incurred, costs incurred by Seller to cancel, suspend or delay, and Seller's anticipated profit.
7. **BACKCHARGES.** Buyer agrees that Seller will not owe backcharges for labor, materials or other costs incurred by Buyer or others in adjustment, modification, service or repair of material or equipment furnished unless such backcharges previously have been authorized in writing by Seller.
8. **TAXES.** All applicable taxes or other Government charges upon the production, sale, shipment, installation and/or use of equipment covered by this proposal shall be added to the total price specified in this proposal and shall be paid by Buyer.
9. **TERMS OF PAYMENT.** Credit is subject to acceptance by Seller and subject to Buyer's continued credit acceptability by Seller through the time of shipment. Buyer agrees to pay on terms of "NET 30 DAYS FROM DATE OF SHIPMENT" of each item. Buyer also agrees to pay interest on past due accounts at the rate of one and one-half percent per month (both pre-judgment and post judgment), plus all costs of collection, including reasonable attorney fees.
10. **WARRANTY.** In cases where Seller is the manufacturer of new equipment, such equipment is warranted by Seller to be free from defects in material and workmanship under normal use and service for a period of one year from date of shipment. In the event of such a defect in material or workmanship within one year of shipment, Seller may (at Seller's option) repair or replace any part(s) provided that such parts are, upon request, returned to the point specified by Seller, transportation prepaid by Buyer. This warranty does not cover parts damaged by decomposition from chemical action or damaged by wear caused by abrasive materials; nor does it cover damage resulting from misuse, accident, or neglect, or from improper operation, maintenance, installation, modification, or adjustment. Nor does this warranty cover parts repaired by entities other than Seller without written approval from Seller.

In cases where Seller is not the manufacturer or where the equipment is not new, Buyer agrees that Seller is not liable for any warranty whatsoever, and Buyer's sole recourse for defects in material or workmanship shall be under the terms of the manufacturer's written warranty, if any.

No warranties have been made by Seller in reference to this equipment unless expressly included in this written agreement.

THESE WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR OF FITNESS FOR A PARTICULAR PURPOSE.

11. **TITLE.** Title to this equipment passes to buyer at the time of shipment, but pursuant to the Uniform Commercial Code, Buyer agrees (should Seller request it) to promptly execute security agreements and financing statements granting to Seller a security interest in the contract amount of this agreement in either (1) all of the equipment covered by this agreement, or (2) Buyer's entire inventory, equipment, accounts receivable and their proceeds, plus after-acquired additions and substitutions.

12. **COMPLIANCE WITH LAWS.** Buyer shall be solely responsible for securing any necessary permits under (and for compliance with) all safety, health and sanitation laws, ordinances and regulations in connection with the installation and operation of the equipment. Buyer agrees to provide Seller, upon request, evidence of the securing of any permits and of compliance with any such laws, ordinances and regulations, although Seller may rely exclusively on Buyer's representations, hereby made, that it shall secure such permits and comply with such laws, ordinances and regulations.

13. **INDEMNIFICATION:** It is understood that Seller has relied upon data furnished by and on behalf of Buyer with respect to the safety aspects of the installation and use of the equipment and that it is Buyer's responsibility to assure that the equipment will, when installed and put to use, be in compliance with safety requirements fixed by law and otherwise legally adequate to safeguard against injuries or damage to persons or property. Buyer hereby agrees to defend, indemnify and hold harmless Seller, its agents and employees, against any and all losses, costs, damages, claims, liabilities or expenses, including but not limited to, reasonable attorney's fees arising out of or resulting from any injury or damage to any person or property caused by inadequacy of safety features, devices or characteristics in the equipment or in the installation, use or operation of same, except claims for repair or replacement of defective parts as provided herein.

14. **DISCLAIMER OF CONSEQUENTIAL DAMAGES, LIQUIDATED DAMAGES OR PENALTIES.** BUYER AGREES THAT SELLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL DAMAGES. CONSEQUENTIAL DAMAGES FOR THE PURPOSES OF THIS AGREEMENT SHALL INCLUDE BUT NOT BE LIMITED TO, LOSS OF USE, INCOME OR PROFIT, OR LOSS OF OR DAMAGE TO PROPERTY (INCLUDING, BUT WITHOUT LIMITATION, PRODUCTS MANUFACTURED, PROCESSED OR TRANSPORTED BY THE USE OF THE EQUIPMENT) OCCASIONED BY OR ARISING OUT OF THE OPERATION, USE, INSTALLATION, REPAIR OR REPLACEMENT OF THE EQUIPMENT. SELLER SHALL NOT BE LIABLE FOR ANY PENALTY OR LIQUIDATED DAMAGES BASED UPON OR RELATING TO FAILURE OR INABILITY TO SHIP WITHIN A SPECIFIED TIME.

15. **COMPLETE AGREEMENT.** The complete agreement between SOUTHERN SALES COMPANY and the Purchaser is contained herein and is not subject to modifications except in a writing signed by an authorized officer of each party.

PURCHASER'S NAME: Lexington Fayette Urban County Government
SIGNATURE OF AUTHORIZED REPRESENTATIVE: [Signature] TITLE: Mayor DATE: NOV 15 2018
PURCHASER'S TAXPAYER IDENTIFICATION NUMBER: 61-0858140

PURCHASER IS A: CORPORATION _____ PARTNERSHIP _____ PROPRIETORSHIP _____

ACCEPTED BY SOUTHERN SALES COMPANY _____ ON (DATE): _____

SIGNATURE OF SOUTHERN SALES COMPANY REPRESENTATIVE: _____

LaDonna Roberts

From: Michael Cravens
Sent: Thursday, October 18, 2018 10:13 AM
To: Commisioner EQ PW Exec Asst
Cc: Charles Martin; LaDonna Roberts
Subject: RE: Law Review: Sole Source West Hickman WWTP Sulzer Blower

I have reviewed this request for authorization for the Division of Water Quality to purchase a replacement Sulzer blower for the West Hickman Waste Water Treatment Plant from Southern Sales Company, a sole source provider, at a cost not to exceed \$155,600.00.

No legal issues.

Michael Cravens
Attorney Senior
Department of Law

859.258.3500
MCravens@lexingtonky.gov
lexingtonky.gov



LEXINGTON

NOTICE OF CONFIDENTIALITY

This message is intended only for the use of the individual or entity to which it is addressed and may contain confidential information that is legally privileged and exempt from disclosure under applicable law, including but not limited to, Kentucky Rule of Evidence 503. Any legal opinion provided in this electronic mail transmission is provided in the course of my legal representation of the Lexington-Fayette Urban County Government and should not be disseminated to the public. If the reader of this message is not the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, delete it from your system without copying or forwarding it, and notify the sender of the error by replying via e-mail or by calling the Department of Law at (859) 258-3500, so that our address record can be corrected. Thank you.

From: Commisioner EQ PW Exec Asst
Sent: Wednesday, October 17, 2018 1:50 PM
To: Janet Graham <jgraham@lexingtonky.gov>; Michael Cravens <mcravens@lexingtonky.gov>
Cc: Charles Martin <chmartin@lexingtonky.gov>; LaDonna Roberts <lroberts@lexingtonky.gov>
Subject: FW: Law Review: Sole Source West Hickman WWTP Sulzer Blower

Janet, please assign the attached for review by Law.

Sandy
3401

Sandra Sue Burke
Executive Assistant to Charles H. Martin
Acting Commissioner, Department of Environmental Quality & Public Works

859.258.3400 office
859.684.3493 cell
lexingtonky.gov



From: LaDonna Roberts
Sent: Wednesday, October 17, 2018 12:50 PM
To: Commisioner EQ PW Exec Asst <commegpwea@lexingtonky.gov>
Cc: Charles Martin <chmartin@lexingtonky.gov>
Subject: Law Review: Sole Source West Hickman WWTP Sulzer Blower

Sandy,

Please send the attached document to law for review.

Thank you,

LaDonna Roberts
Administrative Specialist
Division of Water Quality

859.258.3362 office
lexingtonky.gov



MAYOR JIM GRAY



LEXINGTON

CHARLES H. MARTIN, P.E.
DIRECTOR
WATER QUALITY

To: Mayor Jim Gray
Lexington Fayette Urban County Council

From: Jennifer M. Carey for CHM
Charles H. Martin, P.E., Director
Division of Water Quality

Date: October 11, 2018

Subject: Replacement of a Sulzer Blower at West Hickman WWTP after the blower failed due to major component(s) equipment damage.

Request

The purpose of this memorandum is to request approval for the purchase of a new Sulzer ABS Blower for the West Hickman WWTP from Southern Sales Company, a sole source provider, at a cost not to exceed \$155,600.00.

Purpose of Request

The aeration of partially treated wastewater is a critical component of the overall treatment process. In spring of 2018, West Hickman had a catastrophic failure in one of the two blowers supplying air to the treatment process and is currently operating with 1 Sulzer blower and 2 rebuilt back-up blowers providing air to both Zones 1 and 2. The failed blower cannot be cost effectively repaired and a long-term reliance on the remaining blowers is not recommended because a failure to provide sufficient aeration during treatment likely would result in significant violation of the plant's discharge permit.

A replacement blower is being requested due to the extent of the damage, the cost of the repair and the risk of replacing the sensitive damaged components with only a one year warranty. A new blower has been offered at a reduced rate and will come with a 5 year warranty.

Replace and Repair Cost in FY19

The quote from Southern Sales Company for a new blower with a 5 year warranty is at a cost of \$155,600.00

Are Funds Budgeted

Funds are budgeted in:
4003 303401 3401 92711 2015 WHWWTP_RMP/CONSENT_DE

Martin





JUSTIFICATION FOR SOLE SOURCE CERTIFICATION

Sole Source Purchases are defined clearly, based upon a legitimate need, and are limited to a single supplier. Sole source purchases are normally not allowed except when based upon strong technological grounds such as operational compatibility with existing equipment and related parts or upon a clearly unique and/or cost effective feature requirement. The use of sole source purchases must be justified and shall be limited only to those specific instances in which compatibility or technical performance needs are being satisfied.

Sole Source Services are defined as a service provider providing technical expertise of such a unique nature that the service provider is clearly and justifiably the only practicable source available to provide the service. The justification shall be based on the uniqueness of the service, sole availability at the location required, or warranty or defect correction service obligations of the service provider.

This form must be filled out for the request to purchase any good or non-professional service that requires a competitive procurement process (informal quotes (\$1001-\$10,000), formal quotes (\$10,001 - \$19,999.99), or formal bid (\$20,000 or more) as defined in the LFUCG's Purchasing Manual. This form must be completed in its entirety and attached to the purchase requisition.

Note: Sole Source Purchase requests for goods exceeding \$20,000 will require approval by the Urban County Council by submitting an Administrative Review Form. A copy of this form must be signed off by Central Purchasing and attached to the Administrative Review Form.

Requesting Division

Name Tiffany Rank, P.E.

Division/Dept. Water Quality

Phone (859)425-2406

Email tiffanyr@lexingtonky.gov

Type of Purchase: (X) Goods/Materials/Equipment () Services

Cost: \$155,600.00

Sole Source Request for the Purchase of: One (1) ABS Blower Model HST40-300-1-L-5
For installation at the West Hickman Creek WWTP Zone 1 Blower Building.

One Time Purchase

To Establish Sole Source Provider Contract

(subject to annual review and approval by Central Purchasing and/or Urban County Council)

Vendor Information

Business Name Southern Sales Company, Inc

Contact Name Kenny Graham

Address 2937 Kraft Drive Nashville, TN 37204

Phone (615)254-0066

Email kgraham@SouthernSalesInc.com



JUSTIFICATION FOR SOLE SOURCE CERTIFICATION

STATEMENT OF NEED: (Add additional pages as needed)

My division/department's recommendation for sole source is based upon an objective review of the product/service required and appears to be in the best interest of the LFUCG. I know of no conflict of interest on my part, and I have no personal involvement in any way with this request. No gratuities, favors, or compromising actions have taken place. Neither has my personal familiarity with particular brands, types of equipment, materials, persons or firms been a deciding influence on my request to sole source this purchase when there are other known suppliers to exist.

1. Describe the product or service and list the necessary features this product provides that are not available from any other option.

The product requested for purchase via sole source certification is the:

- ABS Blower Model HST40-300-1-L-5
 - New blower with same BOM as current unit
 - Factory Standard Testing
 - New inlet silencer
 - 5-year warranty
 - Freight to site and start-up

Requested product will replace an existing (identical unit) blower that has failed due to major component(s) equipment damage.

2. Below are eligible reasons for sole source. Check one and describe.

Licensed or patented product or service. No other vendor provides this. Warranty or defect correction service obligations to the consultant. Describe why it is mandatory to use this licensed or patented product or service.

Existing LFUCG equipment, inventory, custom-built information system, custom-built data inventory system, or similar products or programs. Describe. If product is off-the-shelf, list efforts to find other vendors (i.e. web site search, contacting the manufacturer to see if other dealers are available to service this region, etc.)

Uniqueness of the service. Describe.

The LFUCG has established a standard for this manufacturer, supplier, or provider and there is only one vendor. Attach documentation from manufacturer to confirm that only one dealer provides the product.

Factory-authorized warranty service available only from this single dealer. Sole availability at the location required. Describe.

Used item with bargain price (describe what a new item would cost). Describe.



JUSTIFICATION FOR SOLE SOURCE CERTIFICATION

Other – The above reasons are the most common and established causes for an eligible sole source. If you have a different reason, please describe:

3. Describe efforts to find other vendors or consultants (i.e. phone inquires, web site search, contacting the manufacturer to see if other dealers are available to service region, etc.).

Equipment manufacturer was contacted to identify local/regional factory authorized service providers. Equipment manufacturer, Sulzer, indicated and has provided written documentation identifying Southern Sales Co., Inc. as the "...contracted Sulzer sole Master Distributor for Sulzer wastewater (formerly ABS) products..." ; copy attached.

4. How was the price offered determined to be fair and reasonable?

(Explain what the basis was for comparison and include cost analyses as applicable.)

Price and condition(s) offered were determined to be fair and reasonable considering the indicated purchase price is approximately \$80,000.00 less than original purchase price of failed blower. The indicated purchase price, \$155,600.00, requires turnover of the existing failed blower to Sulzer.

5. Describe any cost savings realized or costs avoided by acquiring the goods/services from this supplier.

The cost savings realized by acquiring the indicated blower from the manufacturer identified sole Master Distributer is \$80,000.00

SULZER

Pumps Equipment Sulzer
Pumps Solutions, Inc. 140
Pond View Drive Meriden,
CT 06450

Phone (203) 238 2700

Fax (203) 238 0738

www.sulzer.com

September 12, 2018

Subject: Southern Sales Co. as Contracted Sulzer Distributor for ABS type products

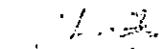
To: Tiffany Rank, Senior Process Engineer, Lexington-Fayette County Government.

The purpose of this letter is to confirm that **Southern Sales Co.**, located in Nashville, Tennessee, is the contracted Sulzer sole Master Distributor for Sulzer wastewater (formerly ABS) products, including pumps, mixers, HST blowers and aerators, for the Municipal Wastewater Collection and Treatment market. Their territory includes the entire area of Lexington, KY, as well as their surrounding counties.

Nationally we utilize a network of independent distributors/service centers to serve Municipal, Industrial, Building Trades and Dewatering market segments in specific territories. The authorized distributor for Sulzer products in these segments/territories has the expertise, knowledge, training and access to the latest product developments and upgrades, along with genuine OEM parts. **Southern Sales Co.** is trained in the latest methods in care and start-up of our equipment and has the ability to execute warranty claims.

Please do not hesitate to contact me if I can provide any additional information.

Sincerely,



Tim Fry
Regional Sales Manager
tim.fry@sulzer.com
(860) 906-2417



2937 Kraft Drive
Nashville, TN 37204
Office: (615) 254-0066
Fax #: (615) 254-0791



Quotation

To: Jim Worten
Plant Supervisor, West Hickman WWTP

Date: July1,2018
Project: West Hickman HST Blower Replacement
Owner: LFUCG
Engineer: N/A
Quote No: 13833KG

Under the terms and conditions herein stated, we are pleased to quote the following equipment. The new Blower pricing is based on special discounts offered by Sulzer for a one time purchase.

New Replacement Blower model HST40, Zone 1:

Opt. 1:

~~One (1) HST40-300-1-L-5 blower of the same BOM as previously purchased and installed. This option is for a new blower and assumes turnover of the existing failed machine to Sulzer.~~

The following is included:

- New Blower with same BOM as current unit
- Factory Standard testing
- New inlet silencer
- 5-year warranty
- Freight to site and start-up.

Note: Installation and electrical hook up is not included and is by others.

~~Total Selling Price\$155,600.00
Estimated Delivery: 18-20 weeks ARO (Quick Ship may be available, TBD)~~

Opt. 2:

One (1) HST40-300-1-L-5 blower of the same BOM as previously purchased and installed. This option is for a new blower and assumes that LFUCG keeps the existing failed machine.

The following is included:

- New Blower with same BOM as current unit
- Factory Standard testing
- New inlet silencer
- 5-year warranty
- Freight to site and start-up.

Note: Installation and electrical hook up is not included and is by others.

Total Selling Price\$174,374.00
Estimated Delivery: 18-20 weeks ARO (Quick Ship may be available, TBD)

Repair of existing Blower model HST40, Zone 1

Opt. 1 (Ocean Freight to and from factory)

One (1) Repair of the existing HST40-300-1-L-5 blower based on the field evaluation by Sulzer Service Tech.

The following is included:

- Factory repair of the machine to include at minimum a full core replacement.
 - Factory evaluation of other components and revision of quote as needed.
 - Factory reassembly and standard testing
 - New inlet silencer
 - Standard 1-year repair warranty
 - Standard Ocean Freight to factory and back to the site with proper crating as required
- Note: Re-Installation and electrical hook up is not included and is by others.

Estimated Minimum Repair Price Range.....\$70,000.00 - 75,000.00

Estimated delivery: 20-22 weeks ARO

Opt. 2 (Air-Freight to and from factory)

One (1) Repair of the existing HST40-300-1-L-5 blower based on the field evaluation by Sulzer Service Tech.

The following is included:

- Factory repair of the machine to include at minimum a full core replacement.
 - Factory evaluation of other components and revision of quote as needed.
 - Factory reassembly and standard testing
 - New inlet silencer
 - Standard 1-year repair warranty
 - Air - Freight to factory and back to the site with crating as required
- Note: Re-Installation and electrical hook up is not included and is by others.

Estimated Minimum Repair Price Range.....\$88,000.00 - 92,000.00

Estimated delivery: 12-18 weeks ARO

General Notes and Exceptions:

1. No sales tax included.
2. Installation by others.
3. **Start-up service is included**
4. All equipment ship FOB point of manufacture with freight allowed.
5. Payment terms are 100% net due 30 days from invoicing.
6. Any items of equipment or services not specifically outlined in the above are to be supplied by others.
7. Please direct all inquiries regarding this proposal to Kenny Graham at the phone numbers shown below. If you are unable to reach Kenny, please call the Southern Sales Company Nashville Office.

We appreciate the opportunity to quote you on the above equipment.

SOUTHERN SALES COMPANY, INC.

Kenny Graham

(502) 551-4750 Mobile
(800) 843-5523 Nashville office - toll free
(615) 254-0791 Nashville office – fax

Cc: Tiffany Rank, LFUCG
Tim Fry, Sulzer
Tom Herndon, Southern Sales