



# City of San Leandro

Meeting Date: May 15, 2017

## Staff Report

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**File Number:** 17-263

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.H.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Debbie Pollart  
Public Works Director

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** Staff Report to Approve a Sole Source Purchase by the Water Pollution Control Plant (WPCP) of One Thousand Aeration Basin Fine-Bubble Membrane Diffusers from Evoqua Water Technologies for an Amount Not to Exceed \$86,000

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### SUMMARY AND RECOMMENDATIONS

The WPCP needs to replace 1,000 existing diffusers in the aeration basins due to degradation of the existing diffusers that is creating a loss of aeration efficiency.

Staff recommends City Council adopt a Resolution making a finding under California Public Contract Code section 3400(c)(3) that a sole-source Purchase Order not to exceed \$86,000 is appropriate to provide 1,000 replacement bubble diffusers.

Staff recommends a sole source Purchase Order because there is only one U.S. vendor that sells this particular style diffuser.

### BACKGROUND

The WPCP had fine-bubble membrane diffusers installed in one aeration basin in 1990 and in the second aeration basin in 2002. Typically, membrane diffusers have a nominal 10-year life span.

During the last few years, the WPCP has been seeing spikes in influent loading which has led to two aeration blowers being on simultaneously to maintain adequate oxygen levels. During warm months, this can be an almost daily occurrence. This frequent increase in airflow has led to the rapid degradation of the existing membrane diffusers, which have also existed well beyond their typical life span.

### Analysis

Due to the age of the aeration system, there is only one U.S. vendor that can still provide replacement diffusers. Purchasing a different type of diffuser would require a capital improvement project involving the design and engineering of a completely different air delivery system and replacing all existing piping. In 2002, the installation of the existing system for one basin cost \$350,000; the anticipated cost would be much greater today.

The WPCP currently needs to replace diffusers in both basins. Purchasing replacement diffusers for our system while they are still commercially available is the most economical choice to meet immediate wastewater treatment requirements. It will also provide time to plan and budget for the complete modernization of the aeration system.

California Public Contract Code section 3400(c)(3) permits public agencies to make sole source purchases if the product is only available from one source.

### **Current Agency Policies**

- City Council Goal: Maintain and enhance San Leandro's infrastructure.

### **Applicable General Plan Policies**

- Policy CSF-6.4 Wastewater Collection and Treatment. Maintain efficient, environmentally sound, and cost-effective wastewater collection and treatment services in San Leandro.

### **Fiscal Impacts**

This purchase will not exceed \$86,000 when tax and freight are included. Funds can be transferred from existing WPCP appropriation in Account 593-52-113-5310.

### **Budget Authority**

This purchase is funded in fiscal year 2016-17 from Account 593-52-113-7410 after a budget transfer of funds from Account 593-52-113-5310.

### **ATTACHMENT(S)**

#### **Attachment(s) to Staff Report**

- Evoqua Water Technologies Quote Number 2017-190999

**PREPARED BY:** Judy Walker, Water Resources Management Analyst, Water Pollution Control Division



**Proposal For:** SAN LEANDRO WATER TREATMENT  
Justin Jenson  
3000 DAVIS ST  
SAN LEANDRO , CA 94577  
Phone: 510-577-6059

James Moore  
Evoqua Water Technologies  
2607 N. Grandview Blvd  
Waukesha , WI 53188  
Phone: 262-521-8368  
james.a.moore@evoqua.com

**ITEM PRICING**

Item Number	Description	Reference Number	Qty	Unit Price	Extended Price
W3T22282	DIFFUSER ASSY-FINE BUBBLE DISC,20.47"DIA	603-31120-80	1000 EA	\$76.00	\$76,000.00
W2T119916	GSKT,SEAL;DIFFUSER;0.125 IN THK;EPDM	303-60457-1	1000 EA	\$1.00	\$1,000.00
				<b>Subtotal:</b>	\$77,000.00

Lead time is 3-5 weeks ARO

**Total Price: \$77,000.00**

**Please provide tax exempt certificate with purchase order.**

Our Manufacturer Rep in your area is:

Representative: Matt Tooley  
Company: MISCOWATER PACIFIC  
List Address: 5976 West Las Positas Blvd Suite 226  
Pleasanton, CA 94588  
Phone:  
Email: matt@miscowater.com



## Payment Terms and Delivery

### PO Terms

Purchaser acknowledges that Seller is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the goods and/or services provided under the Contract, including any export license requirements. Purchaser agrees that such goods and/or services shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Seller of its obligations hereunder that compliance with such export laws and regulations be maintained at all times. PURCHASER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

### Shipping Information:

- Freight least expensive allowed

### Terms:

- This quote is valid until 4/15/2017
- Payment terms are N30 - Net 30 days with proper credit, and are subject to the attached Evoqua Water Technologies Terms and Conditions
- Pricing listed does not include applicable sales tax.
- New customers are pre-approved to \$1,000. All others will need to fill out a credit application and submit a hardcopy PO (or a "No PO Form").
- We require hard documentation of your ordering for Evoqua to process your order. For your convenience, we can start processing your order by signing and returning:
  - Fax to: 262-521-8249
  - or Email to: james.a.moore@evoqua.com
- You may also mail this to:
  - Evoqua Water Technologies
  - 2607 N. Grandview Blvd



**eVOQUA**  
WATER TECHNOLOGIES

Quote Number: 2017-190999

Account ID: 0001010265

Original Evoqua Contract No. : 40556-01  
10991-01

Waukesha, WI 53188



**Standard Terms :**

**Standard Terms of Sale**

1. **Applicable Terms.** These terms govern the purchase and sale of equipment, products, related services, leased products, and media goods if any (collectively herein "Work"), referred to in Seller's proposal ("Seller's Documentation"). Whether these terms are included in an offer or an acceptance by Seller, such offer or acceptance is expressly conditioned on Buyer's assent to these terms. Seller rejects all additional or different terms in any of Buyer's forms or documents.
2. **Payment.** Buyer shall pay Seller the full purchase price as set forth in Seller's Documentation. Unless Seller's Documentation specifically provides otherwise, freight, storage, insurance and all taxes, levies, duties, tariffs, permits or license fees or other governmental charges relating to the Work or any incremental increases thereto shall be paid by Buyer. If Seller is required to pay any such charges, Buyer shall immediately reimburse Seller. If Buyer claims a tax or other exemption or direct payment permit, it shall provide Seller with a valid exemption certificate or permit and indemnify, defend and hold Seller harmless from any taxes, costs and penalties arising out of same. All payments are due within 30 days after receipt of invoice. Buyer shall be charged the lower of 1 ½% interest per month or the maximum legal rate on all amounts not received by the due date and shall pay all of Seller's reasonable costs (including attorneys' fees) of collecting amounts due but unpaid. All orders are subject to credit approval by Seller. Back charges without Seller's prior written approval shall not be accepted.
3. **Delivery.** Delivery of the Work shall be in material compliance with the schedule in Seller's Documentation. Unless Seller's Documentation provides otherwise, delivery terms are ExWorks Seller's factory (Incoterms 2010). Title to all Work shall pass upon receipt of payment for the Work under the respective invoice. Unless otherwise agreed to in writing by Seller, shipping dates are approximate only and Seller shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer or Buyer's customer if Seller fails to meet the specified delivery schedule.
4. **Ownership of Materials and Licenses.** All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data, software and other documents or information prepared or disclosed by Seller, and all related intellectual property rights, shall remain Seller's property. Seller grants Buyer a non-exclusive, non-transferable license to use any such material solely for Buyer's use of the Work. Buyer shall not disclose any such material to third parties without Seller's prior written consent. Buyer grants Seller a non-exclusive, non-transferable license to use Buyer's name and logo for marketing purposes, including but not limited to, press releases, marketing and promotional materials, and web site content.
5. **Changes.** Neither party shall implement any changes in the scope of Work described in Seller's Documentation without a mutually agreed upon change order. Any change to the scope of the Work, delivery schedule for the Work, any Force Majeure Event, any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Seller to an equitable adjustment in the price and time of performance.
6. **Force Majeure Event.** Neither Buyer nor Seller shall have any liability for any breach or delay (except for breach of payment obligations) caused by a Force Majeure Event. If a Force Majeure Event exceeds six (6) months in duration, the Seller shall



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10991-01

have the right to terminate the Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed prior to the date of termination. "Force Majeure Event" shall mean events or circumstances that are beyond the affected party's control and could not reasonably have been easily avoided or overcome by the affected party and are not substantially attributable to the other party. Force Majeure Event may include, but is not limited to, the following circumstances or events: war, act of foreign enemies, terrorism, riot, strike, or lockout by persons other than by Seller or its sub-suppliers, natural catastrophes or (with respect to on-site work), unusual weather conditions.

7. **Warranty.** Subject to the following sentence, Seller warrants to Buyer that the (i) Work shall materially conform to the description in Seller's Documentation and shall be free from defects in material and workmanship and (ii) the Services shall be performed in a timely and workmanlike manner. Determination of suitability of treated water for any use by Buyer shall be the sole and exclusive responsibility of Buyer. The foregoing warranty shall not apply to any Work that is specified or otherwise demanded by Buyer and is not manufactured or selected by Seller, as to which (i) Seller hereby assigns to Buyer, to the extent assignable, any warranties made to Seller and (ii) Seller shall have no other liability to Buyer under warranty, tort or any other legal theory. The Seller warrants the Work, or any components thereof, through the earlier of (i) eighteen (18) months from delivery of the Work or (ii) twelve (12) months from initial operation of the Work or ninety (90) days from the performance of services (the "Warranty Period"). If Buyer gives Seller prompt written notice of breach of this warranty within the Warranty Period, Seller shall, at its sole option and as Buyer's sole and exclusive remedy, repair or replace the subject parts, re-perform the Service or refund the purchase price. Unless otherwise agreed to in writing by Seller, (i) Buyer shall be responsible for any labor required to gain access to the Work so that Seller can assess the available remedies and (ii) Buyer shall be responsible for all costs of installation of repaired or replaced Work. If Seller determines that any claimed breach is not, in fact, covered by this warranty, Buyer shall pay Seller its then customary charges for any repair or replacement made by Seller. Seller's warranty is conditioned on Buyer's (a) operating and maintaining the Work in accordance with Seller's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to Seller. Seller's warranty does not cover (i) damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by Seller) and (ii) media goods (such as, but not limited to, resin, membranes, or granular activated carbon media) once media goods are installed. THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE SELLER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION BELOW. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

8. **Indemnity.** Seller shall indemnify, defend and hold Buyer harmless from any claim, cause of action or liability incurred by Buyer as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Seller's negligence. Seller shall have the sole authority to direct the defense of and settle any indemnified claim. Seller's indemnification is conditioned on Buyer (a) promptly, within the Warranty Period, notifying Seller of any claim, and (b) providing reasonable cooperation in the defense of any claim.

9. **Assignment.** Neither party may assign this Agreement, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other party; provided, however, the Seller may assign its rights and obligations under these terms to its affiliates or in connection with the sale or transfer of the Seller's business and Seller may grant a security interest in the Agreement and/or assign proceeds of the agreement without Buyer's consent.



10. **Termination.** Either party may terminate this agreement, upon issuance of a written notice of breach and a thirty (30) day cure period, for a material breach (including but not limited to, filing of bankruptcy, or failure to fulfill the material obligations of this agreement). If Buyer suspends an order without a change order for ninety (90) or more days, Seller may thereafter terminate this Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed, whether delivered or undelivered, prior to the date of termination.

11. **Dispute Resolution.** Seller and Buyer shall negotiate in good faith to resolve any dispute relating hereto. If, despite good faith efforts, the parties are unable to resolve a dispute or claim arising out of or relating to this Agreement or its breach, termination, enforcement, interpretation or validity, the parties will first seek to agree on a forum for mediation to be held in a mutually agreeable site. If the parties are unable to resolve the dispute through mediation, then *any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Pittsburgh, Pennsylvania before three arbitrators who are lawyers experienced in the discipline that is the subject of the dispute and shall be jointly selected by Seller and Buyer. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The Arbitrators shall issue a reasoned decision* of a majority of the arbitrators, which shall be the decision of the panel. Judgment may be entered upon the arbitrators' decision in any court of competent jurisdiction. The substantially prevailing party as determined by the arbitrators shall be reimbursed by the other party for all costs, expenses and charges, including without limitation reasonable attorneys' fees, incurred by the prevailing party in connection with the arbitration. For any order shipped outside of the United States, any dispute shall be referred to and finally determined by the International Center for Dispute Resolution in accordance with the provisions of its International Arbitration Rules, enforceable under the New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and the governing language shall be English.

12. **Export Compliance.** Buyer acknowledges that Seller is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the Work provided under this Agreement, including any export license requirements. Buyer agrees that such Work shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Seller of its obligations hereunder that compliance with such export laws and regulations be maintained at all times. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

13. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SELLER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE WORK, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ALL WARRANTY CLAIMS OR FOR ANY BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THE CONTRACT, SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE WORK. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.





14. **Rental Equipment / Services.** Any leased or rented equipment ("Leased Equipment") provided by Seller shall at all times be the property of Seller with the exception of certain miscellaneous installation materials purchased by the Buyer, and no right or property interest is transferred to the Buyer, except the right to use any such Leased Equipment as provided herein. Buyer agrees that it shall not pledge, lend, or create a security interest in, part with possession of, or relocate the Leased Equipment. Buyer shall be responsible to maintain the Leased Equipment in good and efficient working order. At the end of the initial term specified in the order, the terms shall automatically renew for the identical period unless canceled in writing by Buyer or Seller not sooner than three (3) months nor later than one (1) month from termination of the initial order or any renewal terms. Upon any renewal, Seller shall have the right to issue notice of increased pricing which shall be effective for any renewed terms unless Buyer objects in writing within fifteen (15) days of issuance of said notice. If Buyer timely cancels service in writing prior to the end of the initial or any renewal term this shall not relieve Buyer of its obligations under the order for the monthly rental service charge which shall continue to be due and owing. Upon the expiration or termination of this Agreement, Buyer shall promptly make any Leased Equipment available to Seller for removal. Buyer hereby agrees that it shall grant Seller access to the Leased Equipment location and shall permit Seller to take possession of and remove the Leased Equipment without resort to legal process and hereby releases Seller from any claim or right of action for trespass or damages caused by reason of such entry and removal.

15. **Miscellaneous.** These terms, together with any Contract Documents issued or signed by the Seller, comprise the complete and exclusive statement of the agreement between the parties (the "Agreement") and supersede any terms contained in Buyer's documents, unless separately signed by Seller. No part of the Agreement may be changed or cancelled except by a written document signed by Seller and Buyer. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify the Agreement. To the extent the Agreement is considered a subcontract under Buyer's prime contract with an agency of the United States government, in case of Federal Acquisition Regulations (FARs) flow down terms, Seller will be in compliance with Section 44.403 of the FAR relating to commercial items and those additional clauses as specifically listed in 52.244-6, Subcontracts for Commercial Items (OCT 2014). If any of these terms is unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. The Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws provisions. Both Buyer and Seller reject the applicability of the United Nations Convention on Contracts for the international sales of goods to the relationship between the parties and to all transactions arising from said relationship.

Accepted by: \_\_\_\_\_

Print: \_\_\_\_\_

Date: \_\_\_\_\_



# City of San Leandro

Meeting Date: May 15, 2017

## Resolution - Council

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**File Number:** 17-264

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Debbie Pollart  
Public Works Director

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** RESOLUTION Making a Sole Source Finding under California Public Contract Code section 3400(c)(3) Approving a Purchase by the Water Pollution Control Plant (WPCP) of One Thousand Aeration Basin Fine-Bubble Membrane Diffusers from Evoqua Water Technologies for an Amount Not to Exceed \$86,000

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WHEREAS, the WPCP needs to replace all aeration system diffusers to maintain operational efficiency; and

WHEREAS, Evoqua Water Technologies is the only U.S. vendor that can supply the WPCP said diffusers; and

WHEREAS, funding for said purchase is available in fiscal year 2016-17 WPCP appropriation; and

WHEREAS, the City Manager recommends approval of said sole source purchase.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. That the City Council makes a finding under California Public Contract Code section 3400(c)(3) that it must make a sole source purchase because the product is only available from one source.
2. That the Sole Source purchase by the Water Pollution Control Plant of said diffusers is authorized, for an amount not to exceed \$86,000, and the City Manager or his designee is authorized to execute all documents and take all actions to effect this purchase.