



Public Works Department

WATER AND WASTEWATER OPERATIONS DIVISION

2555 W. Copans Road • Pompano Beach, Florida 33069 • 954-831-0810 • FAX 954-831-0819

DATE: May 16, 2024

TO: Robert E. Gleason, Director, Purchasing Division

THRU: Matthew Haber, County Attorney *Digitally signed by Matthew Haber
Date: 2024.05.16 15:22:37 -04'00'*

THRU: Alan W. Garcia, P.E., Director, Water and Wastewater Services *Digitally signed by Alan Garcia
Date: 2024.05.16 14:53:55 -04'00'*

FROM: Mark Darmanin, Director, Water and Wastewater Operations Division *Digitally signed by Mark Darmanin
Date: 2024.05.16 13:31:51 -04'00'*

SUBJECT: EXCEPTIONS TO COUNTY GENERAL CONDITION TERMS FOR BID NO. OPN2127828Q1 – OVIVO REPAIR, INSTALLATION AND REHABILITATION SERVICES

Water and Wastewater Operations Division is requesting approval of the exceptions to the County terms and conditions taken by Ovivo USA LLC (Ovivo) on bid OPN2127828Q1 – OVIVO repair, installation, and rehabilitation services.

Ovivo USA, LLC is the original equipment manufacturer (OEM) of the subject proprietary equipment, and as such there is no other combination of OEM supplier and OEM authorized installer that can offer both factory approved components and factory approved installation services from a Florida State Licensed Contractor.

Ovivo USA, LLC is the original equipment manufacturer (OEM) of the subject proprietary equipment, and as such there are no alternative aftermarket products and/or service providers that can offer the necessary proprietary services and parts. The parts are not interchangeable with any other brand and the equipment can be serviced only by Ovivo authorized service technicians. To use any other brand of equipment would require replacing expensive process equipment in its entirety; to replace the Ovivo equipment to accommodate any other brand of equipment would cost the County more than \$15 million.

Ovivo took exceptions to the County's standard terms and conditions. After further discussions, Ovivo agreed that the governing terms will be on the County's terms and conditions with one exception, as follows:

The following Amendment terms and conditions are hereby incorporated into the Contract ("Contract"). In the event of conflict between the Contract documents and the Amendment herein, the terms and conditions of the Amendment shall control. The parties are Broward County Board of Commissioners ("County") and Ovivo USA, LLC ("Vendor").

Limitation of Liability

To the extent permissible by law, Vendor shall have no further liability in connection with this Contract more than the amount paid by County for the products giving rise to such liability. These limits shall not apply to claims based on injury, death, or property damage. These limits shall not apply to claims which are based on the willful misconduct, gross negligence, or fraud of the Vendor.

The proposed amendment seeks to limitations of liability of the vendor and cap the amount of damages. We are not able to recommend acceptance of the limitation of liability and damages provision. Having said that, however, the acceptance of any limitation of liability and damages is ultimately a business decision that the awarding authority can make, upon full disclosure and input from WWOD, weighing the likelihood of damages that may arise under the contract exceeding the limitations and carefully considering the County's best interest.

Therefore, WWOD requests County Attorney's Office (CAO) to further review Ovivo's exceptions as in accepting the alternative terms and conditions. WWOD reviewed the exceptions to the standard terms and conditions from Ovivo, WWS is requesting approval of the exception as stated above, as it is in the County's best interest and provides WWS the ability to purchase the necessary sole source and sole brand parts and equipment and retain the necessary services provided by Ovivo.

If you have any questions or require additional information, please contact Oscar Asgar, Construction Project Manager at (954) 831-0983.

Attachments:

Attachment A - Ovivo USA LLC PROPOSED AMENDMENT

Attachment B – Previously Approve AMENDMENT OF 2021

Attachment C – General Conditions