

VILLAGE OF RUIDOSO SOLE SOURCE CERTIFICATION

A sole source purchase is permissible when there is only one vendor in the overall geographical region that can provide an item or service. (§13-1-126 NMSA 1978, 1997 Repl.) The Department Director, Purchasing Agent or representative shall certify that a good faith effort has been made to contact other vendors in the general overall geographical region that the sole source has been located, and that the item or service is the only source found to be available in the region. The Village Manager or Deputy Village Manager must give final approval for sole source purchases.

The Purchasing Agent shall certify that every effort has been made to determine if there is a Federal Purchasing or State contract for the item or services requested and that negotiations, as appropriate, have been conducted with the sole source vendor to determine that it is the best obtainable price.

If there is a GSA or State Contract for the item or service, a Sole Source Certification is not required. If another vendor has the item or service needed and has been contacted, a Sole Source Certification is not permissible.

For clarification of these Sole Source issues please refer to Procurement Procedures or contact your Purchasing Department.

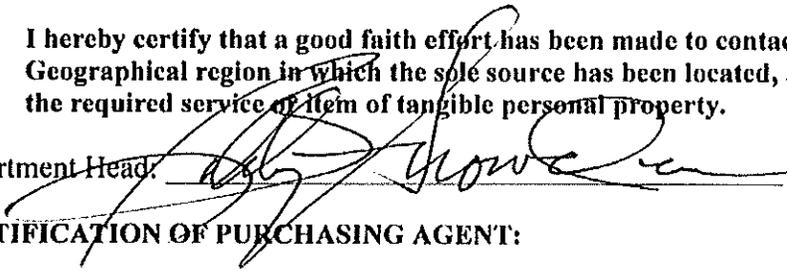
Full Description of item or service:
Filters For The MBR Basins

Additional Justification Information:
Ovivo is the only vendor in the USA that has this product. Letter is attached.

Name/Contact Person of Sole Source Vendor:
Ovivo USA, LLC, April Reyes
Address/Telephone# of Sole Source Vendor
2404 Rutland Drive, Austin, TX 78758
(512) 834-6039
Price of Sole Source Items or Services: \$18,250.00, not including shipping

CERTIFICATION BY DEPARTMENT:

I hereby certify that a good faith effort has been made to contact other vendors in the general overall Geographical region in which the sole source has been located, and that there is only one source for the required service or item of tangible personal property.

Department Head: 

Date: 2/18/14

CERTIFICATION OF PURCHASING AGENT:

I hereby certify that there is not a GSA or State Contract for the item or service requested and that negotiation, as appropriate, have been conducted with the sole source vendor to determine this is the best price obtainable.

Purchasing Agent: 

Date: 2-19-2014



Ovivo USA, LLC
 2404 Rutland Dr
 Austin, Texas 78758
 Phone: (512)834-6000 Fax: (512)834-6039

Customer Quote

ATTENTION: BOBBY SNOWDEN

PHONE NO:

SOLD TO CUSTOMER NUMBER 1484 RUIDOSO; CITY OF 313 CREE MEADOWS DRIVE RUIDOSO NM 88346 USA	SHIP TO RUIDOSO WWTP ATTN: ISSAC GARCIA 575-378-8417 26675 US HWY 70 RUIDOSO DOWNS NM 88346 USA
--	---

QUOTE # QSAW001727	DATE 2/18/2014	TERMS Net 30 days	CUSTOMER RFQ PLATES & TUBES	SALESPERSON APRIL R	CURRENCY USD
-----------------------	-------------------	----------------------	--------------------------------	------------------------	-----------------

L#	Items	Quantity	U/M	Unit Price	Total Value
1	PART # 322-00182 MEMBRANE PLATE, 515 SERIES (RW/RM) REV A	150	EA	115.00	17,250.00
2	PART # 322-FS00222 TUBING, PRE-CUT, PERMEATE, RM TYPE	200	EA	5.00	1,000.00

PLEASE NOTE THIS QUOTE DOES NOT INCLUDE FREIGHT CHARGES OR ANY APPLICABLE SALES TAX.

ALL ITEMS ARE IN STOCK AND READY TO SHIP UPON RECEIPT OF PURCHASE ORDER.

REV A

Sale Amount:	18,250.00
Total Amount:	18,250.00
	USD



June 6, 2013

April Reyes
MBR Customer Support Representative
OVIVO USA, LLC
2404 Rutland Drive
Austin, TX 78758 USA

Subject: Aftermarket licensee in the USA

Dear April

This letter is to confirm that OVIV USA, LLC is the aftermarket exclusive licensee for KUBOTA membrane technology in the United States of America for all OVIVO plants using KUBOTA membrane technology.

Best regards,

A handwritten signature in black ink, appearing to read "Hiroyuki Takatori", with a long horizontal line extending to the right.

Hiroyuki Takatori
President
KUBOTA Membrane USA Corporation
takatori@kubota-membrane.com



Terms & Conditions of Sale

1. ACCEPTANCE. The proposal of **Ovivo USA, LLC** ("SELLER"), as well as these terms and conditions of sale (collectively the "Agreement"), constitutes SELLER's contractual offer of goods and associated services, and PURCHASER's acceptance of this offer is expressly limited to the terms of the Agreement. The scope and terms and conditions of this Agreement represent the entire offer by SELLER and supersede all prior solicitations, discussions, agreements, understandings and representations between the parties. Any scope or terms and conditions included in PURCHASER's acceptance/purchase order that are in addition to or different from this Agreement are hereby rejected.

2. DELIVERY. Any statements relating to the date of shipment of the Products (as defined below) represent SELLER's best estimate, but is not guaranteed, and SELLER shall not be liable for any damages due to late delivery. The Products shall be delivered to the delivery point or points in accordance with the delivery terms stated in SELLER's proposal. If such delivery is prevented or postponed by reason of Force Majeure (as defined below), SELLER shall be entitled at its option to tender delivery to PURCHASER at the point or points of manufacture, and in default of PURCHASER's acceptance of delivery to cause the Products to be stored at such a point or points of manufacture at PURCHASER's expense. Such tender, if accepted, or such storage, shall constitute delivery for all purposes of this agreement. If shipment is postponed at request of PURCHASER, or due to delay in receipt of shipping instructions, payment of the purchase price shall be due on notice from SELLER that the Products are ready for shipment. Handling, moving, storage, insurance and other charges thereafter incurred by SELLER with respect to the Products shall be for the account of PURCHASER and shall be paid by PURCHASER when invoiced.

3. TITLE AND RISK OF LOSS. SELLER shall retain the fullest right, title, and interest in the Products to the extent permitted by applicable law, including a security interest in the Products, until the full purchase price has been paid to SELLER. The giving and accepting of drafts, notes and/or trade acceptances to evidence the payments due shall not constitute or be construed as payment so as to pass SELLER's interests until said drafts, notes and/or trade acceptances are paid in full. Risk of loss shall pass to PURCHASER at the delivery point.

4. PAYMENT TERMS. SELLER reserves the right to ship the Products and be paid for such on a pro rata basis, as shipped. If payments are not made by the due date, interest at a rate of two percent (2%) per month, calculated daily, shall apply from the due date for payment. PURCHASER is liable to pay SELLER's legal fees and all other expenses in respect of enforcing or attempting to enforce any of SELLER's rights relating to a breach or threatened breach of the payment terms by PURCHASER.

5. TAXES. Unless otherwise specifically provided in SELLER's quotation/proposal, PURCHASER shall pay and/or reimburse SELLER, in addition to the price, for all sales, use and other taxes, credits and charges which SELLER may pay or be required to pay to any government directly or indirectly in connection with the production, sale, transportation and/or use by SELLER or PURCHASER, of any of the Products or services dealt with herein (whether the same may be regarded as personal or real property). PURCHASER agrees to pay all property and other taxes which may be assessed or charged against or upon any of the Products on or after the date of aerial shipment, or placing into storage for PURCHASER's account.

6. MECHANICAL WARRANTY. Solely for the benefit of PURCHASER, SELLER warrants that new equipment and parts manufactured by it and provided to PURCHASER (collectively, "Products") shall be free from defects in material and workmanship. The warranty period shall be twelve (12) months from start-up of the equipment not to exceed eighteen (18) months from shipment. If any of SELLER's Products fail to comply with the foregoing warranty, SELLER shall repair or replace free of charge to PURCHASER, EX WORKS SELLER'S FACILITIES or other location that SELLER designates, any Product or parts thereof returned to SELLER, which examination shall show to have failed under normal use and service operation by PURCHASER within the Warranty Period; provided, that if it would be impracticable for the Product or part thereof to be returned to SELLER, SELLER will send a representative to PURCHASER's job site to inspect the Product. If it is determined after inspection that SELLER is liable under this warranty to repair or replace the Product or part thereof, SELLER shall bear the transportation costs of (a) returning the Product to SELLER for inspection or sending its representative to the job site and (b) returning the repaired or replaced Products to PURCHASER; however, if it is determined after inspection that SELLER is not liable under this warranty, PURCHASER shall pay those costs. For SELLER to be liable with respect to this warranty, PURCHASER must make its claims to SELLER with respect to this warranty in writing no later than thirty (30) days after the date PURCHASER discovers the basis for its warranty claim and in no event more than thirty (30) days after the expiration of the Warranty Period. In addition to any other limitation or disclaimer with respect to this warranty, SELLER shall have no liability with respect to any of the following: (i) failure of the Products, or damages to them, due to PURCHASER's negligence or willful misconduct, abuse or improper storage, installation, application or maintenance (as specified in any manuals or written instructions that SELLER provides to the PURCHASER); (ii) the costs of dismantling and reinstallation of the Products; (iii) any Products damaged while in transit or otherwise by accident; (iv) decomposition of Product by chemical action, erosion or corrosion or wear to Products or due to conditions of temperature, moisture and dirt; or (v) claims with respect to parts that are consumable and normally replaced during maintenance such as filter media, filter drainage belts and the like, except where such parts are not performing to SELLER's estimate of normal service life, in which case, SELLER shall only be liable for the pro rata cost of replacement of those parts based on SELLER's estimate of what the remaining service life of those parts should have been, provided, that failure of those parts did not result from any of the matters listed in clauses (i) through (v) above. With regard to third-party parts, equipment, accessories or components not of SELLER's design, SELLER's liability shall be limited solely to the assignment of available third-party warranties. THE PARTIES AGREE THAT ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHETHER WRITTEN, ORAL OR STATUTORY, ARE EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW. All warranties and obligations of SELLER shall terminate if PURCHASER fails to perform its obligations under this Agreement including but not limited to any failure to pay any charges due to SELLER. SELLER's quoted price for the Products is based upon this warranty. Any increase in warranty obligation may be subject to an increase in price.

7. CONFIDENTIAL INFORMATION. All nonpublic information and data furnished to PURCHASER hereunder, including but not limited to price, size, type and design of the Products is the sole property of SELLER and submitted for PURCHASER's own confidential use solely in connection with this Agreement and is not to be made known or available to any third party without SELLER's prior written consent.

8. PAINTING. The Products shall be painted in accordance with SELLER's standard practice, and purchased items such as motors, controls, speed reducers, pumps, etc., will be painted in accordance with manufacturers' standard practices, unless otherwise agreed in writing.

9. DRAWINGS AND TECHNICAL DOCUMENTATION. When PURCHASER requests approval of drawings before commencement of manufacture, shipment may be delayed if approved drawings are not returned to SELLER within fourteen (14) days of receipt by PURCHASER of such drawings for approval. SELLER will furnish only general arrangement, general assembly, and if required, wiring diagrams, erection drawings, installation and operation/maintenance manuals for SELLER's equipment (in English language). SELLER will supply six (6) complete sets of drawings and operating instructions. Additional sets will be paid for by PURCHASER. Electronic files, if requested from SELLER, will be provided in PDF format only.

10. SET OFF. This Agreement shall be completely independent of all other contracts between the parties and all payments due to SELLER hereunder shall be paid when due and shall not be set off or applied against any money due or claimed to be due from SELLER to PURCHASER on account of any other transaction or claim.

11. SOFTWARE. PURCHASER shall have a non-exclusive and non-transferable license to use any information processing program supplied by SELLER with the Products. PURCHASER acknowledges that such programs and the information contained therein is Confidential Information and agrees a) not to copy or duplicate the program except for archival or security purposes; b) not to use the program on any computer other than the computer with which it is supplied; and c) to limit access to the program to those of its employees who are necessary to permit authorized use of the program. PURCHASER agrees to execute and be bound by the terms of any software license applicable to the Products supplied.

12. PATENT INDEMNITY. SELLER will defend at its own expense any suit instituted against PURCHASER based upon claims that SELLER's Product hereunder in and of itself constitutes an infringement of any valid apparatus claims of any United States patent issued and existing as of the date of this Agreement, if notified promptly in writing and given all information, assistance, and sole authority to defend and settle the same, and SELLER shall indemnify the PURCHASER against such claims of infringement. Furthermore, in case the use of the Products is enjoined in such suit or in case SELLER otherwise deems it advisable, SELLER shall, at its own expense and discretion, (a) procure for the PURCHASER the right to continue using the Products, (b) replace the same with non-infringing Products, (c) modify the Product so it becomes non-infringing, or (d) remove the Products and refund the purchase price less freight charges and depreciation. SELLER shall not be liable for, and PURCHASER shall indemnify SELLER for, any claims of infringement related to (a) the use of the Products for any purpose other than that for which it was furnished by SELLER, (b) compliance with equipment designs not furnished by SELLER or (c) use of the Products in combination with any other equipment. The foregoing states the sole liability of SELLER for patent infringement with respect to the Products.

13. GENERAL INDEMNITY. Subject to the rights, obligations and limitations of liabilities of the parties set forth in this Agreement, PURCHASER shall protect and indemnify SELLER, its ultimate parent, its ultimate parent's subsidiaries and each of their respective officers, directors, employees and agents, from and against all claims, demands and causes of action asserted by any entity to the extent of PURCHASER's negligence or willful misconduct in connection with this Agreement.

14. DEFAULT TERMINATION. In the event that PURCHASER becomes insolvent, commits an act of bankruptcy or defaults in the performance of any term or condition of this Agreement, the entire unpaid portion of the purchase price shall, without notice or demand, become immediately due and payable. SELLER at its option, without notice or demand, shall be entitled to sue for said balance and for reasonable legal fees, plus cost-of-pocket expenses and interest, and/or to enter any place where the Products are located and to take immediate possession of and remove the Products, with or without legal process and/or retain all payments made as compensation for the use of the Products and/or resell the Products, without notice or demand, for and on behalf of the PURCHASER, and to apply the net proceeds from such sale (after deduction from the sale price of all expenses of such sale and all expenses of retaking possession, repairs necessary to put the Products in salable condition, storage charges, taxes, liens, collection and legal fees and all other expenses in connection therewith) to the balance then due to SELLER for the Products and to receive from the PURCHASER the deficiency between such net proceeds of sale and such balance. PURCHASER hereby waives all trespass, damage and claims resulting from any such entry, repossession, removal, retention, repair, alteration and sale. The remedies provided in this paragraph are in addition to and not limitations of any other rights of SELLER.

15. CANCELLATION. PURCHASER may terminate this Agreement for convenience upon giving SELLER thirty (30) days prior written notice of such fact and paying SELLER for all costs and expenses (including overhead) incurred by it in performing its work and closing out the same plus a reasonable profit thereon. All such costs and expenses shall be paid to SELLER within ten (10) days of the termination of the Agreement, or be subject to an additional late payment penalty of five percent (5%) of the total amount of costs and expenses owed.

16. REMEDIES. The rights and remedies of the PURCHASER in connection with the goods and services provided by SELLER hereunder are exclusive and limited to the rights and remedies expressly stated in this Agreement.

17. INSPECTION. PURCHASER is entitled to make reasonable inspection of Products at SELLER's facility. SELLER reserves the right to determine the reasonableness of the request and to select an appropriate time for such inspection. All costs of inspections not expressly included as an itemized part of the quoted price of the Products in this Agreement shall be paid by PURCHASER.

18. WAIVER. Any failure by SELLER to enforce PURCHASER's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

19. COMPLIANCE WITH LAWS. If applicable law, ordinances, regulations or conditions require anything different from, or in addition to, that called for by this Agreement, SELLER will satisfy such requirements at PURCHASER'S written request and expense.

20. FORCE MAJEURE. If SELLER is rendered unable, wholly or in material part, by reason of Force Majeure to carry out any of its obligations hereunder, then on SELLER's notice in writing to PURCHASER within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended. "Force Majeure" shall include, but not be limited to, acts of God, laws and regulations, strikes, civil disobedience or unrest, lightning, fire, flood, war, storm, contamination, insect infestation, delays of the PURCHASER or PURCHASER'S subcontractors, breakage or accident to equipment or machinery, war, police actions, terrorism, embargos, and any other causes that are not reasonably within the control of the SELLER. If the delay is the result of PURCHASER'S action or inaction, then in addition to an adjustment in time, SELLER shall be entitled to reimbursement of costs incurred to maintain its schedule.

21. INDEPENDENT CONTRACTOR. It is expressly understood that SELLER is an independent contractor, and that neither SELLER nor its principals, partners, parents, subsidiaries, affiliates, employees or subcontractors are servants, agents, partners, joint venturers or employees of PURCHASER in any way whatsoever.

22. SEVERABILITY. Should any portion of this Agreement be held to be invalid or unenforceable under applicable law then the validity of the remaining portions thereof shall not be affected by such invalidity or unenforceability and shall remain in full force and effect. Furthermore, any invalid or unenforceable provision shall be modified accordingly with the closest of applicable law, giving maximum permissible effect to the parties' intentions expressed herein.

23. CHOICE OF LAW, CHOICE OF VENUE. This Agreement shall be governed and construed in accordance with the laws of the State of Utah, without regard to its rules regarding conflicts of choice of law. The parties submit to the jurisdiction and venue of the state and federal courts located in Salt Lake City, Utah.

24. ASSIGNMENT. PURCHASER shall not assign or transfer this Agreement without the prior written consent of the SELLER. Any attempt to make such an assignment or transfer shall be null and void. SELLER shall have the authority to assign, or otherwise transfer, its rights and obligations in connection with this Agreement, in whole or in part, upon prior written notice to PURCHASER.

25. LIMITATION ON LIABILITY. TO THE EXTENT PERMISSIBLE BY LAW, SELLER SHALL HAVE NO FURTHER LIABILITY IN CONNECTION WITH THIS AGREEMENT IN EXCESS OF THE COST OF CORRECTING ANY DEFECTS, OR IN THE ABSENCE OF ANY DEFECT, IN EXCESS OF THE VALUE OF THE PRODUCTS SOLD HEREUNDER. NOTWITHSTANDING ANY LIABILITIES OR RESPONSIBILITIES ASSUMED BY SELLER HEREUNDER, SELLER SHALL IN NO EVENT BE RESPONSIBLE TO PURCHASER OR ANY THIRD PARTY, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION OR INCREASED EXPENSE OF OPERATION, SERVICE INTERRUPTIONS, COST OF PURCHASED OR REPLACEMENT POWER, COST OF MONEY, LOSS OF USE OF CAPITAL OR REVENUE OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSS OR DAMAGE, WHETHER ARISING FROM DEFECTS, DELAY, OR FROM ANY OTHER CAUSE WHATSOEVER.

Revision Date - September 2010

- A) The Ovivo USA, LLC Terms and Conditions of Sale are attached and made essential parts of the Ovivo USA, LLC proposal or purchase order confirmation. These terms and conditions replace and supersede any terms and conditions or warranty included in Buyer's or Owner's purchase order, requests for quotation or specifications and cannot be changed without written approval from an authorized representative of Ovivo USA, LLC.
- B) GST and all other taxes are extra, if applicable.
- C) Pricing valid for acceptance 30 days from date of the proposal document, and will be subject to change thereafter.
- D) Shipping shall be (FCA) Free Carrier at point of manufacture unless otherwise stated above. Insurance is the responsibility of Buyer.
- E) Payment terms are stated above.
- F) Duty, freight and brokerage costs are for Buyer's account unless stated otherwise herein.
- G) Minimum billing of \$100 per order.
- H) Notwithstanding any liabilities or responsibilities it has assumed hereunder, Ovivo USA, LLC shall in no event be responsible to Buyer or any third party in contract or in tort, or otherwise, for loss or damage sustained as a result of the operation of the equipment, loss of use, expenses involved in loss of capital claims or Buyer's or Owner's loss of profit or revenues, or any other indirect, incidental, special or consequential loss or damage, whether arising from defects, delay, or any other cause whatsoever.
- I) Current Ovivo USA, LLC paint specifications shall apply unless otherwise specified.
- J) Any and all stock or "off the shelf" parts returned to Ovivo USA, LLC are subject to a re-stocking fee equal to 25% of their respective invoice price. All other parts, including but not limited to customized and special manufactured parts, shall, at the sole discretion of Ovivo USA, LLC be (i) subject to a restocking fee of 45% of their respective invoice price or (ii) non-refundable.

PLEASE ADDRESS AND SUBMIT YOUR PURCHASE ORDER TO THE ADDRESS INDICATED ABOVE.