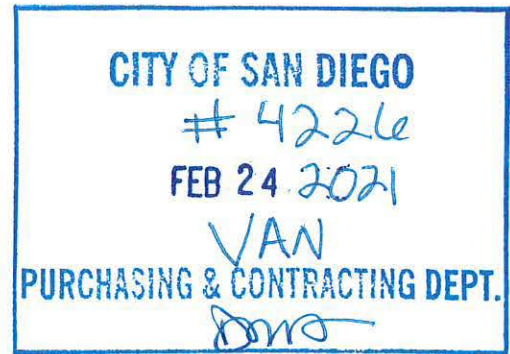


Purchasing and Contracting Department
Sole Source Request and Certification Form



To: Director of Purchasing and Contracting

Cc: Assistant Chief Operating Officer

From: Peter Vroom, Deputy Director, Public Utilities Department

Date: February 24, 2021

In alignment with the guidance provided in the San Diego Municipal Code section 22.3016, the Purchasing Agent (Director of Purchasing and Contracting) must certify that the award of a sole source contract is necessary by memorializing in writing why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible.

For consideration, this form must be completed and all required accompanying information must be submitted together, including any related contracts. Failure to do so will result in a delay of approval of the request.

Describe commodity or service(s) to be purchased. Include vendor contact information.

The Environmental Monitoring and Technical Services Division (EMTS) of the Public Utilities Department (PUD) is requesting a sole source agreement with Sea-Bird Scientific (hereafter Sea-Bird), which includes Sea-Bird Electronics and sister company Wetlabs Electronics. Sea-Bird provides EMTS essential equipment maintenance and calibration and replacement instruments and parts to ensure the City meets State and Federal permit mandated monitoring requirements.

The services provided by Sea-Bird are essential to EMTS being able to meet its environmental monitoring objectives, commitments, and regulatory permit requirements associated with the discharge of wastewater to the Pacific Ocean via the Point Loma Ocean Outfall (PLOO) and South Bay Ocean Outfall (SBOO). Sea-Bird provides essential equipment and services for the City's water quality instrumentation, such as the 'Conductivity, Temperature and Depth' (CTD) system, and the real-time oceanographic mooring systems (RTOMS). The City relies upon many of Sea-Bird's proprietary sensors and other equipment, to ensure the continued and effective operations of the City's Ocean Monitoring Program (OMP). In addition to specialized equipment, Sea-Bird provides essential services including, but not limited to, diagnostic testing of equipment, calibration services, pressure testing, O-ring replacement, electrical circuitry testing, and component failure checks. Their services also include replacement of expendable parts and components, such as batteries. Regular maintenance and service is essential to maintain high quality standards, continued operations and ensure compliance with regulatory permits.

As part of the City's Ocean Monitoring Program, a CTD device, equipped with a range of specialized modular sensors, is routinely used to survey the water column, on a weekly basis, to provide critical information to meet permit requirements. This equipment alone requires constant maintenance and sensor replacements on an ongoing basis, for which Sea-Bird has been the primary provider for over 20 years. This equipment is used to continuously scan and record measurements made by a series integrated sensors, including, but not limited to, conductivity (measurement of salinity), temperature, pressure (depth), pH, dissolved oxygen, transmissometer (water clarity), and fluorometer (chlorophyll and CDOM). Given the range of sensors used, and the complexity of such equipment, calibration and maintenance services provided by Sea-Bird are essential to ensure continued and uninterrupted operations.

Furthermore, in recent years, the City has taken on a new permit mandated project, which involves the deployment of two oceanographic moorings (RTOMS). One of these RTOMS is positioned off of the Point Loma Ocean Outfall (PLOO) and the second off of the South Bay Ocean Outfall (SBOO). The City's two RTOMS are networked with a third system operated by Scripps and located off of Del Mar in order to provide a complete state-of-art water quality monitoring network covering almost all of San Diego's coastal waters. Due to the high number of sensors, and sophisticated monitoring equipment, used on each of these RTOMS, the City's reliance on the services of Sea-Bird has increased exponentially in recent years.

If any of the City's monitoring operations were delayed, due to faulty equipment, or if data were deemed to be unusable, due to inaccurate calibrations, the City would face the possibility of large State and Federal fines for being out of compliance with permit regulations. Thus, having the services of Sea-Bird readily available is essential to ensure continued and uninterrupted operations of the City's Ocean Monitoring Program. Furthermore: (1) Sea-Bird has been the City's provider of CTD instrumentation and support since 1986; (2) Sea-Bird CTDs are used by all southern California discharge agencies and many environmental consulting firms providing agency support in order to maximize region-wide data comparability; (3) much of the department's existing inventory of Sea-Bird sensors and equipment can be integrated with the new instrumentation, thereby reducing the need for future acquisitions and expenditures; (4) Sea-Bird is unique in the industry in that it offers the ability to integrate third party equipment and sensors on their CTDs. As part of the City's due diligence, PUD is currently in the process of developing an RFI to determine alternate options. Therefore, it is requested that you approve the sole source agreement for a period up to a year for an amount not to exceed \$250,000 (\$159,000 is for this FY for the immediate need to ensure monitoring requirements/compliance) with Sea-Bird due to the highly technical and uniquely tailored services that Sea-Bird provides, which are unavailable through any other single source.

Vendor Contact Information:

Valerie Oliver
Sea-Bird Scientific - Sales Support
(425) 643-9866
sales@seabird.com

Justification

1. This product or service is available from only one supplier and meets at least one of the following criteria (please check all that are applicable):

- One-of-a-kind/Compatibility*
- a. Required by Warranty: the product matches existing equipment, infrastructure and is required by warranty. **(A letter from the provider which supports this claim must be provided.)**
 - b. Goods and Services:
 - i. the good has no competitive product or alternative on the market.
 - ii. the service requires a special skill, ability, or expertise linked to the current project that cannot be provided by another supplier.

(Documentation in support of either of the above claims must be provided by the requesting department.)

City Standards

The product or service complies with established, existing City standards.

Replacement

The product or service is the only compatible replacement component that supports a larger system. Or, the services are the only ones that can replace the existing service requirements.

2. Do any of the following situations exist?

Limited Competition

Department made an attempt to find a second or multiple sources to no avail.

Emergency

There is an urgent need for the item or service and time does not permit the City to solicit for competitive bids, as in the cases of emergencies as defined under SDMC section 22.3208,. (Delays in solicitation do not satisfy this criteria)

Cost/Market Analysis

Purchasing and Contracting will perform due diligence on each request. If Purchasing and Contracting can find a suitable, cost effective alternative, this request will be denied and that alternative will be pursued after your department has been contacted to discuss the revised determination.

This form does not take the place of an agreement and all sole source requests for a period of one year or longer will require the **submission of an agreement**. The requesting department must submit a purchase requisition and a copy of this certification to Purchasing and Contracting for a Purchase Order to be issued.

PCO Due Diligence (PCO to initial all that apply)

- VD Proof of warranty or maintenance requirement for standardized and replacement items confirmed.
- VD Vendor/Supplier confirmed submission of justification letter.
- _____ Market test confirmed that there is no advantage to the City in competing this contracting opportunity to multiple vendors.
- _____ Emergency verified with the department.
- VD Pricing agreement has been reviewed.
- VD Purchasing and Contracting has reviewed this request and affirms that this request for a sole source justification is appropriate.

This sole source is approved for:

- One (1) year from the signature date below.
- For the entire length of the contract, but not more than five (5) years.

The length of the contract must be consistent with the sole source approval. A sole source request must be submitted and approved by the Purchasing and Contracting Director prior to the award of each new contract and prior to each extension of an existing contract that was not contemplated in the initial contract term.

_____ After reviewing the provided information and due diligence, I cannot recommend the approval of this request.

Purchasing and Contracting Director Review

I certify that strict compliance with a competitive process would be unavailing or would not produce an advantage, and that soliciting bids or proposals would be therefore undesirable, impracticable or impossible. My approval is contingent on the information provided in this form.

- In accordance with SDMC §22.3016, this request is approved.
- Based on the information provided and due diligence recommendation of staff, this request is denied.



Claudia C. Abarca, *Interim* Director, Purchasing and Contracting

2/25/2021

Date



SEA-BIRD
SCIENTIFIC

Sea-Bird Electronics, Inc
13431 NE 20th Street
Bellevue, WA 98005 USA

Phone: +1 425-643-9866
Email: sales@seabird.com
Web: www.seabird.com

January 5, 2021

Sole Source Letter

To Whom It May Concern:

Thank you for your interest in our products.

Sea-Bird Electronics, Inc (Sea-Bird) manufactures marine instruments for measurement of salinity, temperature, pressure, dissolved oxygen, and related oceanographic variables. Major products include Conductivity/Temperature/Depth (CTD) profilers, multi-bottle *in-situ* water samplers, moored CT recorders, and dissolved oxygen sensors. Some of our customers include research institutes, engineering firms, and others throughout the world.

Sea-Bird is the only authorized facility equipped to perform integrations on all primary Sea-Bird manufactured sensors and instruments.

The warranty information for our instruments can be found here: <https://www.seabird.com/warranty>

If you have further questions or need further details, please let us know.

On behalf of Sea-Bird Electronics, Inc

Thomas O. Mitchell
VP – Commercial Team

T&C Addendum

Parties: City of San Diego (“Customer”) **Date:** 25-February-2021
Sea-Bird Scientific dba Sea-Bird Electronics, Inc and WET Labs (“Supplier”)

Recitals: Customer and Supplier are entering into a contract for the Project and, for convenience, are using Customer’s standard contract forms (“Customer’s Base Contract”) for the purchase of Supplier’s goods and/or services (“Goods” and/or “Services”). This Addendum is intended to provide reasonable revisions to Customer’s Base Contract to enable the parties to enter a contract for the Project without prolonged or complex negotiations over terms and conditions. Accordingly, the parties incorporate this Addendum into the Customer’s Base Contract and make it an integral part thereof, taking precedence over any contrary or related terms or conditions that may be contained therein, in any purchase orders, or in any other writings, addenda or exhibits constituting part of the agreement between the parties (collectively, the “Agreement”).

Revisions: Notwithstanding anything to the contrary contained in the Agreement, the following provisions and rules of construction apply:

- 1. Services.** The Services shall be limited to those services specifically described herein. For the avoidance of doubt, and without limitation, Supplier has no responsibility for the supervision or actions of Customer’s employees or contractors or for non-Sea-Bird chemicals or equipment and disclaims all liability and responsibility for any loss or damage that may be suffered as a result of such aspects or actions or any other aspects or actions not under Supplier’s control.
- 2. Indemnification.** Any and all indemnification obligations imposed upon Supplier are limited to the extent of those damages proportionately caused by Supplier’s breach of the Agreement, negligence, wrongful conduct, or violations of law. In no case is Supplier liable for any damages caused by negligence, misuse or misapplication of goods by others. For non-government customers, Supplier’s indemnification obligations are provided on the condition that Customer defends, indemnifies and holds harmless Supplier against those damages to the extent proportionately caused by misuse or misapplication of goods, negligence, wrongful conduct, or violations of law by the Customer, its affiliates, or those in privity with them.
- 3. Limitation on Liability.** THE TOTAL LIABILITY OF SUPPLIER AND ITS SUBSIDIARIES, AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS AND AGENTS ARISING OUT OF PERFORMANCE, NONPERFORMANCE, OR OBLIGATIONS IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, DELIVERY, AND/OR USE OF GOODS AND/OR SERVICES IN NO CIRCUMSTANCE INCLUDES ANY LIQUIDATED, PENALTY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, NOR EXCEED AN AMOUNT THAT IS UNREASONABLY DISPROPORTIONATE TO THE TOTAL AMOUNT OF COMPENSATION ACTUALLY PAID TO SUPPLIER UNDER THE AGREEMENT, EXCEPT ONLY IN THE CASE OF DAMAGES ARISING DUE TO SUPPLIER’S WILLFUL MISCONDUCT.
- 4. Warranty.** Supplier warrants to Customer that each of the Goods conforms to its written warranty set forth in its user manual in effect on the date of purchase, or, if there is no express warranty therein, that each of the Goods will be free from defects in material and workmanship and will conform to the manufacturer’s quoted specifications for twelve (12) months from delivery. Warranties do not extend to consumable items such as, without limitation, reagents, batteries, mercury cells, and light bulbs. Supplier warrants that it will perform all Services in accordance with its standard practices and that the Services will be free from defects in workmanship for a period of three hundred and sixty five (365) days from their date of performance. If an item is found to be defective and is still covered under warranty, we will repair/replace it for free. For items covered under the 5 year warranty, it does not restart. However if items are repaired just before the 5 year warranty is up, we cover repairs and service for 1 year after service on the parts that were replaced and/or serviced. For items covered

under the 1 year warranty, the 1 year warranty in essence will start over. If Supplier breaches this warranty and the Customer notifies Supplier of such breach within 30 days of the end of the applicable warranty period, Supplier will, at its option, either replace or repair the nonconforming Goods, or re-perform any nonconforming Services, or refund the amounts paid by Customer to Supplier for the nonconforming Goods and/or Services. THIS IS THE EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY. SUPPLIER EXPRESSLY DISCLAIMS ANY REMEDIES OF "COVER" AND ANY WARRANTIES IMPLIED BY LAW, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Our warranty applies by product which you can find here: <https://www.seabird.com/warranty>

5. Intellectual Property; Information Technology; Privacy. Supplier retains all rights in and to any intellectual property and confidential information created or procured by it or its representatives at any time, and Customer receives licenses to use such intellectual property and information only to the extent provided by implied license under applicable law. No Customer information technology requirements apply, except the extent such requirements specifically apply to equipment being sold to Customer. To help ensure mutual compliance with applicable privacy laws, Customer will not provide to or share with Company any personal data or personally identifiable information.

6. Performance Guarantees. All product warranties and guarantees shall only be enforceable if (a) all equipment is properly installed, inspected regularly and is in good working order, (b) all operations are consistent with Supplier recommendations, (c) operating conditions at the Customer site have not materially changed and remain within anticipated specifications, and (d) no reasonably unforeseeable circumstances exist or arise. Inspected regularly means that equipment is sent in for recalibration as per our general recommendations. Our general recommendations can be found here: www.seabird.com/faqs

7. Acceptance and Set-off. Except to the extent agreed upon in writing by Supplier's CFO, all Goods and Services are deemed accepted upon delivery and early payment discounts do not apply. Any set-off rights in the Agreement notwithstanding, Customer bears the customary burden of proof with respect to any amounts invoiced by Supplier but not paid by the invoice due date. This revision does not adversely impact any of Customer's rights under Supplier's warranties.

8. Force Majeure. Neither party shall be liable to the other for any failure or delay on its part to perform any obligation under this Agreement due to acts of God, war, mobilization, civil commotion, riots, embargoes, domestic or foreign regulations or orders, fires, floods, accidents, strikes, lockouts, machinery breakdowns, quarantines, shortages or inability to obtain timely delivery of materials or supplies from the usual sources of supply, interruption or delay in transportation, inability to obtain shipping space or transportation, or for any other cause, whether or not foreseeable, that is reasonably beyond the control of that party. The affected party shall promptly notify the other of the circumstances constituting an event of force majeure.

9. Miscellaneous. Except to the extent signed by a duly authorized representative of an affiliate of Supplier, the Agreement does not bind any affiliates of Supplier. Supplier is not subject to any audit rights in favor of the Customer, except for audit rights (under reasonable conditions) directly related to Supplier's compliance with laws and regulations (*e.g.*, safety) which are directly applicable to Supplier's Goods and/or Services purchased under this Agreement. Supplier is not obligated to purchase or carry Professional Liability or E&O Insurance coverage, provide copies of Supplier's policies, or provide waivers of subrogation. Supplier may include Customer and their Affiliates as an Additional Insured party. Nothing in the Agreement supersedes or nullifies this Addendum. Supplier's obligations under the Agreement will only be modified by written agreement of Supplier through the same duly authorized representative who signed this Addendum, or such person's duly authorized successor. Except as provided herein, neither party agrees to any contractual clause or provision, that waives such party's ordinary and standard rights, including, but not

limited to, the right to retain party's own counsel and each party's right to determine facts and circumstances in the event of a dispute.

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed by their duly authorized representatives, intending thereby to be legally bound.

City of San Diego

Signature: Abarca

Name: Claudia C. Abarca

Title: Interim Director

Date: 2/25/2021

Sea-Bird Scientific dba Sea-Bird Electronics, Inc and WET Labs:

Signature: Thomas Mitchell

Name: Thomas Mitchell

Title: Vice President, Commercial

Date: March 5, 2021