
Meeting Date: December 13, 2023
Staff Contact: Cassia Sanchez, Chief Engineer

TITLE: C-23-24 – Approving Price Agreement with Aqua Smart for Seaquest Phosphates

ACTION: Recommend Approval

Summary:

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) currently uses Seaquest Phosphates in its water treatment operations. Seaquest provides corrosion control and scale to aid in the mixing of surface water and groundwater. This also helps prevent any potential leaching of lead and copper.

Resolution R-18-14 requires board approval for any purchase in an amount exceeding \$500,000.

The Water Authority's Financial and Business Services Division is recommending funding for this new price agreement cap to allow for the purchase of this product throughout the contract term. The estimated expenditure under this price agreement is expected to exceed \$500,000; however, actual expenses will be incurred as the product is provided.

If approved by the Board, the price agreement will be issued by the Water Authority to enable Aquasmart to provide Seaquest phosphates for the contract term of four years. Approval of this item shall also serve as delegation of authority for the Executive Director to approve all future amendments to this price agreement, if any.

FISCAL IMPACT:

The Water Authority has budgeted funds to cover expenses pursuant to this price agreement.



Cassia Sanchez, PE (NM, TX)
Chief Engineer – Surface Water, Plant Operations Division
Albuquerque-Bernalillo County Water Authority
6000 Alexander Blvd, NE
Albuquerque, NM 87107

August 17, 2023

RE: Unit Price Proposal for Supply and Delivery of SeaQuest Liquid

Dear Ms. Sanchez,

Thank you for your request for proposal to supply and deliver SeaQuest Liquid to the Albuquerque Bernalillo County Water Authority for the purpose of controlling corrosion, scale, hardness, and color.

Additionally, the chemical bond between SeaQuest and minerals / metals reduces chlorine demand because chlorine is no longer able to oxidize the metals. Thus, chlorine residuals throughout the distribution system are stronger, more consistent and more effective in disinfecting the water.

Current Unit Price, defined as one (1) four-thousand-gallon bulk tanker load

\$68,700.00 per Tanker

Thank you for your consideration.

We look forward to working with you and your team.

David J. Bogart

David Bogart

US Municipal Accounts Manager

Aqua Smart, Inc.
3710 Atlanta Industrial Pkwy, NW
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Everyone deserves clean water

SOLE SOURCE PURCHASE REPORT

To: Purchasing Officer

From: Cassia Sanchez

Date: 8/3/2023

1. Name and address and contact information of supplier:
Aqua Smart Inc.
3710 Atlanta Industrial Parkway NW Suite 200B
Atlanta, Georgia 30331 USA
2. Goods and/or services to be purchased:
SeaQuest water treatment additive
3. Estimated total dollar amount of expenditures pursuant to this request: \$500,000 per fiscal year
4. Term for which goods and/or services will be purchased pursuant to this request (mark only the option which applies):
 - a. 4 _____ Years/Months/Weeks/Days (circle one)
 - b. This is a one-time sole source purchase, to be completed within the next fiscal year.
5. Identify the specific circumstances that require a sole source purchase of the goods and/or services requested:
 - a. Brief description of the purpose of the goods or services to be purchased:
A water treatment additive introduced at the San Juan Chama Water Treatment Plant that continuously keeps ortho-phosphate and poly-phosphate in equilibrium, but without forming a layer of mineral scale inside of water pipes to control corrosion within the distribution system.
 - b. Reasons for need of goods and/or services from the specific supplier. Any one reason, by itself, does not necessarily justify a sole source purchase (mark all that apply):
 - i. A diligent inquiry failed to identify any source for the same or similar goods and/or services that will substantially accomplish the same or similar functions to those provided by the source identified above. If so, identify which of the following steps were taken to establish a good-faith review of available alternative sources and provide written justification verifying the actions below were taken (mark all that apply):
 1. Contacted various suppliers of similar goods to discuss alternative options;
 2. Performed product research for potential alternative sources;
 3. Consulted with subject matter experts to identify potential alternative sources;
 4. Other (specifically describe any actions taken, attach additional sheets if necessary):

(Inability to locate other sources via internet search will not suffice as acceptable due diligence.)

SOLE SOURCE PURCHASE REPORT

- ii. The goods and/or services offered are unique or proprietary in form, fit, and function. If so, describe the unique or proprietary qualities of the goods and/or services; if available, provide documentation of their unique or proprietary nature, e.g. evidence of patent/copyright/secret processes/limited rights in data (attach additional sheets if necessary):
AquaSmart is the creator and exclusive global manufacturer of SeaQuest. SeaQuest has been utilized since the inception of the San Juan Chama Treatment Plant. SeaQuest has aided the Water Utility Authority in maintaining compliance with the Safe Drinking Water Act and associated regulatory permitting.
- iii. Use of goods and/or services from sources other than an Original Equipment Manufacturer will require substantial modification to equipment or systems currently in use, resulting in substantial duplication in cost to the Water Authority that is not expected to be recovered through competition and/or unacceptable delays in fulfilling the Water Authority's requirements. If so, describe the modifications, potential costs, and/or delays associated with making substitute goods and/or services compatible with current equipment or systems (attach additional sheets if necessary):
- iv. The procurement requires a specific supplier of goods or services. If so, identify one or more of the following reasons and provide written justification verifying that the statement below is true:
1. Limited availability of goods or services;
 2. Proven quality, accuracy, and/or dependability;
 3. Compatibility considerations;
 4. Safety considerations;
 5. Warranty issues or guarantee of parts performance;
 6. During the system design process, several alternatives were evaluated and the current proprietary process was selected;
 7. Other (specifically describe any other reasons, attach additional sheets if necessary):
SeaQuest has been utilized since the inception of the San Juan Chama Treatment Plant. SeaQuest has aided the Water Utility Authority in maintaining compliance with the Safe Drinking Water Act and associated regulatory permitting.
- v. The goods and/or services cannot be purchased by the Water Authority from any other supplier, e.g. the supplier has a protected territory established by the original producer of the goods or services. If so, attach written documentation from the original producer verifying the availability of sources for goods and/or services.
6. Describe the reasons the purchase is in the public's interest (attach additional sheets if necessary):
The purchase of SeaQuest continues the Water Utility Authority's ability to produce drinking water that meets Safe Drinking Water Act standards. The blending of sourcewater (surface water and groundwater) and their associated chemical properties requires SeaQuest to control corrosion, discolored water, and maintain permit compliance.
7. Attach negotiated cost or fee schedule, as applicable, along with evidence confirming that the price is most advantageous to the Water Authority.
See attached.

SOLE SOURCE PURCHASE REPORT

Requirement:

At least fifteen days before a sole source contract is awarded, the Central Purchasing Office shall post this notice of intent to award any sole source contracts for goods, services, or construction, on its website.

Any qualified potential contractor may protest an intent to award a sole source procurement to the Central Purchasing Office. The protest shall be submitted in writing within fifteen calendar days of the notice of intent to award a contract being posted by the Central Purchasing Office.

The signature below certifies that this justification is accurate and complete to the best knowledge and belief of the individuals signing:

Requestor's Signature:



Chief Engineer – Surface Water

08/21/2023

Date

Signature Acknowledgement from the Division Manager:


Division Manager

8/21/2023

Date

Review and Verification by Purchasing Officer:



Purchasing Officer

10/17/23 08:15 MDT

Date

Albuquerque Bernalillo County Water Utility Authority (Water Authority)

TERMS AND CONDITIONS

IMPORTANT: READ CAREFULLY BEFORE PROVIDING GOODS, SERVICES OR CONSTRUCTION. FAILURE TO DO SO WILL NOT RELIEVE VENDOR OF RESPONSIBILITY TO PERFORM OR DELIVER IN ACCORDANCE WITH ALL APPLICABLE PROVISIONS.

- 1. General:** This purchase order is authorization to provide the goods, services or construction described on its face in accordance with the Terms and Conditions set out below and any attached offer submitted by Vendor and accepted by the Water Authority. These constitute the terms of the contract between the parties. If this purchase order results from a formal solicitation or separate contract, all or part of those documents are also made a part of the contract as specified in those documents referenced in this purchase order and will control over any conflicting provisions in these Terms and Conditions. Unless otherwise provided, this is an indefinite quantity contract; it is not exclusive to Vendor; the Water Authority may make similar purchases from other vendors as needed; and the Water Authority is not obligated to make any amount of purchases under the contract.
- 2. Packing, Shipping and Invoicing:** Department name AND purchase order number MUST be on all invoices, packages, packing slips, bills of lading, etc. Department's count will be accepted by Vendor as final and conclusive on all shipments not accompanied by a packing slip. Vendor will bear all risk of loss or damage until delivery to the Water Authority. Shipment is F.O.B. Destination unless purchase order states otherwise.
- 3. Delivery and Inspection:** Delivery will be strictly in accordance with the Water Authority's delivery schedule and instructions. Final inspection and acceptance will not be deemed to be a waiver by the Water Authority of its right to (a) cancel, reject or return, at Vendor's risk and expense, all or any portion of the goods, services or construction, or (b) make a claim for damages. Payment prior to inspection does not constitute acceptance.
- 4. Payment Terms/Discounts:** Payment terms are net thirty (30) days unless otherwise specified in the contract. Discounts, if offered, will be computed from the date of actual delivery or receipt of invoice, whichever is later.
- 5. Taxes:** All applicable gross receipts taxes are assumed to be included unless otherwise specified. The Water Authority will furnish, on request, a Non-Taxable Transaction Certificate. Determination of whether the tax is due and payment of the tax is the responsibility of the Vendor. Applicable taxes should be included in each invoice and may not be billed more than sixty (60) days after providing the goods, services or construction to which the taxes apply.
- 6. Commercial Warranty:** Vendor agrees that it will provide the Water Authority with the most favorable commercial warranties which Vendor gives to any customer for the goods, services, or construction and that the rights and remedies provided herein will extend to the Water Authority and are in addition to and do not limit any rights afforded to the Water Authority by law or under this contract. Vendor agrees not to disclaim warranties of fitness for a particular purpose or merchantability. All of Vendor's representations and warranties, both express and implied, constitute conditions of this contract. In the event that the goods, services or construction are found to be defective or fail within the warranty period, Vendor will, at its own expense, promptly remedy the defects.
- 7. New Material:** All items provided under this contract will be NEW and of most current production, unless otherwise specified.
- 8. Indemnification:** Vendor agrees to indemnify and hold harmless the Water Authority, its Board, officers, agents and employees against any and all damages, claims, expenses or other liability, including attorneys' fees, arising out of any (a) alleged or actual infringement or misappropriation of any copyright, patent, trademark, trade secret or other right based upon the goods, services or construction provided by Vendor pursuant to this contract; (b) negligence or willful misconduct of Vendor; (c) Vendor's failure to perform fully its obligations herein in a timely manner; or (d) breach of any of Vendor's representations and warranties herein.
- 9. Insurance:** Vendor will maintain in effect during the term of the contract, insurance of the kinds, in the amounts and in the form specified by the Water Authority, including, but not limited to: Commercial General Liability Insurance, Business Automobile Liability Insurance, and Workers' Compensation Insurance. As proof that such insurance is in effect, Vendor will furnish certificate(s) of insurance in a form satisfactory to the Water Authority prior to providing goods, services or construction under the contract.
- 10. Right to Audit/Inspection of Plant:** Vendor will maintain complete and accurate records of all financial transactions associated with this contract, including, but not limited to, invoices and other official documentation which sufficiently support all charges under this contract. Vendor will retain such records for six (6) years after final payment, or longer if required by law. Authorized representatives of the Water Authority may inspect and copy records pertaining to this contract at the Vendor's business office during normal business hours. Vendor will include this audit provision in any subcontracts that it may issue under this contract. The Water Authority may inspect, at any reasonable time, Vendor's plant or place of business related to the performance of this contract.
- 11. Default:** The Water Authority will have the right to cancel all or any part of this contract without cost to the Water Authority if the Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor liable for any excess cost incurred by the Water Authority due to Vendor's default. Vendor will not be liable if failure to perform the contract arises out of causes beyond the control and without the fault or negligence of Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Water Authority determines that the supplies or services to be furnished by the subcontractor were obtainable from other sources. The rights and remedies of the Water Authority provided in this paragraph are not be exclusive and are in addition to and do not limit any rights afforded to the Water Authority by law or under this contract.
- 12. Termination:** The Water Authority will also have the right to terminate the contract upon the occurrence of any one or more of the following events: (a) if sufficient appropriations are not made by the Water Authority Board. Such event will not be an event of default and the contract may be terminated at the end of the Water Authority's then current fiscal year upon written notice given by the Water Authority to Vendor; (b) without notice to Vendor, upon receipt of a notice of debarment of or ineligibility to receive funds by Vendor from any agency of the federal government or the State of New Mexico or a local public body of the State. (c) if Vendor is found to have engaged or is engaging in Unfair Business Practices as described in Section 2-376 of the Water Authority Procurement Ordinance; or (d) at any time for convenience by giving at least thirty (30) days' notice in writing to Vendor. In such event, Vendor will be paid under the terms of the contract for all goods, services or construction provided to and accepted by the Water Authority prior to the effective date of termination.
- 13. Assignment/Changes:** Neither the contract, nor any interest therein, nor claim thereunder, may be assigned or transferred by Vendor, except as expressly authorized in writing by the Water Authority. No such assignment or transfer will relieve Vendor from the obligations and liabilities under this contract. The terms of the contract may not be changed without the prior written approval of the Water Authority.
- 14. Compliance With Laws:** In performing the contract, Vendor will comply with all applicable laws, ordinances and codes of the federal, State and local governments, including, but not limited to the New Mexico Governmental Conduct Act, the New Mexico Human Rights Act, Title VII of the federal Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and all federal, State and local statutes, regulations and executive orders relating to civil rights. In addition, Vendor certifies that (1) it has not, either directly or indirectly, entered into action in restraint of free competitive bidding; (2) it will comply with the Ethical Conduct provisions (§2-390) and Unfair Business Practices provisions (§2-376) of the Water Authority Procurement Ordinance; and (3) it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this contract. Vendor will obtain and maintain, and furnish to the Water Authority upon request, any and all permits, licenses, approvals, certificates and other documents required by the Water Authority, or otherwise required by applicable law.
- 15. Governing Law:** This contract is governed by the laws of the State of New Mexico without regard to principles of conflicts of law. Any and all actions or proceedings relating to the subject matter of this contract will be maintained by and subject to the jurisdiction of State and federal courts located in Bernalillo County, New Mexico, which courts will have exclusive jurisdiction for such purposes.

IMPORTANT NOTICE: Before accepting a purchase order, always check for authenticity and require identification. The Water Authority will not be liable for purchases made by unauthorized individuals. (Rev. 07/01/2018)