

Memorandum



Buckman Direct Diversion

Date: October 2, 2025
To: The Buckman Direct Diversion Board
From: Gutema Ayana, Contracts Administrator (Contractor)
Via: Bradley Prada, Facilities Manager
Samantha Secrist, Accounting Supervisor
Matthew Sandoval, Operations Superintendent
Subject FY26 Chemical Award

ITEM

Request approval to award ITB #26005 "BDD Water Treatment Plant Chemicals" to various vendors.

09/26/2025

Background

The BDD uses various chemicals to treat surface water in compliance with State and Federal Drinking Water Standards. Quantities purchased are based on anticipated flows and estimated dosages as determined by Operations.

On August 21, 2025, staff issued an invitation to bid (ITB #26005) for essential water treatment chemicals. Consistent with a multi-award solicitation, all responsive and responsible bidders were recommended for award and will be eligible to supply their respective chemicals at their bid unit prices for the contract term.

The estimated pricing for all chemicals is summarized below:

Item#	Vendor Name	Description	Unit Price	Approx. Qty
1	Polydyne Inc.	Polymer	1.04000	50,000
2	WATER TECH INC	Polymer	1.61000	50,000
3	Chemrite, Inc.	Calcium Thiosulfate	0.58000	50,000
4	Kemira Water Solutions	Ferric Chloride	0.32000	950,000
5	Penco, Inc	Ferric Chloride	0.28700	950,000
6	DuBois Chemicals, Inc.	Hydrofluorosilicic Acid	0.44300	25,000
7	Matheson Tri-Gas, Inc.	Liquid Oxygen	0.01070	10,000,000
8	SYOXSA, INC.	Liquid Oxygen	0.00913	10,000,000
9	PVS DX	Sodium Hydroxide	0.25500	500,000
10	PVS DX	Sodium Hypochlorite	3.10000	60,000
11	WATER TECH INC	Sodium Hypochlorite	2.90000	60,000
12	PVS DX	Sulfuric Acid	0.55000	15,000
13	WATER TECH INC	Sulfuric Acid	0.36000	15,000
14	Chemrite, Inc.	Zinc Orthoposphate	1.06700	30,000
15	George S. Coyne Chemical Co., Inc.	Zinc Orthoposphate	0.79990	30,000
16	Shannon Chemical Corporation	Zinc Orthoposphate	0.81400	30,000

Recommendation

BDD Staff recommends approval of award to multiple vendors as listed above for the procurement of water treatment plant chemicals under ITB# 26005. Funding is available in the approved operating budget.

Andy Hopkins 09/25/2025

BU/LI Chemicals 8000801.510810

Approved By BDDB October 2, 2025

Justin Greene, BDDB Chair

Budget

Purchasing



**BUCKMAN DIRECT DIVERSION
GENERAL SERVICES CONTRACT**

**BUCKMAN DIRECT DIVERSION WATER TREATMENT CHEMICALS
BDD Water Treatment Chemicals – Multi-Award Contract (ITB #26005).**

THIS CONTRACT is established under **ITB #26005** for the supply and delivery of essential water treatment chemicals. Multiple vendors were awarded under this solicitation, and Buckman Direct Diversion (BDD) is authorized to purchase from any of the awarded suppliers throughout the contract term to ensure continuous operations and regulatory compliance.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions

- A. "Products and Services Schedule" refers to the complete list of products and services offered under this Contract and the price for each. Product and service descriptions may be amended with the prior approval of the Contract Administrator. New products and services shall not be added to the Products and Services Schedule.
- B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.
- C. "Fiscal Year" means the twelve-month period beginning on July 1 and ending on June 30 of the following calendar year.
- D. "Fiscal Year Quarters" means the four three-month periods within the City's fiscal year, defined as follows: Quarter 1 is July 1 through September 30; Quarter 2 is October 1 through December 31; Quarter 3 is January 1 through March 31; and Quarter 4 is April 1 through June 30.
- E. "Acknowledgement of Terms and Conditions" means that by submitting a bid in response to ITB #26005, the Contractor agreed to the terms and conditions set forth in the solicitation, which are incorporated into and made part of this Contract. Execution of this Contract reaffirms the Contractor's acceptance of those terms and conditions.

2. Scope of Work

The Chemical Contractor includes one or more of the following water treatment chemicals:

- Ferric Chloride
- Sodium Hydroxide
- Polymer
- Zinc Orthophosphate (ZOP)
- Calcium Thiosulfate
- Sulfuric Acid

- Liquid Oxygen (LOX)
- Hydrofluorosilicic Acid
- Sodium Hypochlorite

Item 1: Ferric Chloride

Liquid Ferric Chloride (FeCl₃) is an orange-brown, acidic, corrosive aqueous solution. The specific gravity of the solution shall be in the range of 1.3 to 1.5. The specific gravity will vary with the FeCl₃ concentration. Concentration may be varied with the season and point of destination to prevent crystallization during cold weather.

Liquid Ferric Chloride Quality

Total FeCl₃ by weight 28% to 47% Total iron as Fe 9.6% to 16.2% Not more than 2.5% of the total iron shall be in the ferrous state. The free acid, expressed as HCL, shall not exceed 1.0%. The solution shall not contain more than 0.2% total insoluble matter by weight.

Chemicals must meet ANSI/AWWA Standard Specification B407-05 and certified to NSF/ANSI 60 Drinking Water Treatment Chemicals – Health Effects for use in drinking water. Estimated use per year is 950,000 lbs.

Item 2: Sodium Hydroxide

Liquid Sodium Hydroxide supplied shall contain approximately 50 percent or 25 percent sodium hydroxide (NaOH). The 50% sodium hydroxide solution begins to crystallize at approximately 540 F and the 25% solution will begin to crystallize at approximately 80 F. **Concentration shall be varied with the season and point of destination, as per the recipient request, to prevent crystallization during cold weather.**

Liquid Sodium Hydroxide Quality

Liquid Sodium Hydroxide supplied shall contain approximately 50 percent or 25 percent sodium hydroxide (NaOH) as specified above for seasonal delivery. Chemicals must meet ANSI/AWWA Standard B501-08 and certified to NSF/ANSI 60 Drinking Water Treatment Chemicals – Health Effects for use in drinking water. Estimated use per year is 500,000 lbs.

Item 3: Polymer

Polydyne Inc. Clarifloc A-210P Polymer OR Equal

POLYMER solution is to be ordered in 275 Gallon tote quantities. Deliveries will be made to BDD Water Treatment Facility dock area. Delivery off-loading process will be by fork truck. **Empty used tote containers will have to be removed by the Contractor and disposed of.**

Other Polymer

Bidders may propose alternative polymer chemicals, provided they demonstrate the chemical's performance at the BDD Water Treatment Plant at no cost or obligation to BDD. The full-scale demonstration must be conducted using BDD's existing polymer feed and dewatering equipment. Performance will be evaluated based on the following criteria:

The polymer shall be evaluated for its effectiveness in dewatering sludge generated from Ferric Chloride flocculation at the water treatment plant. The following conditions and performance requirements shall apply:

1. Minimum solids feed rate: 120 GPM at 5.0% solids.
2. Maximum hydraulic loading rate: 350 GPM at 2.0% solids.
3. Maximum solids loading rate: 3,300 dry pounds per hour.
4. Minimum cake solids concentration: 20%.
5. Minimum solids capture efficiency: 95% of total solids in the sludge feed.
6. Maximum polymer dosage (active polymer): 12 pounds per dry ton of solids.
7. Minimum continuous demonstration run time at steady state: 2 hours.

Percent Solids Capture = $(C/F) \times [(F-E)/(C-E)] \times 100$ Where C = Dewatered sludge total solids in mg/kg F* = Feed TS in mg/kg, excluding any dilution flow from polymer solution flow E = Centrate total suspended solids (TSS) in mg/kg, excluding any dilution from polymer solution flow. 14* Feed refers to sludge feed excluding active polymer and polymer dilution water flow rates. A polymer may be selected from those demonstrated to be the most cost effective at meeting the above criteria. If selected, the polymer is to be ordered in 275 Gallon tote quantities. Delivery off-loading process at the BDD Water Treatment Facility will be by fork truck.

Polymer Quality

Chemicals must be certified to NSF/ANSI 60 Drinking Water Treatment Chemicals – Health Effects for use in drinking water. Estimated use per year is 50,000 lbs.

Item 4: Zinc Orthophosphate (ZOP)

Aqueous ZOP solutions are clear and have a slight acid odor. ZOP solutions are miscible with water in all proportions. The specific gravity of the solutions will vary depending on the ratio of Zn to PO₄³⁻ and can range from 1.20 to 1.70 at 720 F.

Zinc Orthophosphate Quality

Chemicals must meet ANSI/AWWA Standard Specification B506-06 and certified to NSF/ANSI 60 Drinking Water Treatment Chemicals – Health Effects for use in drinking water. Estimated use per year is 30,000 lbs.

Item 5: Calcium Thiosulfate

Captor® Calcium Thiosulfate or Equal (Calcium thiosulfate solution) is a non-hazardous liquid with a typical pH of 6.5 - 8.0. The liquid solution is water-white to pale yellow in color and may have a slight odor of fresh concrete. The solution of Captor is considered stable in normal transportation. Solutions range from 20 to 30% strength by weight and weigh 10.0 to 11.0 pounds per U.S. gallon (1.198 to 1.318 gm/cc).

Captor Calcium Thiosulfate Quality

Chemicals must be certified to NSF/ANSI 60 Drinking Water Treatment Chemicals – Health Effects for use in drinking water. Estimated use per year is 50,000 lbs.

Item 6: Sulfuric Acid

Sulfuric Acid H₂SO₄ Sulfuric Acid solution is to be ordered in 250-gallon tote quantities. Deliveries will be made to BDD Water Treatment Facility dock area. Delivery off-loading process will be by fork truck only. Empty used tote containers will have to be removed and disposed of by the Contractor.

Sulfuric Acid Quality

Total H₂SO₄% by weight 93%. Chemicals must be certified to NSF/ANSI 60 Drinking Water Treatment Chemicals – Health Effects for use in drinking water. Estimated use per year is 15,000 lbs.

Item 7: Liquid Oxygen (LOX)

Liquid Oxygen (LOX) is a colorless, odorless, tasteless, diatomic gas. Oxygen has a density of 1.326 g/L at 700 F and 760 mm of mercury. Liquid Oxygen is to be ordered in bulk truck load quantities.

Liquid Oxygen Quality

LOX shall have an oxygen content of at least 99.0 percent, by weight. The water content of the LOX shall not exceed a dew point of -800F at the time of delivery. The total hydrocarbon content (as methane) of the LOX shall not exceed 40 ppm (v/v) at the time of delivery. Other impurities include nitrogen, argon, and other inert gases. The sum of these impurities shall not be sufficient to prevent achieving the minimum oxygen content specified above. Chemicals must meet ANSI/AWWA Standard Specification B304-08 and certified to NSF/ANSI 60 Drinking Water Treatment Chemicals – Health Effects for use in drinking water. Estimated use per year is 10,000,000 cu ft.

Item 8: Hydrofluorosilicic Acid

Hydrofluorosilicic acid supplied shall be clean, free of visible suspended matter, and white to straw-yellow in color.

Hydrofluorosilicic Acid Quality

Total Hydrofluorosilicic acid % by weight 20% to 30% Maximum free acid, expressed as HF, shall not exceed 1.0%. Chemicals must meet ANSI/AWWA Standard Specification B703a-08 Addendum to B703-06 and certified to NSF/ANSI 60 Drinking Water Treatment Chemicals – Health Effects for use in drinking water. Estimated use per year is 25,000 lbs.

Item 9: Sodium Hypochlorite

Sodium Hypochlorite is a clear, pale yellow or greenish liquid with a chlorine odor.

Sodium Hypochlorite Quality

Total sodium hypochlorite% 10% to 12.5% The solution shall not contain more than 0.15% insoluble matter by weight. Chemicals must meet ANSI/AWWA Standard Specification B300-04 and certified to NSF/ANSI 60 Drinking Water Treatment Chemicals – Health Effects for use in drinking water. Estimated use per year is 60000 gal

3. Compensation

A. Payment. The City shall compensate the Contractor based on the itemized amounts specified in Appendix A. For the services described in the scope of work, the City will pay the Contractor. The applicable gross receipts tax shall be shown as a separate amount on each billing or request for payment made under the contract, consistent with NMSA 1978, Section 13-1-108.

B. The compensation represents a maximum amount. The Contractor must notify the City when the Services provided under this Contract approach 90% of compensation total. Services rendered beyond the maximum compensation amount will not be reimbursed unless the Contract is amended in writing prior to the provision of such services.

C. Invoicing and Payment Terms Payment will be made upon the City's acceptance of deliverables and receipt of a detailed, certified invoice from the Contractor. Payments will be sent to the Contractor's designated address. The City shall issue payment in accordance with the timelines required by law. Invoices must be submitted no later than fifteen (15) days after the Contract's termination. Late invoices will not be processed or paid.

D. Extended Payment Terms for Grant-Funded Contracts. For grant-funded agreements, the City may issue payment within forty-five (45) days following submission of an undisputed payment request.

4. Term

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. The initial term of this contract shall be for **three (3) years** from the date of final signature. This Contract shall terminate three (3) years from the date of final signature unless terminated pursuant to Paragraph 4 (Termination) or Paragraph 5 (Appropriations). A contract for general services may not exceed ten (10) years, including all extensions and renewals, except as otherwise provided by NMSA 1978, Sections 13-1-150 through 13-1-152 or SFCC 1987, Section 11-13.

5. Default and Force Majeure

The City reserves the right to cancel all, or any part of any orders placed under this contract without cost to the City, if the Contractor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; 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 sub-contractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

6. Termination

A. Grounds. The City may terminate this Contract for convenience or cause. For contracts within their authority, the City Manager or their designee is authorized to provide the notice of termination, otherwise such notice of termination shall be provided by the Mayor, or their designee as authorized by the Governing Body. The Contractor may only terminate this Contract based upon the City's uncured, material breach of this Contract.

B. Notice: City Opportunity to Cure.

i) The City shall give the Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

ii) Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Contract upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

iii) Notwithstanding the foregoing, this Contract may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Contract, the Contractor is suspended or debarred by the City; or (iii) the Contract is terminated pursuant to Paragraph 17, "Appropriations", of this Contract.

C. Liability. Except as otherwise expressly allowed or provided under this Contract, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Contract. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS CONTRACT.*

7. Amendment

A. This Contract shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Contract to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Contract, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

8. Status of Contractor

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City because of this Contract. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

9. Assignment

The Contractor shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract without the prior written approval of the City.

10. Subcontracting

The Contractor shall not subcontract any portion of the services to be performed under this Contract without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Contract, nor shall any subcontract obligate direct payment from the City.

11. Non-Collusion

In signing this Contract, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City.

12. Inspection of Plant

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

13. Commercial Warranty

The Contractor agrees that the tangible personal property or services furnished under this Contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. The contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

14. Condition of Proposed Items

Where tangible personal property is a part of this Contract, all proposed items are to be NEW and of most current production, unless otherwise specified.

15. Records and Audit

During the term of this Contract and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. The City shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the City to recover excessive or illegal payments.

16. Appropriations

The terms of this Contract, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Contract. If sufficient appropriations and authorization are not made by the Governing Body, this Contract, and any orders placed under it, shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Contract to unilaterally reduce funding, the Contractor shall have the option to terminate the Contract or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

17. Release

The Contractor, upon final payment of the amount due under this Contract, releases the City, its officers, and employees, from all liabilities, claims and obligations whatsoever arising from or under this Contract. The Contractor agrees not to purport to bind the City, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

18. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City.

19. Conflict of Interest

- A. The Contractor represents and warrants that it presently has no interest and, during the term of this Contract, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.
- B. The Contractor further represents and warrants that it has complied with, and, during the term of this Contract, will continue to comply with, and that this Contract complies with all applicable provisions of the Governmental Conduct Act, NMSA 1978, Chapter 10, Article 16.
- C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the City relied when this Contract was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph were erroneous on the effective date of this Contract or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph were erroneous on the effective date of this Contract or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Contract to the contrary, the City may immediately terminate the Contract.
- D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

20. Approval of Contractor Representatives

The City reserves the right to require a change in the Contractor's assigned representatives if they are not adequately serving the City's needs.

21. Scope of Contract; Merger

This Contract incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written contract.

All terms and conditions of the BDDDB Water Treatment Chemicals ITB# 26005 and the Contractor's response to such document(s) are incorporated herein by reference and is included in the order of precedence.

22. Notice

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

23. Equal Opportunity Compliance

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Contract. If Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

24. Indemnification

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

25. New Mexico Tort Claims Act

Any liability incurred by the City of Santa Fe in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et. seq., as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act.

26. Applicable Law

The laws of the State of New Mexico shall govern this Contract, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with

NMSA 1978, Section 38-3-2. By execution of this Contract, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Contract.

27. Limitation of Liability

The Contractor's liability to the City, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the City's, claim. The foregoing limitation does not apply to paragraph 25 of this Contract or to damages resulting from personal injury caused by the Contractor's negligence.

28. Incorporation by Reference and Precedence

If this Contract has been procured pursuant to a request for proposals, this Contract is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Contract, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Contract in reverse chronological order; (2) the Contract, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

29. Workers' Compensation

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Contract may be terminated by the City.

30. Inspection

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

31. Inspection of Services

If this contract is for the purchase of services, the following terms shall apply.

A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Contract requires. The City has the right to inspect and test all services contemplated under this Contract to the extent practicable at all times and places during the term of the Contract. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Contract, the City may require the Contractor to re-perform the services in conformity with the requirements of this Contract at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

- i. require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Contract; and
- ii. reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Contract, the City may:

- iv) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
- v) terminate the contract for default.

32. Insurance

If the services contemplated under this Contract will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Contract, the following insurance coverage(s), naming the City as additional insured.

A. Commercial General Liability insurance shall be written on an occurrence basis and be a broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insurers.

B. Business Automobile Liability insurance for all owned, non-owned automobiles, with a combined single limit not less than \$1,000,000 per accident.

C. Broader Coverage and Limits. The insurance requirements under this Contract shall be the greater of (1) the minimum coverage and limits specified in this Contract, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Contract are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Contract and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

33. Impracticality of Performance

A party shall be excused from performance under this Contract for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to

ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

34. Invalid Term or Condition

If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

35. Enforcement of Contract

A party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Contract shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

36. Patent, Copyright and Trade Secret Indemnification

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Contract infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Contract, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- i. provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or,
- iii. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

37. Survival

The Contract paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Contract. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Contract shall survive this Contract.

38. Disclosure Regarding Responsibility

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any City for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's

company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Contract. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Contract. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Contract pursuant to the conditions set forth in Paragraph 7 of this Contract.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Contract. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City may terminate the involved contract for cause. Still further the City may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City.

39. Suspension, Delay or Interruption of Work

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Contract.

40. Notification

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To Buckman Direct Diversion:

Samantha Secrist
sasecrist@santafenm.gov
341 Cajan Del Rio Rd.
Santa Fe, NM 87506

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

41. Succession

This Contract shall extend to and be binding upon the successors and assigns of the parties.

42. Chemical Award & Pricing Sheet

This sheet summarizes the results of ITB #26005 for the supply of essential water treatment chemicals to Buckman Direct Dviersion (BDD). It lists the awarded vendors, unit costs, approximate annual quantities, and extended totals, and serves as the official record of contract pricing for the term of the agreement.

Item#	Vendor Name	Description	Unit Price	Approx. Qty
1	Polydyne Inc.	Polymer	1.04000	50,000
2	WATER TECH INC	Polymer	1.61000	50,000
3	Chemrite, Inc.	Calcium Thiosulfate	0.58000	50,000
4	Kemira Water Solutions	Ferric Chloride	0.32000	950,000
5	Penco, Inc	Ferric Chloride	0.28700	950,000
6	DuBois Chemicals, Inc.	Hydrofluorosilicic Acid	0.44300	25,000
7	Matheson Tri-Gas, Inc.	Liquid Oxygen	0.01070	10,000,000
8	SYOXSA, INC.	Liquid Oxygen	0.00913	10,000,000
9	PVS DX	Sodium Hydroxide	0.25500	500,000
10	PVS DX	Sodium Hypochlorite	3.10000	60,000
11	WATER TECH INC	Sodium Hypochlorite	2.90000	60,000
12	PVS DX	Sulfuric Acid	0.55000	15,000
13	WATER TECH INC	Sulfuric Acid	0.36000	15,000
14	Chemrite, Inc.	Zinc Orthoposphate	1.06700	30,000
15	George S. Coyne Chemical Co., Inc.	Zinc Orthoposphate	0.79990	30,000
16	Shannon Chemical Corporation	Zinc Orthoposphate	0.81400	30,000

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CONTRACTOR PENCCO, INC:

NAME AND TITLE:

SIGNATURE:

DATE:

NMBTIN:

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CONTRACTOR PVS DX:

NAME AND TITLE:

SIGNATURE:

DATE:

NMBTIN:

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CONTRACTOR POLYDYNE, INC:

NAME AND TITLE:

SIGNATURE:

DATE:

NMBTIN:

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CONTRACTOR GEORGE S. COYNE CHEMICAL CO., INC:

NAME AND TITLE:

SIGNATURE:

DATE:

NMBTIN:

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CONTRACTOR CHEMRITE, INC:

NAME AND TITLE:

SIGNATURE:

DATE:

NMBTIN:

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CONTRACTOR WATER TECH INC:

NAME AND TITLE:

SIGNATURE:

DATE:

NMBTIN:

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CONTRACTOR SYOXSA, INC:

NAME AND TITLE:

SIGNATURE:

DATE:

NMBTIN:

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CONTRACTOR DUBOIS CHEMICALS, INC:

NAME AND TITLE:

SIGNATURE:

DATE:

NMBTIN:

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CONTRACTOR KEMIRA WATER SOLUTIONS:

NAME AND TITLE:

SIGNATURE:

DATE:

NMBTIN:

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CONTRACTOR MATHESON TRI-GAS, INC:

NAME AND TITLE:

SIGNATURE:

DATE:

NMBTIN:

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CONTRACTOR SHANNON CHEMICAL CORPORATION:

NAME AND TITLE:

SIGNATURE:

DATE:

NMBTIN:

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

BUCKMAN DIRECT DIVERSION:

BDDB SIGNATURE:

DATE:

ATTEST:

COUNTY CLERK:

Approved to form and legal sufficiency by:

BDDB COUNCELOR:

Approved by Finances:

Emily K. Oster

FINANCE DIRECTOR: