

EL PASO WATER (EPWater)

1154 Hawkins Blvd, El Paso, Texas 79925, 1st Floor Purchasing and Contracts
Solicitation Check List

**WET AND DRY SAND AND SILT REMOVAL
Bid No. 39-23**

THIS CHECKLIST IS PROVIDED FOR YOUR CONVENIENCE

Before turning in your proposal, did you do the following?

_____ Did you check our website www.epwater.org, for any addenda?
(Failure to sign and include the addenda with the proposal may deem the bidder's submission non-responsive.)

_____ Did you complete the Conflict-of-Interest Questionnaire?

_____ Did you complete the Statement of Residency?

_____ Did you complete the Statement of Nondivestment from Israel?

_____ Did you REVIEW the process associated with the Texas Ethics Commission form 1295?
(Form is required and must be completed by the awardee on the Friday before Public Service Board Meeting)

_____ Did you provide one (1) hard copy proposal signed in blue ink?

_____ Did you electronically save your signed proposal as a PDF on a USB drive?

_____ Did you complete the Excel Bid Form Worksheet with all HIGHLIGHTED costs and blank spaces filled out?

_____ Did you save the EXCEL Bid Form Worksheet in **Excel format** on the USB Drive?
(Failure to include the Excel Bid Form Worksheet in Excel format on USB Drive may deem the bidder's submission non-responsive).

The Excel Bid Form worksheet is found with the solicitation announcement located at www.epwater.org

Please Label the USB Drive with the Bid number and Company name.

_____ Is your bid in a sealed envelope marked with the **Bid Number** and **Company name**?
Deliver your Proposal to the El Paso Water Utilities Purchasing Department
(See Schedule of Events).

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SOLICITATION FOR EPWater

1154 HAWKINS BLVD., EL PASO, TX 79925
Phone: (915) 594-5628 Fax: (915) 594-5689

The undersigned bidder offers to furnish all the materials, supplies, equipment and /or services shown below in accordance with specifications, terms and conditions set forth herein.

SUBJECT: WET AND DRY SAND AND SILT REMOVAL
BID NUMBER: 39-23
BID DEADLINE: 11:00 A.M. MOUNTAIN TIME, September 01, 2023
TO BE OPENED: 11:30 A.M. MOUNTAIN TIME, September 01, 2023

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PRINT LEGIBLY

FIRM: _____	
MAILING ADDRESS: _____	SIGNATURE: _____
STREET ADDRESS: _____	PRINTED NAME: _____
CITY/STATE/ZIP: _____	TITLE: _____
PHONE NUMBER: _____	FAX: _____
E-MAIL: _____	DATE: _____

PART 1 – PROJECT INFORMATION

1.1 PROPOSAL OVERVIEW

The purpose of these general provisions is to provide a complete understanding by all interested vendors. Bids will be considered only from bidders who are established in this type of business, are financially responsible and are able to show evidence of satisfactory past performance.

For the purpose of these specifications, the word " successful bidder" and "contractor" shall be meant to be the same.

This is a unit price Low Bid Solicitation.

1.2 PROPOSAL SUBMITTAL

The proposal shall bear an original signature, in blue ink, of a responsible officer or agent for the company. Failure to sign will be the basis for declaring the proposal non-responsive.

Submit ONE (1) signed hard copy of the proposal, signed in blue ink, in a sealed envelope with the following information:

"BID ENCLOSED"
Bid No. 39-23 Wet and Dry Sand and Silt Removal
Attn: Barbara Logan, Procurement Analyst
El Paso Water Utilities
Purchasing & Contracts Administration
1154 Hawkins Blvd.
El Paso, Texas 79925

Place a tab on the Excel Bid Form Worksheet for quick identification during the bid opening.
Note: Faxed or emailed Proposals **WILL NOT** be accepted

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1.3 PROPOSAL FORMAT

Bidders are also to complete the following:

1. **Checklist** – First page of this Solicitation
2. **EXCEL BID FORM** found with this Solicitation located at www.epwater.org

In the Unit Cost column of the Excel Bid Form, a dollar amount must be included for each bid line item.

**DO NOT ENTER FORMULAS in the Excel Bid form to calculate your price.
Only enter the final Unit Cost per line item.**

1.4 USB DRIVE

Bidders must provide a read-only USB Drive with the following documents saved in the USB drive:

1. PDF electronic version of the complete AND signed proposal in blue ink.
2. Completed Excel Bid Form (not PDF version)
3. USB Drive must be labeled with the bid number and company name.
4. If the printed Excel Bid Form does not match the USB information, the USB version will take precedence.
5. Failure to comply with Items 1 through 2 may deem the 'bidder's submission non-responsive.

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1.5 SCHEDULE OF EVENTS

EVENTS	DATE AND/OR TIME
Advertisement	August 08, 2023, and August 15, 2023
Pre-Bid Meeting (Recommended to attend)	August 17, 2023 at 2:30 P.M. Mountain Time (MT) The link for the Pre-Bid Meeting is provided in our website at www.epwater.org
Questions Deadline	August 21, 2023 at 3:00 P.M. MT
Answers Posted	August 24, 2023
Bid Deadline	September 01, 2023 at 11:00 A.M. MT
Bid Opening	September 01, 2023 at 11:30 A.M. MT The link for the Bid Opening is provided in our website at www.epwater.org
Public Service Board	October 11, 2023

EPWater reserves the right, at its sole discretion, to adjust this Schedule of Events as necessary. EPWater will communicate adjustments to any event in the Schedule in the form of an Addendum.

1.6 REQUESTS FOR CLARIFICATION

Any requests for clarifications or changes to this solicitation shall be made in writing via email to:

EMAIL: Purchasing.Info@epwater.org
SUBJECT: Bid No. 39-23 **Wet and Dry Sand and Silt Removal**
Body of email TO: Barbara Logan, Procurement Analyst

Requests submitted after the deadline will not elicit a response.

1.7 BID OPENINGS

Bid openings will be live-streamed. Check scheduling information on the solicitation page at www.epwater.org.

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PART 2 – GENERAL CONDITIONS AND SPECIFICATIONS

2.1 SPECIFICATIONS

THE ITEM(S) CONTAINED WITHIN THIS SOLICITATION IS / ARE TO BE PROVIDED IN ACCORDANCE WITH THE FOLLOWING AND OR ATTACHED SPECIFICATIONS:

Item # 1

The successful bidder shall supply machinery (loader or excavator) of adequate size and capacity and equipment operators to scoop, pile, and load settled sand and silt located at the Jonathan Rogers Water Treatment Plant. The bidder shall furnish tractor trailer trucks to transport the sand and silt to a designated destination as stated within this specification. Each individually loaded truck will contain a designated number of cubic yards of sand and/or silt as agreed upon by the Contractor and EPWater. The loaded materials shall be delivered and adequately stockpiled to minimize space as directed by a Utility employee **to a designated transfer point/drying area** in the back lot of the Rogers and Bustamante Plants. Sand material shall be piled separately from other silt materials.

Item # 2

The successful bidder shall supply machinery (loader or excavator) of adequate size and capacity and equipment operators to scoop, pile, and load settled sand and silt **from the raw water canal intake** located in the rear of the Jonathan Rogers Plant. Slopes are to be dressed and brought to original grading upon completion of sand and silt removal. The bidder shall furnish tractor trailer trucks to transport the sand and silt to a designated destination as stated within this specification. Each individually loaded truck will contain a designated amount of cubic yards of sand and/or silt as agreed upon by the Contractor and EPWater. The loaded materials shall be delivered and adequately stockpiled to minimize space as directed by a Utility employee **to a designated transfer point/drying area** located in the back lot of the Rogers and Bustamante Plants. Sand material shall be piled separately from other silt materials.

Work for Item 1 and Item 2 will commence after the surface water season ends and the designated areas are drained, typically in November.

Item # 3 (a and b)

For item #3, OPTION 1 or 2, EPWater reserves the right to choose between option 1 and option 2. It is recommended that bidders enter a bid for both options.

The successful bidder shall supply machinery (loader or excavator) of adequate size and capacity and equipment operators to scoop, pile and load dried sand and silt **from the transfer point/drying area** located in the back lot of the Rogers and Bustamante Plants. The bidder shall also furnish tractor trailer trucks to transport the dried sand and silt to its designated destination as approved by EPWater and Contractor. Each individually loaded truck will contain a designated amount of cubic yards of dried sand and/or silt as agreed upon by the Contractor and El Paso Water. The Contractor has the option of segregating materials to be hauled away. The loaded material shall be delivered as directed by an EPWater employee **to a designated 'Contractor's area as approved by EPWater** or the loaded material shall be hauled as directed by a Utility employee to 'Contractor's site. Contractor's disposal site for hauling and disposal of said material to 'Contractor's site shall be in accordance with all local, State and Federal regulations **at the 'contractor's expense**. An estimated minimum of 8 to 12 trucks will be needed to transport this dried sand and silt but number of trucks will depend on final transport site.

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Item # 4 Allowance

Owner's allowance for unanticipated work required at owner's direction only.

All employees of the awarded vendor shall be United States Citizens and/or legal residents residing in the United States and shall be paid in accordance with the prevailing wage scale for work of a similar character in this locality and in no event shall they be paid less than the minimum wage established by law. A security investigation will be made of the persons who will have access to any EPWater owned facilities. Any of the 'Contractor's employees not satisfactory to the EPWater shall be immediately replaced by others who will be satisfactory. The contractor shall be responsible for their employees working in EPWater facilities. Contractor vehicles shall be clearly marked with the company name. Work days for this project will be Monday through Friday from 7:00 A.M. to 3:30 P.M. **Work on Saturday and Sunday is permitted with approval by the Plant Superintendent.**

Nothing contained herein shall be construed as creating the relationship of employer or employee between EPWater and the Contractor or between EPWater and the 'Contractor's employee. The Contractor shall be deemed at all times to be an independent contractor. In carrying out the terms of this Contract, the Contractor shall select his own employees subject to conditions contained herein and such employees shall be and act under the exclusive and complete supervision and control of the Contractor.

The Contractor shall be responsible for all his employees and vehicles while working on El Paso Water facilities premises. No subcontracted trucks will be allowed unless approved by El Paso Water.

The successful bidder shall provide adequate equipment to efficiently remove settled sand and silt from ponds by completion date or as specified by EPWater, and will stockpile said materials separately in designated drying area to minimize space used.

The successful bidder shall furnish a ticket for each load hauled from the plant. A copy of the ticket shall be turned in on a daily basis to the Plant Superintendent. A Utility employee will verify the actual loads removed against the turned in load tickets.

The successful bidder shall be responsible for providing the equipment required to provide dust control on the dirt access road to and from the Jonathan Rogers Water Treatment Plant. EPWater will furnish RECLAIMED water for this operation at NO CHARGE TO THE CONTRACTOR.

El Paso Water reserves the right to modify equipment used for the efficient removal of sand and silt from the plant.

Smoking and drinking of alcoholic beverages in all El Paso Water facilities is strictly prohibited.

COMPLETION DATES:

Removal of sand and wet dirt from ponds shall be completed **NO LATER THAN FEBRUARY 15TH.**

Removal of sand and dirt from transfer point/drying area shall begin no later than 30 days from written notification to the Contractor from EPW Plant Superintendent.

The 'Contractor's employees shall be required to report to the security officer stations for **ALL ENTRIES AND EXITS AT ALL 'EPWATER' UTILITIES FACILITIES.**

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PART 3 – PRICE ESCALATION/DE-ESCALATION

3.1 PRICE ESCALATION

A Price Escalation may be considered under the following conditions:

a. CONSUMER PRICE INDEX (CPI)

The maximum **price** increase for each line item shall not exceed two (2%) percent of the Contractor's current NYS pricing or the percent increase in the latest available National Consumer **Price Index**. The Contractor shall submit a CPI statement for all price escalations.

b. Prices must be firm for the first 12-month period from the award by the Public Service Board.

c. After the 12-month period, a request for a price increase **MUST BE ACCOMPANIED BY A CERTIFIED LETTER from the contractor's supplier or other forms of evidence as deemed necessary by EPWater, which includes the price increase to the contract. **The price increase shall be effective within 14 calendar days from EPWater acceptance AND written notification of Price Increase Acceptance by EPWater.****

d. EPWater reserves the right to cancel the contract resulting from this Solicitation and rebid the requirements **if the price escalation requested is above the current open market price. Cancellation of the contract will not affect any outstanding orders.**

e. All price increases accepted shall be effective for 12 months from the revised date of the Master Contract.

3.2 PRICE DE-ESCALATION

If the Contractor receives a price decrease from the supplier, the Contractor is responsible for notifying EPWater within two working days of the price decrease and passing the price decrease on to EPWater. The price decrease will be effective upon receipt of the price reduction from the Contractor.

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3.3 DISCOUNT

Unless a discount is provided as an inducement for prompt payment, EPWater is not obligated to make payment on invoice(s) for this contract until 30 days after receipt of a valid, complete, and acceptable invoice. An invoice shall not be submitted prior to receipt of the (**Wet and Dry Sand and Silt Removal**), whichever is later. Payment may be delayed in accordance with exceptions under the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code). Interest on all overdue payments shall be imposed in accordance with the provisions of the Texas Prompt Payment Act.

Any discount will be used in the evaluation of the bid submittal to determine the lowest responsible bid.

Discount: _____

Payment Terms: _____

The payment terms for a discount cannot be less than the first ten (10) days following the date the invoice is received by the Accounting Department

3.4 SALES AND USE TAX EXEMPTION

EPWater is exempt from State and City Sales Tax

PART 4 – DELIVERY REQUIREMENTS

The 'Contractor's employees shall be required to report to the security officer stations for **ALL ENTRIES AND EXITS AT ALL 'EPWATER' UTILITIES FACILITIES.**

EPWater reserves the right to request delivery to any EPWater location.

4.1 PERSONNEL IDENTIFICATION

Personnel entering the premises of EPWater (including drivers of delivery vehicles) are required to wear an identification badge containing the following information:

- Employee Name
- Company Name
- Employee Picture

Entry to the premises of ANY EPWater facilities may be denied to individuals without identification as addressed above.

4.2 TRANSPORTATION

F.O.B. – El Paso, Texas. Delivery carriers must meet insurance requirements.

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PART 5 – GENERAL INFORMATION

5.1 RESIDENT/NON-RESIDENT BIDDERS

Bidder must answer the following questions:

1. Does the bidder that is making and submitting the bid qualify as a "**Resident Bidder**" or a "**Non-Resident Bidder**" under Texas Law? If the bidder is a "**Resident Bidder**," please complete and return the **Statement of Residency Form** with your proposal.

Answer: _____

2. If the bidder is a "**Non-Resident Bidder**," does the state in which the non-resident bidder's principal place of business is located have a law requiring a non-resident bidder of that state to bid a certain amount or percentage under the bid of a resident bidder of that state in order for the non-resident bidder of that state to be awarded the contract on their bid in such state?

Answer: _____

3. If the answer to Question Number 2 is "Yes," by what amount or percentage must a Texas resident bidder bid under the bid of a resident bidder of that state in order to be awarded a contract on such bid in the said state?

Answer: _____

A "**Non-Resident Bidder**" will not be awarded this Bid unless the non-'resident's proposal is best value bid submitted by a responsible **Texas Resident Bidder** by the same amount that a **Texas Resident Bidder** would be required to underbid the non-resident bidder to obtain a comparable contract in the state where the non-'resident's principal place of business is located. The definitions for the terms "**Bidder**," "**Texas Resident Bidder**," and "**Non-Resident Bidder**" are included in the "**Instructions to Bidders**" on the last two pages of this solicitation.

[CONTINUED ON NEXT PAGE]

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5.2 STATEMENT OF RESIDENCY

The following information is required by EPWater in order to comply with the provisions of Texas Government Code §§ 2252.001 *et. seq.* Failure to provide the required information may constitute a basis for the rejection of your proposal. Offeror's cooperation in this regard will avoid costly time delays in the award of solicitation by EPWater. Failure to provide all required information may result in the apparent best value bidder being considered non-responsive and non-responsible and the second best value bidder being considered for award.

Definitions

Resident Bidder: a person whose principal place of business is in the State of Texas, including an Offeror whose ultimate parent company or majority owner, has its principal place of business in the State of Texas.

Nonresident Bidder: a person who is not a resident.

Principal Place of Business in Texas: a permanent business office located in Texas from which a bid is submitted and from which business activities are primarily conducted for the organization other than submitting bids to governmental agencies, where at least one employee works for the business entity.

'Bidder's Complete Company Name: _____

State the address of your principal place of business in the space provided below:

State the nature of the business conducted at your principal place of business in the space provided below:

State the number of employees you have at your principal place of business: _____

I swear and attest that the information provided above is true and correct as of the date _____ ("Bidder") submitted its Bid on Bid No. _____. I further attest that I am an authorized representative of Bidder or have been duly authorized to represent Bidder in this matter. I understand that the information provided is being relied on by EPWater in order for it to comply with state purchasing laws and will materially affect its decisions in this regard. Should the information provided be false or materially misleading, any contract entered into between EPWater and Bidder will be void, and EPWater may pursue any legal claims it may have against Bidder.

[SIGNATURE ON NEXT PAGE]

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By: _____
Offeror Name
Name: _____
Owner
Title: _____
Company: _____

ACKNOWLEDGMENT

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20____, by
_____, as _____ of _____, a
_____.

Notary Public, State of _____

My Commission Expires: _____

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5.4 CONTRACT CLAUSES

1. TYPE OF CONTRACT

This is a **Good(s) and/or Service(s) Contract**, under which EPWater shall order all of its requirements for the good(s) and/or service(s) described within this solicitation from the best value, responsible, responsive bidder, hereinafter referred to as Contractor, for the duration of the contract.

Note: Good(s) and/or Service(s) will be ordered on an ""as-required"" basis.

2. TERM OF CONTRACT

The **Contract** to provide (**Wet and Dry Sand and Silt Removal**) shall be from **AWARD OF PROPOSAL** by the Public Service Board to the most responsive, responsible bidder for a term of one year. Upon mutual agreement, the contract may be extended under the same terms and conditions for **four** additional one-year optional years.

Bidders are advised that only bids with a firm, fixed price, F.O.B., El Paso, Texas, for the above-listed time period will be considered. **Bids not complying with this provision may be disqualified**.

When the successful Bidder cannot furnish the required (**Wet and Dry Sand and Silt Removal**) within the delivery time specified above, the EPWater reserves the right to obtain (**Wet and Dry Sand and Silt Removal**) from any available source and bill the successful Bidder for any additional cost over the bid amount.

Option to Extend Services for a period of up to Six (6) Months

In the event EPWater has not obtained other goods and/or services by the expiration date of the existing contract term, the Contractor shall nonetheless continue for a period not to exceed six (6) months on a month-to-month basis after the end of its term unless EPWater has notified the Contractor that EPWater has obtained another contractor.

3. ACCEPTANCE OR REJECTION OF PROPOSALS

EPWater reserves the right to accept or reject any or all proposals, to waive all minor technicalities, and to accept the proposal determined to be the most favorable to EPWater. Additionally, EPWater may accept a proposal subject to an exception if, in the sole judgment of EPWater, the proposal meets or exceeds EPWater's specifications.

4. INTERLOCAL PURCHASING AGREEMENTS (applicable to competitively procured goods/services contracts).

- a. EPWater has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with EPWater.
- b. EPWater does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

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5. CONTRACT ADMINISTRATION

Administration of this Contract, on behalf of EPWater, is the responsibility of (**Barbara Logan**), Purchasing and Contract Administration, who is your point of contact for general information or specific matters concerning this contract. (**Barbara Logan**) can be reached by telephone at (915) 594-5627, or by FAX at (915) 594-5689. Correspondence should be addressed to:

By Mail:

ATTN: Barbara Logan
Bid No. 39-23 Wet and Dry Sand and Silt Removal
El Paso Water
Purchasing & Contracts Administration
1154 Hawkins Blvd.
El Paso, Texas 79925

By Email

Purchasing.Info@epwater.org

Subject Line: 39-23 Wet and Dry Sand Silt Removal

ATTN: Barbara Logan

Please refer to Bid Number or Contract Number in all correspondence.

With respect to required insurance, EPWater and its officers and employees shall be named as additional insureds as their interests may appear. EPWater shall be provided with 30 days advance notice, in writing, of any cancellation or material change. EPWater shall be provided with certificates of insurance evidencing the required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least 15 days prior to the expiration or cancellation of any such policies.

NOTE: The insurer waives any right of subrogation it may acquire against the Owner, its partners, agent, and employees.

Notices and Certificates required by this contract clause shall be provided to:

By Mail:

ATTN: Barbara Logan
Bid No. 39-23 Wet and Dry Sand and Silt Removal
El Paso Water
Purchasing & Contracts Administration
1154 Hawkins Blvd.
El Paso, Texas 79925

By Email

Purchasing.Info@epwater.org

Subject Line: 39-23 Wet and Dry Sand and Silt Removal

ATTN: Barbara Logan

Failure to submit insurance certification may result in contract cancellation.

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Please refer to Bid Number/Contract Number and Title in all correspondence.

6. PRICE ADJUSTMENT

MINIMUM WAGE

A price adjustment increase will be allowed if there is a **federally mandated** increase.

7. COMPLIANCE WITH NON-DISCRIMINATION LAWS

The Contractor agrees that it, its employees, officers, agents, and subcontractors, will comply with all applicable federal and state laws and regulations and local ordinances in the performance of this contract, including, but not limited to, the Americans with Disabilities Act, the Occupational Safety and Health Act, or any environmental laws.

The Contractor further agrees that it, its employees, officers, agents, and subcontractors will not engage in any employment practices that have the effect of discriminating against employees or prospective employees because of sex, race, religion, age, disability, ethnic background, or national origin, or political belief or affiliation of such person, or refuse, deny, or withhold from any person, for any reason directly or indirectly, relating to the race, gender, gender identity, sexual orientation, color, religion, ethnic background or national origin of such person, any of the accommodations, advantages, facilities, or services offered to the general public by place of public accommodation.

8. CONTRACTING INFORMATION

This clause is applicable for purchases that have a stated expenditure or result in an expenditure of at least \$1 million.

The Contractor must preserve all contracting information related to this contract as provided by the records retention schedule requirements applicable to EPWater for the duration of this contract. The Contractor will promptly provide EPWater any contracting information related to this contract that is in the custody or possession of the Contractor on request of EPWater. On completion of this contract, the Contractor will either provide at no cost to EPWater all contracting information related to this contract that is in the custody or possession of the Contractor or preserve the contracting information related to this contract as provided by the records retention requirements applicable to EPWater.

9. PROTEST/DISPUTE

Only a vendor who has submitted a response to a solicitation may protest a recommendation for contract award. Failure to follow the requirements of the protest procedures established by EPWater and included in all solicitations shall constitute a waiver of all protest rights. Protests must be made after the PSB Agenda has been posted and by 5 p.m. the day before the PSB meeting in which the award will be considered.

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10. CONE OF SILENCE

The ""Cone of Silence"" is imposed upon each RFP, RFQ, or Bid from the time of advertising until it is posted on the Public Service Board Agenda for the award. The Cone of Silence prohibits communications with EPWater employees to attempt to influence the purchasing decision. As such, the Cone of Silence prohibits any communication regarding RFPs, RFQs, or Bids between, among others:

- Potential vendors, service providers, bidders, consultants, and EPWater employees.
- Potential vendors, service providers, bidders, consultants, any member of the Board, the President/CEO, or their respective staff and members of the respective selection committee.

The provisions do not apply to, among other communications:

- Oral communications with Sr. Purchasing Agent, Purchasing Agent, Contracts Developer Coordinator, or Procurement Analyst, provided the communications are limited strictly to matters of process or procedure already contained in the solicitation document;
- The provisions of the Cone of Silence do not apply to oral communications at pre-proposal or pre-bid conferences, oral presentations before selection committees, contract negotiations during duly notice public meeting, public presentations made to the President/CEO and Board members during a duly noticed public meeting; or
- Communications in writing at any time unless specifically prohibited by the applicable RFP, RFQ, or Solicitation.

In addition to any other penalties provided by law, violation of the Cone of Silence by any proposer or bidder shall render that 'proposer's or 'bidder's RFP, RFQ, or bid award voidable. Any person having personal knowledge of a violation of these provisions shall report such violations to 'EPWater's General Counsel and the Senior Purchasing Agent.

The ""Cone of Silence"" applies to any and all potential subcontractors as well.

This bid will be awarded by the Public Service Board at their regularly scheduled meeting.

5.5 EPWATER TERMS AND CONDITIONS

1. PREVAILING TERMS

These Purchase Order/Master Contract Standard Terms and Conditions (Standard Terms and Conditions) apply to El Paso Water Utilities Public Service Board (EPWater) purchases entered into by EPWater through Purchase Orders or Master Contract for goods or services, unless otherwise noted on a Purchase Order or Master Contract. These terms prevail over the 'Vendor's terms. The Standard Terms and Conditions and accompanying Purchase Order or Master Contract are considered the contract between EPWater and Vendor.

On purchases through an approved purchasing cooperative, the Standard Terms and Conditions

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supplement and prevail over the purchasing cooperative contract terms and conditions if there is a conflict unless otherwise noted on a Purchase Order or Master Contract.

The acceptance of 'EPWater's Purchase Order or Master Contra

2. **INVOICES AND PAYMENTS**

- a. EPWater will pay all invoices in accordance with Chapter 2251 of the Government Code. EPWater will notify the Vendor of any errors or disputes in invoices in accordance with Chapter 2251 of the Texas Government Code.
- b. The Vendor will submit invoices, in a single copy, on each contract after each delivery. Invoices covering more than one purchase order will not be accepted.
- c. Invoices will be itemized, including the serial number of the unit; transportation charges, if any, will be listed separately.
- d. Invoices will reflect the Purchase Order or Master Contract number.
- e. EPWater is a tax-exempt entity. Do not include any taxes in invoices. EPWater will furnish a tax exemption certificate upon request.
- f. Discounts will be taken from the date of receipt of goods or the date of invoice, whichever is later.
- g. A copy of the bill of lading and the freight waybill, when applicable, will be attached to the invoice.
- h. Payment will not be due until the above instruments are submitted after delivery and acceptance.
- i. Email invoices to accountspayable@epwater.org.
- j. Vendor shall notify the Purchasing & Contract Administration division of any changes in its remittance addresses.

3. **AVAILABILITY OF FUNDS**

The awarding of this contract is dependent upon the availability of funding. In the event that funds do not become available, the contract may be terminated, or the scope may be amended. A 30-day written notice will be given to the Vendor and there will be no penalty nor removal charges incurred by EPWater.

4. **GRATUITIES**

EPWater may, by written notice to the Contractor, cancel this contract without liability to the Contractor if it is determined by EPWater that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of EPWater with a view toward securing a contract or

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securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by EPWater pursuant to this provision, EPWater shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

5. **WARRANTY-PRICE**

- a. The price to be paid by EPWater will be that contained in the Contractor's bid, which the Contractor warrants to be no higher than the Contractor's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event the Contractor breaches this warranty, the prices of the items will be reduced to the Contractor's current prices on orders by others, or in the alternative, EPWater may cancel this contract without liability to the Contractor for breach or Contractor's actual expense.
- b. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, EPWater will have the right, in addition to any other right or rights, to cancel this contract without liability and to deduct from the contract price.

6. **RIGHT TO ASSURANCE**

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he or she may demand that the other party give written assurance of his or her intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

7. **VENDOR TO PACKAGE GOODS**

The Vendor will package goods according to good commercial practice. Each shipping container will be clearly and permanently marked as follows: (a) Vendor's name and address; (b) Consignee's name, address, and purchase order; (c) Container number and the total number of containers, e.g., "box 1 of 4 boxes"; and (d) the number of the container bearing the packing slip. The Vendor will bear the cost of packaging unless otherwise provided. Goods will be suitably packed to secure the lowest transportation costs and to conform to the requirements of common carriers and any applicable specifications. EPWater's count or weight will be final and conclusive on shipments not accompanied by packing lists.

8. **SHIPMENT UNDER RESERVATION PROHIBITED**

The Vendor is not authorized to ship the goods under reservation, and no tender of a bill of lading will operate as a tender of goods.

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9. **DELIVERY TERMS AND TRANSPORTATION CHARGES**

The delivery of the goods by the Contractor shall be F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in the quote; EPWater agrees to reimburse the Contractor for transportation costs in the amount specified in the 'Contractor's bid if the bid does not include transportation costs, EPWater will have the right to designate what method of transportation will be used by Contractor to ship the goods.

10. **TITLE & RISK OF LOSS**

The title and risk of loss of the goods will not pass to EPWater until EPWater actually receives and takes possession of the goods at the point or points of delivery.

11. **RIGHT OF INSPECTION**

EPWater will have the right to inspect the goods at delivery before accepting them.

12. **NO REPLACEMENT OF DEFECTIVE TENDER**

Every tender or delivery of goods must fully comply with all provisions of this contract as to the time of delivery, quality, and the like. If a tender is made which does not fully conform, this will constitute a breach, and the Contractor will not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Vendor may reasonably notify EPWater of his intention to cure and may then make a conforming tender within the contract time but not afterward.

13. **PLACE OF DELIVERY**

The place of delivery will be that set forth in the solicitation. The terms of this contract are "no arrival, no sale".

14. **WARRANTY-PRODUCT**

The Contractor will not limit or exclude any implied warranties, and any attempt to do so will render this contract voidable at the option of EPWater.

15. **SAFETY WARRANTY**

The Contractor warrants that the product sold to EPWater will conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, EPWater may return the product for correction or replacement at the Contractor's expense. In the event the Contractor fails to make the appropriate correction within a reasonable time, the correction made by EPWater will be at the Contractor's expense.

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16. **TERMINATION**

A. TERMINATION FOR CONVENIENCE

EPWater may terminate this contract for convenience, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close-out costs and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to EPWater to be paid to the Contractor. If the Contractor has any property in its possession belonging to EPWater, the Contractor will account for the same and dispose of it in the manner EPWater directs.

B. TERMINATION FOR DEFAULT

If the Contractor fails to comply with any provision of the contract, EPWater may terminate this contract for default. Termination shall be effectuated by serving a notice of intent to terminate the contract, with a copy to Surety, if applicable, setting forth the manner in which the Contractor is in default. The Contractor will be given an opportunity to correct the problem within a reasonable amount of time as specified by EPWater before termination notice is rendered. EPWater shall have the right to immediately terminate the Contract for default if the Contractor violates any local, state, or federal laws, rules, or regulations that relate to the performance of this Contract.

If EPWater terminates this Contract because the Contractor failed to perform the services as required by the Contract, EPWater shall have the right to obtain like services from another vendor in substitution for those due from the Contractor. The cost of substitute services shall be determined by informal or formal procurement procedures as required by the Local Government Code. EPWater may recover the difference between the cost of the substitute services and the Contract price from the Contractor as damages. EPWater may deduct the damages from Contractor's account for services rendered prior to the termination or services rendered by the Contractor pursuant to a different contract or pursue any other lawful means of recovery. The failure of EPWater to obtain substitute services and charge the Contractor under this clause is not a bar to any other remedy available for default.

C. Termination for Default by EPWater:

If EPWater fails to perform any of its duties under this contract, the Contractor may deliver a written notice to Purchasing & Contract Administration division describing the default, specifying the provisions of the contract under which the Contractor considers EPWater to be in default and setting forth a date of termination not sooner than 90 days following receipt of the Notice. The Contractor, at its sole option, may extend the proposed date of termination to a later date. If EPWater fails to cure such default prior to the proposed date of termination, the Contractor may terminate its performance under this contract as of such date.

D. Termination for Failure to Comply with Subchapter J, Chapter 552, Government Code.

This clause is applicable for purchases that have a stated expenditure or result in an expenditure of at least \$1 million.

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The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the Vendor agrees that this contract can be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

17. **ADDITIONAL REMEDIES**

If EPWater terminates the contract because the Vendor fails to deliver goods as required by the contract, EPWater shall have all of the remedies available to a buyer pursuant to the UNIFORM COMMERCIAL CODE, including the right to purchase the goods from another vendor in substitution for those due from the Vendor. The cost to cover shall be the cost of substitute goods determined by informal or formal procurement procedures as required by the Texas Local Government Code. EPWater may recover the difference between the cost of cover and the contract cost by deducting the same from amounts owed to Vendor for goods delivered prior to termination or any other lawful means.

18. **FORCE MAJEURE**

If by reason of Force Majeure, either party hereto will be rendered unable wholly or in part to carry out its obligations under this contract, then such party will give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, will be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party will try to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein will mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of government of the United States or the State of Texas, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of the party having the difficulty and that the above requires that any Force Majeure will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty. If a party is unable to comply with the provisions of this contract by reason of Force Majeure for a period beyond thirty days after the event or cause relied upon, then upon written notice after the thirty (30) days, the affected party shall be excused from further performance under this contract.

19. **CONTRACTUAL RELATIONSHIP**

Nothing herein will be construed as creating the relationship of employer and employee between EPWater and the Vendor or between EPWater and the Vendor's employees. EPWater will not be subject to any obligations or liabilities of the Vendor or his employees incurred in the performance of the contract unless otherwise authorized herein. The Vendor is an independent contractor, and nothing contained herein will constitute or designate the Vendor or any of his employees as employees of EPWater. Neither the Vendor nor his employees will be entitled to

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any of the benefits established for EPWater employees nor be covered by EPWater's Workers' Compensation Program.

20. **ASSIGNMENT-DELEGATION**

No right or interest in this contract will be assigned or delegation of any obligation made by the Vendor without the written permission of EPWater. Any attempted assignment or delegation by the Vendor will be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

21. **WAIVER**

No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing and signed by the aggrieved party.

22. **ADVERTISING**

The Vendor will not advertise or publish the fact that EPWater has entered into this contract without EPWater's prior consent.

23. **NOTICES**

All notices sent to EPWater shall be made in writing and may be given by personal delivery or by mail. When so addressed, notices shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery.

Notices sent by mail to EPWater shall be addressed to the designated responsible person or office:

By Mail:

ATTN: Barbara Logan
Bid No. 39-23 Wet and Dry Sand and Silt Removal
El Paso Water
Purchasing & Contracts Administration
1154 Hawkins Blvd.
El Paso, Texas 79925

By Email

Purchasing.Info@epwater.org

Subject Line: 39-23 Wet and Dry Sand and Silt Removal
ATTN: Barbara Logan

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24. **INDEMNIFICATION**

THE VENDOR OR ITS INSURER WILL INDEMNIFY, DEFEND AND HOLD EPWATER, ITS OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES, OR EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS CONTRACT, UNLESS SUCH DAMAGE, INJURY, LOSS, ILLNESS, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICE, OR DEATH RESULTS SOLELY FROM OR SOLELY INVOLVES NEGLIGENCE, OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF EPWATER, ITS OFFICERS, AGENTS, OR EMPLOYEES. WITHOUT MODIFYING THE CONDITIONS OF PRESERVING, ASSERTING, OR ENFORCING ANY LEGAL LIABILITY AGAINST EPWATER, EPWATER WILL PROMPTLY FORWARD TO THE VENDOR EVERY DEMAND, NOTICE, SUMMONS, OR OTHER PROCESS RECEIVED BY EPWATER IN ANY CLAIM OR LEGAL PROCEEDING CONTEMPLATED HEREIN. THE VENDOR WILL 1) INVESTIGATE OR CAUSE THE INVESTIGATION OF ACCIDENTS OR OCCURRENCES INVOLVING SUCH INJURIES OR DAMAGES; 2) NEGOTIATE OR CAUSE TO BE NEGOTIATED THE CLAIM AS THE VENDOR MAY DEEM EXPEDIENT; AND 3) DEFEND OR CAUSE TO BE DEFENDED ON BEHALF OF EPWATER ALL SUITS FOR DAMAGES EVEN IF GROUNDLESS, FALSE OR FRAUDULENT, BROUGHT BECAUSE OF SUCH INJURIES OR DAMAGES. THE VENDOR WILL PAY ALL JUDGMENTS, FINALLY ESTABLISHING THE LIABILITY OF EPWATER IN ACTIONS DEFENDED BY THE VENDOR PURSUANT TO THIS SECTION, ALONG WITH ALL ATTORNEYS' FEES AND COSTS INCURRED BY EPWATER, INCLUDING INTEREST ACCRUING TO THE DATE OF PAYMENT BY THE VENDOR AND PREMIUMS ON ANY APPEAL BONDS. EPWATER, AT ITS ELECTION, WILL HAVE THE RIGHT TO PARTICIPATE IN ANY SUCH NEGOTIATIONS OR LEGAL PROCEEDINGS TO THE EXTENT OF ITS INTEREST. EPWATER WILL NOT BE RESPONSIBLE FOR ANY LOSS OF OR DAMAGE TO THE VENDOR'S PROPERTY FROM ANY CAUSE

25. **INSURANCE**

For the duration of this contract and any extension hereof, Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims which may arise out of or result from 'Contractor's performance of the Work and 'Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Bidder, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable: 'Workers' compensation, Automobile Liability insurance, and Commercial General Liability insurance: (a) Covering contractor and its employees and (b) For the protection of the general public and EPWater for bodily or wrongful death and property damage in the limits indicated in the following table. Insurance shall be procured from insurers or indemnity companies acceptable to Owner. Insurance or Indemnity Company furnishing insurance for the Contract shall be authorized to do business in Texas.

(Continued on Next Page)

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INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS				
LIMITS OF COVERAGE FOR ALL GOODS AND SERVICES	AUTOMOBILE {Combined Single Limit} Per Accident	COMMERCIAL GENERAL LIABILITY {Combined Single Limit} Per Project	WORKERS' COMPENSATION {'Employers' Liability} Per Accident Per Employee Per Disease	UMBRELLA {Combined Single Limit}
CONTRACT PRICE LESS THAN \$100,000: Occurrence General Aggregate Products/Completed Operations Aggregate	\$300,000	\$ 500,000 \$ 500,000 \$1,000,000	\$ 500,000 \$ 500,000 \$ 500,000	Not applicable
CONTRACT PRICE EQUAL TO \$100,000 OR GREATER AND LESS THAN \$500,000: Occurrence General Aggregate Products/Completed Operations Aggregate	\$500,000	\$ 500,000 \$1,000,000 \$1,000,000	\$ 500,000 \$ 500,000 \$ 500,000	Not applicable
CONTRACT PRICE EQUAL TO OR GREATER THAN \$500,000 AND UP TO AND INCLUDING \$10,000,000: Occurrence General Aggregate Products/Completed Operations Aggregate	\$1,000,000	\$1,000,000 \$2,000,000 \$2,000,000	\$1,000,000 \$1,000,000 \$1,000,000	\$2,000,000 \$2,000,000
CONTRACT PRICE GREATER THAN \$10,000,000: Occurrence General Aggregate Products/Completed Operations Aggregate	\$1,000,000	\$1,000,000 \$2,000,000 \$2,000,000	\$1,000,000 \$1,000,000 \$1,000,000	\$5,000,000 \$5,000,000

EPWater, its officials, employees, agents, and contractors shall be named as additional insureds and contain a "blanket waiver of subrogation" clause in favor of EPWater.

The Vendor and their 'subcontractors' insurance coverage shall be primary insurance as respects EPWater, its officials, employees, agents, and contractors. Any insurance or self-insurance maintained by EPWater, its officials, employees, agents, and contractors shall be in excess of the 'Vendor's or 'Vendor's subcontractor's insurance and shall not contribute to the Vendor's or Vendor's subcontractor's Insurance.

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Prior to undertaking any work under this contract, the Vendor, at no expense to EPWater, shall furnish to EPWater a copy of a certificate of insurance with an actual copy of the policy and original endorsements affecting coverage for each of the insurance policies provided in this exhibit. Any deductibles or self-insured retentions must be declared to and approved by EPWater.

Notices and Certificates required by this clause shall be provided to:

By Mail:

ATTN: Barbara Logan
Bid No. 39-23 Wet and Dry Sand and Silt Removal
El Paso Water
Purchasing & Contracts Administration
1154 Hawkins Blvd.
El Paso, Texas 79925

By Email

Purchasing.Info@epwater.org

Subject Line: 39-23 Wet and Dry Sand and Silt Removal

ATTN: Barbara Logan

Please refer to Purchase Order or Master Contract number and title in all correspondence. Failure to submit insurance certification may result in contract cancellation.

26. **COMPLIANCE WITH NON-DISCRIMINATION LAWS**

The Vendor agrees that it, its employees, officers, agents, and subcontractors, will comply with all applicable federal and state laws and regulations and local ordinances in the performance of this contract, including, but not limited to, the Americans with Disabilities Act, the Occupational Safety and Health Act, or any environmental laws.

The Vendor further agrees that it, its employees, officers, agents, and subcontractors will not engage in any employment practices that have the effect of discriminating against employees or prospective employees because of sex, race, religion, age, disability, ethnic background or national origin, or political belief or affiliation of such person, or refuse, deny, or withhold from any person, for any reason directly or indirectly, relating to the race, gender, gender identity, sexual orientation, color, religion, ethnic background or national origin of such person, any of the accommodations, advantages, facilities, or services offered to the general public by place of public accommodation.

27. **CONTRACTING INFORMATION**

This clause is applicable for purchases that have a stated expenditure or result in an expenditure of at least \$1 million.

The Vendor must preserve all contracting information related to this contract as provided by the records retention schedule requirements applicable to EPWater for the duration of this contract. The Vendor will promptly provide EPWater any contracting information related to this contract that is in the custody or possession of the Vendor on request of EPWater. On completion of this contract, The Vendor will either provide at no cost to EPWater all contracting information related

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to this contract that is in the custody or possession of the Vendor or preserve the contracting information related to this contract as provided by the records retention requirements applicable to EPWater.

28. **RIGHT TO AUDIT**

The Vendor agrees that EPWater shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine and copy any directly pertinent books, computer and digital files, documents, papers, and records of the Vendor involving transactions relating to this contract. The Vendor agrees that EPWater shall have access during regular working hours to all necessary Vendor facilities and shall be provided with adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. EPWater shall give Vendor reasonable advance notice of intended audits. EPWater will pay Vendor for reasonable costs of any copying EPWater performs on the Vendor's equipment or requests the Vendor to provide. The Vendor agrees to refund EPWater any overpayments disclosed by any such audit.

The Vendor agrees to include this requirement in any subcontract entered into in connection with this contract.

29. **ISRAEL**

This clause is applicable to purchases of a value of \$100,000 or more from a company with ten (10) or more full-time employees that is not a sole proprietorship.

The Vendor affirms it does not boycott Israel and will not boycott Israel during the term of this contract.

30. **ENERGY COMPANIES**

This clause applies to purchases of a value of \$100,000 or more from a company with ten (10) or more full-time employees that is not a sole proprietorship.

In accordance with Chapter 2274 of the Texas Government Code, Vendor affirms it does not boycott energy companies and will not boycott energy companies during the term of this contract.

31. **FIREARM ENTITY OR TRADE ASSOCIATION**

This clause applies to purchases of a value of at least \$100,000 from a company with at least ten (10) full-time employees that is not a sole proprietorship.

In accordance with Section 2274.002 of the Texas Government Code, Vendor does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association.

32. **CONFIDENTIALITY AND DATA OWNERSHIP**

- A. Vendor understands that in the performance of the work under this contract, Vendor may have access to confidential information owned or controlled by EPWater and that such information may contain proprietary details, disclosures, or sensitive information which disclosure to or use by an unauthorized third party will be damaging and/or illegal. Vendor agrees that all information disclosed by EPWater to Vendor, which is in written form, shall be held in confidence and used only in the performance of services under this contract. Any requests for information related to this contract, the Purchase Order, or Master Contract shall be forwarded to EPWater.
- B. Vendor understands that EPWater is subject to the Texas Public Information Act ("Act") and that EPWater will follow all the requirements of the Act. EPWater will not be liable for disclosure of information pursuant to the Act or under court order.
- C. Any and all presentations, drawings, models, designs, formulas, methods, documents, and tangible items prepared for and submitted to EPWater by Vendor in connection with the services rendered under this contract shall belong exclusively to EPWater and shall be deemed to be work-for-hire. Any and all data collected or work-for-hire produced as a result of the services or goods purchased shall be and remain the property of EPWater upon completion of this contract.

33. **COMPLIANCE WITH LAWS**

The Vendor shall comply with all Federal, State, and local laws and ordinances applicable to the work covered hereunder and all applicable rules and regulations promulgated by all local, state, and national boards, bureaus, and agencies.

34. **CAPTIONS**

The captions of the Standard Terms and Conditions are for information purposes only and shall not in any way affect the substantive terms and conditions.

35. **SEVERABILITY**

The sections, paragraphs, sentences, clauses, and phrases of the Standard Terms and Conditions are severable and, if any phrase, clause, sentence, paragraph, or section of this contract should be declared invalid by a final decision of a court of competent jurisdiction, such invalidity will not affect any of the remaining provisions of the Standard Terms and Conditions.

36. **APPLICABLE LAW AND VENUE**

For the purpose of determining the place of agreement and the law governing same, this contract is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or right or cause of action arising under or in connection with this contract shall be exclusively in a court of competent jurisdiction sitting in El Paso County.

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37. **ENTIRE AGREEMENT**

These Standard Terms and Conditions and accompanying the Purchase Order or Master Contract are intended by the parties as a final expression of their agreement and are also intended as a complete and exclusive statement of the terms of their contract. No course of prior dealings between the parties and no usage of the trade will be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in the course of performance rendered under this contract will not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

EPWATER TERMS AND CONDITIONS

Vendor/Contractor Name

Email Address

Name, Authorized Representative/Designee

Telephone Number

Title

Signature

Date

(Space Intentionally Left Blank)

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PART 6 – FORMS

6.1 W-9 REQUEST FOR TAXPAYER IDENTIFICATION

<p>Form W-9 (Rev. October 2018) Department of the Treasury Internal Revenue Service</p>	<p>Request for Taxpayer Identification Number and Certification</p> <p>▶ Go to www.irs.gov/FormW9 for instructions and the latest information.</p>	<p>Give Form to the requester. Do not send to the IRS.</p>	
<p>1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p>			
<p>2 Business name/disregarded entity name, if different from above</p>			
<p>Print or type. See Specific Instructions on page 3.</p>	<p>3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.</p> <p><input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate</p> <p><input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____</p> <p>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</p> <p><input type="checkbox"/> Other (see instructions) ▶ _____</p>		<p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p><small>(Applies to accounts maintained outside the U.S.)</small></p>
	<p>5 Address (number, street, and apt. or suite no.) See instructions.</p>		<p>Requester's name and address (optional)</p>
	<p>6 City, state, and ZIP code</p>		
	<p>7 List account number(s) here (optional)</p>		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number										
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or										
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Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
 - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
 - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
 - Form 1099-S (proceeds from real estate transactions)
 - Form 1099-K (merchant card and third party network transactions)
 - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
 - Form 1099-C (canceled debt)
 - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

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6.2 W-9 INSTRUCTIONS

Form W-9 (Rev. 10-2018)

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By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

11—A financial institution

12—A middleman known in the investment community as a nominee or custodian

13—A trust exempt from tax under section 664 or described in section 4947

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The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

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1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

*Note: The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

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The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

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6.3 HISTORICALLY UNDERUTILIZED BUSINESSES (HUBs)

The Utility's policy is to encourage the participation of Small Locally-Owned Businesses (SLBE), Minority Business Enterprises (MBE), and Women-Owned Business Enterprises (WBE).

My Current Historically Underutilized Business (HUB) Status is (select ONLY ONE of the three Business Enterprises below):

- 1. Small Locally Owned Business Enterprise:
- 2. Women-Owned Business Enterprise:
- 3. Minority-Owned Business Enterprise: **Select ONLY ONE of the categories below:**
 - Hispanic American
 - African American
 - Asian American
 - Native American
 - Service-Disabled Veteran
 - My business is not a HUB vendor**

INSTRUCTIONS: For Minority-Owned Business Enterprise, please indicate your HUB Status above by selecting the appropriate category. Please make sure you select only one (1) category.

DEFINITION OF HUB CATEGORY FOR EPWATER.

A **Small Locally-Owned Business Enterprise** is defined as a business corporation, partnership, joint venture, sole proprietorship, or other legal entity formed for the purpose of making a profit, has been located within the County of El Paso for at least 12 months, and is 51% or more owned by residents of El Paso County; furthermore, that business must employ fewer than 100 employees or have annual gross sales of less than \$7,000,000 and is not a subsidiary of a business which would not meet the above guidelines.

A **Minority-Owned Business Enterprise** is defined as a business that is at least 51% owned and controlled by one or more citizens or lawful permanent residents of the United States who are either African American, Asian American, Hispanic American, Native American, or Service-Disabled Veteran.

A **Woman-Owned Business Enterprise** is one that is at least 51% owned and controlled by one or more citizens or lawful permanent residents of the United States who are non-minority females.

I certify that the foregoing information is a full, true, and correct statement of the facts.

Signature of Authorized Representative or Designee

Title

Date

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6.4 CERTIFICATE OF INTERESTED PARTIES FORM 1295

Business Entity: Disclosure of Interested Parties
Texas Government Code § 2252.908
TEXAS ETHICS COMMISSION FORM 1295 Instructions

This form is required in the submission of your bid proposal:

Instructions - Form 1295

Effective January 1, 2016, a governmental entity may not enter into a contract requiring board approval unless the business entity submits a Disclosure of Interested Parties (Form 1295) at the time the business entity submits the signed contract.

The following definitions apply:

1. "Interested Party" means a person:
 - a. Who has a controlling interest in a business entity with whom a governmental entity contracts; or
 - b. Who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.
2. "Intermediary" means "a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:
 - a. Receives compensation from the business entity for the person's participation;
 - b. Communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
 - c. Is not an employee of the business entity
3. "Business Entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. "Business entity" includes a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.
4. "Contract" includes an amended, extended, or renewed contract.
5. "Controlling Interest" means:
 - a. An ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
 - b. Membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than ten (10) members; or
 - c. Service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers."

A business entity must file Form 1295 electronically with the Texas Ethics Commission using the Commission's online filing application, which can be found at:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

The business entity must **print a copy** of the completed form, including the certification of filing containing a unique certification number. Form 1295 must be **signed by an authorized agent** of the business entity, and **the form must be notarized**. The **business entity must submit the completed, signed, notarized Form 1295 to the contracting school district**.

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6.5 CHANGES TO FORM 1295

Changes to the [law](#) requiring certain businesses to file a Form 1295 are in effect for contracts entered into or amended on or after January 1, 2018. The changes exempt businesses from filing a Form 1295 for certain types of contracts and replace the need for a completed Form 1295 to be notarized. Instead, the person filing a Form 1295 needs to complete an “unsworn declaration.”

What type of contracts are exempt from the Form 1295 filing requirement under the amended law?

The amended law adds to the list of types of contracts exempt from the Form 1295 filing requirement. A completed Form 1295 is not required for the following:

- a sponsored research contract of an institution of higher education;
- an interagency contract of a state agency or an institution of higher education;
- a contract related to health and human services if:
 - the value of the contract cannot be determined at the time the contract is executed; and
 - any qualified vendor is eligible for the contract;
- a contract with a publicly traded business entity, including a wholly owned subsidiary of the business entity;*
- a contract with an electric utility, as that term is defined by Section 31.002, Utilities Code;* or
- a contract with a gas utility, as that term is defined by Section 121.001, Utilities Code.*

The newly exempt contract types are marked with an asterisk.

Why do I need to include my date of birth and address when I sign Form 1295? Was this always the case?

In 2017, the legislature amended the [law](#) to require Form 1295 to include an “unsworn declaration,” which includes, among other things, the date of birth and address of the authorized representative signing the form. The change in the law applies to contracts entered into, renewed, or amended on or after January 1, 2018. The unsworn declaration, including the date of birth and address of the signatory, replaces the notary requirement that applied to contracts entered into before January 1, 2018.

Will my date of birth and address appear on the TEC’s website when I file the form?

No. The TEC filing application does not capture the date of birth or street address of the signatory, and it will not appear on forms that are filed using the TEC filing application.

Although the TEC does not capture the date of birth and street address of the signatory, the contracting state agency or governmental agency will have a physical copy of the form that includes the date of birth and address of the signatory. The TEC cannot answer whether the contracting state agency or governmental agency may release such information. Questions regarding the Texas Public Information Act may be directed to the Office of the Attorney General. *See also Paxton v. City of Dall.*, No. 03-13-00546-CV, 2015 Tex. App. LEXIS 5228, at *10-11 (App.—Austin May 22, 2015) (mem. op.) (pet. denied) (*available [here](#)*).

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6.6 CONFLICT OF INTEREST QUESTIONNAIRE (Form CIQ)

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor doing business with local governmental entity		
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY	
<p>1 Name of vendor who has a business relationship with local governmental entity.</p>	<p>Date Received</p>	
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p>3 Name of local government officer about whom the information is being disclosed.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>		
<p>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p style="margin-left: 40px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="margin-left: 80px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p style="margin-left: 40px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="margin-left: 80px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p>		
<p>6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p>7</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature of vendor doing business with the governmental entity Date</p>		

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CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- ***
- (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
- (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

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6.7 VENDOR INFORMATION FORM



EL PASO WATER PURCHASING DEPARTMENT
VENDOR INFORMATION FORM This form must be accompanied by an IRS W-9 Form

Vendor Add Update Inactivate Contractual Employee City of El Paso Employee

Send form back To: – Mirtha Solis, Senior Purchasing Agent by email at Purchasing.Info@epwater.org
or by **Fax** at 915-594-5689)

VENDOR SALES ADDRESS: If same as W-9 check here _____ if not please use separate sheet to indicate different pay to, or invoice to, or issue P.O. to address other wise order, P.O. or payable issued to address below.

Company Name: _____
Street: _____
City: _____ **State** _____ **Zip Code** _____
Contact Name & Title: _____
Telephone # (_____) _____ **Fax #** (_____) _____
E-Mail Address: _____ **Web address:** _____

VENDOR PROFILE QUESTIONNAIRE:

- (Yes) (No) Small business concern (Less than \$7,000,000.00 Annual Receipts or 100 employees.)
- (Yes) (No) Minority-owned business (At least 51% owned and controlled by one or more citizens or lawful permanent residents of the United States who are either African American, Hispanic American, Asian American, or Native American.)
- (Yes) (No) Woman-owned business (At least 51% owned by a woman or women who also control and operate it. “Control” in this context means exercising the power to make policy decisions. “Operate” in this context means being actively involved in the day-to-day management.)
- (Yes) (No) Historically Underutilized Business (HUB) if your company is certified please send us a photo copy. We need to have an updated copy of the certificate on file.
- (Yes) (No) Disadvantage Business Enterprise -if your company is certified please send us a photo copy. We must have an updated copy of the certificate on file.

***El Paso Water employees only (IRS withholding not required for the following items)**

Pension Refund Mileage Reimbursement Settlement Travel Request Tuition Reimbursement.

***Contractual Employees or Vendors**

- Based on W-9, Individual/Sole Proprietor or partnerships are marked as withholding. Corporation is not marked as withholding. ***INFORMATION ON HOW TO COMPLETE THE W9 FORM PLEASE GO TO <http://www.IRS.gov>**
- Vendors for Rent, Medical Services, and Attorney fees are **always** marked as withholding, even if they are a corporation.

IRS-Withholding required information – Mark one of the following which applies to the type of payment that will be made to the vendor: (Incomplete forms will be returned)

Wages (Withholding / Default Class 7) Juror (No Withholding / No Default Class)
 Goods (No Withholding / No Default Class) Services (Withholding / Default Class 7)
 Settlement / Attorney Proceeds (Withholding / Default Class 14) Rental Property (Withholding / Default Class 1)
 Medical & Healthcare (Withholding / Default Class 6) Stipend (No Withholding / No Default Class)
 Garnishment Vendor (No Withholding/No Default Class) Corporation (No Withholding/No Default Class)

PART 7 – INSTRUCTIONS TO BIDDERS

1. Bidder MUST use the form and format included in this Solicitation and provide all required information. The Bid Proposal will be mailed to Purchasing & Contracts Administration, BID ENCLOSED, 1154 Hawkins Blvd., El Paso, Texas 79925 OR delivered to the Purchasing and Contracts Administration Department, EPWater Building, first floor, 1154 Hawkins Boulevard, El Paso, Texas 79925 prior to the date and time specified in this Solicitation. Bids received after the date and time shall be returned unopened to the Bidder.
2. The unit price of each item must be given in the column headed 'Unit Price' and must be for the particular unit of measurement specified in the column headed 'Unit.' In addition, the price per unit shall be multiplied by the total number of units and the total shown in the column for 'Total Cost.' If there is a discrepancy between the unit price and the total cost, the **unit price shall prevail**.
3. When a bid is requested for a particular item by brand name or other forms of identification, and the words '**or approved equal**' are used, Bidders may bid on items manufactured by other companies, provided the substituted article(s) is clearly described in terms of trade name, grade, capacity, etc. Sufficient information **MUST BE INCLUDED WITH THE PROPOSAL** to permit EPWater to evaluate the item(s) for compliance with solicitation specifications. **BIDDERS WHO FAIL TO INCLUDE THIS INFORMATION WITH THEIR PROPOSAL MAY BE DISQUALIFIED.**
4. Additional information not requested in the bid specifications, but felt to be pertinent by the Bidder, may be included as annotations or attachments to their Bid Proposal.
5. When a date is set for merchandise to be received or for work to be performed, the merchandise **MUST BE DELIVERED OR THE WORK PERFORMED** on or before the specified date; if not, the Purchase Order or Master Contract to the delinquent party may be canceled. If the Purchase Order or Master Contract is canceled, EPWater shall have the right to buy the merchandise or have the unfinished work completed by another bidder. Any excess in cost for the same item(s) or service over the price specified in the Solicitation that was accepted by the Public Service Board will be deducted from any money deposited with this bid or subsequently due. EPWater reserves the right to delete the company from the Bidders List for up to twelve months.
6. All bids **MUST BE F.O.B. DESTINATION**. All reductions or refunds on freight charges will be for the account of EPWater.
7. The Bid Submittal shall remain subject to acceptance for (90) Ninety days after the bid opening.
8. Bidders are invited to join the bid opening via GoTo meeting. The link for the Bid Opening is provided in our website at www.epwater.org.
9. Unless otherwise specified in the Solicitation, award of the Solicitation shall be made by individual item to the best qualified responsible bidder meeting specifications for the goods and/or services described in the Solicitation. A Bidder may qualify their proposal by indicating that it is based on 'All or None' for either all or part of the items.
10. The Public Service Board is not bound by the issuance of this Solicitation to award a contract. Any resulting order will be awarded to the best qualified responsible bidder whose bid, conforming to the Bid Proposal, is most advantageous to EPWater. If deemed to be in the best interest of EPWater, the Public Service Board reserves the right to reject any or all bids, award a contract for the items, either in whole or part, and/or waive any irregularities. However, the contract may not be awarded to a non-resident bidder unless the non-resident's bid is lower than the best-qualified bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder to obtain a comparable contract in the state in which the non-resident's principal place of business is located. If the funding of the contract involves federal funds, then the contract will be awarded to the best qualified and best qualified responsible Texas resident or non-resident bidder whose bid, conforming to the Solicitation, is most advantageous to EPWater.

DEFINITIONS:

BIDDER/OFFEROR - means a person, partnership, or corporation making a proposal for the performance of the work covered by the contract documents and may be a '**Texas Resident Bidder**' or a '**Non-resident Bidder**.'

TEXAS RESIDENT BIDDER - means a bidder whose principal place of business is in this state and includes an Offeror whose ultimate parent company or majority owner has its principal place of business in the state of Texas.

NON-RESIDENT BIDDER - means a bidder whose principal place of business is not in this state but excludes an Offeror whose ultimate parent company or majority owner has its principal place of business in the state of Texas.

11. A Bidder may withdraw their bid at any time prior to the date and time of bid opening, provided written authorization is presented to the Purchasing Agent by an officer of the firm that submitted the bid.
12. Any additional information about this bid and/or complaints, questions, or comments about the bid of another vendor must **be submitted to the Purchasing Agent within 24 hours** after the bids are opened for the information or complaint to be considered.
13. Reference Solicitation Number for insurance requirements.
14. Each bid MUST be accompanied by **Bid Security** made payable to EPWater in an amount of five (5) percent of the Bidder's total bid and in the form of a certified or cashier's check or a Bid Bond. The Bid bond (and performance and Payment bond when required) shall be in the form prescribed by applicable laws and regulations, including, but not limited to, Chapter 2253 of the Texas Government Code and Section 7.19-1 of the Texas Insurance Code. **The bond shall be executed by a Surety authorized and admitted to doing business in the State of Texas and licensed by the State of Texas to issue surety bonds.** This Bid Security is provided as a guarantee that the Bidder, if awarded a contract, will execute the contract (Purchase Order or Master Contract) to provide the material, supplies, equipment, and/or services. **FAILURE OF THE BIDDER TO INCLUDE BID SECURITY WITH THE BID SUBMITTAL SHALL CONSTITUTE A NONRESPONSIVE BID AND RESULT IN DISQUALIFICATION OF THE BID SUBMITTAL.** THE BID SECURITY SHALL BE FORFEITED, AND EPWATER SHALL THEN HAVE THE RIGHT TO MAKE THE AWARD TO THE NEXT BEST QUALIFIED, RESPONSIBLE, RESPONSIVE BIDDER OR ASK FOR NEW BIDS. The Bid Security of all bidders will be retained by EPWater until the award of the contract to the successful Bidder by the Public Service Board. After the award of the contract, the Bid Security of the successful Bidder will be retained by EPWater until receipt of the **Payment and/or Performance Bond** (if required). Upon receipt of the Payment and/or Performance Bonds, the Bid Security will be returned. The Bid Security of the next two low bidders will be retained until the execution of the successful Bidder's contract and will then be returned. The Bid Security of all remaining Bidders will be returned after the award of the Bid by the Board.
15. The successful Bidder will be required to obtain a **Payment and/or Performance Bonds** (when required) for one hundred percent (100%) of the bid as security for the faithful performance and payment of all of the Bidder's obligations. All bonds shall be in the form prescribed by all applicable laws and regulations, including, but not limited to, Chapter 2253 of the Texas Government Code and Section 7.91-1 of the Texas Insurance Code. **The bonds shall be executed by a Surety, which is authorized and admitted to doing business in the State of Texas and licensed by the State of Texas to issue surety bonds.** All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act. IF THE SUCCESSFUL BIDDER FAILS TO FURNISH THESE BONDS WITHIN FIFTEEN (15) DAYS AFTER RECEIPT OF WRITTEN NOTIFICATION OF THE BID AWARD, THEIR **BID SECURITY** SHALL BE FORFEITED. EPWater shall then have the right to make the award of a contract to the next best qualified, responsible, responsive bidder or to ask for new bids.
16. To the fullest extent permitted by laws and regulations, Bidders shall indemnify and hold harmless EPWater, The Public Service Board, its officers, agents, and employees from and against all claims, damages, losses, and expenses; direct, indirect, or consequential (including, but not limited to fees and charges of engineers, architects, attorneys, and other professionals, and court costs) arising out of or resulting from the performance of its obligations under this contract and the contract documents.
17. The Bid Proposal MUST be signed by an authorized agent of the bidding company. Failure to sign the Bid Proposal or signing it with a false statement shall void the submitted bid or any resulting contract (Purchase Order or Master Contract), and the bidder may, at the option of the Public Service Board, be removed from the bid list.
18. By signing the Bid Proposal, the Bidder affirms that he has not given or offered to give nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, favor or services to an employee or official of EPWater in connection with the submitted bid.
19. These INSTRUCTIONS TO BIDDERS, the Bid Proposal, and all other contract documents shall constitute a binding and enforceable contract with EPWater. Upon award of the bid by the Public Service Board, the Bidder hereby agrees that the signature of its duly authorized agent on the first page of the Bid Proposal shall bind the Bidder to all terms and obligations of the INSTRUCTIONS TO BIDDERS, Solicitation, and other contract documents.
20. This bid specifically prohibits communications in writing addressed in the final bullet of the cone of silence.

(END OF SOLICITATION)

Filename: 02. SOLICITATION - 39-23 Wet and Dry Sand and Silt Removal
(FINAL).docx
Directory: C:\Users\msolis\OneDrive - elpasowater\Documents
Template: C:\Users\msolis\AppData\Roaming\Microsoft\Templates\Normal.d
otm
Title: ITEM
Subject:
Author: Jesus M. Hernandez Jr
Keywords:
Comments:
Creation Date: 8/3/2023 12:31:00 PM
Change Number: 6
Last Saved On: 8/8/2023 8:40:00 AM
Last Saved By: Mirtha Solis
Total Editing Time: 16 Minutes
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