

## **EL PASO WATER (EPWater)**

1154 Hawkins Blvd, El Paso, Texas 79925, 1<sup>st</sup> Floor Purchasing and Contracts

### Formal Bid Solicitation Check List

#### **QUICKLIME**

Bid # RFP79-22

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THIS CHECKLIST IS PROVIDED FOR YOUR CONVENIENCE

#### **Before turning in your bid proposal did you do the following?**

- \_\_\_\_\_ Did you check our website [www.epwater.org](http://www.epwater.org) for any addendums? **(Failure to sign addenda and include with bid 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?
- \_\_\_\_\_ REVIEW the process associated with the Texas Ethics Commission form 1295? (Form will be required to be completed by awardee on the Friday before Public Service Board Meeting)
- \_\_\_\_\_ Did you sign the Bid Proposal and provide three (3) signed in blue ink and electronic copy saved on a USB drive?
- \_\_\_\_\_ Did you complete the Excel Worksheet (Attachment B) with all HIGHLIGHTED costs and blank spaces filled out and submit it on a USB Drive along with the sealed bid proposal? The Excel worksheet is found with the bid announcement located at [www.epwater.org](http://www.epwater.org) **(Failure to include the Excel Worksheet and submit it on a USB Drive may deem the bidder's submission non-responsive). Please Label USB Drive with Bid number and Company name.**
- \_\_\_\_\_ Is your bid in a sealed envelope marked with the **Bid Number** and **Company name**? Deliver your bid to the El Paso Water Utilities Purchasing Department by **12:30 p.m. Mountain time August 26, 2022.**



**REQUEST FOR PROPOSAL  
No. RFP79-22**

**QUICKLIME**

Proposal Due Date: August 26, 2022 at 12:30 P.M. MST  
Proposal to be opened: August 26, 2022 at 1:00 P.M. MST

Proposal must be sealed and delivered to:  
EPWater

Attention: Christina Rivas, Procurement Analyst  
1154 Hawkins Boulevard  
El Paso, Texas 79925

Proposals received after the date and time specified above will not be accepted and will be returned unopened. The Request for Proposal (RFP) documents, including addendums, will be posted to the EPWater website at [www.epwater.org](http://www.epwater.org). Proposals received and accepted shall become the property of EPWater and will **NOT** be returned.

Procedural or contractual questions can be directed by email to Christina Rivas at [crivas@epwater.org](mailto:crivas@epwater.org). OR [purchasing.info@epwater.org](mailto:purchasing.info@epwater.org).

Instructions to Bidders:

Item # 8 – Bidders presence is not required for Proposal submittal.

Item # 14 - Bid Security

Item # 15 - Payment & Performance Bond

Are **NOT** required for this RFP.

**Note: Faxed and/or Email proposals will not be accepted**

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## PART 1 – GENERAL INFORMATION

### 1.1 Resident Bidder Information

Respondent **must** answer the following questions:

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

**Answer:** \_\_\_\_\_

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

**Answer:** \_\_\_\_\_

A "**Non-Resident Bidder**" will not be awarded this Proposal unless the nonresident's proposal is lower than the lowest proposal submitted by a responsible **Texas Resident Respondent** by the same amount that a **Texas Resident Respondent** would be required to underbid the nonresident respondent to obtain a comparable contract in the state where the nonresident'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 Request for proposal.

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1.2

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 rejection of your proposal. Respondents' cooperation in this regard will avoid costly time delays in the award of proposals by EPWater. Failure to provide all required information may result in the highest cumulative submission being considered non-responsive and non-responsible, and the second highest cumulative submission being considered for award.

**Definitions**

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

*Nonresident Respondent:* 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.

Respondent'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 \_\_\_\_\_ ("Respondent") submitted its bid on Bid No. \_\_\_\_\_. I further attest that I am an authorized representative of Respondent or have been duly authorized to represent Respondent 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 Respondent will be void and EPWater may pursue any legal claims it may have against Respondent.*

[SIGNATURE ON NEXT PAGE]

By: \_\_\_\_\_  
Contractor 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:

\_\_\_\_\_

### 1.3 INVOICES AND PAYMENTS

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 the invoice or 30 days after acceptance of the **QUICKLIME**, whichever is later.

**Discount:** \_\_\_\_\_ **Payment Terms:** \_\_\_\_\_

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.

- a. The Contractor shall submit invoices, in single copy, for each contract. Invoices covering more than one contract will not be accepted.
- b. Invoices shall reflect the Contract Number and/or the Purchase Order Number.
- c. Do not include Federal tax, State tax, or City Tax. EPWater shall furnish tax exemption certificate upon request.
- d. Discounts will be taken from the date of receipt of services or date of invoice, whichever is later.
- e. EPWater obligation is payable only and solely from funds available for the purpose of this contract for good(s) and/or service(s). Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for good(s) and/or service(s) will be returned to the Contractor by EPWater.
- f. Mail invoices to:  
**EPWater Accounting Department**  
**P.O. Box 511**  
**El Paso, Texas 79961-0511**
- g. Contractor shall advise the Purchasing Department of any changes in its remittance addresses.
- h. All proper invoices received by EPWater will be paid within 30 days of EPWater receipt date of the invoice.
- i. If partial shipments or deliveries are authorized by EPWater, the Contractor shall be paid for the partial shipment or delivery as stated above.
- j. EPWater may withhold or off set the entire payment or part of any payment otherwise due to a Contractor, if good(s) or service(s) is/are defective or non-conforming.

### 1.4 INDEMNIFICATION

CONTRACTOR 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 EXPENSE, (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 AGREEMENT, 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 AS REQUIRED BY LAW, EPWATER WILL PROMPTLY FORWARD TO CONTRACTOR EVERY

DEMAND, NOTICE, SUMMONS OR OTHER PROCESS RECEIVED BY EPWATER IN ANY CLAIM OR LEGAL PROCEEDINGS CONTEMPLATED HEREIN. CONTRACTOR WILL 1) INVESTIGATE OR CAUSE THEM INVESTIGATION OF ACCIDENTS OR OCCURRENCES INVOLVING SUCH INJURIES OR DAMAGES; 2) NEGOTIATE OR CAUSE TO BE NEGOTIATED THE CLAIM AS THE CONTRACTOR 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. CONTRACTOR WILL PAY ALL JUDGMENTS FINALLY ESTABLISHING LIABILITY OF EPWATER IN ACTIONS DEFENDED BY CONTRACTOR PURSUANT TO THIS SECTION ALONG WITH ALL ATTORNEYS' FEES AND COSTS INCURRED BY EPWATER INCLUDING INTEREST ACCRUING TO THE DATE OF PAYMENT BY CONTRACTOR, 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 THIS INTEREST. EPWATER WILL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE TO THE CONTRACTOR'S PROPERTY FROM ANY CAUSE

## **1.5 GRATUITIES**

EPWater may, by written notice to the Contractor, cancel this contract without liability to 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 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.

## **1.6 TERMINATION**

### **I. TERMINATION FOR CONVENIENCE**

EPWater may terminate this contract, 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 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.

### **II. 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 effected 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 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 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.

## **1.7 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 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 requirement 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.

## **1.8 AVAILABILITY OF FUNDS:**

The awarding of this contract is dependent upon the availability of funds. 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 shall be no penalty nor removal charges incurred by EPWater.

## **1.9 VENUE**

Both parties agree that venue for any litigation arising from this contract shall lie in El Paso, El Paso County, Texas.

## **1.10 CONTRACT ADMINISTRATION:**

Administration of this Contract, on behalf of EPWater, is the responsibility of Christina Rivas, Procurement Analyst, who is your point of contact for general information or specific matters concerning this contract. Christina Rivas can be reached by telephone at (915) 594-5639, or by FAX at (915) 594-5629. Correspondence should be addressed to: EPWater, Purchasing and Contract Administration, Attn: Christina Rivas, 1154 Hawkins Blvd. El Paso, TX 79925. Please refer to RFP Number or Contract Number in all correspondence.

## **1.11 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 Supplier, 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.

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

With respect to the above 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 above 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:**

EPWater  
 Purchasing and Contract Administration Department  
 Attn: Christina Rivas, Procurement Analyst  
 1154 Hawkins Blvd.  
 El Paso, Texas 79925

**Failure to submit insurance certification may result in contract cancellation.**

## **Exception for insurance requirements:**

Above mentioned insurance conditions are not required if **all** quoted items on this Request for proposal are to be delivered through an independent carrier and the respondent's personnel or respondent's subcontractors and are not required to enter EPWater premises. **(Respondent is only responsible for obtaining proper insurance requirements from their selected independent delivery carrier)**

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

Personnel entering the premises of EPWater (to include drivers of delivery vehicles) are required to wear an identification badge containing the following information: Name, Company Name, and Employee's Picture

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

### **Transportation:**

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

## **1.12 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 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 RFP's, RFQ's or Bids between, among others:

- Potential vendors, service providers, respondents, or consultants and EPWater employees.
- Potential vendors, service providers, respondents, or 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 is limited strictly to matters of process or procedure already contained the solicitation document.
- The provisions of the Cone of Silence do not apply to oral communications at pre-proposal or pre-proposal 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 bid document.

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

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

## PART 2 – PROJECT INTRODUCTION

### 2.1 INTRODUCTION

The Public Service Board (PSB) is the trustee for the water, wastewater, reclaimed water and stormwater systems related functions within the City of El Paso and has complete authority and control of the management and operation of EPWater. EPWater provides water, wastewater, reclaimed water and stormwater services to approximately 230,000 customers.

El Paso Water operates the following plants that use quicklime for solids processing: the John T. Hickerson Water Reclamation Facility which serves west El Paso and the Fred Hervey Water Reclamation Plant which serves northeast El Paso. The John T. Hickerson Water Reclamation Facility operates three belt presses and uses quicklime for stabilization of biosolids, the Fred Hervey Water Reclamation Plant operates 3 centrifuges and uses quicklime for stabilization of biosolids, and the Fred Hervey Water Reclamation Plant also uses quicklime for the softening and pH treatment of wastewater. Each plant operates under a Texas Commission on Environmental Quality discharge permit and dewatered solids are transported by a third-party contractor to a TCEQ licensed monofill.

### 2.2 IMPORTANT DATES

(All times are Mountain Daylight Time):

Advertisement Dates:	June 17, 2022 & June 24, 2022
Deadline for mailed/mailed written questions:	June 28, 2022 at 5:00 PM
Date answers to questions posted on website:	June 30, 2022 by 5:00 PM
Submit Product Name for Testing & Specs	July 8, 2022 by 5:00 PM
Phase 1 testing period	July 22, 2022 to August 12, 2022
Prequalification notifications to vendors	August 19, 2022
Submit pricing	August 26, 2022, by 12:30 PM
Bid Opening Attachment B	August 26, 2022 by 1:00 PM
Award & Rejection letters	September 14, 2022

### **BASIS FOR AWARD**

EPWater will award this bid to the qualified, responsible, responsive bidder with the lowest price proposal.

### **Specific Requirements**

\* The Price shall include freight — FOB Plant Site, El Paso, Texas

### **Note:**

A current Safety Data Sheet (SDS) for Quicklime shall be provided with the proposal. Failure to provide the Safety Data Sheet (SDS) with the proposal submittal may result in the disqualification of the proposal submittal.

Proposals received after the date and time specified above will not be accepted and will be returned unopened. Interested parties that will be submitting a proposal are requested not to contact or lobby any member of the Committee or the Public Service Board. The Committee will evaluate each proposal based on the criteria described in the Evaluation Criteria contained within this proposal. Proposals received and accepted shall become the property of the EPWater and will **NOT** be returned.

NOTE: The submittal package shall consist of **three** original (signed blue ink) and **electronic copy saved on a USB drive**, the files shall be compatible with Microsoft Word or Adobe Reader.

## 2.3 SELECTION PROCEDURE

The Quicklime successful respondents shall be selected on the basis of the responsiveness of the submittal and the criteria contained within this RFP Evaluation Criteria. A committee made up of EPWater personnel will review and evaluate the proposals. The proposals will be scored in the areas of:

**Quality of the Bidders Goods & Services (35 Points)** - Phase I testing as described in Section 3.1 of this RFP will be conducted to determine the compatibility of the physical/chemical characteristics of the quicklime with the existing lime storage and feed equipment, metering devices, pumps, belt presses, centrifuges and any other equipment associated with the existing sludge thickening and/or dewatering operations at El Paso Water facilities. Phase I testing will also be conducted to determine the compatibility of the product with quicklime storage and handling equipment, and with the lime softening and pH treatment of wastewater.

**Compliance with Product Requirements and Specifications (35 Points)** – The extent to which the products meets the Product Requirements and Specifications listed in this RFP.

**Purchase Price (30 Points)** – The Respondent **must** complete Attachment B, (Price Proposal Form) with all the required pricing information.

It is the respondents' responsibility to ensure that all the required information is submitted with their proposal. Failure to submit the required information listed within this RFP may render the respondent non-responsive to the solicitation, thus resulting in rejection.

It is the respondents' responsibility to ensure that all the required information is submitted with their proposal. Failure to submit the required information listed within this RFP may render the respondent non-responsive to the solicitation, thus resulting in rejection.

All offers are subject to the terms and conditions of this Request for Proposal. Material exceptions to the terms and conditions, or failure to meet the minimum specifications, may render the respondent non-responsive to the solicitation. Sections of this RFP require submittals as part of the deliverables for the RFP, such as, submittals, costs and other required documents.

## PART 3 – SCOPE OF WORK

### 3.1 SCOPE OF WORK

This RFP is to provide **Quicklime** shall be from **AWARD OF RFP** by the Public Service Board 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 extensions.

#### **PHASES OF TESTING:**

There will be one phase of testing to qualify vendors as described below. Phase I testing is mandatory for a price proposal.

#### **PHASE I: July 22, 2022 to August 12, 2022**

The purpose of Phase I is to allow each vendor to submit their product and lab analysis and EPWater will test the product at the EPWater facilities to ensure the product performs to the acceptance of EPWater. If the product performs to the Product Requirements and Specifications as outlined in this RFP, vendor's product will be prequalified, and vendor will be invited to submit a price proposal.

#### **REFERENCE STANDARDS**

Without limiting the generality of these specifications, the Supplier shall conform to the applicable requirements of the following documents:

- A. American National Standards Institute/ National Sanitation Foundation Standard 60
- B. American Water Works Association Standard B202-19 – Quicklime and Hydrated Lime

#### **PRODUCT REQUIREMENTS AND SPECIFICATIONS**

Quicklime provided under this contract will meet the following specifications:

- A. The Quicklime shall comply with ANSI/ NSF 60 and conform to ANSI/ AWWA Specification B202-19 (except as modified below).
- B. Physical Requirements: Quicklime shall comply with the requirements for Dry-Feed equipment.
- C. The Quicklime shall have a minimum of 99% passing on a 1/4 inch sieve.
- D. The Quicklime shall contain a minimum of 90% available calcium oxide.
- E. The Quicklime shall have a slaking rate of 40° C temperature rise in three minutes.
- F. The Quicklime shall not contain any substances that would cause violations as governed by the Safe Drinking Water Act (SDWA), Clean Water Act or State and Local Laws.
- G. The physical/chemical characteristics of the quicklime shall be compatible with the existing lime storage and feed equipment, metering devices, pumps, belt presses, centrifuges and any other equipment associated with the existing sludge thickening and/or dewatering operations at El Paso Water facilities.

- H. Quicklime performance shall not be significantly altered due to weather or temperature conditions.
- I. Phase 1 testing will also be conducted to determine the compatibility of the product with quicklime storage and handling equipment and with the lime softening and PH treatments of all wastewater.

## VERIFICATION

- **Sampling:** For lump material in cars or bulk, sampling points shall be selected in order to produce a representative sample. The sampling will be done by EPWater personnel to their satisfaction.
- **Available Calcium Oxide:** A fine will be charged for lime which fails to contain a minimum of 90% available calcium oxide, when tested according to ANSI/ AWWA B202. A fine of two percent for each percent less than the 90 shall be assessed based on the formula below:
  - Fine Amount =  $0.020 \times (90.0 - \%CaO) \times \text{weight of shipment in tons} \times \text{bid price per ton}$ .
- **Slaking Rate:** A fine will be charged for lime which fails to produce a 40° C temperature rise in three minutes when the test is performed according to ANSI/ AWWA B202. A fine of two percent for each degree Celsius less than 40 degrees shall be assessed based on the formula below:
  - Fine Amount =  $0.020 \times (40 - \text{temp. rise (Celsius)}) \times \text{weight of lime in tons} \times \text{bid price per ton}$ .
- **NOTE:** The price penalties for low available calcium oxide and slaking rate described above shall be based on EPWater Laboratory Analysis results.

## CERTIFICATION REQUIREMENTS

- A. The Certificate of Analysis provided for the Product shall affirm compliance with the most current version of AWWA Standard B202 and shall be based on analyses conducted using the methods described in AWWA Standard B202-19. The Certificate of Analysis **must** include the percent available CaO and slaking rate of a sample representative of the contents of the trailer.
- B. An affidavit certifying the Product's compliance with ANSI/NSF Standard 60 for Drinking Water Treatment Chemicals—Health Effects **must** be submitted with the Bid and with each shipment. The affidavit shall be from one of the following laboratories accredited by ANSI to test and certify drinking water treatment chemicals in accordance with NSF/ANSI Standard 60:
  - National Sanitation Foundation (NSF)
  - Underwriters Laboratory (UL)
  - Water Quality Association (WQA)

## DELIVERY AND UNLOADING REQUIREMENTS (SUPPLEMENTAL)

- Unloading facilities consist of pneumatic unloading systems. Properly equipped trucks are required for delivery at the below listed sites. The Supplier will be provided

with a Materials Release Order by FAX or E-Mail for delivery of the Quicklime. Upon written notification delivery is to be made in partial shipments which will continue throughout the Contract Period.

- The Contractor shall allow up to 2 hours unloading time without demurrage.
- EPWater reserves the right to request delivery to any EPWater location.

Deliveries shall be accepted on Monday through Friday ONLY DURING THE HOURS OF 8:00 A.M. TO 3:00 P.M., TO ALL LISTED FACILITIES BELOW.

**Quicklime (90%)**

Fred Hervey WW Treatment Plant  
11700 Railroad Drive  
El Paso, Texas 79934  
Mr. Robert Hernandez  
(915) 594-5721  
rhernandez@epwater.org

**Quicklime (90%)**

John T. Hickerson Water Reclamation Facility  
701 Executive Center Boulevard  
El Paso, Texas 79912  
Mr. Alfred Murillo  
(915) 594-5791  
fmurillo@epwater.org

**Brand Name/Product Name:** \_\_\_\_\_

**Manufacturer(s) (must include specific name(s)):** \_\_\_\_\_

**Notification Time Required for Delivery of Order:** \_\_\_\_\_

**Location of Primary Distribution Facility:** \_\_\_\_\_

**Distance (in miles) of Primary Distribution Facility from EPWater facilities:** \_\_\_\_\_ miles

**Alternate Distribution Facility:** \_\_\_\_\_

**Reference #1:**

Facility Name: \_\_\_\_\_

Location / Facility Address: \_\_\_\_\_

Point of Contact: \_\_\_\_\_

Average Annual Consumption: \_\_\_\_\_

**Reference #2:**

Facility Name: \_\_\_\_\_

Location / Facility Address: \_\_\_\_\_

Point of Contact: \_\_\_\_\_

Average Annual Consumption: \_\_\_\_\_



**Reference #3:**

Facility Name: \_\_\_\_\_

Location / Facility Address: \_\_\_\_\_

Point of Contact: \_\_\_\_\_

Average Annual Consumption: \_\_\_\_\_

**CONDITIONS - SUPPLEMENT FOR ALL CHEMICALS  
OVERVIEW:**

EPWater is soliciting bids for provision of the water or wastewater treatment chemical described in the attached SPECIFICATION and referred to herein as the "Product". The Product is to be provided by the SUPPLIER for the Contract Period listed on the BID PROPOSAL form.

In some cases, as detailed in the attached SPECIFICATION, the SUPPLIER may also be responsible for providing storage, installation or technical support services associated with the Product.

**BIDDER RESPONSIBILITIES:**

In addition to all requirements and responsibilities described in the attached SPECIFICATION, the Bidder shall also comply with the following responsibilities:

- A. Primary and Alternate Distribution Facility:** The Bidder will provide, as part of the Bidders' Proposal, the location of the Primary Distribution Facility from which the product will be shipped, as well as an Alternate Distribution Facility that can be used in order to provide the Product to EPWater on a timely basis in the event of a disruption in the flow of the product, or raw materials needed to produce it, to the Primary Distribution Facility.
- B. Safety Data Sheet:** A current Safety Data Sheet (SDS) for the Product shall be provided with the Bid Proposal submittal. Failure to provide the Safety Data Sheet (SDS) with the Bid Proposal submittal may result in the disqualification of the Bid Proposal submittal.
- C. Certificate of Analysis:** The Bidder shall furnish, by attachment to the Bid Proposal, a typical Certificate of Analysis of the Product the Bidder would provide should the Bid be accepted. This analysis shall comply with all analysis methods and requirements described in the attached SPECIFICATION. The SUPPLIER shall submit such typical analysis at any time there is a change in the manufacturing practices during the Contract Period, as well as at the following interval:
  - a. Upon each delivery to the person in charge of receiving, as detailed in the attached SPECIFICATION.
  - b. Quarterly to Water Systems Division Manager for water treatment chemicals at 1154 Hawkins Blvd, El Paso, Texas 79925.

- c. Annually to Wastewater Systems Division Manager for wastewater treatment chemicals at 1154 Hawkins Blvd, El Paso, Texas 79925.

**D. Sample:** The Bidder may be required to furnish a typical sample of the Product.

**E. References:** The Bidder shall provide three facilities as References on the Bid Proposal form. The Bidder **must** currently provide the Product to these facilities or **must** have provided the Product to these facilities in the past. The References shall include the amount of Product provided to each facility and a person of contact at each facility. Additional requirements for these References may be included in the attached SPECIFICATION.

## ORDERING PROCEDURES

The SUPPLIER will be provided with a Material Release order by FAX OR E-MAIL for delivery of the Product. Upon written notification, delivery is to be made in partial shipments which will continue throughout the Contract Period. SUPPLIER will be available to make the delivery within the Notification Time given on the Bid Proposal form.

When the SUPPLIER cannot furnish the required Product within the Notification Time given on the RFP form, EPWater reserves the right to obtain the Product from any available source and bill the SUPPLIER for any additional cost over the bid amount.

## SHIPPING REQUIREMENTS

The Product shall be delivered F.O.B., freight pre-paid.

In addition to any shipping requirements included in the attached SPECIFICATION, the SUPPLIER shall comply with the following:

- A. Delivery containers shall be cleaned and inspected by the SUPPLIER for any contamination or impurities immediately prior to filling and shall be protected against the introduction of impurities during the entire filling, transport, and delivery processes.
- B. The SUPPLIER shall follow all applicable Federal, State and Local shipping regulations.

If the Product is delivered via tanker truck, the SUPPLIER shall comply with the following requirements:

- A. The Product shall be shipped in self-powered, self-contained pneumatic truck trailers. The shipper shall supply all hoses and fittings required to connect to the existing EPWater facilities. Delivery containers shall be structurally sound and meet industry standards for material compatibility with the Product. All hatches and fill/drain connections shall be capped and in good condition to prevent contamination of product. Delivery vehicle hoses shall be clean, capped, and sealed while in transit to prevent contamination of product during unloading
- B. A certified statement of specific tanker cleaning shall be emailed to the treatment plant prior to each shipment. The statement shall include the method of cleaning, the method of inspection, security procedures following cleaning/inspection, the cleaning company, and a contact name and phone number for the cleaning company. EPWater reserves the right to inspect the cleaning and filling facilities. After the first cleaning, this requirement may be waived if the delivery containers are used exclusively for delivering only the

Product meeting the requirements of this specification. The SUPPLIER must request this waiver in writing and sequentially be granted it by EPWater before it is implemented.

- C. After filling the delivery container at the loading location, all hatches and connection caps shall be sealed against tampering.

## DELIVERY AND UNLOADING REQUIREMENTS

The product shall be delivered to the locations and during the hours specified in the attached SPECIFICATION.

A 24-HOUR NOTICE OF REQUEST FOR DOCK APPOINTMENT SHALL BE PHONED INTO ALL LISTED FACILITIES REQUESTING PRODUCT BY F.O.B COMPANY DISPATCH. DOCK APPOINTMENT FOR DELIVERY IS REQUIRED AND THE EPWATER WILL NOT HONOR OR PAY DEMURRAGE.

After a dock appointment is made, the SUPPLIER must email the EPWater facilities at the email addresses listed in the attached SPECIFICATION before the truck leaves the SUPPLIER's facilities. The email must contain the following information:

- The names of the driver and anyone accompanying the driver, including a supervisor, trainer or trainee
- The tractor and trailer numbers
- PDF or other photocopy of the Bill of Lading which includes the EPWater contract number, the name of the transport company, contract name, and the cap seal numbers

Each delivery **must** be accompanied by a Certificate of Analysis conforming to all requirements contained in these Conditions and in the attached SPECIFICATION. A single Certificate of Analysis may be used if multiple loads are from the same lot, provided that one copy is provided to each of the treatment plants receiving a delivery from that lot.

Responsibility for expediting and tracking each shipment shall be the Suppliers until delivery is accepted. The SUPPLIER shall notify EPWater Contract Representative and the Treatment Plant immediately of any delay while in route to the delivery location.

All truckload deliveries shall be accompanied by one scale ticket from a state certified scale showing the name of the scale company, its location, date, truck and trailer number, and gross, tare and net weights. Such Certified Weight Tickets shall be for the actual load delivered to EPWater.

Any alternative method of determining weight for the Product **must** be submitted in writing with this proposal and approved by EPWater. EPW reserves the right to determine the quantity delivered through its online instrumentation or weighing after offloading, if it believes weight tickets are inaccurate or that an entire shipment was not offloaded. It further reserves the right to make payments based on this determination.

The container or tanker truck used to deliver the product shall have a tamper-proof seal. EPWater personnel will visually inspect the delivery container prior to unsealing, opening, sampling and unloading. Seals shall not be removed prior to inspection. Prior to being unloaded, EPWater personnel must accept each delivery. In the event a delivery is rejected by EPWater, the SUPPLIER shall provide a replacement shipment meeting the requirements of this specification within 72 hours of original delivery.

The SUPPLIER is responsible for unloading of the Product, and making any necessary connections to EPWater facilities, in a manner that fits EPWater facilities and procedures. If the Bid is accepted, before making any chemical deliveries the SUPPLIER shall make a preliminary visit to each of the facilities to which chemicals will be delivered to become familiar with unloading conditions and necessary connections.

During the delivery/unloading process, the SUPPLIER shall follow proper safety and security procedures to the satisfaction of EPWater including safety procedures described in applicable AWWA standards and the Product SDS, and the use of personal protective equipment (PPE) recommended by the Product SDS. EPWater reserves the right to refuse unloading if driver does not have the proper PPE.

The SUPPLIER will be responsible for cleaning up and disposing of any Product that is leaked or spilled during unloading. The SUPPLIER shall not clean or wash the delivery vehicle, delivery equipment, hoses, or connections on EPWater property.

## MARKING REQUIREMENTS

Product delivery containers shall bear legible tags showing:

- Product name
- Name and address of manufacturer
- Specific gravity (for liquids)
- Grade and/or Concentration
- All markings required or recommended by the most recent versions of applicable Department of Transportation (DOT), Occupational Safety and Health Administration (OSHA), and American Water Works Association (AWWA) standards.
- Any additional markings required by the attached SPECIFICATION.

## TESTING REQUIREMENTS

EPWater reserves the right to sample and analyze each delivery to determine if it meets required specifications. For bulk material, sampling points shall be selected in order to produce a representative sample of the load. The sampling will be done by EPWater personnel to their satisfaction. Tests performed and tests methods shall be at the sole discretion of EPWater.

If EPWater determines that the Product delivered does not meet required specifications, the material will be rejected and **must** be removed at the SUPPLIER's expense. If material is determined to be unacceptable to EPWater, three additional one-liter samples shall be collected from the delivery container in accordance with any applicable AWWA standards, sealed and labeled in the presence of the SUPPLIER, and retained by EPWater. A notice of nonconformance shall be provided by EPWater to the SUPPLIER within ten working days after receipt of the shipment at the point of destination.

The results of EPWater tests shall prevail unless the SUPPLIER notifies EPWater within five working days after receipt of the complaint that a retest is desired. On receipt of the request for a retest, EPWater shall forward to the SUPPLIER one of the sealed samples. In the event results obtained by the SUPPLIER, on retesting, do not agree with the test results obtained by

EPWater, the other sealed sample shall be forwarded, unopened, to a referee laboratory agreed on by both parties. If a referee analysis is needed, analysis shall be conducted using the methods required for the Certificate of Analysis (see attached SPECIFICATION). The results of the referee analysis shall be accepted as final. The cost of the referee analysis shall be paid by the SUPPLIER if the material does not meet the requirements of this specification and by EPWater if the material does meet this specification.

## **TITLE TRANSFER**

Title of the Product shall pass from the SUPPLIER to EPWater when EPWater has received, inspected and approved the material, subject to EPWater rights to return the product described herein.

## **DELIVERY REQUIREMENTS:**

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

## **General Information**

The submission requirements for this RFP are set forth below. A proposal shall constitute an irrevocable offer for 180 calendar days following the deadline for its submission. Reference to a certain number of days in this RFP shall mean business days unless otherwise specified.

Firms are cautioned that once a proposal is received, all information contained therein will be available to the **PUBLIC** unless the information is excepted from the requirements of Government Code Section 552.021 pertaining to Open Records. The exception that allows EPWater to protect information that, if released, would give advantage to a competitor or bidder does not apply after the bidding is complete and the contract has been awarded. *Trade secrets, commercial or financial background data, and privileged or confidential information* may be excepted from public inspection. If any information contained in your proposal qualifies for an exception because it falls into one of the categories above it should be clearly marked "CONFIDENTIAL" and the basis of your claim of confidentiality should be stated. Data so identified will be maintained as a protected record. Firms who claim that information contained in a proposal should be protected from public disclosure after the award of the contract may be asked to support such claim if EPWater receives an Open Records request for the information and requests a determination by the Attorney General.

It is the submitting firm's responsibility to ensure that they have all pertinent information regarding this RFP, including all amendments prior to submitting their proposal. Please check the website, even after submitting a proposal, to ensure that you have all amendments as they may be posted at any time.

## **Inquiries and Interpretations**

EPWater may in its sole discretion respond in writing to written inquiries concerning this RFP and mail its response as an addendum to all parties recorded by EPWater as having received a copy of this RFP. Questions may also be emailed to the Procurement Analyst at [crivas@epwater.org](mailto:crivas@epwater.org) or to [purchasing.info@epwater.org](mailto:purchasing.info@epwater.org) and answers will be posted as described below. Only EPWater's responses that are made by formal written addendum shall be binding on EPWater. Verbal and other written interpretations or clarifications shall be without legal effect. All addendum issued by EPWater prior to the Submittal Deadline shall be and are hereby incorporated in this RFP for all purposes. Proposer shall be required to consider and acknowledge receipt of each addendum.

EPWater will accept written questions until: **June 28, 2022**

All questions received prior to deadline **noted above** will be addressed with responses via one (1) addendum which will be posted to: <http://www.epwater.org> no later than **June 30, 2022**.

### **Submission of Proposals**

The submittal package shall consist of **three** original (signed blue ink) and **electronic copy saved on a USB drive**, and submitted as their response to:

**EPWater  
PURCHASING AND CONTRACTS ADMINISTRATION DEPARTMENT  
ATTN: CHRISTINA RIVAS  
PROCUREMENT ANALYST  
1154 HAWKINS BLVD.  
EL PASO, TEXAS 79925**

### **Submittal Requirements**

To be considered responsive, the proposal shall include the following:

- All accepted proposal pricing shall be valid for a minimum of 6 months, from the date the proposals are due at EPWater.
- In submitting a proposal, bidder acknowledges acceptance of EPWater's Terms and Conditions. See Proposal for a summary of these Terms and Conditions.
- Contractor shall submit with their proposal submittal a Safety Data Sheet (SDS) for each quicklime
- Contractor shall submit with their proposal submittal a Product Bulletin if available for each quicklime

### **Rejection of Proposals**

It is understood that the EPWater reserves the right to reject any or all proposals as it shall deem to be in the best interests of the EPWater. Receipt of any proposal shall under no circumstances obligate the EPWater.

For Phase I testing as outlined above, EPWater will purchase approximately one truck load of Quicklime from each vendor submitting a proposal. Vendors are required to accept the EPWater Standard Terms and Agreements (Attachment A) and EPWater will not sign off on vendor Terms and Conditions or complete vendor credit applications. EPWater reserves the right to reject any or all proposals if EPWater cannot purchase product for Phase I testing.

### **Confidentiality and Publicity**

In conducting the various interviews, meetings and planning sessions, you may be given access to sensitive EPWater information and critical systems. The firm will be expected to keep all information acquired while performing the services strictly confidential, as well as agreeing to abide by all security policies associated with access to EPWater data. Employees may be required to sign individual confidentiality agreements.

The firm will retain all information provided by the EPWater in the strictest confidence and will neither use it nor disclose it to anyone other than employees requiring the information to perform

services without prior written consent from the EPWater. EPWater retains the right to enjoin any unauthorized disclosure in a Texas court of law. The firm will not issue any public announcements concerning the EPWater without the prior written consent of EPWater.

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

- a. The Utility has entered into Inter-local Purchasing Agreements with other governmental entities, pursuant to the Inter-local 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 inter-local agreement with El Paso Water Utilities.
- b. The Utility does not accept any responsibility or liability for the purchases by other governmental agencies through an inter-local cooperative agreement.

**PRICE ESCALATION:**

A Price Escalation may be considered under the following conditions:

- a. Prices must be firm for at least the first 12 month period from Price Submittal on Attachment B.
- b. 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 El Paso Water Utilities which includes the price increase to the contract. The price increase shall be effective within 14 calendar days from El Paso Water Utilities acceptance.
- c. El Paso Water Utilities reserves the right to cancel the contract resulting from this Proposal and rebidding our requirements if the price escalation requested is above the current open market price. Cancellation of the contract will not affect any outstanding orders.
- d. All price increases accepted shall be effective for a 12 month period from the revised date of the Master Contract.

**PRICE DE-ESCALATION:**

If the agency receives a price decrease from the supplier, the Contractor is responsible to notify El Paso Water Utilities within two working days of the price decrease and pass the price decrease on to the Utility. The price decrease will be effective upon receipt of the price reduction from the Contractor.





**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.

## 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. He 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 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](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

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

## 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 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 contract exempt from the Form 1295 filing requirement. A completed Form 1295 is not required for:

- 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](#)*).

**CERTIFICATE OF INTERESTED PARTIES**

**FORM 1295**

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY**

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

**5 Check only if there is NO Interested Party.**

**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
 (street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 (month) (year)

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity  
 (Declarant)

**ADD ADDITIONAL PAGES AS NECESSARY**

# STATEMENT OF NONDIVESTMENT FROM ISRAEL

The following information is required by El Paso Water Utilities – Public Service Board (“EPWater”) in order to comply with the provisions of Texas Government Code §§ 2270.002.

*I swear and attest that the following is true and correct as of the date \_\_\_\_\_ (“Bidder”) submitted its bid on Bid No. \_\_\_\_\_. Bidder does not boycott Israel and will not boycott Israel during the term of the contract should it be awarded to Bidder. 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 it be discovered that the statement by Bidder contained herein is false, any contract entered into between EPWater and Bidder will be void and EPWater may pursue any legal claims it may have against Bidder.*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
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:

\_\_\_\_\_

## PART 5 – INSTRUCTIONS TO RESPONDENTS

1. Respondents **MUST** use the form and format included in this RFP document and provides all required information. The Request for Proposal shall be mailed to the Purchasing and Contracts Administration Department, EPWater, P.O. Box 511 El Paso, Texas 79961 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 RFP document. Proposals received after the date and time shall be returned unopened to the Respondent.
2. When a proposal is requested for a particular item by brand name or other form of identification and the words 'or approved equal' are used, Respondents may proposal 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 SUBMITTAL** to permit EPWater to evaluate the item(s) for compliance with proposal specifications. **RESPONDENTS WHO FAIL TO INCLUDE THIS INFORMATION WITH THE PROPOSAL SUBMITTAL MAY BE DISQUALIFIED.**
3. Additional information not requested in the proposal specifications, but felt to be pertinent by the Respondent, may be included as annotations or attachments to the Proposal.
4. 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 respondent. Any excess in cost for the same item(s) or service over the price specified in the Proposal that was accepted by the Public Service Board will be deducted from any money deposited with this proposal or subsequently due. EPWater reserves the right to delete the company from the Respondents List for up to twelve months.
5. All proposals must **BE F.O.B. DESTINATION**. All reductions or refunds on freight charges will be for the account of EPWater.
6. The Proposal Submittal shall remain subject to acceptance for (90) Ninety days after the proposal opening.
7. Unless otherwise specified in the Proposal, award of the proposal shall be made by individual item to the lowest responsible respondent meeting specifications for the goods and/or services described in the Proposal. A Respondent may qualify their proposal by indicating that is based on 'All or None' for either all or part of the items.
8. The Public Service Board is not bound by the issuance of this Proposal to award a contract. Any resulting order will be awarded to the respondent(s) that submits a proposal which receives the highest cumulative score for each of the evaluation factors delineated herein. If deemed to be in the best interest of EPWater, the Public Service Board reserves the right to reject any or all proposals, award a contract for the items, either in whole or part and/or waive any irregularities. If the funding of the contract involves federal funds, then the contract will be awarded to the lowest and best qualified responsible Texas resident or nonresident bidder whose proposal, conforming to the Proposal, is most advantageous to EPWater.

### DEFINITIONS:

**BIDDER or RESPONDENT** - 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 'Nonresident Bidder'.

TEXAS RESIDENT PROPOSER - means a respondent whose principal place of business is in this state and includes a contractor whose ultimate parent company or majority owner has its principal place of business in the state of Texas.

NONRESIDENT PROPOSER - means a respondent whose principal place of business is not in this state but excludes a contractor whose ultimate parent company or majority owner has its principal place of business in the state of Texas.

9. A Respondent may withdraw their proposal at any time prior to the date and time of proposal opening, provided written authorization is presented to the Purchasing Agent by an officer of the firm that submitted the proposal.
10. Any additional information about this proposal and/or complaints, questions or comments about the proposal of another vendor must be submitted to the Purchasing Agent within 24 hours after the proposals are opened for the information or complaint to be considered.
11. Reference proposal for insurance requirements.
12. The successful Respondent will be required to obtain a Performance Bond and Payment bond for one hundred percent (100%) of the proposal as security for the faithful performance and payment of all of the Respondent'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 do 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.
13. To the fullest extent permitted by laws and regulations, Respondents 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.
14. The Proposal MUST be signed by an authorized agent of the responding company. Failure to sign the Proposal or signing it with a false statement shall void the submitted proposal or any resulting contract (Purchase Order or Master Contract) and the respondent may, at the option of the Public Service Board, be removed from the proposal list.
15. By signing the Proposal, the Respondent 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 proposal.
16. These INSTRUCTIONS TO RESPONDENTS, the Proposal and all other contract documents shall constitute a binding and enforceable contract with EPWater. Upon award of the proposal by the Public Service Board, the Respondent hereby agrees that the signature of its duly authorized agent on the first page of the Proposal shall bind the Respondent to all terms and obligations of the INSTRUCTIONS TO RESPONDENTS, Proposal and other contract documents.
17. This proposal specifically prohibits communications in writing addressed in the final bullet of the cone of silence.



**EL PASO WATER- PUBLIC SERVICE BOARD PURCHASE ORDER/MASTER  
CONTRACT STANDARD TERMS AND CONDITIONS**

(Attachment A)

**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 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 Contract by Vendor signifies the Vendor's acceptance of these Standard Terms and Conditions.

**2. INVOICES & 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 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 serial number of 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 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. E-Mail invoices to [accountspayable@epwater.org](mailto: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 Vendor, cancel this contract without liability to Vendor if it is determined by EPWater that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Vendor, or any agent or representative of the Vendor, to any officer or employee of EPWater with a view toward securing a contract or 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 Vendor in providing such gratuities.

#### **5. WARRANTY-PRICE**

A. The price to be paid by EPWater will be that contained in the Vendor's quote which the Vendor warrants to be no higher than Vendor'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 Vendor breaches this warranty, the prices of the items will be reduced to the Vendor's current prices on orders by others, or in the alternative, EPWater may cancel this contract without liability to Vendor for breach or Vendor's actual expense.

B. The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Vendor 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 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 cost of packaging unless otherwise provided. Goods will be suitably packed to secure lowest transportation costs and to conform to 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.

#### **9. DELIVERY TERMS AND TRANSPORTATION CHARGES**

The delivery of the goods by Vendor shall be F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in the quote; EPWater agrees to reimburse the Vendor for transportation costs in the amount specified in the Vendor's quote, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, EPWater will have the right to designate what method of transportation will be used by Vendor 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 time of delivery, quality and the like. If a tender is made which does not fully conform, this will constitute a breach and the Vendor 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 Purchase Order or Master Contract. The terms of this contract are "no arrival, no sale."

## **14. WARRANTY-PRODUCT**

The Vendor 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**

Vendor warrants that the product sold to EPWater will conform to the standards promulgated by the US 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 Vendor's expense. In the event the Vendor fails to make the appropriate correction within reasonable time, correction made by EPWater will be at the Vendor's expense.

## **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 Vendor. The Vendor will be paid its costs, including the contract close out costs, and for work performed up to the time of termination. The Vendor will promptly submit its termination claim to EPWater. If the Vendor has any property in its possession belonging to EPWater, the Vendor will account for the same, and dispose of it in the manner EPWater directs.

**B. Termination for Default:** If the Vendor 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 setting forth the manner in which the Vendor is in default. The Vendor will be given an opportunity to correct the problem within a reasonable time before termination notice is rendered. The Vendor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. EPWater shall have the right to immediately terminate the contract for default if the Vendor violates any local, state, or federal laws, rule or regulations that relate to the performance of this contract.

**C. Termination for Default by EPWater:** If EPWater fails to perform any of its duties under this contract, Vendor may deliver a written notice to Purchasing & Contract Administration division describing the default, specifying the provisions of the contract under which the Vendor considers EPWater to be in default and setting forth a date of termination not sooner than 90 days following receipt of the Notice. The Vendor 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, Vendor 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 the expenditure of at least \$1 million.**

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 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 requirement 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 herein authorized. 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 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 signed by the aggrieved party.

## **22. ADVERTISING**

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

**El Paso Water-Public Service Board  
Purchasing & Contracts Administration  
1154 Hawkins Blvd.  
El Paso, Texas 79925**

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.

## **24. INDEMNIFICATION**

**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 EXPENSE, (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 VENDOR EVERY DEMAND, NOTICE, SUMMONS OR OTHER PROCESS RECEIVED BY EPWATER IN ANY CLAIM OR LEGAL PROCEEDING CONTEMPLATED HEREIN. 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. VENDOR WILL PAY ALL JUDGMENTS FINALLY ESTABLISHING LIABILITY OF EPWATER IN ACTIONS DEFENDED BY VENDOR PURSUANT TO THIS SECTION ALONG WITH ALL ATTORNEYS' FEES AND COSTS INCURRED BY EPWATER INCLUDING INTEREST ACCRUING TO THE DATE OF PAYMENT BY 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 REQUIREMENTS**

### **Commercial General Liability:**

Written on an occurrence form. (There may be situations where a “claims-made” form may be our only option but it is best we require an occurrence form including all the usual coverage known as:

- Premises/operations liability
- Products/completed operations
- Personal/advertising injury
- Contractual liability
- Broad-form property damage
- Independent contractor liability
- Explosion, Collapse and Underground (XCU)
- Cyber Liability/Data/Breach/Ransom

### **Minimum Limits of Liability:**

\$1,000,000 Bodily Injury/\$1,000,000 Property Damage per occurrence  
Commercial General Liability Exclusion Removed/Railroad Protective  
Liability/Contractual

### **Liability-Railroads:**

\$1,000,000 Bodily Injury/\$1,000,000 Property Damage Liability per occurrence  
Required when a Vendor is going to work on or within 50 feet of any “railroad property”

### **Commercial Automobile Liability;**

\$1,000,000 Bodily Injury/\$500,000 Property Damage Liability per occurrence

**Workers' Compensation:** Statutory Coverage for Employers Liability:

### **Professional (Errors & Omissions) Liability (if required):**

\$1,000,000 per occurrence

### **Umbrella or Excess Liability Insurance (if required):**

\$5,000,000 per occurrence

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.

Prior to undertaking any work under this contract, the Vendor, at no expense to EPWater, shall furnish to EPWater copy of a certificate of insurance with an actual copy of 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:

**El Paso Water-Public Service Board  
Purchasing & Contracts Administration  
1154 Hawkins Blvd.  
El Paso, Texas 79925**

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 American 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 the 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. 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, Vendor will either provide at no cost to EPWater all contracting information related 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. Vendor agrees that EPWater shall have access during normal working hours to all necessary Vendor facilities, and shall be provided 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 to EPWater any overpayments disclosed by any such audit.

The Vendor agrees that it will include this requirement into 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 10 or more full-time employees, that is not a sole proprietorship.**

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

### **30. ENERGY COMPANIES**

**This clause is applicable to purchases of a value of \$100,000 or more from a company with 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 is applicable to purchases of a value of at least \$100,000 from a company with at least 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 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 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.

### **37. ENTIRE AGREEMENT**

These Standard Terms and Conditions and accompanying Purchase Order or Master Contract is intended by the parties as a final expression of their agreement and is intended also 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 a 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.