

## **EL PASO WATER**

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

Formal Bid Solicitation Check List

### **Dirt Fill Material**

Bid # 81-22

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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 two (2) signed bid proposals, one (1) original signed in blue ink and one (1) copy?

\_\_\_\_\_ Did you complete the Excel Worksheet with all HIGHLIGHTED costs and blank spaces filled out and submit it on a CD or 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 CD or USB Drive may deem the bidder's submission non-responsive). Please Label CD or 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 July 5, 2022 **1:00 p.m. Mountain time.**



## BID PROPOSAL FOR EPWater

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

The undersigned bidder offers to furnish all the materials, supplies, equipment and /or services shown below in accordance with specifications, terms and conditions set forth herein. Note: The **"INSTRUCTION TO BIDDERS"** are attached on the last two pages of this bid proposal document and are applicable, unless otherwise stated within the bid proposal document.

SUBJECT: DIRT FILL MATERIAL

BID NUMBER: 81-22

BID DEADLINE: 1:00 P.M. MOUNTAIN TIME, (July 5, 2022)

TO BE OPENED: 1:30 P.M. MOUNTAIN TIME, (July 5, 2022)

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FIRM: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_ PRINTED NAME: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_ TITLE: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ FAX: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ DATE: \_\_\_\_\_

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

Submit two (2) signed bid proposals, one (1) original signed in blue ink and one (1) copy.

Note: Faxed and/or Email bids will not be accepted.

Any requests for clarifications and/or changes to this bid proposal shall be made in writing via email to Jesus Hernandez at [jmhernandezjr@epwater.org](mailto:jmhernandezjr@epwater.org) or [purchasing.contracts@epwater.org](mailto:purchasing.contracts@epwater.org). May also be sent via fax to Jesus Hernandez at (915) 594-5689 by June 28, 2022. Requests submitted after this time frame, will not elicit a response. Answers to bid questions will be posted June 30, 2022.

All items noted on the last two pages of the attached "INSTRUCTIONS TO BIDDERS" will apply to this bid proposal **except** for the following:

- Item(s) # 14 – Bid Security and
- # 15 – Performance and Payment Bond

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**NOTE:**

Bid openings will be live streamed until further notice. Check scheduling information on the solicitation page at [www.epwater.org](http://www.epwater.org).

**NOTE:** Bidders are to complete the attached check list and excel spreadsheet found with this Bid announcement located at [www.epwater.org](http://www.epwater.org). In the Unit Cost column, a dollar amount must be included for each bid line item. Bidder must provide a saved read only USB Drive of the provided excel spreadsheet and provide a printed, signed copy of the spreadsheet with the submitted sealed bid. USB Drive must have the bid number and company name written on the USB Drive. In the event that the printed spreadsheet does not match the USB information, the USB will take precedence. Failure to complete this may deem the bidder's submission non-responsive.

This bid will be awarded to the bidder with the lowest, responsive, responsible "Total Bid" for items 1 thru 3 as noted on the Excel spreadsheet.

\*The quantities shown on the Excel spreadsheet is an estimated annual usage. Although no obligation shall exist to purchase these quantities, EPWater reserves the right to increase, decrease and/or change these requirements to provide for continued operation during the Contract Period.

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

The dirt fill material shall be free of any organic or deleterious substance and shall not contain rocks or lumps over ½ inch in diameter. The material shall show low shrinkage or swelling when subjected to changes in moisture content. The material shall be caliche type soil. El Paso Water's Operations Supervisor will inspect and make the final approval of material.

**DELIVERY REQUIREMENTS:**

- ITEM 1. DIRT FILL MATERIAL shall be delivered and stockpiled at the Haskell Street Treatment Plant, 4100 Delta Drive, El Paso, Texas 79905. Delivery shall be made upon receipt of a Verbal Authorization provided by the El Paso Water Utilities Operations Supervisor.
- ITEM 2. DIRT FILL MATERIAL shall be delivered on a 24-hour on-call basis. Response time to each job site throughout the city shall be no more than 2 hours from the time of verbal notification by the EL Paso Water Utilities Operations Supervisor. If additional loads of dirt are required at a job site, deliveries shall be made within no less than 2-hour intervals.
- ITEM 3. DEBRIS HAULING AND DISPOSAL shall be from 4100 Delta Drive or other locations throughout the City as requested. The successful bidder is responsible for hauling and disposing of the debris in a manner that is in accordance with all Local, State and Federal regulations.

"Debris" as defined in this bid, shall mean, all dirt, mud, clay, rocks, concrete, asphalt and crushed PVC pipe, steel pipe or concrete pipe which comes out of El Paso Water Utilities excavations. El Paso Water Utilities sifts some of the material to recover the dirt for reuse, therefore the "debris" is mostly composed of rocks, concrete, asphalt, clay and crushed PVC pipe, steel pipe and concrete pipe.

Due to the nature of the site constraints, roll-offs or waste containers are not an acceptable substitution for truck and trailer debris haul away.

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

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

-Employee's Picture

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

**GENERAL REQUIREMENTS:**

Smoking and drinking of alcoholic beverages in all El Paso Water Utilities facilities is strictly prohibited. Deliveries can be made in partial shipments which will continue throughout the Contract Period. Deliveries to the Haskell Street Treatment Plant, 4100 Delta Drive will be during normal working hours 7:30 a.m. to 4:00 p.m. Monday through Friday. Anything outside of normal working hours will need written, or verbal approval of the Operations Supervisor.

The Contractor's manager, owner, or a responsible representative shall be available for material deliveries or debris pickup 24 hours a day 7 days a week including holidays.

**TWENTY-FOUR HOUR CONTACT TELEPHONE NUMBER: \_\_\_\_\_**

The Contractor's employees shall be required to report to the security officer stations for **ALL ENTRIES AND EXITS AT ALL EL PASO WATER UTILITY FACILITIES.**

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

The Contractor shall be responsible for his employees and vehicles working in any El Paso Water Utilities facilities. The successful Bidder will be required to provide photographs of each vehicle and person authorized to be in the facilities and shall be submitted to the Operations Supervisor.

The utility reserves the right to request delivery to any EPW location.

Personnel entering the premises of El Paso Water Utilities (to include drivers of delivery vehicles) are required to wear an identification badge containing the following information:

-Name

-Company Name

-Employee's Picture

**Entry to the premises of ANY El Paso Water Utilities facilities may be denied to individuals without identification as addressed above.**

**Transportation:**

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

**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 award of the Master Contract.

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- 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 EPWater which includes the price increase to the contract. The price increase shall be effective within 14 calendar days from EPWater acceptance.
- c. EPWater reserves the right to cancel the contract resulting from this Bid 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 Contractor receives a price decrease from the supplier, the Contractor is responsible to notify EPWater within two working days of the price decrease and pass the price decrease on to EPWater. The price decrease will be effective upon receipt of the price reduction from the Contractor.

**DISCOUNT:**

Unless a discount is provided as an inducement for prompt payment, EPWater is not obligated to make payment on invoice(s) for this contract until 30 days after receipt of a valid, complete, and acceptable invoice. An invoice shall not be submitted prior to receipt of the **Dirt Fill Material**, whichever is later. Any discount will be used in the evaluation of the bid submittal to determine the lowest responsive bid.

**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.

**EPWater is exempt from State and City Sales Tax**

**Bidder must answer the following questions:**

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

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

2. If the bidder is a "**Nonresident 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 bid a certain amount or percentage under the bid of a resident bidder of that state in order for the nonresident bidder of that state to be awarded the contract on their bid in such state?

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

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

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

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A "**Nonresident Bidder**" will not be awarded this Bid unless the nonresident's bid is lower than the lowest bid submitted by a responsible **Texas Resident Bidder** by the same amount that a **Texas Resident Bidder** would be required to underbid the nonresident bidder 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 "**Nonresident Bidder**" are included in the "**Instructions to Bidders**" on the last two pages of this bid proposal.

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### 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 bid. Bidders' cooperation in this regard will avoid costly time delays in the award of bids by EPWater. Failure to provide all required information may result in the apparent low bidder being considered non-responsive and non-responsible, and the second low bidder being considered for award.

#### **Definitions**

*Resident Bidder:* 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 Bidder:* a person who is not a resident.

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

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Bidder's Complete Company Name: \_\_\_\_\_

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

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

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

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

[SIGNATURE ON NEXT PAGE]

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



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### 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: \_\_\_\_\_

## **CONTRACT CLAUSES**

### **1. TYPE AND TERM OF CONTRACT**

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

**Note:** Good(s) and/or Service(s) will be ordered on “**as-required**” basis.

The **Contract** to provide **Dirt Fill Material** shall be from **AWARD OF BID** 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 two additional one-year extensions.

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

When the successful supplier cannot furnish the required **Dirt Fill Material** within the delivery time specified above, the EPWater reserves the right to obtain **Dirt Fill Material** from any available source and bill the successful supplier for any additional cost over the bid amount.

This bid is to award a contract to the most responsive, responsible bidder for an initial one-year period. If upon mutual consent between both parties the contract may be extended under the same terms and conditions for two additional one-year extensions. In the event EPWater has not obtained other goods and/or services contractor by the expiration date of the existing contract term, the Contractor shall nonetheless continue for a period not to exceed six (6) months on a month-to-month basis after the end of its term, unless EPWater has notified the Contractor that EPWater has obtained another contractor.

### **2. ACCEPTANCE OR REJECTION OF BIDS**

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

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

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

### **4. INVOICES AND PAYMENTS**

- a. The Contractor shall submit invoices, in single copy, for each contract. Invoices covering more than one contract will not be accepted.
- b. If transportation costs are allowed in the bid a separate line item will be included in the proposal.
- c. Invoices shall reflect the Contract Number and/or the Purchase Order Number.
- d. Do not include Federal tax, State tax, or City Tax. EPWater shall furnish tax exemption certificate upon request.

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- e. Discounts will be taken from the date of receipt of services or date of invoice, whichever is later.
- f. 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.
- g. Mail invoices to:  
**EPWater Accounting Department**  
**P.O. Box 511**  
**El Paso, Texas 79961-0511**  
  
Invoices may also be emailed to: [accountspayable@epwater.org](mailto:accountspayable@epwater.org)
- h. Contractor shall advise the Purchasing Department of any changes in its remittance addresses.
- i. All proper invoices received by EPWater will be paid in accordance with Chapter 2251 of the Texas Government Code. EPWater will notify the Contractor of any errors or disputes in invoices in accordance with Chapter 2251 of the Texas Government Code.
- j. If partial shipments or deliveries are authorized by EPWater, the Contractor shall be paid for the partial shipment or delivery as stated above.
- k. 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.

## **5. 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 Workers' Compensation Program.

## **6. 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

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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.

**7. 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.

**8. WARRANTY-PRICE**

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

**9. 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.

**10. CONTRACTOR TO PACKAGE GOODS**

The Contractor will package goods according to good commercial practice. Each shipping container will be clearly and permanently marked as follows: (a) Contractor'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 Contractor 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.

**11. SHIPMENT UNDER RESERVATION PROHIBITED**

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

**12. DELIVERY TERMS AND TRANSPORTATION CHARGES**

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

**13. 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.

**14. RIGHT OF INSPECTION**

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

**15. 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 Contractor will not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Vendor may reasonably notify EPWater of his intention to cure and may then make a conforming tender within the contract time but not afterward.

**16. PLACE OF DELIVERY**

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

**17. WARRANTY-PRODUCT**

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

**18. SAFETY WARRANTY**

Contractor 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 Contractor's expense. In the event the Contractor fails to make the appropriate correction within reasonable time, correction made by EPWater will be at the Contractor's expense.

**19. TERMINATION**

**I. TERMINATION FOR CONVENIENCE**

EPWater may terminate this contract for convenience, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to EPWater to be paid 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 effectuated by serving a notice of intent to terminate the contract, with a copy to Surety, if applicable, setting forth the manner in which the Contractor is in default. The Contractor will be given an opportunity to correct the problem within a reasonable amount of time as specified by EPWater before termination notice is rendered. EPWater shall have the right to immediately terminate the Contract for default if 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.

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

This clause is applicable to contracts 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 Contractor agrees that this contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

**IV. Termination for Default by EPWater:**

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

**20. ADDITIONAL REMEDIES**

If EPWater terminates the contract because the Contractor 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 Contractor. 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.

**21. 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.

**22. 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.

**23. 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.

**24. ADVERTISING**

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

**25. AVAILABILITY OF FUND**

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 Contractor and there shall be no penalty nor removal charges incurred by EPWater.

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

**27. COMPLIANCE WITH LAWS**

The Contractor 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.

**28. CAPTIONS**

The captions of these Contract Clauses are for information purposes only and shall not in any way affect the substantive terms and conditions.

**29. SEVERABILITY**

The sections, paragraphs, sentences, clauses, and phrases of these Contract Clauses 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 these Contract Clauses.

**30. CONTRACT ADMINISTRATION**

Administration of this Contract, on behalf of EPWater, is the responsibility of Jesus Hernandez, Procurement Analyst, Purchasing and Contract Administration, who is your point of contact for general information or specific matters concerning this contract. Jesus Hernandez can be reached by telephone at (915) 594-5639, or by FAX at (915) 594-5689. Correspondence should be addressed to: EPWater, Purchasing and Contract Administration, Attn: Jesus Hernandez, 1154 Hawkins Blvd. El Paso, TX 79925. Please refer to Bid Number or Contract Number in all correspondence.

**31. 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.



**SUBJECT: DIRT FILL MATERIAL**  
**BID NUMBER: 81-22**  
**BID DEADLINE: 1:00 P.M. MOUNTAIN TIME, (July 5, 2022)**  
**TO BE OPENED: 1:30 P.M. MOUNTAIN TIME, (July 5, 2022)**

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

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.

**SUBJECT: DIRT FILL MATERIAL**  
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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: Jesus Hernandez, Procurement Analyst  
1154 Hawkins Blvd.  
El Paso, Texas 79925

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

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

**32. PRICE ADJUSTMENT**

**I. MINIMUM WAGE**

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

**33. 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.

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

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

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

**35. CONTRACTING INFORMATION**

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

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

**36. RIGHT TO AUDIT**

The Contractor 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 Contractor involving transactions relating to this contract. Contractor agrees that EPWater shall have access during normal working hours to all necessary Contractor 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 Contractor reasonable advance notice of intended audits. EPWater will pay Contractor for reasonable costs of any copying EPWater performs on the Contractor's equipment or requests the Contractor to provide. The Contractor agrees to refund to EPWater any overpayments disclosed by any such audit.

The Contractor agrees that it will include this requirement into any subcontract entered into in connection with this contract.

**37. 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.

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

**38. 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, Contractor affirms it does not boycott energy companies and will not boycott energy companies during the term of this contract.

**39. 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, Contractor 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.

**40. CONFIDENTIALITY AND DATA OWNERSHIP**

- a. Contractor understands that in the performance of the work under this contract, Contractor 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. Contractor agrees that all information disclosed by EPWater to Contractor 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 shall be forwarded to EPWater.
- b. Contractor 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 Contractor 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.

**41. Protest/Dispute**

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

**42. 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, bidders, or consultants and EPWater employees.
- Potential vendors, service providers, bidders, 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-bid conferences, oral presentations before selection committees, contract negotiations during duly notice public meeting, public presentations made to the President/CEO and Board members during a duly noticed public meeting; or
- Communications in writing at any time unless specifically prohibited by the applicable, RFP, RFQ or bid document.

**SUBJECT: DIRT FILL MATERIAL**

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

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

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

# CONFLICT OF INTEREST QUESTIONNAIRE

## FORM CIQ

For vendor doing business with local governmental entity

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

### OFFICE USE ONLY

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2** ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6** ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **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. The term does not include a governmental entity or state agency.
4. "Contract" includes an amended, extended, or renewed contract.
5. "Controlling Interest" means:
  - a. An ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
  - b. Membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 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 is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(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**

# INSTRUCTIONS TO BIDDERS

1. Bidders **MUST** use the form and format included in this bid document and provides all required information. The Bid Proposal shall be mailed to the Purchasing and Contracts Administration Department, El Paso Water, El Paso, Texas 79961 or delivered to the Purchasing and Contracts Administration Department, El Paso Water Building, first floor, 1154 Hawkins Boulevard, El Paso, Texas 79925 prior to the date and time specified in this bid document. Bids received after the date and time shall be returned unopened to the Bidder.
2. The unit price of each item must be given in the column headed 'Unit Price' and must be for the particular unit of measurement specified in the column headed 'Unit'. In addition, the price per unit shall be multiplied by the total number of units and the total shown in the column for 'Total Cost'. If there is a discrepancy between the unit price and the total cost, the **unit price shall prevail**.
3. When a bid is requested for a particular item by brand name or other form of identification and the words '**or approved equal**' are used, Bidders may bid on items manufactured by other companies, provided the substituted article(s) is clearly described in terms of trade name, grade, capacity, etc. Sufficient information **MUST BE INCLUDED WITH THE BID SUBMITTAL** to permit El Paso Water to evaluate the item(s) for compliance with bid specifications. **BIDDERS WHO FAIL TO INCLUDE THIS INFORMATION WITH THE BID SUBMITTAL MAY BE DISQUALIFIED.**
4. Additional information not requested in the bid specifications, but felt to be pertinent by the Bidder, may be included as annotations or attachments to the Bid Proposal.
5. When a date is set for merchandise to be received or for work to be performed, the merchandise **MUST BE DELIVERED OR THE WORK PERFORMED** on or before the specified date; if not, the Purchase Order or Master Contract to the delinquent party may be canceled. If the Purchase Order or Master Contract is canceled, El Paso Water shall have the right to buy the merchandise or have the unfinished work completed by another bidder. Any excess in cost for the same item(s) or service over the price specified in the Bid Proposal that was accepted by the Public Service Board will be deducted from any money deposited with this bid or subsequently due. El Paso Water reserves the right to delete the company from the Bidders List for up to twelve months.
6. All bids **MUST BE F.O.B. DESTINATION**. All reductions or refunds on freight charges will be for the account of El Paso Water.
7. The Bid Submittal shall remain subject to acceptance for (90) Ninety days after the bid opening.
8. Bidders are invited to be present at the opening of bids.
9. Unless otherwise specified in the Bid Proposal, award of the bid shall be made by individual item to the lowest responsible bidder meeting specifications for the goods and/or services described in the Bid Proposal. A Bidder may qualify their bid by indicating that is based on 'All or None' for either all or part of the items.
10. The Public Service Board is not bound by the issuance of this Bid Proposal to award a contract. Any resulting order will be awarded to the lowest and best qualified responsible bidder whose bid, conforming to the Bid Proposal, is most advantageous to El Paso Water. If deemed to be in the best interest of El Paso Water, the Public Service Board reserves the right to reject any or all bids, award a contract for the items, either in whole or part and/or waive any irregularities. However, the contract may not be awarded to a nonresident bidder unless the nonresident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. 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 bid, conforming to the Bid Proposal, is most advantageous to El Paso Water.

## DEFINITIONS:

**BIDDER** - 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 BIDDER** - means a bidder 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 BIDDER** - means a bidder 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.

11. A Bidder may withdraw their bid at any time prior to the date and time of bid opening, provided written authorization is presented to the Purchasing Agent by an officer of the firm that submitted the bid.
12. Any additional information about this bid and/or complaints, questions or comments about the bid of another vendor must **be submitted to the Purchasing Agent within 24 hours** after the bids are opened for the information or complaint to be considered.

# INSTRUCTIONS TO BIDDERS

## CONTINUED

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