

EL PASO WATER UTILITIES

Solicitation Check List

Hydrogen Peroxide

Bid # 11-15

THIS CHECKLIST IS PROVIDED FOR YOUR CONVENIENCE

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

- _____ Responses should be delivered to the El Paso Water Utilities Purchasing Department by **11:00 a.m., February 4, 2015**. Did you visit our website at www.epwu.org for any addendums? **(Failure to sign addendums and include with bid proposal may deem the bidder's submission non-responsive.)**
- _____ Did you sign the Bid Proposal?
- _____ Did you provide two (2) signed bid proposals, one (1) original signed in blue ink and one (1) copies?
- _____ Did you complete the Excel Worksheet and submit it on a CD along with the sealed bid proposal? Excel worksheet is found with the bid announcement located at www.epwu.org **(Failure to include the Excel Worksheet and submit it on a CD may deem the bidder's submission non-responsive)**
- _____ Are all unit and extended costs filled out?
- _____ Does the bid total equal the sum of extended costs as compared to the Excel Worksheet?
- _____ Did you provide Bid Bonds (only if required)?
- _____ Last day for questions is **January 27, 2015**.
- _____ Are all blank spaces filled in?
- _____ Is your bid in a sealed envelope marked with the bid number and name?



BID PROPOSAL TO THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD

1154 HAWKINS BLVD. – P.O. BOX 511 79961
EL PASO, TEXAS 79925 – P 915/594-5628 F 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.

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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.

Any requests for clarifications and/or changes to this bid proposal shall be made in writing via email to Christina Rivas @ crivas@epwu.org or sent via fax to Christina Rivas at (915) 594-5689. Requests need to be submitted by January 27, 2015. Requests submitted after this time frame, may not elicit a response. Answers to bid questions will be posted January 30, 2015.

Item(s) 14 Bid Security & 15 Performance Bond as noted on the attached "INSTRUCTIONS TO BIDDERS" do not apply to this bid.

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NOTE: Bidders are to complete the attached check list and Excel form spreadsheet found with this Bid announcement located at www.epwu.org. Bidder must provide a saved read only CD formatted copy of this Excel spreadsheet returned with sealed bid. Failure to complete this may deem the bidders submission non responsive.

This bid will be awarded to the bidder with the lowest, responsive, responsible "Total Bid" for item 1.

***EAU = ESTIMATED ANNUAL USAGE**

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

Note:

A current Material Safety Data Sheet (MSDS) for Hydrogen Peroxide shall be provided with the bid submittal. **Failure to provide the Material Safety Data Sheet (MSDS) with the bid proposal submittal may result in the disqualification of the bid proposal submittal.**

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

The Hydrogen Peroxide solution shall be clear, colorless, water-like in appearance and can be mixed with water in any proportion. Hydrogen Peroxide has a molecular weight of 34.02 and the pure material, as well as its aqueous solution, shall be nonflammable. The 50% (wt. %) Hydrogen Peroxide solution shall meet NSF 60 requirements suitable for drinking water application. The Chemical Abstracts Service Registry Number for Hydrogen Peroxide is 7722-84-1. Other typical physical and chemical properties are listed below:

Approximate H_2O_2 content, wt. % = 50 – 51.5%

Active Oxygen, wt. % = 23.5

Density @ 20° C = 1.196 sp. GR.

Apparent pH = <3

Freezing Point = - 52°C

Boiling Point = 114° C

Vapor Pressure @ 30° C = 18 mm Hg (hydrogen peroxide + water)

Viscosity (approximate) @ 0° C = 1.87

If the Hydrogen Peroxide is to be repackaged for delivery to the El Paso Water Utilities, the repackaging facility shall provide evidence of their NSF 60 Sub-Registration documentation with their bid submittal. **FAILURE OF A REPACKAGING FACILITY TO PROVIDE THE SUB-REGISTRATION DOCUMENTATION WITH THE BID SUBMITTAL IS A MATERIAL DEFECT WHICH SHALL RESULT IN DISQUALIFICATION OF THE BID SUBITTAL.**

DELIVERY REQUIREMENTS:

Suppliers will be provided with a Material Release Order by FAX or E-Mail for delivery of the Hydrogen Peroxide. Upon written notification, delivery is to be made in partial shipments which will continue throughout the Contract Period. Deliveries of 300 gallon one way totes shall be accepted **ONLY DURING THE HOURS OF 8:00 A.M. TO 2:00 P.M.** local time at the Jonathan Rogers Treatment Plant 10000 Southside Road El Paso, Texas 79927. Unloading time shall not exceed one hour. Unloading equipment shall be provided by the Utility.

Delivery of each order shall be made within four (4) calendar days of written notification. In order to ensure that the Hydrogen Peroxide is delivered on the required date, the bidder shall indicate their minimum notification requirement:

MINIMUM NOTIFICATION REQUIREMENT: _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

E-MAIL ADDRESS: _____

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Each delivery **MUST BE ACCOMPANIED BY A LEGIBLE TAG** which shall include the following:

- a. Specific Gravity of the Hydrogen Peroxide delivered
- b. The percent of Hydrogen Peroxide (wt. %) delivered
- c. Number of 300 gallon one way totes delivered

The Hydrogen Peroxide shall be delivered to the following location:
(Approximately 12 each - one way totes per delivery)

JONATHAN ROGERS WATER TREATMENT PLANT
10000 Southside Road
El Paso, Texas 79927

Each delivery **MUST ALSO BE ACCOMPANIED BY A PRODUCT CERTIFICATION** attesting to compliance with these bid specifications. The product sample used for analysis of the product must be representative of the product being delivered during that particular quarter. The analysis of the product must be submitted quarterly to Mr. Angel Bustamante, P.E., Water Systems Division Manager 210 N. Lee Street El Paso, TX 79901 showing the typical properties listed above.

Personnel entering the premises of the 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 the El Paso Water Utilities facility may be denied to individuals without identification as addressed above.

Bidders Fax Number: _____ **E-Mail Address:** _____

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.
- 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 the 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. The El Paso Water Utilities 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 the 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.

Unless a discount is provided as an inducement for prompt payment, El Paso Water Utilities - Public Service Board 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 **Hydrogen Peroxide**, whichever is later. Any discount will be used in the evaluation of the bid submittal to determine the lowest responsive bid.

Discount: _____

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.

F.O.B. – El Paso, Texas

State and City Sales Tax Exempt

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?

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 his 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: _____

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.

1. TYPE AND TERM OF CONTRACT:

This is a **Good(s) and/or Service(s) Contract**, under which the El Paso Water Utilities 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 **Hydrogen Peroxide** 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 on a year to year basis for an additional two year periods.

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 **Hydrogen Peroxide** within the delivery time specified above, the Utility reserves the right to obtain **Hydrogen Peroxide** 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 for an additional year for a maximum of up to two years total. In the event the El Paso Water Utilities has not obtained another 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 the El Paso Water Utilities shall have notified the Contractor that the El Paso Water Utilities obtained another contractor.

2. 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. El Paso Water Utilities shall furnish tax exemption certificate upon request.
- e. Discounts will be taken from the date of receipt of services or date of invoice, whichever is later.
- f. The El Paso Water Utilities' 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 the El Paso Water Utilities.
- g. Mail invoices to:
El Paso Water Utilities Accounting Department
P.O. Box 511
El Paso, Texas 79961-0511
- h. Contractor shall advise the Purchasing Department of any changes in its remittance addresses.
- i. All proper invoices received by the EPWU will be paid within 30 days of the EPWU's receipt date of the invoice.
- j. If partial shipments or deliveries are authorized by the EPWU, the Contractor shall be paid for the partial shipment or delivery as stated above.
- k. The EPWU 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.

3. INDEMNIFICATION:

Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the El Paso Water Utilities, 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. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the El Paso Water Utilities as required by law, the El Paso Water Utilities will promptly forward to Contractor every demand, notice, summons or other process received by the El Paso Water Utilities in any claim or legal proceedings contemplated herein. Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause the to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the El Paso Water Utilities 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 the El Paso Water Utilities in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by the El Paso Water Utilities including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The El Paso Water Utilities, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of this interest. The El Paso Water Utilities will not be responsible for any loss or damage to the Contractor's property from any cause.

4. GRATUITIES:

The El Paso Water Utilities may, by written notice to the Contractor, cancel this contract without liability to Contractor if it is determined by the El Paso Water Utilities 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 the El Paso Water Utilities 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 the El Paso Water Utilities pursuant to this provision, the El Paso Water Utilities shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

5. TERMINATION:

I. TERMINATION FOR CONVENIENCE

The El Paso Water Utilities 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 the El Paso Water Utilities to be paid the Contractor. If the Contractor has any property in its possession belonging to the El Paso Water Utilities, the Contractor will account for the same, and dispose of it in the manner the El Paso Water Utilities directs.

II. TERMINATION FOR DEFAULT

If the Contractor fails to comply with any provision of the contract, the El Paso Water Utilities 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 The El Paso Water Utilities before termination notice is rendered. The El Paso Water Utilities

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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 the El Paso Water Utilities terminates this Contract because the Contractor failed to perform the services as required by the Contract, the El Paso Water Utilities 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. The El Paso Water Utilities may recover the difference between the cost of the substitute services and the Contract price from the Contractor as damages. The El Paso Water Utilities 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 the El Paso Water Utilities to obtain substitute services and charge the Contractor under this clause is not a bar to any other remedy available for default.

6. 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.

7. 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 the El Paso Water Utilities.

8. VENUE:

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

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9. CONTRACT ADMINISTRATION:

Administration of this Contract, on behalf of the El Paso Water Utilities, is the responsibility of Christina Rivas, Procurement Analyst Purchasing and Contract Administration, who is your point of contact for general information or specific matters concerning this contract. Christina Rivas can be reached by telephone at (915) 594-5629, or by FAX at (915) 594-5689. Correspondence should be addressed to: The El Paso Water Utilities, Purchasing and Contract Administration, Attn: Christina Rivas, P.O. Box 511, El Paso, Texas 79961-0001. Please refer to Bid Number or Contract Number in all correspondence.

10. LIABILITY INSURANCE:

For the duration of this contract and any extension hereof, Contractor shall carry in a solvent company authorized to do business in Texas public liability insurance a) covering contractor and its employees in the amount of \$500,000 and b) for the protection of the general public and the El Paso Water Utilities in the amount of \$1,000,000 per occurrence for bodily injury or wrongful death and \$1,000,000 per occurrence for property damage.

With respect to the above required insurance, the El Paso Water Utilities and its officers and employees shall be named as additional insureds as their interests may appear. The El Paso Water Utilities shall be provided with 30 days advance notice, in writing, of any cancellation or material change. The El Paso Water Utilities 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.

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

El Paso Water Utilities
Purchasing and Contract Administration Department
Attn: Michelle LePage, Purchasing Agent
P. O. Box 511
El Paso, Texas 79961-0001

Failure to submit insurance certification may result in contract cancellation.

11. CONE OF SILENCE

The "Cone of Silence" is imposed upon each RFP, RFQ or Bid after advertising. The Cone of Silence prohibits communications with EPWU 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 EPWU 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 Purchasing Agent or Administrative Analyst 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.

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 the EPWU General Counsel and the Purchasing Agent.

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

Bids will be received until **February 4, 2015**, Local Time, **11:00 a.m.** and will then be opened and read aloud in the first floor Conference Room of the El Paso Water Utilities Bldg. 1154 Hawkins Blvd. El Paso, Texas. Bids may be mailed to the attention of the Purchasing and Contracts Administration Department, P.O. Box 511, El Paso, Texas 79961 or delivered to the El Paso Water Utilities Bldg. 1154 Hawkins Blvd. El Paso, Texas 79925.

Note: Faxed bids will not be accepted.

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

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 Utilities, P.O. Box 511, El Paso, Texas 79961 or delivered to the Purchasing and Contracts Administration Department, El Paso Water Utilities 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 the Utility 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, the El Paso Water Utilities 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. The El Paso Water Utilities Public Service Board 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 the El Paso Water Utilities.
7. The Bid Submittal shall remain subject to acceptance for sixty 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 his 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 the El Paso Water Utilities. If deemed to be in the best interest of the El Paso Water Utilities, 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 the El Paso Water Utilities.

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 this state.

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 this state.

11. A Bidder may withdraw his 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. The successful bidder will be required to obtain and maintain comprehensive general liability insurance in an amount not less than \$500,000 per occurrence. **The City of El Paso and the El Paso Water Utilities Public Service Board shall be included as additional insureds on all policies of comprehensive general liability insurance.** Each policy shall contain a clause which **requires** the insured to give the Public Service Board **at least 30 days written notice of cancellation** of said insurance or of a material change in same. Prior to the effective date of cancellation, the Bidder shall obtain replacement insurance which meets these specifications. A copy of the Bidder's Certificate of Insurance or other satisfactory evidence of insurance coverage shall be submitted to the Purchasing Agent **within 15 days after receipt of a written Notice of Award.** **UPON FAILURE OF THE SUCCESSFUL BIDDER TO FURNISH SATISFACTORY EVIDENCE OF INSURANCE COVERAGE WITHIN 15 DAYS AFTER RECEIPT OF A WRITTEN NOTICE OF THE BID AWARD, THE NOTICE OF AWARD SHALL BE NULL AND VOID.** THE BID SECURITY (PROVIDED IN ACCORDANCE WITH INSTRUCTION 14) SHALL BE FORFEITED AND THE EL PASO WATER UTILITIES SHALL THEN HAVE THE RIGHT TO MAKE THE AWARD TO THE NEXT LOWEST RESPONSIBLE, RESPONSIVE BIDDER OR ASK FOR NEW BIDS.
14. Each bid MUST be accompanied by Bid Security made payable to the El Paso Water Utilities Public Service Board 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 of all bidders will be retained by the El Paso Water Utilities 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 the El Paso Water Utilities 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.** The El Paso Water Utilities 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 the El Paso Water Utilities 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 the El Paso Water Utilities 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 the El Paso Water Utilities Public Service Board. 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.