

EL PASO WATER UTILITIES

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

Formal Bid Solicitation Check List

Sale of Surplus Brass, Copper, Steel & Miscellaneous Assorted Scrap

Bid # 66-17

THIS CHECKLIST IS PROVIDED FOR YOUR CONVENIENCE

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

_____ Did you check our website www.epwu.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?

_____ 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.epwu.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 **11:00 a.m. July 27, 2017.**



BID PROPOSAL TO

EL PASO WATER UTILITIES

1154 HAWKINS BLVD. – P.O. BOX 511 79961-0511
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 July 19, 2017. Requests submitted after this time frame, may not elicit a response. Answers to bid questions will be posted July 21, 2017.

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
- # 15 - Performance Bond and/or Payment Bond

NOTE:

A **PRE-BID MEETING** shall be held at **10:00 A.M. LOCAL TIME WEDNESDAY, JULY 19, 2017** at the El Paso Water Utilities Bldg., 1154 Hawkins Blvd. The purpose of having the PRE-BID MEETING is to review the requirements in the bid documents and respond to questions from potential bidders. **ATTENDANCE AT THE PRE-BID MEETING IS HIGHLY RECOMMENDED.**

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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 or USB Drive of this Excel spreadsheet returned with sealed bid. CD or USB Drive must have the bid number and company name written on the CD or USB Drive. Failure to complete this may deem the bidders submission non responsive.

All bidders must provide a percentage to be paid to EPW for column C. The percentage is a fixed percentage that will be for the duration of the contract.

*(A) estimated quantity to be sold

*(B) You must use the simulated market index price for bid purposes only in Column B.

(C) For items 1-7, calculate the percentage from the Market price that will be paid to the El Paso Water Utilities. Enter the bid percent for this column. ***Example***, if the item is \$2.100 per pound according to the AMM index, Houston Midwest Market then the bidder will pay the Utility 95% market price for a total of \$1.995 per pound X the estimated quantity to get the extended total \$159,600.00. The excel spreadsheet will calculate your extended total of material to be sold.

(D) For item 8 & 9 enter price per pound.

(E) The extended total for each line item will automatically be calculated $(a \times b \times c) = d$.

(F) Total bid amount for items 1 – 7 are automatically calculated

This bid will be awarded to the bidder with the highest, responsive, responsible “Total Bid” for items 1 thru 7 as noted on the Excel spreadsheet.

DO NOT CHANGE ANY OF COLUMNS A, B AND D. ONLY PROVIDE THE PERCENTAGE ON COLUMN C FOR ITEMS 1 THROUGH 7.

Clean Brass = water meters, ball valves, fittings etc.

Bare Copper = pipe, fittings, wire

Insulated Copper Wire = phone cable, electrical wire, stranded copper

Misc. steel = fire hydrants, metal material, metal file cabinets

Stainless steel = bolts, material

Electronic scrap = electronic components (Keyboards, monitors, printers, electronic tools)

Misc. scrap = chairs, tables etc.

***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, El Paso Water Utilities reserves the right to increase, decrease and/or change these requirements to provide for continued operation during the Contract Period.

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The undersigned bidders offer to purchase the Sale of Surplus Brass, Copper, Steel & Miscellaneous Assorted Scrap items described in this proposal AS IS from the following EPW locations:

WAREHOUSE

9751 Pan American Dr. Bld. B,
El Paso, Texas 79927
Contact: Jesse Vasquez, Materials Specialist
915/594-5761

CENTRAL RECEIVING/PROPERTY CONTROL

9751 Pan American Dr. Bld. B,
El Paso, Texas 79927
Contact: Rudy Vargas, Property Control Officer
915/594-5764

HASKELL STREET WASTEWATER
TREATMENT PLANT

4100 Delta Dr.
El Paso, Texas 79905
Contact: Michael Dubrule, Heavy Equipment
Supervisor 915/594-5710

JONATHAN ROGERS WATER TREATMENT
PLANT

10000 Southside Rd,
El Paso, Texas 79927
Contact: Mike Parker, Plant Superintendent
915/594-5750

ROBERTO R. BUSTAMANTE WASTEWATER
TREATMENT PLANT

10001 Southside Rd,
El Paso, Texas 79927
Contact: Gustavo Ogaz, Plant Superintendent
915/594-5703

NORTHWEST WASTEWATER TREATMENT
PLANT

701 Executive Center Blvd.,
El Paso, Texas 79912
Contact: Fred Murillo, Plant Superintendent
915/594-5791

ROBERSTON UMBENHAUER WATER
TREATMENT PLANT

800 Canal Rd,
El Paso, Texas 79901
Contact: Sal Morales, Water Plant Asst.
Superintendent 915/238-9879
Saul Espinoza, Water Plant Asst. Superintendent
915/319-4667

FRED HERVEY WATER RECLAMATION PLANT

11700 Railroad Dr.
El Paso, Texas 79934-2608
Contact: Robert Hernandez, Plant Superintendent
915/594-5721

UPPER VALLEY WATER TREATMENT PLANT

9070 N. Vinton Rd,
Canutillo, Texas 79821
Contact: Raymond Shay, Plant Assistant
Superintendent 915/621-2076

AUTO SHOP/FLEET MAINTENANCE

9751 Pan American Dr. Bldg. A
El Paso, Texas 79927
Contact: Martin Noriega, Storm Water Operations
Manger 915/621-2085

All locations are subject to change with notice.

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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:

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

1. Sealed bids for the **Sale of Surplus Brass, Copper, Steel and Miscellaneous Assorted Scrap** must be delivered to:
Christina Rivas, Procurement Analyst
El Paso Water Utilities
Purchasing and Contracts Administration Dept.
1154 Hawkins Blvd
El Paso, Texas 79925
2. For hand delivered or mailed bids, please mark **Bid Number 66-17** on lower left hand corner of the envelope.
3. If bid is made by an agent for a proposed purchaser, the signature of such agent shall be affixed to the Bidder's Proposal. In addition, bid shall identify the proposed purchaser in whose name the title will be taken. ***No agent commission will be paid by the El Paso Water Utilities Public Service Board.***
4. El Paso Water Utilities reserves the right to reject any or all bids or to award a contract either in whole or in part and to waive any irregularities, if it is deemed to be in the best interest of the EPWU.
5. **BID SECURITY IS NOT REQUIRED.**
6. The bid will be awarded to the bidder submitting the highest bid price for the TOTAL BID AMOUNT.
7. Successful bidder must pay all proportional costs of Insurance, Transportation, Loading and Unloading.
8. The successful bidder must provide a copy of business license and all permits prior to sale and removal of Surplus/Scrap Items to cover all City, County, State, and Federal regulations regarding transportation and disposal of assorted Surplus/Scrap Items. All costs, including Transit Insurance must be paid by the successful bidder.
9. The successful bidder, its successors, or assigned will not discard or place in storage any Surplus/Scrap items or other hazardous, toxic or corrosive waste material which would contaminate/damage the ground water supply or sources of the City and County of El Paso, Texas.
10. The successful bidder agrees that he or she has examined the Surplus/Scrap Items property and accepts them "AS IS", including, but not limited to, the present condition. In addition, the successful bidder will be required to meet ALL City, County, State of Texas and Federal regulations in regards to the purchase and transportation of Surplus/Scrap Items.
11. Successful bidder must demonstrate to El Paso Water Utilities that it has the expertise and understanding to safely receive/remove, from the location where Surplus/Scrap Items are to be purchased.
12. All scrap material is available F.O.B. present El Paso Water Utilities location. The successful bidder shall provide trucks, equipment, personnel and containers to pick up and load the Surplus/Scrap Items to be purchased.
13. The successful bidder will submit payment no later than the fifteenth (15th) day from the day of the removal to be accompanied with a detailed list of all scrap removed including official weigh ticket for each pick up trip. Payment must be submitted to the Warehouse location. The successful bidder must use and provide the highest market price listed on the Houston Midwest Market AMM index for the actual day of the pick up by the end of that business day. The successful bidder will provide roll off containers at no charge for miscellaneous assorted scrap for different EPWU locations on an as needed basis. When needed section locations listed will call for delivery of roll off container and will advise when it's ready to pick up. Containers at all location are easy accessible. One roll off container a total of 4 must remain at all times at each of the following facilities:

Warehouse @ 9751 Pan American Dr. Bld. B, El Paso, Texas 79927

Haskell Street Wastewater Treatment Plant @ 4100 Delta Drive, El Paso, TX 79924

Auto Shop @ 9751 Pan American Dr. Bld. A, El Paso, Texas 79927

Roberto R. Bustamante Wastewater Treatment Plant @ 10001 Southside Rd, El Paso, TX 79927

Successful bidder must provide 20 containers no larger than 48" x 60" to the Warehouse for material storage and transport. Brass pick up will be on as needed basis approximately once a month, shipment weighing about 15,000 to 20,000 lbs. Pick up hours are from 9 am to 2 pm at all site locations. A representative from awarded bidder along with an EPWU employee shall verify and confirm the brass weight from the EPW scale and such weight will be considered the official weight for payment of the brass.

14. The Surplus/Scrap Items must be purchased with certified check, money order or company check. El Paso Water Utilities does not accept cash.
15. 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.
16. The official weigh scale for bid items 1-5, and 8-9 will be the El Paso Water Utilities warehouse's scale. The official weigh scale for bid item 6 and 7 will be that of the successful bidder. A representative from El Paso Water Utilities shall verify and confirm the weight at the awarded bidder's location. In the case of a dispute involving weight, the El Paso Water Utilities scale will be the official weigh scale.
17. Roll off containers for miscellaneous assorted scrap are located at all of the locations.
18. For all locations, roll off containers are easy accessible. At the Warehouse, items 1-5, 8 & 9 will be placed in containers provided by successful bidder. All pickups will be done by employees of winning vendor. For brass weight the successful bidder can have a representative with an EPWU employee confirm the weight from the EPWU scale as this is the official weight that must be observed for payment on items 1-5, 8 & 9.

DELIVERY REQUIREMENTS:

The utility reserves the right to request delivery to any EPWU 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.

El Paso Water Utilities is exempt from State and City Sales Tax

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PRICE ESCALATION and DE-ESCALATION:

A Price Escalation and De-escalation may be considered under the following conditions:

- Prices to be paid must be firm for at least the first 12 month period from award of the Master Contract.
- 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.
- The El Paso Water Utilities reserves the right to cancel the contract resulting from this Bid Proposal and rebidding our requirements if the price de-escalation requested is above the current open market price. Cancellation of the contract will not affect any outstanding orders.
- All price decreases accepted shall be effective for a 12 month period from the revised date of the Master Contract.

(Space Intentionally Left Blank)

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STATEMENT OF RESIDENCY

The following information is required by El Paso Water Utilities 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 El Paso Water Utilities. 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.

Bidder's Complete Company Name: _____

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

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

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

I swear and attest that the information provided above is true and correct as of the date _____ ("Bidder") submitted its bid on Bid No. _____. I further attest that I am an authorized representative of Bidder or have been duly authorized to represent Bidder in this matter. I understand that the information provided is being relied on by El Paso Water Utilities 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 El Paso Water Utilities and Bidder will be void and El Paso Water Utilities 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:

1. TYPE AND TERM OF CONTRACT:

This is a **Good(s) and/or Service(s) Contract**, under which 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 highest, 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 **Sale of Surplus Brass, Copper, Steel & Miscellaneous Assorted Scrap** 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 **Sale of Surplus Brass, Copper, Steel & Miscellaneous Assorted Scrap** within the delivery time specified above, the Utility reserves the right to obtain **Sale of Surplus Brass, Copper, Steel & Miscellaneous Assorted Scrap** 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 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 El Paso Water Utilities has notified the Contractor that El Paso Water Utilities has obtained another contractor.

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

- a. The Utility 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 the Utility.
- b. The Utility does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

3. 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. El Paso Waters 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 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 El Paso Water Utilities will be paid within 30 days of El Paso Waters Utilities' receipt date of the invoice.
- j. If partial shipments or deliveries are authorized by El Paso Water Utilities, the Contractor shall be paid for the partial shipment or delivery as stated above.
- k. El Paso Water Utilities 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.

4. INDEMNIFICATION:

Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD 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 El Paso Water Utilities as required by law, El Paso Water Utilities will promptly forward to Contractor every demand, notice, summons or other process received by 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 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 El Paso Water Utilities in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by El Paso Water Utilities including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. 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. El Paso Water Utilities will not be responsible for any loss or damage to the Contractor's property from any cause.

5. GRATUITIES:

El Paso Water Utilities may, by written notice to the Contractor, cancel this contract without liability to Contractor if it is determined by 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 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 El Paso Water Utilities pursuant to this provision, 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.

6. TERMINATION:

I. TERMINATION FOR CONVENIENCE

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 El

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

II. TERMINATION FOR DEFAULT

If the Contractor fails to comply with any provision of the contract, 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 El Paso Water Utilities before termination notice is rendered. El Paso Water Utilities 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 El Paso Water Utilities terminates this Contract because the Contractor failed to perform the services as required by the Contract, 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. El Paso Water Utilities may recover the difference between the cost of the substitute services and the Contract price from the Contractor as damages. 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 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.

7. FORCE MAJEURE:

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

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

8. AVAILABILITY OF FUNDS:

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

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9. VENUE:

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

10. CONTRACT ADMINISTRATION:

Administration of this Contract, on behalf of 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: El Paso Water Utilities, Purchasing and Contract Administration, Attn: Christina Rivas, 1154 Hawkins Blvd. El Paso, TX 79925. Please refer to Bid Number or Contract Number in all correspondence.

(Space Intentionally Left Blank)

11. INSURANCE:

For the duration of this contract and any extension hereof, Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable: Workers' compensation, Automobile Liability insurance and Commercial General Liability insurance: (a) Covering contractor and its employees and (b) For the protection of the general public and El Paso Water Utilities 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.

INSURANCE REQUIREMENTS				
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

SUBJECT: Sale of Surplus Brass, Copper, Steel & Miscellaneous Assorted Scrap

BID NUMBER: 66-17

TO BE OPENED: 11:00 A.M. LOCAL TIME, July 27, 2017

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

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:

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

Failure to submit insurance certification may result in contract cancellation.

Exception for insurance requirements:

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

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

12. CONE OF SILENCE

The "Cone of Silence" is imposed upon each RFP, RFQ or Bid from the time of advertising until it is posted on the Public Service Board Agenda for award. The Cone of Silence prohibits communications with El Paso Water Utilities 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 El Paso Water Utilities 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: Sale of Surplus Brass, Copper, Steel & Miscellaneous Assorted Scrap

BID NUMBER: 66-17

TO BE OPENED: 11:00 A.M. LOCAL TIME, July 27, 2017

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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 El Paso Water Utilities General Counsel and the Purchasing Agent.

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

Bids will be received until **July 27, 2017**, Local Time, **11:00 a.m.** and will then be opened and read aloud in the 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, 1154 Hawkins Blvd. El Paso, TX 79925 or delivered to El Paso Water Utilities, 1154 Hawkins Blvd. El Paso, Texas 79925.

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

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

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

FORM CIQ

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.

**TEXAS ETHICS COMMISSION
REQUIREMENT**

Reference: FORM 1295 (revised 4/8/2016) “Certificate of Interested Parties”

“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

**SEE INSTRUCTIONS: Form 1295, and Sample Form 1295 within Bid Form,
INSTRUCTION – 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) prior to the convening Board awarding the 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, attorney, or representative of, or agent 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 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 contact, 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 non-profit 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 ten (10) percent;
 - b. Membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than ten (10) members, or;
 - c. Service as an officer of a business entity that has four (4) or fewer officers, or serve as one of the four (4) officers most highly compensated by a business entity that has more than four (4) officers.

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

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

The business entity must print a copy of the completed form, 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 El Paso Water.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

OFFICE USE ONLY

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.

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 **AFFIDAVIT** I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20 _____, to certify which, witness my hand and seal of office.

 Signature of officer administering oath

 Printed name of officer administering oath

 Title of officer administering oath

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 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 (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 **highest** responsible bidder meeting specifications for the goods and/or services described in the Bid Proposal. A Bidder may qualify his bid by indicating that **the bid** 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 **highest** 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 **higher** than the **highest** bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to **overbid** 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 **highest** 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. Reference bid proposal for insurance requirements.
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 of 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 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. 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 **high** 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 **highest** 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.