



REQUEST FOR PROPOSAL
No. RFP38-18

Direct Funded Revolving Loan or Note Purchase Agreement

Proposal Due Date: March 13, 2018 at 12:00 P.M MST

Proposal must be sealed and delivered to:
El Paso Water (EP Water)
Attention: Levi Chacon, Purchasing Agent
1154 Hawkins Boulevard
El Paso, Texas 79925

Proposals received after the date and time specified above will not be accepted and will be returned unopened. The RFP documents, including addendums, will be posted to the EP Water website at www.epwu.org Proposals received and accepted shall become the property of EP Water and will **NOT** be returned.

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

Procedural or contractual questions can be directed to Levi Chacon, Purchasing Agent at lchacon@epwu.org.

The Utility will award the contract to the respondent that submits a proposal which receives the highest cumulative score for each of the evaluation factors delineated herein.

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PART 1 – GENERAL INFORMATION

1.10 CONTRACT ADMINISTRATION:

Administration of this Contract, on behalf of EP Water, is the responsibility of Levi Chacon, Purchasing and Contract Administration, who is your point of contact for general information or specific matters concerning this contract. Levi Chacon can be reached by telephone at (915) 594-5625, or by FAX at (915) 594-5689. Correspondence should be addressed to: EP Water, Purchasing and Contract Administration, Attn: Levi Chacon, 1154 Hawkins Blvd. El Paso, TX 79925. Please refer to RFP Number or Contract Number in all correspondence.

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

1.11 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 EP Water employees to attempt to influence the purchasing decision. As such, the Cone of Silence prohibits any communication regarding RFP’s, RFQ’s or Bids between, among others:

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

The provisions do not apply to, among other communications:

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

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

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

PART 2 – GENERAL OVERVIEW

2.1 INTRODUCTION

The City of El Paso, Texas Municipal Drainage Utility System (“City”) is issuing this Request for Proposals (“RFP”) to solicit proposals for a Direct Funded Revolving Loan or Note Purchase Agreement (“DFRL/NPA”), in an amount up to \$25,000,000 with drawdown and prepayment flexibility similar to a traditional commercial paper program. Proceeds will be used to fund the acquisition, construction and repair of structures, equipment and facilities for the City’s Municipal Drainage Utility System (“System”). Principal and Interest shall be secured by a subordinate lien on and pledge of the Net Revenues of the System.

The System anticipates establishing by City ordinance (the “Notes Ordinance”) a revolving finance program entitled the “City of El Paso, Texas Municipal Drainage Utility System Flexible Rate Revolving Note Private Placement Program” (the “Program”) under which the System may issue, from time to time, taxable or tax-exempt notes (the “Notes”), bearing interest at fixed or variable rates and having individual maturities of one year or less, in an aggregate principal amount at any one time outstanding not to exceed \$25,000,000. The Notes and the Program will be reviewed and approved by the Texas Attorney General and a legal opinion of the City’s Bond Counsel will accompany the delivery of the Notes.

The Program will be approved as to legality by the Attorney General of the State of Texas; certain legal matters will be approved by Norton Rose Fulbright US LLP, Dallas, Texas, Bond Counsel for the City. In addition, those Notes (i.e. tax-exempt notes) issued as obligations the interest on which is excluded from the gross income of the owners thereof who are individuals or, except with respect to the alternative minimum tax calculation, corporations, for federal income tax purposes under section 103 of the Internal Revenue code of 1986, as amended, will be subject to the legal opinion of Bond Counsel concerning such tax matters.

Respondents are requested to respond to all of the questions listed herein, including commenting on the requested terms of the DFRL/NPA. Responses should be complete. Indicate areas of this Request that your firm is not able to provide.

2.2 ESTIMATED TIMELINE

February 26, 2018.....	RFP Released
March 6, 2018.....	Last Day for Questions
March 13, 2018.....	Proposals Due
March 23, 2018.....	Proposals Evaluated
March 26-30, 2018.....	Negotiations
April thru May 2018.....	PSB and City Council of El Paso Consideration and Approval
May thru June 2018.....	Texas Attorney General Approval
June 2018.....	Program Effective, Notes Issuable

Responses to this Request must be received by the City, with a copy to HilltopSecurities, municipal advisor to the City, on or before 12:00 P.M. Mountain Time on March 13, 2018, at the addresses listed below. Responses may be delivered either electronically (email address provided below) or by mail or overnight delivery. The City will not be responsible for any failure of electronic transmission or other method of delivery. Questions or requests for clarification from respondents should be submitted to the e-mail addresses for the City and HilltopSecurities shown below. Answers should be in the order outlined with the Questions repeated at the top of the page. Proposals must be submitted on the Proposal forms.

EP Water - Public Service Board

Attn: Levi Chacon, Purchasing Agent
Purchasing & Contracts Administration
1154 Hawkins Blvd
El Paso, Texas 79925
Telephone: 915-594-5625
Email: ljchacon@epwu.org

Hilltop Securities

Attn: Maria Fernanda Urbina, Director
221 North Kansas, Suite 600
El Paso, Texas 79901
Telephone: 915-351-7228
Email: maria.urbina@hilltopsecurities.com

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

2.3 SELECTION CRITERIA

Selection Criteria for bank credit providers will include:

- 1) Pricing and proposed fees, both utilized and unutilized and upfront, if any;
- 2) Terms and Conditions, including termination costs, downgrade pricing, and term out provisions;
- 3) Financial strength of the proposer; and,
- 4) Any other factors the City deems appropriate in making its determination.

The City Reserves the Right to:

- 1) Reject any and all proposals, to waive any minor abnormalities in a proposal, to request clarifications or additional information from an institution and to effect any agreement deemed to be in the City's best interest;
- 2) Issue a subsequent RFP;
- 3) Cancel the RFP;
- 4) Accept Multiple Proposals; and/or
- 5) The City will not reimburse institutions for any costs associated with the preparation or submittal of any proposal nor for any travel and/or per diem expenses incurred in any presentations of such proposal.

2.4 QUESTIONS AND ITEMS TO BE RESPONDED TO

- 1) General Information: Provide name, address, phone number, fax number, and e-mail address of the contact person who is authorized to answer questions and to negotiate final terms and conditions on behalf of the firm.
- 2) Fees: Using the pricing matrix for a DFRL/NPA, please give commitment fee indications assuming the City of El Paso Drainage Utility's debt rating at "AA+," by both S&P and Fitch. Include details regarding general terms, interest cost, all fees and all issuance costs. To the extent that the pricing for your proposed loan fluctuates, please provide such details as of March 6, 2018. Also, detail the documentation (i.e., credit information, offering memorandum, legal opinions, etc.) that the institution requires in order to successfully close the transaction. If available, please provide a sample bank facility document.

In addition to the ongoing commitment fee indications, please also provide pricing indications and other information for the items a-e below:

- (a) Draw Fees;
- (b) Bank interest rate;
- (c) Default rate;

- (d) Non-legal fees and expenses (specify nature of expense and whether it is an annual or one-time expense);
- (e) Provide your term-out interest rate and repayment terms. For the amortization end date, please specify a minimum of no earlier than three years.
- 3) Term of Facility: Describe the options available for extending the agreement beyond the initial term, and the level of review required by the bank to extend the term. The City prefers an “evergreen” provision with periodic credit review. Also, please disclose any fees associated with terminating the Agreement prior to the originally selected tenor.
- 4) Conditions: Please provide comments, including any desired changes to the terms for a DFRL/NPA. Describe in detail any special conditions, requirements, covenants, restrictions, or other terms that your firm would intend to include in the DFRL/NPA that might reasonably be expected to be viewed by the City as materially different from “current industry standard”. Describe any conditions, costs, or other limitation on the termination or substitution of the facility by the City prior to the stated termination date of the facility.
- 5) Credit Approval: Credit approvals should be completed prior to submission of the response to this Request.
- 6) Legal Counsel: Identify your firm’s legal counsel and provide a separate listing of their anticipated fees and expenses, including any cap on such fees and expenses. Please provide the same information for foreign bank counsel, if applicable.
- 7) Expenses: Detail any other costs, expenses or fees associated with preparing, executing, administering or exercising the Agreement.
- 8) Governing Law: The power and duties of the City will be governed by the Laws of Texas. The firm agrees to be bound to the exclusive jurisdiction of any court of the State of Texas for the purpose of any suit, action or other proceeding arising out of the transaction.
- 9) Provider’s Ratings: Please provide the provider’s long term and short term ratings from Moody’s, Fitch, and Standard & Poor’s, as well as the rating outlooks, indicating any changes during the past three years. Please comment in detail on any relevant events that may cause or recently have caused any of the rating agencies to place these ratings under review.
- 10) No Boycott of Israel. To the extent the Direct Funded Revolving Loan or Note Purchase Agreement (“DRF/NPA”) that is the subject of this Request for Proposal constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, the winning respondent will be required to verify that it (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the respondent) does not boycott Israel and, except to the extent required by applicable federal law, will not boycott Israel through the term of the DRF/NPA. For purposes of the verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 11) Anti-Terrorism. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, to the extent applicable, the winning respondent will be required to verify that it (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the respondent) is not a company (as defined in Section 2270.0001(2), Texas Government Code) engaged in business with Iran, Sudan, or a foreign terrorist organization (as defined in Section 2252.151(2), Texas Government Code) and that it is not on a list prepared and maintained by the Comptroller of Public Accounts of the State of Texas under Sections 2270.0201 or 2252.153, Texas Government Code.

12) Form 1295. Pursuant to Texas Government Code Section 2252.908 (the "Interested Party Disclosure Act"), if the winning respondent is not a publically traded business entity or a wholly owned subsidiary of a publically traded company (a "Privately Held Entity"), then the City cannot enter into the DRF/NPA with such Privately Held Entity until it submits a Certificate of Interested Parties Form 1295 (the "Disclosure Form") to the City as prescribed by the Texas Ethics Commission ("TEC").

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PART 3 – PRICING MATRIX

**City of El Paso, Texas
Municipal Drainage Utility System**

PRICING MATRIX FOR DIRECT FUNDED REVOLVING LOAN OR NOTE PURCHASE AGREEMENT

Name of Bank: _____

Contact Person: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

- 1) Assuming the City’s Drainage Utility’s debt is rated “AA+” by both S&P and Fitch, please provide your proposed Direct Funded Revolving Loan or Note Purchase Agreement:

Commitment Amount: \$ _____ Million, Principal Amount

Term	Upfront Fee	Unutilized Fee (if any)	Index* (SIFMA or LIBOR)	Spread to Index (basis points)	Term Out Period	Frequency Of Rate Adjustments	Redemptions Provisions	Term Out Rate and/or Default Rate
2 Years								
3 Years								
5 Years								
Other term:								

- 2) If your fees would increase due to a downgrade of the City’s underlying credit ratings, please provide a fee matrix.

- 3) Additional Fees & Expenses

Cap on Legal Fees:	
Non-Legal Fees and Expenses:	
Bank Interest Rate, specify index if applicable:	
Default Rate:	
Amendment Fee to Bank:	
Any other Fees/Expenses:	

PART 4 – FORMS

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

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

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

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

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

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

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

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

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

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

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

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

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

Instructions - Form 1295

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

The following definitions apply:

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

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

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

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

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	OFFICE USE ONLY
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.	
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.	

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services 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

APPEX NO. _____ / 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

