



Invitation to Bid (ITB) – Construction Aggregate Materials

Commodity Code: 75053, 75072, 75052

Title: **EBID ITB 2026-02 Construction Aggregate Materials**

Project Scope of Work:

The purpose of this Invitation to Bid (ITB) is to solicit competitive bids for the supply and delivery of construction aggregate materials for the Elephant Butte Irrigation District. Materials may include, but are not limited to, crushed rock, processed aggregate, recycled concrete, base course material, riprap, screenings, and other related aggregate products in various sizes and gradations.

Bidders shall provide pricing on a per cubic yard basis for all available material types and sizes, including but not limited to 3/4-inch base course and other commonly utilized construction aggregates. Materials supplied under this ITB will be utilized for construction and maintenance activities.

All materials furnished shall meet applicable industry and project specifications and be available for pickup and/or delivery as requested by the District throughout the contract period.

Submission of Bid Deadline:

Thursday, May 21st, 2026, Time: 2:00 p.m. MST **Late Submission of Bids Will Not Be Accepted.**

Indicate **EBID ITB 2026-02 Construction Aggregate Materials** on the outer envelope and return bid to:

Elephant Butte Irrigation District
Attn: Leah Diaz, CPO
530 S. Melendres Street
Las Cruces, NM 88005

Bidders may also submit their proposals electronically via email: ldiaz@ebid-nm.org, subject line:

EBID ITB 2026-02 Submission – Construction Aggregate Materials

Formal Sealed Bid Opening:

Place: Elephant Butte Irrigation District. To occur immediately following submission deadline.

To ensure information is consistent with all prospective respondents, all inquiries or requests regarding this procurement should be submitted, in writing, only to the Procurement Manager. Other EBID employees and representatives do not have the authority to respond on behalf of EBID. If you have questions regarding this ITB please contact:

Leah Diaz, CPO
Direct: (575) 993-2437
Email: ldiaz@ebid-nm.org

Bidder MUST complete as applicable and sign the following in order for Bid response to be valid (type or print clearly) and submit with Cost Response Form:

NM Vendor ID# (if applicable): _____ Remit Address: _____
Company Name: _____
DBA: _____
NM Gross Receipts Tax # (CRS): _____ Federal Tax ID#: _____

The Price Agreement shall not be modified or supplemented.

Authorized Signature: _____ Print or type name: _____
Signatory Email: _____ Phone No.: _____

Elephant Butte Irrigation District
530 S. Melendres Street
Las Cruces, NM 88005
EBID ITB 2026-02 Construction Aggregate Materials

F.O.B. Point must be Destination, unless otherwise specified by the Contractor

Delivery: _____ (May be considered in the award)

Bids are subject to the **Bidder Instructions and the Price Agreement included** on the attached pages of this document, and any additional bidding instructions or requirements. NOTE: NO response is needed if a bid is not submitted. All entities submitting a bid will be referred to as a Bidder and the successful Bidder will be known as the Contractor.

Bidder Instructions for Invitation to Bid (ITB)

Viewing ITB:

Bidders can access active procurements at the following site: <https://www.ebid-nm.org/procurement>

Submitting Bids:

Complete bid documents as required by the ITB Specifications, and submit any required documentation, supporting materials, certificates, etc. in addition to the bid documents.

Proposals must be labeled on the outside of the package or in the subject line of the email to clearly indicate that they are in response to **EBID ITB 2026-02 Construction Aggregate Materials**. A public log will be kept of the names of all Offerors. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed until contract award.

It is the Bidder's responsibility to ensure all documents are complete when submitted. Please ensure that you, as the Bidder, allow adequate time for mailing and fully complete when submittal by the deadline. A submission that is not both: (1) fully complete; and (2) received by the deadline will be deemed late and nonresponsive. In accordance with statutes and rules, **NO LATE BID WILL BE ACCEPTED.**

Electronic Submission of Proposals:

State of New Mexico, NMSA 1978, § 13-1-95.1 permits electronic submission of proposals. Offerors may submit their proposals via email to the Procurement Manager at the email address listed in this ITB. Proposals must be received no later than the date and time specified. The subject line of the email shall clearly state: **EBID ITB 2026-02 Submission – Construction Aggregate Materials** Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed until contract award.

Bid Opening:

Sealed bids will be opened immediately following the submission deadline at the Elephant Butte Irrigation District. Bids are subject to the "Price Agreement," shown on the subsequent pages of this document, and any additional bidding instructions or requirements. **NOTE: if a bid is not submitted, do not return this ITB document.**

Important Bidding Information

Failure of Bidder to complete bidding documents, in accordance with all instructions provided, is cause for the bid to be rejected.

Elephant Butte Irrigation District
530 S. Melendres Street
Las Cruces, NM 88005
EBID ITB 2026-02 Construction Aggregate Materials

Specifications on the bid are not to exclude any Bidder or manufacturer. Where a brand name or equal is indicated, it is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to restrict competition. "No substitute" specifications may be authorized ONLY if required to match existing equipment.

If any Bidder is of the opinion that the specifications as written preclude him from submitting a bid on this ITB, it is requested that his opinion be made known to the Elephant Butte Irrigation District, in writing, at least seven (7) days prior to the bid opening date.

Bidders must, upon request of the Elephant Butte Irrigation District, provide information and data to prove that the financial resources, production of service facilities, service reputation and experience are adequate to make satisfactory delivery of the materials and/or services. Elephant Butte Irrigation District reserves the right to require a Bidder to furnish a Performance Bond prior to award, where the Bidder is unable to furnish the required information or data, or for other reasons which would insure proper performance by the Bidder.

Unless otherwise indicated in the bid specifications, samples of the items, when required, shall be free of expense to the Elephant Butte Irrigation District. Samples not destroyed or mutilated in testing will be returned upon request, at Bidders expense. Each sample must be labeled to clearly show the bid number and item number that it pertains to. Unsolicited bid samples or descriptive literature, which is submitted at the Bidder's risk, will not be returned.

Non-Collusion: In signing this bid the Contractor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Elephant Butte Irrigation District or his/her designee.

Nondiscrimination: Contractor doing business with the State of New Mexico must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (Rev. 1979) and the Americans with Disabilities Act of 1990 (Public Law 101-336).

The Procurement Code: Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

Submission of Bid: Bids must be submitted in a sealed envelope with the bid number and opening date clearly indicated on the front of the envelope. Failure to label bid envelope will necessitate the premature opening of the bid in order to identify the bid number.

All required documents must be submitted by the Bidder prior to the submission deadline:

Thursday, May 21st, 2026, Time: 2:00 p.m. MST

- **Signed cover page of this ITB**
- **Signed Cost Response Form**
- **Signed Agreement**
- **Documents required in Specifications under:**
 - **Bidder Background and Experience**

Awards

Determination of Lowest Bidder – Following determination of product acceptability, if any is required, bids will be evaluated to determine which Bidder offers the lowest cost to the Elephant Butte Irrigation District in accordance with the specifications and terms & conditions set forth in the Invitation to Bid. Elephant Butte Irrigation District reserves the right to award this Invitation to Bid in total; by groups of items; on the basis of individual items; any combination of these which could result in a multiple award; or as otherwise specified in bid specifications; whichever, in his/her judgment, best serves the interest of the Elephant Butte Irrigation District.

Elephant Butte Irrigation District reserves the right to accept and/or reject any and all bids, to waive technical irregularities, and to award to the Bidder whose bid is deemed to be in the best interest of the District.

Elephant Butte Irrigation District
530 S. Melendres Street
Las Cruces, NM 88005
EBID ITB 2026-02 Construction Aggregate Materials

Special Notice – To preclude any possible errors and/or misinterpretations, bid prices must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by the Bidder prior to the scheduled bid opening; failure to do so will be just cause for rejection of bid.

Bids may be withdrawn upon receipt of written request, prior to scheduled bid opening for the purpose of making any corrections and/or changes; such corrections must be properly identified and signed or initialed by the Bidder. Resubmittal must be prior to scheduled bid opening for consideration.

After bid opening, no modifications on bid prices or other provisions of bid shall be permitted. A low Bidder alleging a material mistake of fact after bids have been opened may be permitted to withdraw the bid upon written request prior to award at the discretion of the Elephant Butte Irrigation District.

New Mexico Employees Health Coverage

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agrees to maintain for the term of the contract, health insurance for its New Mexico Employees and offer that health insurance to its New Mexico Employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceeds \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of its New Mexico Employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all of its New Mexico Employees of the availability of State publicly financed health care coverage programs by providing each of its New Mexico Employees with, as a minimum, the following web site link to additional information: <https://www.bewellnm.com/>.

D. For purposes of this Paragraph, the following terms have the following meanings:

- (1) “New Mexico Employee” means any resident of the State of New Mexico employed by Contractor who performs the majority of the employee’s work for Contractor within the State of New Mexico, regardless of the location of Contractor’s office or offices; and
- (2) “offer” means to make available, without unreasonable restriction, enrollment in one or more health coverage plans and to actively seek and encourage participation in order to achieve the goals of Executive Order 2007-049. This could include State publicly financed public health coverage programs such as *Insure New Mexico!*

Elephant Butte Irrigation District
530 S. Melendres Street
Las Cruces, NM 88005
EBID ITB 2026-02 Construction Aggregate Materials

SPECIFICATIONS FOR GOODS

All aggregate materials furnished under this Invitation to Bid (ITB) shall be commercially available construction-grade materials suitable for roadway, drainage, embankment, canal, wasteway, dam, and general civil construction applications. Materials may include, but are not limited to, crushed rock, processed aggregate, recycled concrete, screenings, riprap, and base course materials in various sizes and gradations.

Bidders shall provide pricing on a per cubic yard basis for all available material sizes and types, including but not limited to:

- 3/4" Base Course
- 1 1/2" Base Course
- Screenings/Fines
- Riprap (all available sizes)
- Crushed Rock
- Processed Aggregate
- Recycled Concrete Aggregate
- Other commercially available aggregate materials

All materials shall conform to applicable industry standards and be free of excessive debris, organic matter, and unsuitable materials. The District reserves the right to request material specifications, gradation reports, or testing documentation for any material supplied under this contract.

Bidders shall indicate:

- Material description and size/gradation
- Unit cost per cubic yard
- Availability and estimated lead times
- Pickup location(s)
- Delivery availability and associated delivery charges, if applicable

Materials shall be available for pickup and/or delivery on an as-needed basis in coordination with the District throughout the duration of the contract term.

Bidders must include lead time, shipping terms, and post-sale support details in their submission.

COST RESPONSE FORM:

Bidders are required to complete the Cost Response Form (Exhibit A) and submit it as part of their proposal. Signature of the form is required by a qualified representative of the bidding organization.

BIDDER BACKGROUND AND EXPERIENCE

Bidders must provide, in narrative format, a description of their experience in providing and servicing similar products in a government or commercial setting.

The Bidder must be an authorized dealer and/or distributor of construction aggregate material for a minimum of 3 years.

Elephant Butte Irrigation District
530 S. Melendres Street
Las Cruces, NM 88005
EBID ITB 2026-02 Construction Aggregate Materials

**Elephant Butte Irrigation District
Construction Aggregate Materials (ITB 2026-02)**

THIS AGREEMENT is made and entered into by and between the Elephant Butte Irrigation District, hereinafter referred to as the "District" and TBD, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Board of Directors for the District.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the work outlined in the Scope of Work attached hereto as **Attachment 1** and incorporated herein by reference.

2. Compensation.

A. The District shall pay the Contractor in full payment for services satisfactorily performed at the following rates as specified in Exhibit A, to be invoiced after the performance of the services.

The gross receipts tax levied on the amounts payable under this Agreement shall be paid by the District to the Contractor.

B. Payment is subject to the availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices MUST BE received by the District no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered, October 31st. Invoices received after such date WILL NOT BE PAID.

C. If the District finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor with a letter of exception explaining the defect or objection to the services and outlining steps the Contractor may take to provide remedial action. Upon certification by the District that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the District shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

3. Term.

This Agreement is effective TBD and shall expire on TBD. This Contract may be mutually renewed on an annual basis for a one (1) year terms unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In no event shall this agreement remain in effect beyond four years.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the District's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the District is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination.

Elephant Butte Irrigation District
530 S. Melendres Street
Las Cruces, NM 88005
EBID ITB 2026-02 Construction Aggregate Materials

Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the District or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE DISTRICT'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B Termination Management. Immediately upon receipt by either the District or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the District; 2) comply with all directives issued by the District in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the District shall direct for the protection, preservation, retention or transfer of all property titled to the District and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the District upon termination and shall be submitted to the District as soon as practicable.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of Directors for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of Directors, this Agreement shall terminate immediately upon written notice being given by the District to the Contractor. The District's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the District proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the District and are not employees of the Elephant Butte Irrigation District. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of District vehicles, or any other benefits afforded to employees of the District as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the District unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the District.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the District. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the District. In all cases, the contractor is solely responsible for fulfillment of this Agreement.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the District, its officers, and employees from all liabilities, claims, and obligations whatsoever arising from or under this Agreement.

Elephant Butte Irrigation District
530 S. Melendres Street
Las Cruces, NM 88005
EBID ITB 2026-02 Construction Aggregate Materials

10. Confidentiality and Non-Competition.

Any confidential or privileged information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the District.

This confidentiality provision shall not expire notwithstanding the date Contractor completes his services hereunder, or other termination of this Agreement. Contractor agrees to contractually bind any agents or employees with this provision.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the exclusive property of the District and shall be delivered to the District no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

Upon termination of this Agreement, or completion of the work required under this Agreement, whichever occurs first, the Contractor will return to the District all documents, records, data, licensed software, and information of any kind whether written, computer or other forms, which was acquired, compiled or produced by the Contractor and/or the District during the course of this Agreement. The Contractor may retain information regarding billing and compensation but shall not retain any substantive written or computerized information acquired or compiled during the course of this Agreement.

12. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any District employee while such employee was or is employed by the District and participating directly or indirectly in the District's contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the District; (ii) the Contractor is not a member of the family of a public officer or employee of the District; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the District, a member of the family of a public officer or employee of the District, or a business in which a public officer or employee of the District or the family of a public officer or employee of the District has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the District within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the District whose official act, while in District employment, directly resulted in the District's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement, or any procurement related to this Agreement; and

Elephant Butte Irrigation District
530 S. Melendres Street
Las Cruces, NM 88005
EBID ITB 2026-02 Construction Aggregate Materials

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the District.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the District relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the District if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the District and notwithstanding anything in the Agreement to the contrary, the District may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of the law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal, state and District laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern, and that venue will lie in the Third Judicial District Court in Dona Ana District. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the District.

Elephant Butte Irrigation District
530 S. Melendres Street
Las Cruces, NM 88005
EBID ITB 2026-02 Construction Aggregate Materials

19. Insurance.

The Contractor is an independent contractor with the District and understands and agrees that he will not be covered under any worker's compensation insurance policy of the District. The Contractor further understands and agrees that no benefit to Contractor is provided by insurance policies or coverages maintained by the District regarding its employees, property and operations.

Contractor may maintain his/her/its own insurance for professional negligence, ordinary negligence (including automobile liability), workers compensation or other risks and liabilities that the Contractor deems appropriate. Contractor hereby waives all rights to subrogation, contribution and indemnity by, to or against the District, its officers, agents and employees and any members of its governing bodies, boards and committees.

20. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the District, the Department of Finance and Administration and the State Auditor. The District shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the District to recover excessive or illegal payments.

21. Disclaimer and Hold Harmless.

The District shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold the District harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by the District in connection with the performance by Contractor of Contractor's duties according to this Agreement.

22. Indemnification.

The Contractor shall defend, indemnify and hold harmless the District from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the District by certified mail.

23. Invalid Term or Condition.

If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall remain valid and enforceable.

24. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

Elephant Butte Irrigation District
530 S. Melendres Street
Las Cruces, NM 88005
EBID ITB 2026-02 Construction Aggregate Materials

25. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

26. Approval of Contractor Personnel.

Personnel proposed in the Contractor's written proposal to the District are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the District. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the District shall retain the right to request the removal of any of the Contractor's personnel at any time.

27. Survival.

The agreement paragraphs titled "Confidentiality & Non-Competition", "Copyright", "Disclaimer & Hold Harmless", "Indemnification", and "Patent, Copyright, Trademark and Trade Secret Indemnification" shall survive the expiration of this agreement. Software licenses, leases, and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this Agreement.

28. Succession.

This agreement shall extend to and be binding upon the successors and assigns of the parties.

29. Force Majeure.

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

30. Mediation.

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the Third Judicial District Court and the parties shall utilize a striking process until a mediator is agreed upon.

31. Notice to Proceed.

It is expressly understood that this Agreement is not binding upon the District until it is executed by the Board of Directors after voting on the contract at a public meeting. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully signed copy of the Agreement.

32. Attorney's Fees.

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall be entitled to an award of attorneys' fees and court costs.

Elephant Butte Irrigation District
530 S. Melendres Street
Las Cruces, NM 88005
EBID ITB 2026-02 Construction Aggregate Materials

33. Cooperation.

All parties hereto will fully cooperate with the other and their respective counsel, consultants, and agents in connection with any steps required to be taken under this Agreement.

34. Patent, Copyright, Trademark and Trade Secret Indemnification.

A. The contractor shall defend, at its own expense, the District against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the District based upon the contractor's trade secret infringement relating to any product or service provided under this agreement, the contractor agrees to reimburse the District for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the District shall:

- i. give the contractor prompt written notice of any claim;
- ii. allow the contractor to control the defense or settlement of the claim; and
- iii. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

- i. provide the District the right to continue using the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the District to the extent such modification is the cause of the claim.

35. Cooperative Agreement.

This Agreement is applicable and available for use by the EBID, NM State Agencies and NM Local Public Bodies. Prior to utilizing this Agreement, EBID must be notified, and the user must request approval. Awarded vendor(s) are to take note that EBID has precedence for the usage of this Agreement. When applicable, all Agencies must report their expenditure to the General Services Department, State Purchasing Division.

36. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the District: Elephant Butte Irrigations District
 c/o Joshus Smith, Treasurer/Manager
 530 S. Melendres St.
 Las Cruces, NM 88005

To the Contractor:

Elephant Butte Irrigation District
530 S. Melendres Street
Las Cruces, NM 88005
EBID ITB 2026-02 Construction Aggregate Materials

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signatures by the Board of Directors for the Elephant Butte Irrigation District.

By: _____ Date: _____
Contractor
Printed Name:

By: _____ Date: _____
District President
Printed Name: Rafael Rovirosa

By: _____ Date: _____
District Secretary
Printed Name: Randy Garay

