



Invitation to Bid – High Flow Pumps for River Lift Station Commodity Code: 8413

Title: High Flow Pumps

ITB Number: EBID 2024-03

Project Scope of Work: The purpose of the Invitation to Bid (ITB) is to solicit sealed bids for two (2) High Flow Pumps for a river water lift station, including installation. These two lift pumps are to be electric motor driven, oil or water lubricated, irrigation water lift pumps. Electric motors and Variable Frequency Drives appropriate for this application are to be included with the pumps as a part of this scope of work. The two pumps shall be delivered, set in place, and setup (once electrical connection and discharge pipe is installed by others) with startup troubleshooting at the designated Elephant Butte Irrigation District (EBID) site south of Mesilla, NM.

Submission of Bid Due Date:

Date: **March 12, 2024** Time: **2:00 pm**

**Return Bid to: Elephant Butte Irrigation District
530 S. Melendres Street, Las Cruces, NM 88005**

Late Submission of Bids Will Not Be Accepted.

Pre-Bid Conference:

Optional pre-bid conference will be held at 530 S Melendres St, Las Cruces NM 88005, Board Room, Tuesday March 5, 2024 at 1:30 pm followed by a tour of the installation site. Transportation will not be provided.

Formal Sealed Bid Opening:

Place: Elephant Butte Irrigation District Finance Director's Office

To occur immediately following due date/time.

If you have questions regarding this ITB please contact:

CPO: Karin Byrum

Telephone No.: (575) 526-6671 ext. 412

Email: kbyrum@ebid-nm.org

Bidder MUST complete as applicable and sign the following in order for Bid response to be valid (type 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.: _____

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.

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Bidder Instructions for Invitation to Bid (ITB)

Viewing ITB:

1. Bidders can access active procurements at the following site:
 - www.ebid-nm.org
2. Complete bid documents as required by the ITB Specifications, and submit any required documentation, supporting materials, certificates, etc. in addition to the bid documents.

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.

*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 statute and rule, **NO LATE BID CAN BE ACCEPTED.***

Bid Opening:

Sealed bids will be opened immediately following the submission deadline at 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.

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Important Bidding Information

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

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 Elephant Butte Irrigation District, in writing, at least seven (7) days prior to the bid opening date.

Bidders must, upon request of 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 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 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.

Bidder must submit the following documents prior to the deadline submission date and time of March 12, 2024 2:00 PM.

Signed cover page of this ITB

Cost Response Form

Signed Price Agreement

Documents required in Specifications under:

Warranties, Manuals, and Services

Bidder Background and Experience

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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 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 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 Elephant Butte Irrigation District.

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 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 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 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!*

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1. SPECIFICATIONS FOR GOODS

The high flow irrigation water pumps and installation shall be offered by a bidder who is an authorized factory dealer/distributor of the equipment offered. The pumps shall be delivered and set in place at the designated site. Following electrical connection and discharge pipe installation by others, the awarded bidder shall adjust the pumps and provide startup troubleshooting. The equipment offered must be according to the specifications provided in this section and delivered according to the requirements of this procurement. EBID will have pump supports ready and will attach discharge pipe for the pumps. EBID will contract electrical connection components, installation, and permitting separately as a part of this project. The selected bidder will need to make themselves available for adjustment and troubleshooting during the initial startup of the pumps. A map of the installation location, a depiction of the structure the pumps to be installed within, and photos of a similar installation are shown as 1.8.1, 1.8.2, and 1.8.3.

1.1. GENERAL MINIMUM TECHNICAL REQUIREMENTS:

- 1.1.1. Two high flow irrigation water pumps, inverter duty motors, and variable-frequency power converter/drive (VFD) shall be NEW and of the most current production.
- 1.1.2. Two high flow irrigation water pumps, motors, and VFDs shall be manufactured for sale in the United States.
- 1.1.3. Two low head high flow irrigation water pumps, motors, and VFDs shall be sold by an authorized and/or franchised factory dealer or distributor.
- 1.1.4. Two low head high flow water pumps shall be electric motor driven, oil lubricated, irrigation water lift pumps.
- 1.1.5. Two low head high flow irrigation water pumps and motors and all appurtenant parts, equipment, appliances, materials and supplies as a part of this project provided by the bidder shall include all the latest changes and features offered as standard equipment, whether or not specified in this procurement.
- 1.1.6. Two low head high flow irrigation water pumps shall be delivered FOB destination to the designated EBID job site, near Mesilla, NM. (See attached map)
- 1.1.7. Each pump, motor, and VFD unit shall have a minimum discharge of 4500 gallons per minute (gpm) at design lift (Total Dynamic Head) of 32 feet.
- 1.1.8. Each pump and motor unit shall have an above grade elbow discharge with minimum discharge pipe diameter of 14 inches.
- 1.1.9. Each pump and motor shall have a total pump length of 11 feet. (Base of discharge head to bottom of inlet; column + bowls)
- 1.1.10. Each pump shall include a basket strainer which will fit within a distance from bottom of inlet to bottom of sump of 24 inches. (distance from bottom of inlet to sump floor will vary if supplied pump length (1.1.11) varies from 11.0 feet)
- 1.1.11. Each pump unit must be designed to avoid cavitation and other preventable deterioration at the minimum (shutoff) inlet submergence of 3.5 feet at design

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lift/head. The pump station site elevation is approximately 3880 feet ASL. (inlet submergence will vary if supplied pump length (1.1.11) varies from 11.0 feet).

- 1.1.12 Each pump unit shall have a minimum acceptable overall pump efficiency at design flow & head of 75%.
- 1.1.13 Each motor unit shall have a minimum acceptable overall motor efficiency at design speed of 80%.
- 1.1.14 Each motor unit shall be three-phase induction motors designed for the 230/460 V/3 phase available power supply and rated for operation with the supplied VFD.
- 1.1.15 Each VFD unit shall be designed for the 230/460 V/3 phase available power supply and shall be appropriate for operation with the supplied electric motor and pump supplied allowing for variable speed control.
- 1.1.16 Each pump unit shall have a manual drip feed oiler with sight feed gauge and reservoir of at least one gallon unless other lubrication method is approved.
- 1.1.17 Each pump must be designed to handle total suspended solids of Rio Grande river irrigation water.
- 1.1.18. All pump and motor assemblies, installation and setup troubleshooting must be completed within 90 days of formal award of this procurement.

1. 2. DISCHARGE ELBOW ASSEMBLY MINIMUM TECHNICAL REQUIREMENTS:

- 1.2.1. Each elbow discharge assembly shall be made of high-grade cast iron or fabricated steel.
- 1.2.2. Shall have an above ground flanged discharge connection.
- 1.2.2. Shall have a discharge diameter of 14 inches or greater.
- 1.2.3. Shall have a manual drip feed oiler with sight feed gauge and reservoir of at least two gallons unless other lubrication method is approved.
- 1.2.4. Shall have appropriate epoxy point coating on interior and exterior.

1. 3. BOWL ASSEMBLY MINIMUM TECHNICAL REQUIREMENTS:

- 1.3.1. Shall be flanged type constructed of close-grained cast iron.
- 1.3.2. Shall be free from sand holes, blowholes, or other faults.
- 1.3.3. Must be accurately machined and fitted to close tolerances.
- 1.3.4. Shall be capable of withstanding a hydrostatic pressure equal to twice the pressure at rated flow or 1.5 times shut-off head, whichever is greater.

1. 4. COLUMN ASSEMBLY MINIMUM TECHNICAL REQUIREMENTS:

- 1.4.1. Column pipe shall be steel pipe.

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- 1.4.2. The lineshaft shall be stainless steel ground and polished.
- 1.4.3. The lineshaft shall be furnished in interchangeable sections.
- 1.4.4. The lineshaft shall be coupled with threaded stainless steel couplings machined from solid steel bar.
- 1.4.5. The lineshaft shall have left-handed thread to tighten during pump operation.

1.5. DRIVE UNIT AND VFD MINIMUM TECHNICAL REQUIREMENTS:

- 1.5.1. The motor shall be a heavy duty squirrel cage induction type and inverter ready.
- 1.5.2. Shall have NEMA Class B or Class F insulation with WP-1 enclosure.
- 1.5.3. Shall have a thrust bearing of ample capacity to carry the weight of all rotating parts plus the maximum hydraulic thrust load under all conditions of operation. Provision shall be made for momentary upthrust no less than equal to 30% of the rated down thrust.
- 1.5.4. The motor shall be rated for an exposed outdoor environment.
- 1.5.5. Shall be high efficiency, 1.5 service factor and suitable for use on 230/460 volt, three phase, 60 Hz electric service.
- 1.5.6. When vertical hollow shaft motor is used, an adjusting nut shall be provided at the top of the motor for setting the impeller to bowl running clearance.
- 1.5.7. When vertical solid shaft motor is used, an adjustable shaft coupling shall be provided at the discharge head for setting the impeller to bowl running clearance.
- 1.5.8. Each VFD shall have output rating from 10 to 60 Hz, with voltage proportional to frequency throughout voltage range; maximum voltage equals input voltage.
- 1.5.9. Each VFD shall have minimum efficiency at 60Hz, full load of 98%, minimum displacement primary-side power factor under any load or speed condition of 98% and have overload capability of 1.1 times the base load current for 60 seconds.
- 1.5.10. Each VFD unit shall comply with NEMA ICS 7, NEMA ICS 61800-2, and UL 508C.

1.6. WARRANTY, MANUALS AND SERVICE:

- 1.6.1. Bidder agrees that the Goods furnished under this procurement shall be covered by the most favorable commercial warranty the Bidder gives to any customer for such supplies or services, (a minimum of one (1) year against defective materials, design and workmanship) and that the rights and remedies provided herein shall extend to EBID and are in addition to and do not limit any rights afforded to EBID by any other clause of this procurement. Bidder agrees not to disclaim warranties of fitness for a particular purpose of merchantability.
- 1.6.2. Bidder shall provide a certified performance curve from the pump manufacturer for the model of pumps the bidder proposes to supply.

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- 1.6.3. The performance curve shall have the same information as required for the performance curve of these specifications.
- 1.6.4. The performance curve shall be based on tests of a pump unit identical to the pump unit the bidder proposes to supply.
- 1.6.5. The performance curves shall show bowl assembly head, bowl assembly input horsepower, bowl assembly efficiency minimum submergence and net positive suction head required, all versus discharge capacity over the complete operating range of the pump.
- 1.6.6. Shall include all instruction books containing complete information pertaining to the operation, adjustment, maintenance and repair of the pump unit and appurtenant equipment and detailed parts lists for all equipment provided.
- 1.6.7. Shall include all labor associated with replacement parts at no expense to EBID during the warranty period.
- 1.6.8. Shall provide complete parts order delivery for defective parts within the warranty period within a minimum of 5 working days of order for parts by EBID at no expense to EBID.

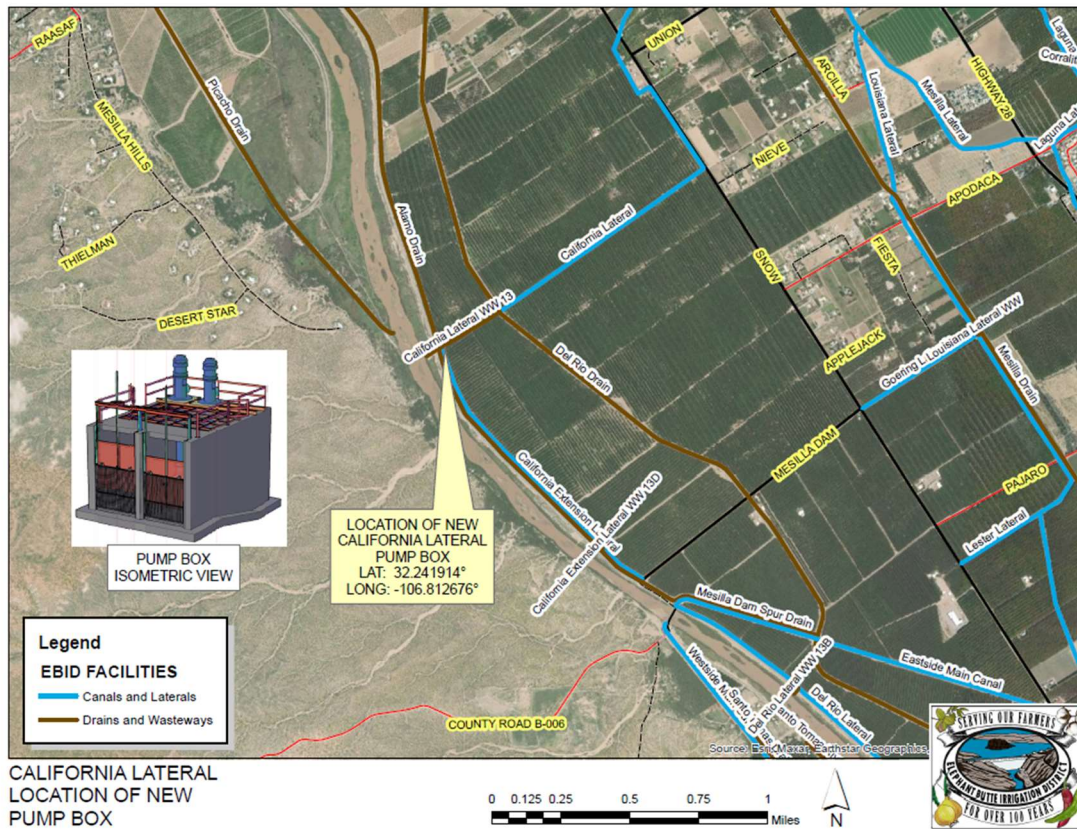
1.7. PUMP INSTALLATION MINIMUM TECHNICAL SPECIFICATIONS:

- 1.7.1. Awarded bidder shall provide assembled pumps and motors to the designated EBID project site FOB. Awarded bidder shall safety lift and lower each pump vertically into place onto the EBID provided I-beam supports and fasten discharge head base plate to the EBID provided supports. EBID will contract licensed professional electrician services for the purposes of providing electrical power supply and EBID will connect flanged discharge pipe of its own fabrication to bidder supplied discharge head.
- 1.7.2. Awarded bidder shall make themselves available for adjustment and troubleshooting during the initial startup of the pumps, following electrical connections and discharge pipe installation by others.

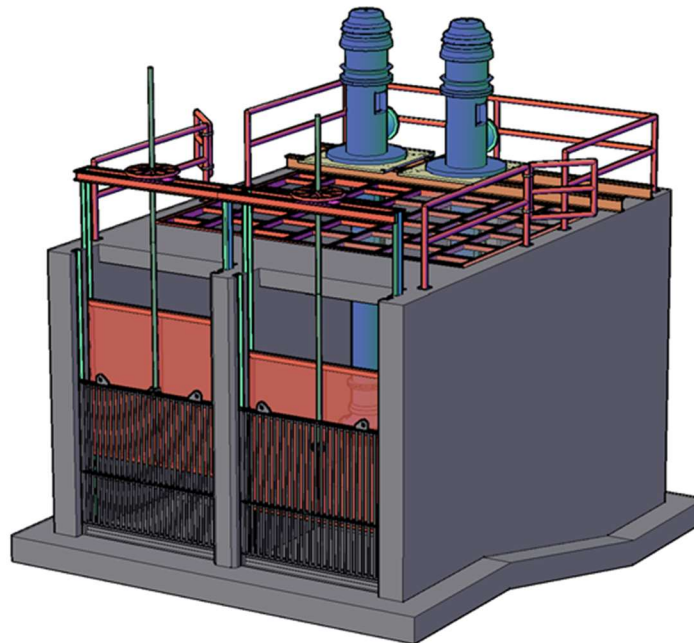
1.8. PUMP SITE AND PLAN:

- 1.8.1

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1.8.2



1.8.3

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Structure and pumps similar to pump specifications in ITB 2024-03



Structure and pumps similar to pump specifications in ITB 2024-03

1.9. COST RESPONSE FORM:

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1.9.1. Bidders must complete the Cost Response Form and submit it with their proposal. The costs shown on the Cost Response Form must correspond with the prices on the Bidder's Price Agreement.

1.10. BIDDER BACKGROUND AND EXPERIENCE :

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

1.10.2. The Bidder must be an authorized dealer and/or distributor of low head high flow pumps and installation services for a minimum of 3 years.

PRICE AGREEMENT

WHEREAS, Elephant Butte Irrigation District, hereinafter known as "EBID" periodically has the need for high flow pumps for river water lift stations, "Goods";

WHEREAS, Contractor represents it is able to supply EBID with high flow pumps for river water lift stations conforming to the bid specifications;

WHEREAS, EBID has initiated a bidding process, and in compliance with the bidding process EBID has selected [CONTRACTOR NAME], hereinafter known as Contractor as the provider of the Goods;

WHEREAS, Contractor has been provided and has read the terms and requirements and agrees to the terms, specifications, and requirements therein and agrees that said terms, specifications and requirements are incorporated by reference to this Contract; a copy of which is attached hereto as Exhibit A.

WHEREAS, it is understood that no guarantee or warranty is made or implied by EBID, that any order for any definite quantity will be issued under this Contract;

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NOW, THEREFORE, the Parties do hereby agree as follows:

ARTICLE I. STATEMENT OF WORK

Under the terms and conditions of this Contract, EBID will issue purchase orders for the Goods as described. The terms and conditions of this Contract are incorporated into and shall form part of each purchase order issued by EBID to Contractor.

ARTICLE II TERM OF CONTRACT

The term of this agreement is effective [DATE], or the date, thereafter, signed by EBID. The agreement shall expire on [DATE]. The agreement may be mutually renewed annually for one-year terms unless terminated pursuant to the terms of this agreement. In no event shall this agreement remain in effect beyond [DATE—not to exceed 4 years from Effective Date].

ARTICLE III. TERMINATION OF CONTRACT

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, EBID's sole liability upon such termination shall be to pay for acceptable goods received or ordered through valid purchase orders prior to the Contractor's receipt of the notice of termination, if EBID 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. Any termination shall not affect purchase orders issued to the Contractor by EBID prior to the date of the termination of this Contract. The Contractor shall submit an invoice for such goods within thirty (30) days of receiving or sending the notice of termination.

Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to provide goods contracted for, as determined by EBID 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 EBID'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT. Regardless of when this agreement is terminated, Contractor's warranties for the Goods delivered and accepted by EBID shall extend beyond the termination of the contract.

ARTICLE IV. SPECIFICATIONS

The Goods to be purchased pursuant to this Contract shall strictly conform to the requirements, specifications and/or drawings as provided by EBID.

ARTICLE V. PRICE

Contractor shall provide the Goods to EBID at the price(s) provided for in the bid submitted by the Contractor, and accepted by EBID, and as attached to this contract as Exhibit B. The Contractor may propose price increases on an annual basis, and the contract shall be renewed annually for up to four years, only upon the agreement of both EBID and the Contractors. The price for the Goods set forth in Exhibit B includes the cost of delivery. There shall be no interest charged by the Contractor on outstanding invoices.

ARTICLE VI. PURCHASE PROCEDURE AND PAYMENT

From time to time, EBID shall initiate a valid signed written purchase order, containing both a purchase order number and the contract agreement, providing the description and quantity of Goods to be delivered, as well as the specific location of the delivery and shall notify the Contractor. EBID and the Contractor shall coordinate specific

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delivery date and time. EBID shall provide to the Contractor the place and manner of delivery and any other delivery instructions. Contractor shall deliver Goods to EBID as per specific delivery instructions. Only a written purchase order signed by EBID, is valid as a purchase order under this Contract. All other purchase orders shall be void.

After delivery of the Goods to EBID at the location designated by EBID, the Contractor shall deliver to EBID an invoice specifying the purchase order number, the contract agreement number, and the purchase price. EBID shall pay the Contractor invoice within thirty (30) days after the receipt of the invoice by EBID, unless the Goods are determined to be defective or nonconforming to specifications, in which case, Article VIII applies.

ARTICLE VII. DELIVERY AND RISK OF LOSS

Contractor shall make all arrangements for delivering the Goods to EBID pursuant to this Contract, and delivery shall be made within the State of New Mexico as identified by EBID. Risk of loss for the shipment of Goods shall not pass to EBID until they reach the delivery location specified by EBID. EBID shall be responsible to provide the proper equipment and manpower to unload and inspect the Goods at their delivery destination. EBID shall assure that unloading is completed within a minimal time period of arrival of the shipment of Goods at their specific delivery location, provided, however, that Contractor shall notify EBID in advance of delivery so as to allow for scheduling and compliance with this requirement. Delivery of the Goods by the Contractor shall be done in a standard and commercially reasonable manner.

ARTICLE VIII. DEFECTIVE OR NONCONFORMING GOODS AND REIMBURSEMENT

Goods shall be required to meet the specifications as provided for by EBID. Goods that do not meet the requirements and specifications are stipulated to be defective or nonconforming Goods. EBID shall determine whether the Goods are defective or nonconforming.

EBID shall be responsible to make timely and commercially reasonable inspection of the Goods. EBID may reject delivery of any defective or nonconforming Goods, if known at the time of delivery. EBID shall notify the Contractor of any obvious defective and nonconforming Goods as soon as is commercially reasonable. In the event testing of the Goods, as set forth in Exhibit A, reveals the Goods do not meet specifications, the Contractor shall reimburse EBID the price paid for the Goods within 30 days after receipt of the certified testing results for said defective or nonconforming Goods. Failure to pay said reimbursement within 30 days shall be considered a breach of this Contract. If the contractor receives receipt of the certified testing results for said defective or nonconforming Goods, prior to EBID payment, then EBID is not obligated to pay for the Goods. This article supersedes any inconsistent provision in contractor's standard terms and conditions.

ARTICLE IX. INSURANCE

The Contractor shall provide proof to EBID that the Contractor carries the necessary insurance and the insurance shall be in place prior to the first shipment and delivery of the Goods that are to be provided under this Contract. EBID shall be listed as an additional insured on any said policies to insure their interest in the Goods and to cover all of their damages in the event of damage or loss including, if necessary, the cost to cover the Goods.

Beyond the above required insurance, the Contractor is an independent contractor with EBID and understands and agrees that he will not be covered under any worker's compensation insurance policy of EBID. The Contractor further understands and agrees that no benefit to Contractor is provided by insurance policies or coverages maintained by EBID 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 EBID, its officers, agents and employees and any members of its governing bodies, boards and committees.

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ARTICLE X. WARRANTIES

Contractor shall warrant all Goods provided to the fullest extent provided by law.

ARTICLE XI. GENERAL CONTRACT PROVISIONS

A. CONTRACTOR STATUS

The Contractor warrants that neither the Contractor nor any officer, stockholder, director, or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement, nor to the best knowledge of the Contractor is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to EBID.

The Contractor and its agents and employees are independent contractors performing professional services for EBID 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 EBID vehicles, or any other benefits afforded to employees of EBID 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 EBID unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

B. INDEMNIFICATION

The Contractor shall indemnify, defend, and hold harmless EBID and their officers and employees from and against any and all such claims, demands, liability, suits, causes of action, losses, damages, fines, fees, attorney's fees, penalties, costs, expenses, injuries to property, judgments (including defense costs and attorney fees) that occur or arise out of or in connection with:

- a. Contractor's performance or failure to perform under any provision of this Agreement and the manufacture, supply and/or delivery of Goods;
- b. Contractor's breach of any term, condition, warranty or representation contained in this Agreement;
- c. Contractor's provision of services that are not in accordance with any applicable law, rule, regulation, or provision of this Agreement;
- d. Any error, omission, fraud, embezzlement, theft or negligence of Contractor;
- e. It is understood, however, that the Contractors' obligations under this Paragraph do not extend to liabilities resulting from causes beyond the control and without the fault or negligence of the Contractor, including acts of God, war or civil commotion, fire, earthquake, or other natural disaster, and unforeseeable acts of any federal, state, or local government.

In the event that any action, suit or proceeding related to the services performed or the Goods provided by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify EBID by certified mail.

EBID 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 EBID harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by EBID in connection with the performance by Contractor of Contractor's duties according to this Agreement.

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C. RELEASE

The Contractor's acceptance of final payment of the amount due under this Contract shall operate as release of EBID, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

D. CONFIDENTIALTY

Any information provided to or developed by the Contractor in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of EBID except as may otherwise be required by law.

All materials developed or acquired by the Contractor under this Agreement shall become the exclusive property of EBID and shall be delivered to EBID 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.

E. CONFLICT OF INTEREST

I. 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.

II. 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:

a) 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 EBID and participating directly or indirectly in EBID's contracting process;

b) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of EBID; (ii) the Contractor is not a member of the family of a public officer or employee of EBID; (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 EBID, a member of the family of a public officer or employee of EBID, or a business in which a public officer or employee of EBID or the family of a public officer or employee of EBID 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;

c) 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 EBID 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 EBID whose official act, while in District employment, directly resulted in EBID's making this Agreement;

d) 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

e) 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 EBID.

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III. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which EBID relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to EBID 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 EBID and notwithstanding anything in the Agreement to the contrary, EBID may immediately terminate the Agreement.

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

F. 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 County. 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.

G. 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 in the Third Judicial District Court in Dona Ana County. 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.

H. ATTORNEY 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.

I. ENFORCEMENT OF CONTRACT/WAIVER

A parties' failure to require strict performance of any provision of this contract 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 Contract shall be effective unless expressed in writing and signed by the party alleged to have granted the waiver. A waiver by a party of any of its rights shall not be effective to waive any other rights.

J. NOTICE OF PENALTIES

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.

K. 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 EBID.

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L. MERGER: SCOPE OF CONTRACT

The provisions of this contract are severable, and if for any reason, a clause, sentence or paragraph of this Contract is determined to be invalid by a court having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions of this Contract, which can be given effect without the invalid provision.

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.

M. AMENDMENTS

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories. Any amendments shall not affect purchase orders issued to the Contractor by EBID prior to the date of the amendments.

N. ASSIGNMENTS

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 EBID.

O. SUBCONTRACTING

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

P. 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.

Q. SURVIVAL

The agreement paragraphs titled "Confidentiality" and "Indemnification" shall survive the expiration of this agreement. Software licenses, leases, and any other unexpired agreements or warranties that were entered into or provided under the terms and conditions of this agreement shall survive this Agreement.

R. FORCE MAJEUR

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.

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S. 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.

T. 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 EBID: c/o Gary Esslinger, Treasurer-Manager
530 S. Melendres St.
Las Cruces, NM 88005

To the Contractor:

U. 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.

EBID by _____
District President of the Board

Contractor by _____

Date

Date

COST RESPONSE FORM – prices exclusive of state taxes

Item #	Item	Each	Total
1	High flow irrigation water pump and variable-frequency power converter/drive		
2	Pump Installation		
3	Warranty as specified		

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4	Delivery FOB EBID Jobsite		

Signature of bidder _____

Notes:

1. In case of discrepancy between the unit price and total, these will be adjusted in accordance with paragraph 1.5.4 of the Instructions to Bidders.
2. Price and currencies to be in accordance with paragraphs 1.3.3 and 1.3.4 respectively of the Instructions to Bidders.
3. All items in this procurement document must be entered and include prices in the appropriate price schedule. Items not priced will be treated in accordance with paragraph 1.5.4 of the Instructions to Bidders.