

New York State Department of Health
Center for Environmental Health
INVITATION FOR BID
One-Time Purchase

| | |
|-------------------|------------------------------------|
| Title | X-Ray Fluorescence Analyzer |
| Bid Proposal Date | 1/25/11 |
| Proposal Number | FAU #1012070931 |
| Bid Due Date | 02/15/2011 by 4:45 PM |
| Bid Opening | 02/16/2011 @ 8:45 AM |

RETURN RESPONSES TO THIS REQUEST TO

Regular Mail Service

*NYS Department of Health
Center for Environmental Health
X-Ray Fluorescence Analyzer– FAU #1012070931
Attention: Henry Spliethoff
Bureau of Toxic Substance Assessment
547 River Street, Room 330
Troy, NY 12180-2216*

Express Mail Service

*NYS Department of Health
Center for Environmental Health
X-Ray Fluorescence Analyzer– FAU #1012070931
Attention: Henry Spliethoff
Bureau of Toxic Substance Assessment
547 River Street, Room 330
Troy, NY 12180-2216*

DESIGNATED CONTACTS

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies the following designated contacts to whom all communications attempting to influence this procurement must be made:

Lynn M. Lockwood, Purchasing Agent
NYS Department of Health
Bureau of Accounts Management
Corning Tower, Room 1344
Albany, NY 12237
Telephone (518) 474-3057, Fax (518) 486-9100
E-Mail: LMB02@health.state.ny.us

PERMISSIBLE SUBJECT MATTER CONTACTS

Pursuant to State Finance Law § 139-j(3)(a), the Department of Health also identifies the following allowable contacts for communications related to the following subjects: to request a complete package of the Invitation for Bid

Henry Spliethoff
NYS Department of Health
Bureau of Toxic Substance Assessment
547 River Street, Room 330
Troy, NY 12180-2216
Telephone (518) 402-78000, Fax (518) 402-7819
E-Mail: hms01@health.state.ny.us

Lisa Ribaudo
NYS Department of Health
Bureau of Toxic Substance Assessment
547 River Street, Room 330
Troy, NY 12180-2216
Telephone (518) 402-7800, Fax (518) 402-7819
E-Mail: lnr02@health.state.ny.us

GENERAL INFORMATION

IMPORTANT NOTICE TO POTENTIAL BIDDERS

Receipt of this Invitation for Bid (IFB) document does not indicate that the New York State Department of Health has pre-determined your company's qualifications to receive a purchase agreement award. Such determination will be made after the request for quote due date and will be based on our evaluation of your quote submission compared to the specific requirements and qualifications contained in this request for quote document.

ISSUING AGENCY

This IFB is issued by the NYS Department of Health. The Department is responsible for the requirements specified herein and for the evaluation of all proposals.

SUBMISSION OF PROPOSALS

In order to meet deadlines, faxed copies will be accepted and may be sent to (518) 402-7609. **Originals** are needed to complete the purchase agreement process. The package must include:

- Vendor Information Form (see page 11)
- Bid Form (see page 10)
- Published Price List - If a published price list is not available, please attach a letter explaining how your prices are set.
- Lobbying Certification - Offerer's Disclosure of Prior Non-Responsibility Determinations and Offerer's Affirmation of Understanding of and Agreement Pursuant to State Finance Law §139-j(3) and §139-(j) (b) (see pages 12 & 13)

NON-COLLUSIVE BIDDING CERTIFICATION (State Finance Law Section 139-d and Appendix A, Clause 7)

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

- (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition

THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO

- (1) Reject any or all proposals received in response to the IFB;
- (2) Withdraw the IFB at any time, at the agency's sole discretion;
- (3) Make an award under the IFB in whole or in part;
- (4) Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- (5) Seek clarifications and revisions of proposals;
- (6) Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB;
- (7) Prior to the ***bid opening***, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- (8) Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB amendments;
- (9) Change any of the scheduled dates;

- (10) Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- (11) Waive any requirements that are not material;
- (12) Negotiate with the successful bidder within the scope of the IFB in the best interests of the state;
- (13) Conduct purchase agreement negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- (14) Utilize any and all ideas submitted in the proposals received;
- (15) Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the bid opening; and,
- (16) Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

APPENDIX A

Appendix A, Standard Clauses for New York State Contracts, dated June 2006, attached hereto, is hereby expressly made a part of this Request for Quote document as fully as if set forth at length herein. *Please retain this document for future reference.*

CONFLICT OF TERMS AND CONDITIONS:

Conflicts between documents shall be resolved in the following order of precedence:

- a. Appendix A – Standard Clauses for New York State Contracts
- b. Appendix B - This Invitation for Bid
- c. Appendix C – Bid Forms

VENDOR RESPONSIBILITY

The Bidder acknowledges that the State's execution of the purchase agreement will be contingent upon the State's determination that the Bidder is responsible.

FREEDOM OF INFORMATION LAW

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. Should You Feel Your Firm's Bid/Proposal Contains Any Such Trade Secrets Or Other Confidential Or Proprietary Information, You Must Submit A Request To Except Such Information From Disclosure. Such Request Must Be In Writing, Must State The Reasons Why The Information Should Be Excepted From Disclosure And Must Be Provided At The Time Of Submission Of The Subject Information. Requests For Exemption Of The Entire Contents Of A Bid/Proposal From Disclosure Have Generally Not Been Found To Be Meritorious And Are Discouraged. Kindly Limit Any Requests For Exemption Of Information From Disclosure To Bona Fide Trade Secrets Or Specific Information, The Disclosure Of Which Would Cause A Substantial Injury To The Competitive Position Of Your Firm.

STATUTORY SUMMARY

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, establishes significant changes to the development of procurement contracts with governmental entities. Among other things, the new law:

- makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;

- authorizes the New York State Commission on Public Integrity to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal-State Agreements, and procurement contracts;
- modifies the governance of the New York State Commission on Public Integrity;
- provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- establishes the Advisory Council on Procurement Lobbying.

Generally speaking, two related aspects of procurements were amended: (i) activities by the business and lobbying community seeking procurement contracts (through amendments to the Legislative Law) and (ii) activities involving governmental agencies establishing procurement contracts (through amendments to the State Finance Law).

Additionally, a new section 1-t was added to the Legislative Law establishing an Advisory Council on Procurement Lobbying (Advisory Council). This Advisory Council is authorized to establish the following model guidelines regarding the restrictions on contacts during the procurement process for use by governmental entities (see Legislative Law §1-t (e) and State Finance Law §139-j). In an effort to facilitate compliance by governmental entities, the Advisory Council has prepared model forms and language that can be used to meet the obligations imposed by State Finance Law §139-k, Disclosure of Contacts and Responsibility of Offerers. Sections 139-j and 139-k are collectively referred to as "new State Finance Law."

It should be noted that while this Advisory Council is charged with the responsibility of providing advice to the New York State Commission on Public Integrity (Lobbying Commission) regarding procurement lobbying, the Lobbying Commission retains full responsibility for the interpretation, administration and enforcement of the Lobbying Act established by Article 1-A of the Legislative Law (see Legislative Law §1-t (c) and §1-d). Accordingly, questions regarding the registration and operation of the Lobbying Act should be directed to the Lobbying Commission.

SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this *Invitation for Bid* includes and imposes certain restrictions on communications between the Department of Health (DOH) and an Offerer during the procurement process. **An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit bids/proposals through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a).** Designated staff, as of the date hereof, is/are identified on the first page of this *Invitation for Bid or Request for Proposal*. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

PROCUREMENT LOBBYING TERMINATION

The DOH reserves the right to terminate this purchase agreement in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, DOH may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this purchase agreement.

M/WBE UTILIZATION PLAN FOR SUBCONTRACTING AND PURCHASING

The Department of Health (DOH) encourages the use of Minority and/or Women Owned Business Enterprises (M/WBE's) for any subcontracting or purchasing related to this contract. Bidders who are not currently a New York State certified M/WBE must define the portion of all consumable products and personnel required for this proposal that will be sourced from an M/WBE. The amount must be stated in total dollars and as a percent of the total cost necessary to fulfill the IFB requirement. Supportive documentation must include a detail description of work that is required including products and services.

The goal for usage of M/WBE's is at least 10% of monies used for contract activities (Minority-owned – 5%; Women-owned – 5%). In order to assure a good-faith effort to attain this goal, the DOH requires that bidders complete the M/WBE Utilization Plan (Attachment #1) and submit this Plan with their bid documents.

Bidders that are New York State certified MBE's or WBE's are not required to complete this form. Instead, such bidders must simply provide evidence of their certified status.

Failure to submit the above referenced Plan (or evidence of certified M/WBE status) may result in disqualification of the vendor from consideration for an award.

PROPOSAL REQUIREMENTS

- 1 Cost for one hand-held, X-ray-tube-based, multi-element X-ray fluorescence (XRF) analyzer capable of multi-element soil analysis (compatible with EPA method 6200) and lead-based paint analysis (consistent with associated HUD/EPA Performance Characteristic Sheet
- 2 Cost, if any, for start up training and assistance
- 3 Cost of each accessory /option listed under product specifications

PRICE

Price is F.O.B. destination, freight pre-paid and added to invoice

REQUEST FOR CHANGE

Any request by the agency or contractor regarding changes in any part of the purchase agreement must be made in writing prior to effectuation. Such requests are subject to approval by the State Comptroller.

APPENDIX A

The contractor agrees to comply with Appendix A, New York State Contract Clauses.

CONTRACT PAYMENTS

Payments cannot be processed by the NYS Department of Health until the purchased items have been delivered in satisfactory condition. Payment will be based on an invoice used in the supplier's normal course of business; however, such invoice must contain sufficient data including, but not limited to, Contract No., purchase order number, description of material, quantity, unit and price per unit, as well as Federal Identification Number. Properly completed vouchers are required to be forwarded to the Office of the State Comptroller for audit and payment. Prompt payment legislation (Article XI-A, State Finance Law) sets standards for the payment of bills incurred by State agencies within specified periods of time and requires interest payments in situations where payments do not conform to these standards. With certain exceptions, it is the Department's policy to pay all vendors/contractors providing acceptable invoices within 30 days of receipt. Agencies are urged to process vouchers expeditiously.

Payment for vouchers and/or invoices submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us or by telephone at 518-474-4032. CONTRACTOR acknowledges that it will not receive payment on any vouchers and/or invoices submitted under this purchase agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9, must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/epay>.

Completed W-9 forms should be submitted to:

NYS Office of the State Comptroller
Bureau of Accounting Operations
Warrant & Payment Control Unit
110 State Street, 9th Floor
Albany, NY 12236

PURCHASE ORDERS

Purchase orders are effective and binding upon the contractor's receipt.

TERMINATION

The NYS Department of Health reserves the right to cancel the purchase agreement upon 30 day written notice for: (1) Unavailability of Funds; (2) Cause; (3) Convenience. Failure of the contractor to provide the required goods in accordance to the purchase agreement, the NYS Department of Health reserves the right to cancel the purchase agreement upon 30 day written notice. If the agreement is terminated, the NYS Department of Health shall be liable only for payment of goods received prior to the effective date of termination.

TERMS AND CONDITIONS

The contractor agrees to comply with all specifications of *NYS Department of Health* **Bid Number FAU #1012070931, dated 1/18/2011.**

DETAILED SPECIFICATIONS

SCOPE OF BID

IFB

The NYS Department of Health's Center for Environmental Health's Bureau of Toxic Substance Assessment intends to purchase one (1) hand-held, X-ray tube-based XRF analyzer. The XRF analyzer must include a multi-element soil analysis mode and be compatible with EPA Method 6200 for soil analysis. In addition, the XRF analyzer must be associated with a HUD/EPA Performance Characteristic Sheet or equivalent for EPA-compliant residential home lead-based paint inspections. The analyzer will be used to measure lead in paint, and multiple metals in soil and other media such as CCA-treated wood.

Product Specifications

- A. One field-portable XRF analyzer with enclosure body, x-ray tube, high-resolution detector, associated electronics and resident upgradeable software. Analyzer will be accompanied by batteries with sufficient power for full day in the field, battery charger, carrying case, and references for standardization/calibration check and other necessary or standard hardware. Resident programming shall include capability for analysis of (1) both heavy and light metals, such as As, Ba, Ca, Cd, Cr, Cu, Fe, Hg, K, Pb, Mn, Ni, P, Ti, S, Sb, Se, Sn, and Zn in soils to achieve the lowest limits of detection, and (2) lead-based paint consistent with an existing XRF HUD/EPA Performance Characteristic Sheet. Analyzer will be accompanied by manufacturer's warranty inclusive of parts and labor.
- B. Additional accessories /options: (1) an instrument test stand, (2) belt holster, (3) extra battery, (4) hardware necessary to transfer data to desktop PC including data transfer cable and/or wireless functionality, (5) software for data transfer and data analysis on PC, (6) any other accessories necessary for in-situ soil analysis.
- C. Manufacturer's operator start-up training at operator-designated training site in New York State at or shortly after time of delivery and other after-sale support as appropriate.

The devices will be shipped to (see "Delivery To" below). Interested parties should contact Henry Spliethoff, Bureau of toxic Substance Assessment, 547 River Street, Room 330, Troy, NY 12180-2216 to submit a formal bid document.

METHOD OF AWARD

Grand Total Bid – Award shall be made by Grand Total to the lowest responsive and responsible bidder. The state reserves the right to make no award on this bid.

No Bid Form

Bidders choosing not to bid are requested to complete the portion of the form below:

☐ We do not provide the requested commodity. Please remove our firm from your mailing list.

☐ We are unable to bid at this time because:

—

—

—

—

—

—

Please retain our firm on your mailing list.

| | |
|----------------------------------------------------------------|------------------|
| Name of Company | |
| Name of Company Official Submitting Bid (Print or Type) | Title |
| Authorized Signature | Date |
| Phone | Extension |
| Toll Free Phone | Extension |
| Fax | Extension |
| E-Mail Address | |

Failure to respond to bid invitations may result in your firm being removed from our mailing list for this commodity.

Bid Form

| | |
|-----------------|-----------------------|
| Name of Company | Federal Tax ID Number |
|-----------------|-----------------------|

| Item Number | Quantity | Item Description | Unit of Measure | Catalog Number | Price Each | Total |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------|-----------------|----------------|------------|-------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Estimated Shipping / Handling / Freight Charges | | | | | | |
| Total | | | | | | |
| NYS Shipping Terms are FOB Destination, Freight Pre-Paid and Added to Invoice Shipping Charges Are Allowed Only If Quoted Above Freight Charges in Excess of \$100 Require a Copy of Original Freight Manifest Upon Invoice/Billing | | | | | | |

- ☐ Offerer is the Manufacturer of above items.
☐ Other, Please Explain: _____

☐ Offerer is an authorized reseller of above items.

Quote Number containing specific information relating to this bid has been attached.
 Estimated number of days shipment can be made after receipt of purchase order.

The following required documents must be attached to this bid form

- ☐ Published Price List - *If a published price list is not available, please attach a letter explaining how your prices are set.*

☐ Vendor Information

☐ Offerer's Disclosure of Prior Non-Responsibility Determinations

☐ Offerer's Affirmation of Understanding of and Agreement Pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

Offerer agrees to the following: 1) All terms and conditions detailed within this proposal document; 2) that prices quoted on this bid form will remain fixed for the duration of this proposal; 3) prices quoted are the same as or lower than those quoted other corporations, institutions and government agencies on similar products, quantities, terms and conditions.

Offerer's Signature

Date

Name (Please Print or Type)

Telephone

Title

E-Mail Address

Vendor Information

| | | | |
|------------------|------|-----------------------|----------|
| Name of Company | | Federal Tax ID Number | |
| Company Web Site | | | |
| Company Address | City | State | Zip Code |

| | | |
|-----------------------------------------|-----------------------------|----------------|
| Name of Company Official Submitting Bid | Title | E-Mail Address |
| Telephone / Extension | Toll Free Phone / Extension | Fax Number |

| | | | |
|----------------------------------------------------------|-----------------------------|----------------|----------|
| Contact Person for Placing Orders | Title | E-Mail Address | |
| Telephone / Extension | Toll Free Phone / Extension | Fax Number | |
| Address to Mail Purchase Order (if different than above) | City | State | Zip Code |

Business Information

1. Are you a New York State Resident Business? ☐ Yes ☐ No
2. Total number of people employed by your business: _____
3. Total number of people employed by your business in New York State: _____
4. Is your business independently owned and operated? ☐ Yes ☐ No
5. Is your business at least 51% owned and controlled by women, or 50% owned and controlled by minority group members (i.e., Black, Hispanic, Asian, Pacific Islander, American Indian, Alaskan Native)? ☐ Yes ☐ No
 - a. If yes, have you been ☐ Yes ☐ No
 - b. List certification or _____
registration authority: ☐ Yes ☐ No
6. Is your company considered an industry leader in your field? ☐ Yes ☐ No

Place of Manufacturer of Product(s)

1. All New York State Manufacture? ☐ Yes ☐ No
2. All Manufactured outside New York State? ☐ Yes ☐ No
3. Manufactured in New York State and Outside New York State? ☐ Yes ☐ No
 - a. If Yes, location (State) where more than half the value is added to the product(s):

 - b. Bidder's Principal Place of Business (*Principal Place of Business is the location of the primary control, direction and management of the enterprise*):

Offerer's Signature

Date

Name (Please Print or Type)

Telephone

Lobbying Certification

Page 1 of 2

| | |
|-----------------|-----------------------|
| Name of Company | Federal Tax ID Number |
|-----------------|-----------------------|

Offerer's Disclosure of Prior Non-Responsibility Determinations and Affirmation of Understanding and Agreement Pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

Pursuant to State Finance Law §§139-j and 139-k, this *Invitation for Bid* includes and imposes certain restrictions on communications between the Department of Health (DOH) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit *bids/proposals* through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is/are identified on the first page of this *Invitation for Bid or Request for Proposal*. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

Offerer/Bidder provides the following disclosure of prior non-responsibility determinations:

1. Has any Governmental Entity made a finding of non-responsibility regarding the Offerer/bidder in the previous four years? (Please check): ☐ No ☐ Yes - If **yes**, please answer questions a and b:

a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j or NYS Executive Order No. 127? (Please check): ☐ No ☐ Yes

b. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please check): ☐ No ☐ Yes

If you answered **yes** to question 1b, please provide details regarding the finding of non-responsibility below.

| | |
|----------------------------------------------------------------------------------------|---------------------------------------|
| Governmental Entity | Date of Finding of Non-Responsibility |
| Basis of Finding of Non-Responsibility (<i>Attach Additional Pages as Necessary</i>) | |

Lobbying Certification

Page 2 of 2

| | |
|-----------------|-----------------------|
| Name of Company | Federal Tax ID Number |
|-----------------|-----------------------|

State Finance Law §139-j (3) and §139-j (6) (b) - Continued

2. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please check): ☐ No ☐ Yes

If you answered **yes** to question 2, please provide details regarding the finding of non-responsibility below.

| | |
|-------------------------------------------------------------------------------------|------------------------------------------------|
| Governmental Entity | Date of Termination or Withholding of Contract |
| Basis of Termination or Withholding (<i>Attach Additional Pages as Necessary</i>) | |

Vendor Certification

Offerer/Bidder affirms that it understands and agrees to comply with the procedures of the Department of Health relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b). Offerer/Bidder certifies that all information provided to the Department of Health with respect to State Finance Law §139-k is complete, true and accurate.

The DOH reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, DOH may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.

Offerer's Signature

Date

Name (Please Print or Type)

Telephone

Title

E-Mail Address

ATTACHMENT 1

New York State Department of Health M/WBE Procurement Forms

The following forms are required to maintain maximum participation in M/WBE procurement and contracting:

1. Bidders Proposed M/WBE Utilization Form
2. Minority Owned Business Enterprise Information
3. Women Owned Business Enterprise Information
4. Subcontracting Utilization Form
5. M/WBE Letter of Intent to Participate
6. M/WBE Staffing Plan

BIDDERS PROPOSED M/WBE UTILIZATION PLAN

| | |
|---------------------|-----------------------------|
| Bidder Name: | |
| IFB Title: | IFB Number FAU # |

Description of Plan to Meet M/WBE Goals

PROJECTED M/WBE USAGE

| | % | Amount |
|---------------------------------------|-----|--------|
| 1. Total Dollar Value of Proposal Bid | 100 | \$ |
| 2. MBE Goal Applied to the Contract | | \$ |
| 3. WBE Goal Applied to the Contract | | \$ |
| 4. M/WBE Combined Totals | | \$ |

New York State Department of Health

MINORITY OWNED BUSINESS ENTERPRISE (MBE) INFORMATION

In order to achieve the MBE Goals, bidder expects to subcontract with New York State certified MINORITY-OWNED entities as follows:

| MBE Firm (Exactly as Registered) | Description of Work (Products/Services) [MBE] | Projected MBE Dollar Amount |
|------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-----------------------------|
| Name Address City, State, ZIP Employer I.D. Telephone Number () - | | \$ |
| Name Address City, State, ZIP Employer I.D. Telephone Number () - | | \$ |
| Name Address City, State, ZIP Employer I.D. Telephone Number () - | | \$ |

WOMEN OWNED BUSINESS ENTERPRISE (WBE) INFORMATION

| WBE Firm (Exactly as Registered) | Description of Work (Products/Services) [WBE] | Projected WBE Dollar Amount |
|------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-----------------------------|
| Name Address City, State, ZIP Employer I.D. Telephone Number () - | | \$ |
| Name Address City, State, ZIP Employer I.D. Telephone Number () - | | \$ |
| Name Address City, State, ZIP Employer I.D. Telephone Number () - | | \$ |

**New York State Department of Health
SUBCONTRACTING UTILIZATION FORM**

Agency Contract: _____ Telephone: _____
Contract Number: _____ Dollar Value: _____
Date Bid: _____ Date Let: _____ Completion Date: _____

Contract Awardee/Recipient: _____

Name

Address

Telephone

Description of Contract/Project Location: _____

Subcontractors Purchase with Majority Vendors:

Participation Goals Anticipated: _____ % MBE _____ % WBE

Participation Goals Achieved: _____ % MBE _____ % WBE

Subcontractors/Suppliers:

| Firm Name and City | Description of Work | Dollar Value | Date of Subcontract | Identify if MBE or WBE or NYS Certified |
|-------------------------------|--------------------------------|-------------------------|--------------------------------|--------------------------------------------------------|
| | | | | |
| | | | | |
| | | | | |

Contractor's Agreement: My firm proposes to use the MBEs listed on this form

| | | | |
|-------------------------------------------|--------------------------|--------------|-------|
| Prepared By: (Signature of Contractor) | Print Contractor's Name: | Telephone #: | Date: |
| | | | |

Grant Recipient Affirmative Action Officer Signature (If applicable):

| |
|--|
| |
|--|

FOR OFFICE USE ONLY

| | |
|------------------------------|----------------------|
| Reviewed By: | Date: |
| | |
| M/WBE Firms Certified: _____ | Not Certified: _____ |
| CBO: _____ | MCBO: _____ |

New York State Department of Health

MWBE ONLY

MWBE SUBCONTRACTORS AND SUPPLIERS
LETTER OF INTENT TO PARTICIPATE

To: _____ Federal ID Number: _____
(Name of Contractor)

Proposal/ Contract Number: _____

Contract Scope of Work: _____

The undersigned intends to perform services or provide material, supplies or equipment as: _____

Name of MWBE: _____

Address: _____

Federal ID Number: _____

Telephone Number: _____

Designation:

☐ MBE - Subcontractor

☐ WBE - Subcontractor

☐ MBE - Supplier

☐ WBE - Supplier

Joint venture with:

Name: _____

Address: _____

Fed ID Number: _____

MBE ☐

WBE ☐

Are you New York State Certified MWBE? _____ Yes _____ No

The undersigned is prepared to perform the following work or services or supply the following materials, supplies or equipment in connection with the above proposal/contract. (Specify in detail the particular items of work or services to be performed or the materials to be supplied): _____

at the following price: \$ _____

The contractor proposes, and the undersigned agrees to, the following beginning and completion dates for such work.

Date Proposal/ Contract to be started: _____

Date Proposal/ Contract to be Completed: _____

Date Supplies ordered: _____ Delivery Date: _____

The above work will not further subcontracted without the express written permission of the contractor and notification of the Office. The undersigned will enter into a formal agreement for the above work with the contractor ONLY upon the Contractor’s execution of a contract with the Office.

Date Signature of M/WBE Contractor

Contractor Printed/Typed Name of M/WBE

INSTRUCTIONS FOR M/WBE SUBCONTRACTORS AND SUPPLIERS LETTER OF INTENT TO PARTICIPATE

This form is to be submitted with bid attached to the Subcontractor’s Information Form in a sealed envelope for each certified Minority or Women-Owned Business enterprise the Bidder/Awardee/Contractor proposes to utilize as subcontractors, service providers or suppliers.

If the MBE or WBE proposed for portion of this proposal/contract is part of a joint or other temporarily-formed business entity of independent business entities, the name and address of the joint venture or temporarily-formed business should be indicated.

**New York State Department of Health
M/WBE STAFFING PLAN**

Check applicable categories: ☐ Project Staff ☐ Consultants ☐ Subcontractors

Contractor Name _____

Address _____

| | Total | Male | Female | Black | Hispanic | Asian/ Pacific Islander | Other |
|------------------------------|-------|------|--------|-------|----------|-------------------------------|-------|
| STAFF | | | | | | | |
| Administrators | | | | | | | |
| Managers/Supervisors | | | | | | | |
| Professionals | | | | | | | |
| Technicians | | | | | | | |
| Clerical | | | | | | | |
| Craft/Maintenance | | | | | | | |
| Operatives | | | | | | | |
| Laborers | | | | | | | |
| Public Assistance Recipients | | | | | | | |
| TOTAL | | | | | | | |

(Name and Title)

Date

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall

by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for

six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the

Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age,

disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of

each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

0

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business 30 South Pearl St- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited

to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.