

NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN, that the Undersigned, on behalf of the Essex County Board of Supervisors, will accept sealed bids until **Friday December 2, 2016 at 2:00 pm** for Marked Timber on Lands of Essex County, in the Town of Lewis, NY.

Specifications and bid forms are available by contacting the Office of the Purchasing Agent, Linda M. Wolf, Government Center, 7551 Court Street, Elizabethtown, New York 12932, 518-873-3332, on the Seller's website at www.co.essex.ny.us, or from Essex County Soil and Water Conservation District at 518-962-8225 and online at <http://www.essexcountyswcd.org/>.

The bids shall be opened publicly and read aloud on **December 2, 2016** at 2:00 P.M. at the Office of the Purchasing Agent, 7551 Court Street, Elizabethtown, New York 12932.

All bids submitted in response to this notice shall be marked "**SEALED ESSEX COUNTY TIMBER BID**" clearly on the outside of the envelope.

Dated: November 7, 2016

Linda M. Wolf, CPA
Purchasing Agent
Essex County Government Center
7551 Court Street – PO Box 217
Elizabethtown, New York 12932
(518) 873-3332

INSTRUCTIONS TO BIDDERS

Each proposal must be accompanied by either a Certified Check payable to Essex County Treasurer in the amount of ten percent (10%) of amount of the bid or a Bid Bond, in a form acceptable to the Essex County Attorney.

All bids shall be submitted on the bid sheets included in the package, and no other forms shall be accepted.

Essex County reserves the right to reject any and all bids not considered to be in the best interest of Essex County, and to waive any technical or formal defect in the bids which is considered by Essex County to be merely irregular, immaterial, or unsubstantial.

In addition to bid sheets, the bidder shall submit executed non-collusion bid certificates signed by the bidder or one of its officers as required by the General Municipal Law Sec. 103d. The bidder shall also submit an executed certificate of compliance with the Iran Divestment Act signed by the bidder or one of its officers as required by the General Municipal Law Sec. 103g.

A Contract awarded pursuant to this notice shall be subject to the provisions of Sections 103-1, 103-b, 103-d and 103-g of the General Municipal Law.

Essex County affirmatively states that in regard to any contract entered into pursuant to these instructions, without regard to race, color, sex, religion, age, national origin, disability, sexual preference or Vietnam Era veteran status, disadvantaged and minority or women-owned business enterprises will be afforded equal opportunity to submit bids in response hereto.

VOLUMES: An estimated **139,789 BF** (International ¼" Rule) 97% white pine, 2% mixed hardwoods, and 1% red pine; plus **248 green tons pulpwood** marked in natural stands and plantation stands, on 54 acres, more or less. Marked trees were 100% tallied.

Addenda will be posted on the Essex County Website, interested vendors are urged to check before submitting their bid.

Each bidder will need to complete, sign, have notarized and return the following documents with their Bid:

- 1) Certification of Compliance With Iran Divestment Act
- 2) Non-Collusive Bidding Certification

**TIMBER SALE
FOR MARKED STANDING TIMBER
ON LANDS OF ESSEX COUNTY, NEW YORK
IN THE TOWN OF KEENE**

BIDDING SPECIFICATIONS

PROPERTY OWNER: Essex County, NY

VOLUMES: An estimated **139,789 BF** (International ¼” Rule), plus **248 green tons of cordwood**, marked in plantation and natural stands, on 54 acres, more or less. Marked trees were 100% tallied.

Species: 97% white pine, 2% mixed hardwoods, and 1% red pine, based on sawtimber distribution.

HARVEST AREA SIZE: 54 acres, more or less.

TYPE OF SALE: Lump sum.

FORESTER: Essex County Soil and Water Conservation District (SWCD), (518) 962-8225, essexswcd@westelcom.com.

VIEWING THE TIMBER: The sale area is public land, and may be inspected at any time. Independent timber cruises are welcomed. The Seller’s foresters will be available to show the timber on **Wednesday November 16, 2016 at 12:30 pm**; RSVP is required. Interested parties should meet at the sale area parking lot off of Raywoods Road. The parking area is approximately 8/10 of a mile east of the intersection of NYS Highway 9 and Raywoods Road in the Town of Lewis, NY. Serious bidders who can't make the showing can contact SWCD at (518) 962-8225 for a private showing.

LOCATION: The timber sale is located off of Raywoods Road, approximately 8/10 of a mile east of the intersection of NYS Highway 9 and Raywoods Road in the Town of Lewis, NY. The access road is located approximately 3 miles from Exit 32 on NYS Highway 9.

CONTRACT PERIOD: From contract signing until June 1, 2018

All timber remaining on said premises after this date will be and shall remain the property of the County, and any and all payments which have been made thereon or theretofore, will be retained by the County.

BIDDING TERMS: Award will be to the highest qualified bidder. All bids shall be considered final - no adjustments after opening will be allowed. Bids shall be in United States dollars. Bids must be submitted on the form provided, found on page 18, or a photocopy of it - alteration of the bidding form will not be accepted. All bids must be accompanied by the signed non-collusive bidding certificate on the back of the bidding form. Bidders must guarantee their bid

for 45 days. **Sealed bids must be labeled: "DO NOT OPEN – SEALED ESSEX COUNTY TIMBER BID" in large letters on both front and back.**

Essex County and its foresters reserve the right to waive any technicalities concerning bids, and also reserve the right to reject any and all bids, in the Seller's sole discretion.

The timber described for sale herein is offered "as is". Neither the County nor its foresters guarantee the quantity, quality or merchantability of the timber described herein, and assume no responsibility for under-run or over-run of actual timber volumes harvested, compared to the volume estimates listed herein. The estimates herein are presented as a reference base, not a guarantee. Each bidder is considered an expert, and shall base his/her bid on his/her own volume, quality and merchantability estimate as a condition of bidding.

CONTRACT SIGNING: The contract will be available to sign after bid approval at the Board of Directors meeting currently scheduled for December 5, 2016. The entire bid sum for the marked timber listed herein is due at that time. The payment must be in the form of a bank cashier's check, money order, travelers check or certified personal or company check, drawn on a bank located in the United States. **Uncertified personal or company checks will not be accepted.**

Make this check out to: *Essex County Treasurer.*

MAILED BIDS should be addressed to: Linda M. Wolf, County Purchasing Agent, Essex County Government Center, P.O. Box 217, Elizabethtown, NY 12932.

HAND-DELIVERED BIDS may be brought to the Purchasing Agent's office in the County Government Center on 7551 Court Street in Elizabethtown, 12932 during normal operating hours, up to the time of bid opening.

BID WITHDRAWAL DEPOSIT: Ten percent (10%) of the bid amount must be submitted with the bid. This will be held and returned to each unsuccessful bidder after the contract is signed. Essex County reserves the right to retain the bid deposit in the event the successful bidder fails to execute the contract. **Bids not accompanied by a deposit will not be accepted.** Bid deposits must be in the form of a bank cashier's check, money order, traveler's check, or certified personal or company check, drawn on a bank located in the United States. **Uncertified personal or company checks will not be accepted.**

Make this check out to: *Essex County Treasurer.*

PERFORMANCE DEPOSIT: A performance deposit of ten percent (10%) of the total contract amount is required at contract signing. This will be held by the County, and returned at satisfactory completion of the contract, with accrued interest. The bid withdrawal deposit will be used for this. The funds on deposit with the County may be subjected to forfeiture in whole or in part if excessive damage is caused to the land or residual timber as a result of improper logging practices, or if the Buyer fails to grade and drain skid trails, cleanup landing(s), lop conifer tops, all to the satisfaction of the Seller's forester(s).

INSURANCE REQUIREMENTS: Refer to attachments herein.

TIMBER ESTIMATION METHODS: Original timber volume estimates are based on a 100% sample of marked trees.

Trees are marked at eye level and ground level with orange paint. Trees tallied as sawtimber were marked at eye level with diagonal slashes (\), and pulp trees were marked with spots (●). Cull trees/ cutter's choice are marked at eye level with an "X". Trees marked with slashes (\) as sawtimber will occasionally display one or more paint spots approximately eight feet (8') above stump height. These can be used as an aid in estimating merchantable sawlog height. Trees marked with an "X" were not recorded with any volume or weight information.

Trees were considered sawtimber if they were estimated to contain at least one 8'4" sawlog. Trees were considered cordwood if they didn't seem to be sawtimber quality, but contained at least two reasonably sound 8' bolts.

White pine trees suspected of red rot (*Phellinus pini*) were sampled with an increment borer. If rot was detected, the entire tree was tallied as cordwood. These trees are marked with spots (●) and have ROT written on at least two sides.

Trees in this sale were tallied by 2- inch DBH classes. For example, the 14- inch DBH class includes trees measuring 13.1 inches to 15.0 inches DBH, and the 16- inch DBH class includes trees measuring 15.1 inches to 17.0 inches DBH. DBH was taken using a Biltmore stick, and frequently checked with a diameter tape. Sawtimber heights were estimated with a Merritt hypsometer, and defect was estimated on an individual basis. U.S. Forest Service Girard Form Class tables were used for sawtimber volume estimates, using Form Class 80 for pines and Form Class 78 for hardwoods. Cordwood trees were measured for DBH only, and a local volume table based on DBH and species was used to compute volumes. Topwood (cordwood found in the tops of sawtimber) was estimated using tables based on research done by the U.S. Forest Service.

Utilization Limits: Pine and spruce sawlogs were estimated to an 8" top, or wherever the tree appeared to become unmerchantable as sawtimber. Hardwood saw logs were estimated to a 10" top.

WORKING CONDITIONS: Only trees marked with orange paint by the Seller's foresters shall be harvested. It is **NOT** mandatory to harvest every marked tree - any marked tree may be left standing, for market or safety reasons.

Property boundary and near- boundary trees are marked with red paint, and are not part of this timber sale, unless marked with orange paint.

Parts of the sale compartment boundaries may be marked with pink plastic flagging, imprinted with "TIMBER HARVEST BOUNDARY" in black.

FORESTER'S COMMENTS: The volumes are an unguaranteed estimate only and bidders should satisfy themselves by examination as to quantity, quality and merchantability of the timber offered.

64% of sawtimber volume is estimated to be in trees with a DBH of 18 inches or larger, and 17% in trees 24 inches DBH and larger. Sawlog quality ranges from utility grade to high quality logs. No attempt was made to classify sawtimber volumes by log grade.

Much of the compartment has been harvested in the past at various times. The predominant harvest type has been improvement thinning to promote excellent growth on the highest quality trees. Timber quality appears to be above average. The slopes of the compartment are gentle to mild in grade over most of the timber sale area. Some steeper areas do exist, and additional erosion control care may need to be taken. A majority of the marked sale area exhibits plantation growth of white pine, which has resulted in tall, straight stems.

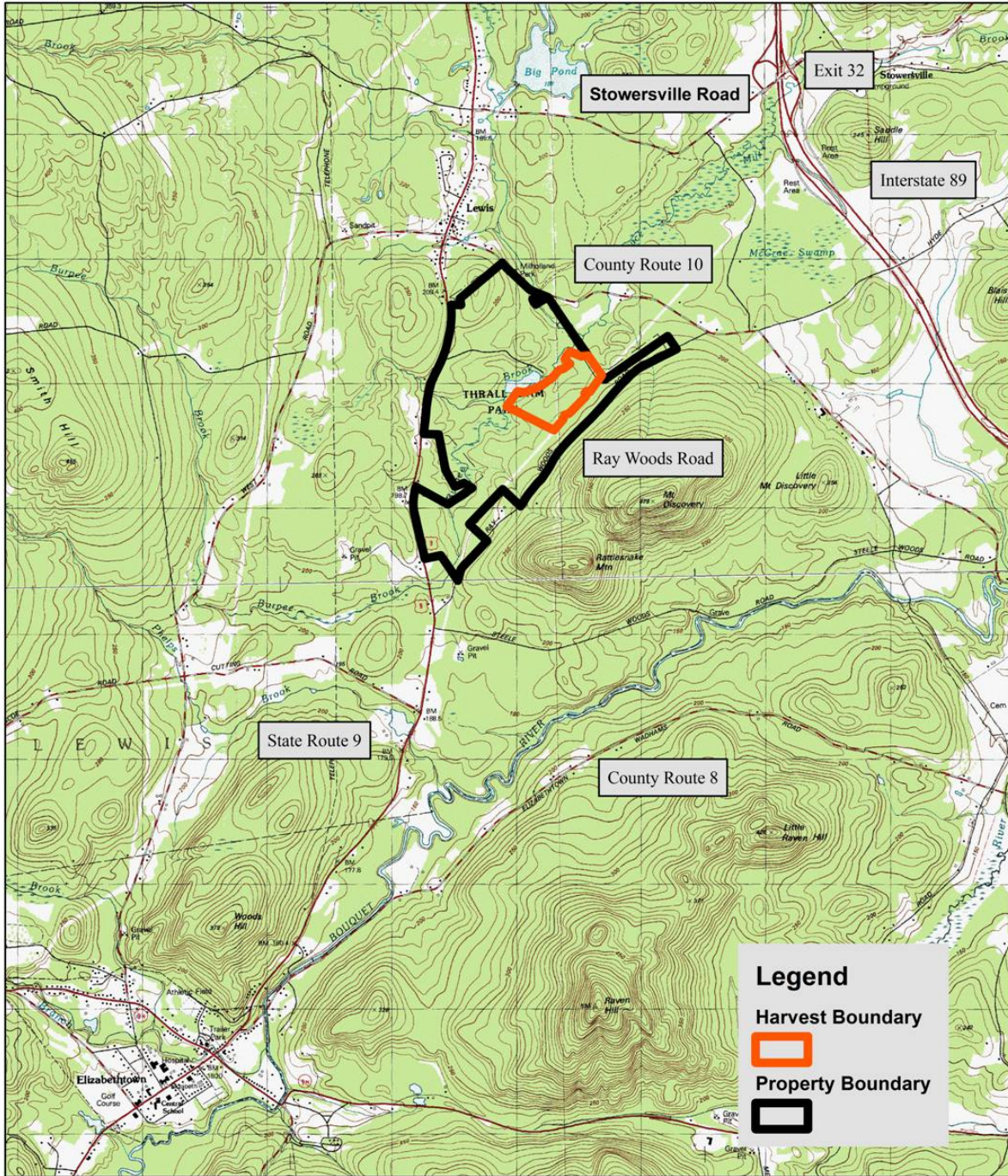
Many skid trails are in place. However, some additional bulldozing may be needed to widen trails.

Landing location will be discussed with Buyer prior to commencement of harvest. Due to the recreational usage of this property, an elevated level of cleanliness will be required. Buyer shall remove debris from the landing, as far into the adjoining woods as the Seller's foresters require. Grading and grass seeding will also be required. The above may also be required if the landing is not used for an extended time during the contract period, to be determined by the Seller's forester(s). There is a vehicle parking area, located at the end of the access road.

Soft soils are present in some parts of the sale area. Rutting may occur in any season, and Buyer shall be responsible to restore these areas to the satisfaction of the Seller's foresters.

New York State Best Management Practices (NYS BMPs), which can be found at http://www.dec.ny.gov/docs/lands_forests_pdf/dlfbmpguide.pdf, shall be followed during and at completion of the job, including water bars.

Essex County, NY Reforestation Property Town of Lewis

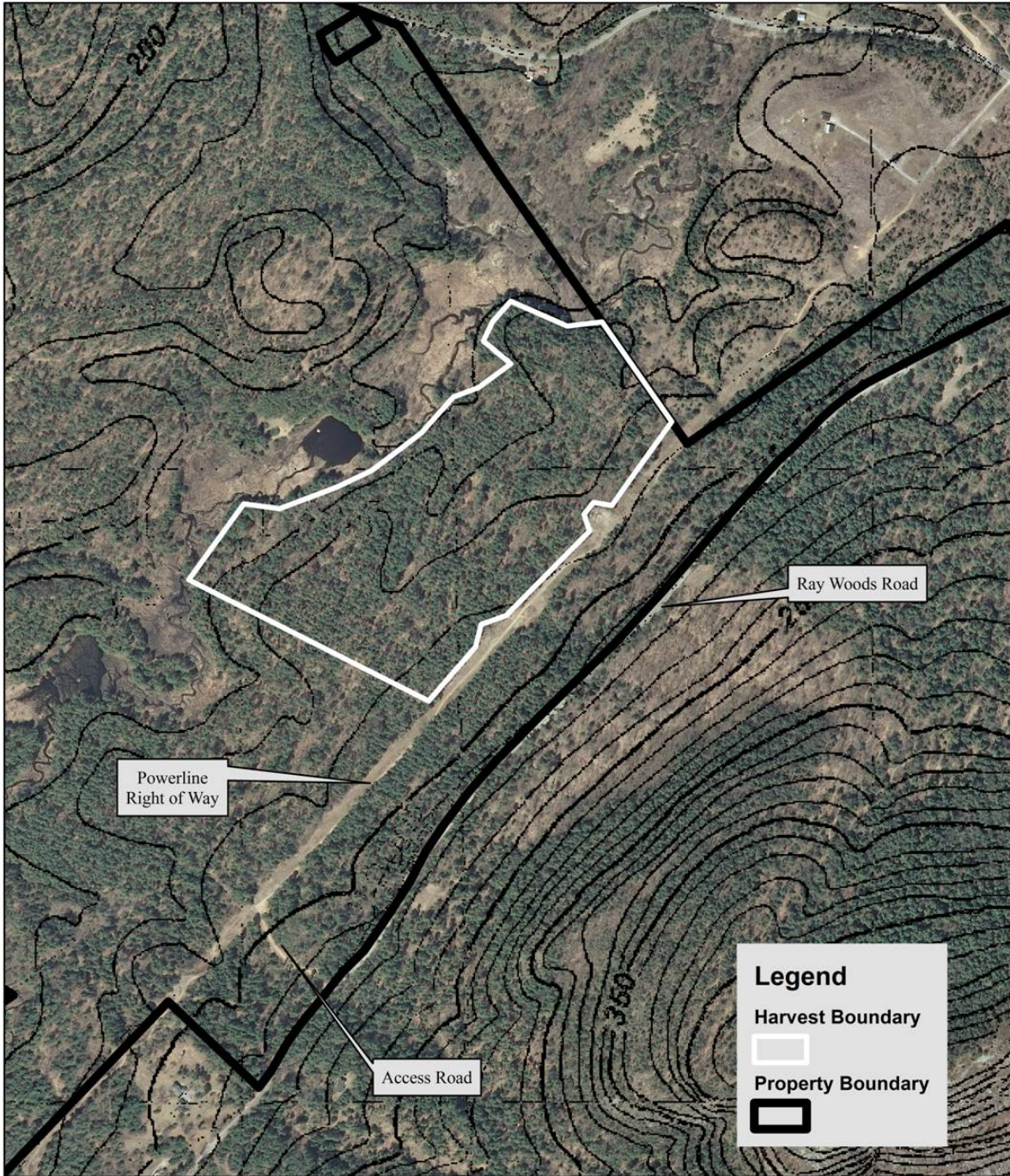


0 0.5 1 2 Miles



Topographic
Location Map
Essex County Soil and Water
Conservation District
August 30, 2016

Essex County, NY Reforestation Property
Town of Lewis



Legend

- Harvest Boundary
- Property Boundary



0 500 1,000 2,000 Feet
Elevation in meters
Contour interval is 10 meters (33 feet)



2013 Aerial Photograph
Harvest Map
Essex County Soil and Water
Conservation District
August 30, 2016

Compartment: 1
 Acres Marked: 54
 Location: Town of Lewis, Ray Woods Road
 Paint Color: Orange
 By: Essex County Soil and Water Conservation District
 Crew: L. Benedict
 Landowner: Essex County, NY
 Date Marked: Summer 2016
 Log Rule: International 1/4"

Estimated Saw Timber Volumes In Board Feet By DBH Class

| Species | 10 | 12 | 14 | 16 | 18 | 20 | 22 | 24 | 26 | 28 | 30 | 32 | 34 | Totals |
|--------------------|-------|-------|--------|--------|--------|--------|--------|--------|-------|-------|-------|----|-------|---------|
| White Pine | | | | | | | | | | | | | | |
| Volume | 1,079 | 3,142 | 13,818 | 30,909 | 24,892 | 24,434 | 15,863 | 11,056 | 5,337 | 2,363 | 1,272 | 0 | 1,838 | 136,003 |
| # Marked | 29 | 48 | 105 | 132 | 78 | 61 | 31 | 18 | 7 | 3 | 1 | 0 | 1 | 514 |
| Red Oak | | | | | | | | | | | | | | |
| Volume | 0 | 0 | 148 | 339 | 549 | 0 | 0 | 637 | 0 | 0 | 0 | 0 | 0 | 1,673 |
| # Marked | 0 | 0 | 2 | 4 | 4 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 11 |
| Red Pine | | | | | | | | | | | | | | |
| Volume | 113 | 118 | 112 | 190 | 204 | 0 | 0 | 637 | 0 | 0 | 0 | 0 | 0 | 1,374 |
| # Marked | 3 | 2 | 1 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 9 |
| Sugar Maple | | | | | | | | | | | | | | |
| Volume | 0 | 0 | 0 | 74 | 95 | 0 | 338 | 0 | 0 | 0 | 0 | 0 | 0 | 507 |
| # Marked | 0 | 0 | 0 | 1 | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 4 |
| White Ash | | | | | | | | | | | | | | |
| Volume | 0 | 0 | 0 | 0 | 0 | 0 | 232 | 0 | 0 | 0 | 0 | 0 | 0 | 232 |
| # Marked | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |

| | | | | | | | | | | | | | | |
|-------------------|-------|-------|--------|--------|--------|--------|--------|--------|-------|-------|-------|-------|-------|---------|
| Volume by DBH | 1,192 | 3,260 | 14,078 | 31,512 | 25,740 | 24,434 | 16,433 | 12,330 | 5,337 | 2,363 | 1,272 | 0 | 1,838 | 139,789 |
| Total Marked | 32 | 50 | 108 | 138 | 84 | 61 | 34 | 20 | 7 | 3 | 1 | 0 | 1 | 539 |
| % of Total Volume | 0.85% | 2.33% | 10.07% | 22.54% | 18.41% | 17.48% | 11.76% | 8.82% | 3.82% | 1.69% | 0.91% | 0.00% | 1.31% | 100% |

Estimates as used herein shall be used as a reference base only; not a guarantee. Timber is offered "as is".

Compartment: 1
 Acres Marked: 54
 Location: Town of Lewis, Ray Woods Road
 Landowner: Essex County, NY
 Date Marked: Summer 2016

Paint Color: Orange
 By: Essex County Soil and Water
 Conservation District
 Crew: L. Benedict
 Log Rule: International 1/4"

Estimated Cordwood Volumes

| <i>Species</i> | <i>Cordwood</i> ¹ | <i>Topwood</i> ² | <i>Total Cordwood</i> ³ |
|---------------------------|------------------------------|-----------------------------|------------------------------------|
| White Pine | | | |
| Green Tons | 45 | 51 | 96 |
| # Marked | 55 | 514 | 569 |
| Mixed Hardwoods | | | |
| Green Tons | 36 | 5 | 41 |
| # Marked | 134 | 17 | 151 |
| Eastern Hemlock | | | |
| Green Tons | 33 | 0 | 33 |
| # Marked | 52 | 0 | 52 |
| Aspen and Basswood | | | |
| Green Tons | 78 | 0 | 78 |
| # Marked | 82 | 0 | 82 |
| Red Pine | | | |
| Green Tons | 0 | 1 | 1 |
| #Marked | 1 | 9 | 10 |
| Total | | | |
| Green Tons | 192 | 56 | 248 |
| # Marked | 324 | 531 | 855 |

1. Volume in tons to a 4" top softwood and 5" top hardwood, exclusive of limbs.
 2. Topwood is the estimated cordwood ton volume in the tops of sawtimber trees, exclusive of limbs.
 3. Cordwood and topwood volume combined, exclusive of limbs.
- Estimates as used herein shall be used as a reference base only; not a guarantee. Timber is offered "as is".

FORM CLASS 80

TABLE 23.—Gross volume of tree, International 1/4-inch rule

| Tree diameter (inches) | VOLUME (board feet) BY NUMBER OF USABLE 16-FOOT LOGS | | | | | | | | | | |
|------------------------|--|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | 1 | 1½ | 2 | 2½ | 3 | 3½ | 4 | 4½ | 5 | 5½ | 6 |
| 10..... | 39 | 51 | 63 | 72 | 80 | ----- | ----- | ----- | ----- | ----- | ----- |
| 11..... | 49 | 64 | 80 | 92 | 104 | ----- | ----- | ----- | ----- | ----- | ----- |
| 12..... | 59 | 78 | 98 | 112 | 127 | 136 | 146 | ----- | ----- | ----- | ----- |
| 13..... | 71 | 96 | 120 | 138 | 156 | 168 | 181 | ----- | ----- | ----- | ----- |
| 14..... | 83 | 112 | 141 | 164 | 186 | 201 | 216 | ----- | ----- | ----- | ----- |
| 15..... | 98 | 132 | 166 | 194 | 221 | 240 | 260 | ----- | ----- | ----- | ----- |
| 16..... | 112 | 151 | 190 | 223 | 256 | 280 | 305 | ----- | ----- | ----- | ----- |
| 17..... | 128 | 174 | 219 | 258 | 296 | 325 | 354 | ----- | ----- | ----- | ----- |
| 18..... | 144 | 196 | 248 | 292 | 336 | 369 | 402 | ----- | ----- | ----- | ----- |
| 19..... | 162 | 222 | 281 | 332 | 382 | 420 | 457 | ----- | ----- | ----- | ----- |
| 20..... | 181 | 248 | 314 | 370 | 427 | 470 | 512 | 546 | 580 | ----- | ----- |
| 21..... | 201 | 276 | 350 | 414 | 478 | 526 | 575 | 616 | 656 | ----- | ----- |
| 22..... | 221 | 304 | 387 | 458 | 528 | 583 | 638 | 685 | 732 | ----- | ----- |
| 23..... | 244 | 336 | 428 | 507 | 586 | 646 | 706 | 761 | 816 | ----- | ----- |
| 24..... | 266 | 368 | 469 | 556 | 644 | 708 | 773 | 836 | 899 | ----- | ----- |
| 25..... | 290 | 402 | 514 | 610 | 706 | 779 | 852 | 922 | 992 | ----- | ----- |
| 26..... | 315 | 436 | 558 | 662 | 767 | 849 | 931 | 1,008 | 1,086 | ----- | ----- |
| 27..... | 341 | 474 | 606 | 721 | 836 | 925 | 1,014 | 1,100 | 1,185 | ----- | ----- |
| 28..... | 367 | 510 | 654 | 779 | 904 | 1,000 | 1,096 | 1,190 | 1,284 | 1,368 | 1,453 |
| 29..... | 396 | 551 | 706 | 842 | 977 | 1,080 | 1,184 | 1,289 | 1,394 | 1,491 | 1,588 |
| 30..... | 424 | 591 | 758 | 904 | 1,050 | 1,161 | 1,272 | 1,388 | 1,503 | 1,613 | 1,723 |
| 31..... | 454 | 634 | 814 | 973 | 1,132 | 1,254 | 1,376 | 1,497 | 1,618 | 1,740 | 1,862 |
| 32..... | 485 | 678 | 870 | 1,042 | 1,213 | 1,346 | 1,480 | 1,606 | 1,733 | 1,867 | 2,001 |
| 33..... | 518 | 724 | 930 | 1,114 | 1,298 | 1,442 | 1,586 | 1,722 | 1,858 | 2,005 | 2,152 |
| 34..... | 550 | 770 | 989 | 1,186 | 1,383 | 1,537 | 1,691 | 1,838 | 1,984 | 2,144 | 2,304 |
| 35..... | 585 | 820 | 1,055 | 1,266 | 1,477 | 1,642 | 1,806 | 1,965 | 2,124 | 2,291 | 2,458 |
| 36..... | 620 | 870 | 1,121 | 1,346 | 1,571 | 1,746 | 1,922 | 2,093 | 2,264 | 2,438 | 2,612 |
| 37..... | 656 | 922 | 1,188 | 1,430 | 1,672 | 1,858 | 2,044 | 2,230 | 2,416 | 2,600 | 2,783 |
| 38..... | 693 | 974 | 1,256 | 1,514 | 1,772 | 1,970 | 2,167 | 2,368 | 2,568 | 2,761 | 2,954 |
| 39..... | 732 | 1,031 | 1,330 | 1,602 | 1,874 | 2,087 | 2,300 | 2,507 | 2,714 | 2,920 | 3,127 |
| 40..... | 770 | 1,086 | 1,403 | 1,690 | 1,977 | 2,204 | 2,432 | 2,646 | 2,860 | 3,080 | 3,300 |

Tree Volume Distribution in Percent, by 4-ft Sections

Based on 16 ft logs

Source: U.S. Forest Service

| | 1.5 Logs | | 2 Logs | | 2.5 Logs | | 3 Logs | | 3.5 Logs | |
|--------------|-----------------|---------------|-----------------|---------------|-----------------|-----|---------------|-----|-----------------|--|
| | | | | | | | | | 4% | |
| | | | | | | | | 4% | 4% | |
| | | | | | | | 4% | 4% | 4% | |
| | | | | | | 4% | 4% | 4% | 4% | |
| | | | 8% | 8% | 8% | 8% | 8% | 8% | 6% | |
| | | 8% | 8% | 8% | 8% | 8% | 8% | 8% | 8% | |
| | 12% | 10% | 8% | 8% | 8% | 8% | 8% | 8% | 8% | |
| 1 Log | 12% | 12% | 12% | 12% | 8% | 8% | 8% | 8% | 8% | |
| 18% | 14% | 12% | 12% | 12% | 10% | 10% | 10% | 10% | 10% | |
| 22% | 18% | 14% | 12% | 12% | 12% | 12% | 12% | 12% | 12% | |
| 26% | 28% | 16% | 16% | 16% | 14% | 14% | 14% | 14% | 12% | |
| 34% | 24% | 20% | 16% | 16% | 16% | 16% | 16% | 16% | 12% | |
| 1 Log | 1.5 Logs | 2 Logs | 2.5 Logs | 3 Logs | 3.5 Logs | | | | | |

SAMPLE TIMBER SALE AGREEMENT CONTRACT

THIS AGREEMENT made as of this _____ day of _____, 2016,

BETWEEN: **ESSEX COUNTY**, a municipal corporation with offices located at Court Street, Elizabethtown, New York, by its Board of Supervisors, (hereinafter designated as the “Seller”);

and

_____,
(hereinafter designated as the “Buyer”).

W I T N E S S E T H:

WHEREAS, the Seller is the owner of certain real property located in the Town of Lewis, Essex County, New York and has solicited competitive bids for the purchase of certain timber located on said property in accordance with “bidding specifications”, the same being attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, the Buyer submitted the highest bid meeting specifications for the purchase of said timber, (a copy of which is attached hereto as Exhibit B and incorporated herein by reference) and the County desires to accept the same;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Seller and Buyer agree as follows:

1. Whenever the term “Buyer” is used in this agreement, such term shall include and apply to all employees, all officers, directors and agents, if any, of the Buyer.
2. Seller hereby sells to Buyer, and Buyer hereby agrees to purchase from Seller, the timber on the lands owned by Seller, all as more particularly described in Exhibit A.
3. (a) With regard to the timber being sold to the Buyer under this contract, in the event that all or a part of the timber is destroyed by a fire prior to the Buyer’s payment therefore, which fire is not caused directly or indirectly by the acts or omissions or negligence of the Buyer, then the price for such timber shall be reduced proportionately by the value of the destroyed timber as determined by the Seller’s foresters.

(b) Notwithstanding any of the foregoing, payment for the timber must be made prior to the signing of this contract.

(c) All sums due and payable hereunder shall be made payable to Essex County. In the event that this agreement is not executed by the Seller, all sums shall be returned to the Buyer.

4. All timber under this agreement shall be removed by **March 1, 2018**. All timber remaining on said premises after **March 1, 2018**, will be and shall remain the property of the Seller, and any and all payments which have been made thereon or theretofore, will be retained by Seller. All clean up activity, as approved by Seller's foresters, shall be completed by the end of the contract period, **June 1, 2018**.
5. Buyer, prior to the cutting of any trees, shall procure the insurance required by Seller, as listed below, hereto and shall furnish Seller with proof that such insurance has been obtained. Said insurance shall be maintained by Buyer for the duration of this agreement.
6. The Buyer shall have the right, so long as this contract shall remain in force, to enter the Seller's lands described herein for the purpose of performing this agreement as stated herein, provided that the Buyer complies with the following:
 - (a) Buyer shall at all times comply with all applicable federal, state, county and town laws, rules and regulations governing the performance and rendition of the operations of the Buyer under this agreement.
 - (b) Buyer shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certificates required by any governmental authority having jurisdiction over the rendition and performance of the operations of the Buyer under this agreement.
 - (c) Buyer shall perform and/or abide by the other terms contained herein and in any attachments or exhibits hereto.
 - (d) Buyer shall lop all felled conifer tree tops in accordance with New York State laws. Deciduous tops may be left unlopped to deter deer browsing.
 - (e) The sale area contains a number of existing skid trails. It is not mandatory to use a skid trail if safety dictates otherwise. Additional skid trails shall be located only with the approval of the Seller's foresters prior to timber harvesting in a given area.
 - (f) All new landings and truck access roads shall be located and mapped by the Buyer and the Seller's foresters and approved by the Seller's foresters in writing, before being cleared. Any unmarked trees located within said landings and/or roads shall be marked and their merchantable volumes estimated by the Seller's foresters using the same methods described in the bidding specifications attached to this agreement. Buyer shall then pay the Seller a lump sum amount for said trees at rates comparable to those used to formulate buyer's original bid, with such lump sum payments to be made to Essex County Treasurer within 30 days of their determination. No such trees shall be cut or removed without prior authorization of the Seller's foresters.
 - (g) Skid trails, haul roads and landings shall be graded and stabilized within two weeks of the end of the timber sale. This will be done to NYS BMP specification and may include water bars, ditches, grass seeding at the completion of the harvest if the Seller's foresters deems this necessary. If the sale is completed in winter, The Buyer will need to have NYS BMP's installed by the following May 31.
 - (h) Skidding and hauling may not be allowed during periods of excessively soft soil conditions, all as determined by the Seller's foresters.

- (i) No logging debris shall be left in streams or within fifty feet of their banks. No logging debris shall be left within twenty feet of the property boundary.
- (j) All litter connected with the harvesting operation, such as cables, fuel and oil containers, wrappers, machinery parts, etc., shall be removed from the site by the Buyer upon completion of the harvest, or at the direction of the Seller's forester(s). No toxic chemicals shall be dumped on the lands of the Seller. The term 'toxic chemicals' as used herein includes, but is not limited to: fuels, hydraulic fluids, lubricating oils and other petro chemicals. If toxic chemicals are accidentally spilled, they shall be immediately cleaned up and removed from the Seller's property, along with any contaminated soil, by the Buyer or his/her agents.
- (k) All trees to be cut are marked with paint as described in the bidding specifications. Only those trees so marked or otherwise designated by the Seller's foresters shall be harvested.
- (l) Unmarked trees which are cut without prior approval of the Seller's foresters will be charged to the Buyer at the rate of three times the estimated market value, said value to be determined by the Seller's forester(s).
- (m) The falsification of evidence of the cutting of unmarked trees shall be considered theft, and will result in the forfeiture of the contract and all sums paid on account of the same, and the Buyer's performance deposit, in addition to other remedies provided by law or in equity.
- (n) Buyer shall use due care to prevent fires. The Buyer shall use his/her employees and equipment to extinguish any fires, started on their account, that is endangering the Seller's property described in this agreement. All fires shall be reported to the Seller and its forester as soon as possible. If fire is uncontrollable, the local fire department shall be notified immediately.
- (o) Buyer shall notify the Seller's foresters at least **three days** in advance of the beginning or cessation of any operations under this contract.
- (p) Buyer shall be solely responsible for insuring that no unmarked trees are cut or removed from lands located outside the timber sale area, and that the Buyer or his agents do not trespass upon any other lands.
- (q) Buyer shall be responsible for repairing any damages to ditches, stream crossings, roads, trails, or other improvements incurred from logging.
- (r) Buyer shall take care to prevent unnecessary injury to young growth and tree not designated for cutting. Residual stand damage should be maintained below 20%.

7. This contract may be immediately cancelled by the Seller if the Buyer fails or refuses to conform with the requirements of this agreement, or if at any time the Seller is of the opinion the Buyer is willfully violating any of the conditions of this agreement, or executing same in bad faith. Upon such default or cancellation, the Seller has the right to proceed to enforce the performance deposit posted by the Buyer in connection with this agreement, and shall have in addition such other remedies as shall be available at law or in equity.

8. The parties each acknowledge, covenant and agree that the relationship of the Buyer to the Seller shall be that of an independent contractor. The Buyer, in accordance with its status as an independent contractor, further covenants and agrees that it: (a) will conduct itself in accordance with its status as an

independent contractor; (b) will neither hold itself out as nor claim to be an officer or employee of the Seller; (c) will not make any claim, demand or application or any right or privilege applicable to an officer or employee of the Seller, including but not limited to: Worker's Compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.

9. Any liability for damage, destruction or restoration of private or public property and/or improvements occasioned by or the exercise of this contract shall be the sole responsibility of the Buyer. The Buyer shall defend, indemnify and hold harmless the Seller to the fullest extent allowed by law from and against any and all liability, suits, judgements, orders, causes of action, and claims, including but not limited to those for bodily injury, property damage, death, and reasonable attorney's fees, arising out of or in connection with the Buyer's negligence and/or its performance of, or failure to perform, this agreement.
10. The Buyer shall promptly advise the Seller of all damages to property of the Seller or of others, or of injuries incurred by persons other than employees of the Buyer, in any manner relating, either directly or indirectly, to the performance of this agreement.
11. The Seller shall have no liability under this contract to the Buyer or to anyone else beyond the funds appropriated and available for this contract.
12. This agreement may be terminated without cause by either party upon thirty days prior written notice, and upon such termination neither party shall have any claim or cause of action against the other, except for services actually performed and mileage expenses actually incurred prior to such termination. Notwithstanding the foregoing, this agreement may be immediately terminated by the Seller:
 - (a) for the Buyer's breach of this agreement, by serving written notice of such termination stating the nature of the breach upon the Buyer by personal delivery or certified mail, return receipt requested, and upon such termination either party shall have such rights and remedies against the other as provided by law; or
 - (b) upon the reduction or discontinuation of funding by the state or federal governments to be used in furnishing some or all of the work, labor and/or services provided for under this agreement, and upon such termination either party shall have any claim or cause of action against the other except for services actually performed and expenses (if the same are to be paid under this agreement) actually incurred prior to such termination.
13. The services to be furnished and rendered under this agreement by the Buyer shall be available to any and all residents of Essex County without regard to race, color, creed, sex, religion, national or ethnic origin, handicap, or source of payment, and under no circumstances shall a resident's financial ability to pay for the services provided be considered unless such consideration is allowed by state and/or federal law, rule or regulation.
14. The Buyer shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or

marital status. In the event that this is a contract to be performed in whole or in part within the State of New York for (a) the construction, alteration or repair of any public building, or public work, (b) for the manufacture, sale, or distribution of materials, equipment or supplies, (c) for building service, the Buyer agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin:

- (1) discriminate in hiring against any citizen who is qualified and available to perform the work; or
- (2) discriminate against or intimidate any employee hired for the performance of work under this contract.

15. The Buyer 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") in accordance with the following requirements:

- (a) the Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter;
- (b) the County Auditor, State Comptroller, the Attorney General or 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 Buyer 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 purpose of inspection, auditing and copying.

The Seller 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 Buyer shall timely inform an appropriate County official in writing, that said records should not be disclosed; and (II) said records shall be sufficiently identified and designation of said records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Seller's right to discovery in any pending or future litigation.

16. The Seller shall have no liability under this contract to the Buyer or to anyone else beyond the funds appropriated and available for this contract.
17. Disputes involving this contract including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction within the State of New York.
18. This agreement may not be assigned, subcontracted, transferred, conveyed, sublet or otherwise disposed of in whole or in part, by the Buyer, without the prior written consent of the Seller, and any attempts to assign the contract without the Seller's written consent are null and void.
19. If this contract was awarded based on the submission of bids, the Buyer warrants, under penalty of perjury, that:

(a) its bid was arrived at independently and without collusion aimed at restricting competition; and

(b) at the time Buyer submitted its bid, an authorized and responsible person executed and delivered to the Seller a non-collusive bidding certificate on Buyer's behalf.

20. The Seller shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Seller's option to withhold for the purposes of set-off any moneys due to the Buyer under this agreement up to any amounts due and owing to the Seller with regard to this contract, any other contract with any County 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 Seller for any other reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Seller shall exercise its set-off rights in accordance with normal County practices, including, in cases of setoff pursuant to an audit, the acceptance of such audit by the County Board of Supervisors or its designated representative.
21. This agreement may not be amended, modified or renewed except by written agreement signed by the Buyer and the Seller.
22. This agreement is the entire agreement between the parties, and the same shall be construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the dates indicated below.

ESSEX COUNTY,

Dated: _____

By _____

Dated: _____

By _____

BIDDING FORM
For Marked Standing Timber
ON LANDS OF ESSEX COUNTY, NY
IN THE TOWN OF LEWIS

Bid Opening: 2:00 pm on Friday December 2, 2016
Office of the County Purchasing Office Agent
County Government Center
7551 Court Street
Elizabethtown, NY 12932
(518)873-3332

Mail Bid To: Linda M. Wolf
County Purchasing Agent
County Government Center
P.O. Box 217
Elizabethtown, NY 12932

NOTE: Please mark the outside of envelope:
“DO NOT OPEN- SEALED ESSEX COUNTY TIMBER BID”

I (we) have examined the marked standing timber for sale, and based my (our) estimate of volume, quality and merchantability, bid the following amount for said timber:

LUMP SUM BID FOR COMPARTMENT 1*: U.S. \$ _____

10% BID WITHDRAWAL DEPOSIT (ENCLOSED): U.S. \$ _____

THIS BID IS GUARANTEED FOR 45 DAYS

*This bid amount is due at contract signing.

BIDDER: _____

ADDRESS: _____

TELEPHONE: _____ **E-MAIL:** _____

AUTHORIZED SIGNATURE: _____

PRINTED NAME AND TITLE: _____

CORPORATE SEAL (if required)
(Include the signed non-collusive certification and contractor’s acknowledgement, to be found on following pages.)

CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2012 (the "Act"), Chapter 1 of the 2012 Laws of New York, a new provision has been added to State Finance Law (SFL) § 165-a and New York General Municipal Law § 103-g, both effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law) (the "Prohibited Entities List"). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each Bidder/Contractor, any person signing on behalf of any Bidder/Contractor and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the OGS website, that to the best of its knowledge and belief, that each Bidder/Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to SFL § 165-a(3)(b).

Additionally, Bidder/Contractor is advised that once the Prohibited Entities List is posted on the OGS Website, any Bidder/Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a Bidder/Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the County shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor in default.

The County reserves the right to reject any bid or request for assignment for a Bidder/Contractor that appears on the Prohibited Entities List prior to the award of a contract and to pursue a responsibility review with respect to any Bidder/Contractor that is awarded a contract and subsequently appears on the Prohibited Entities List.

I, _____, being duly sworn, deposes and says that he/she is the _____ of the _____ Corporation and that neither the Bidder/Contractor nor any proposed subcontractor is identified on the Prohibited Entities List.

SIGNED

SWORN to before me this _____
day of _____, 20__

Notary Public

NON-COLLUSIVE BIDDING CERTIFICATION

1. By submission of this bid, the undersigned bidder and each person signing on behalf of such 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 the undersigned’s knowledge and belief:

(a) 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;

(b) 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

(c) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

2. The undersigned acknowledges and agrees that a bid shall not be considered for award nor shall any award be made where any of the above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where one or more of the above has/have not been complied with, the bid shall not be considered for award nor shall any award be made unless the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

3. The undersigned also acknowledges and agrees that the fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph 1 above.

4. The undersigned further acknowledges and agrees that any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a bidder which is a corporation or a limited liability company for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in paragraph 1 of this certificate, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation or limited liability company.

Name of Bidder: _____
(print full legal name)

Date Signed: _____ Signature: _____

Name of Person Signing Certificate: _____
(print full legal name of signer)

Bidder is (check one): an individual, a limited liability partnership, a limited liability company,
 other entity (specify): _____

CONTRACTOR'S ACKNOWLEDGEMENT

(If Corporation)

STATE OF NEW YORK) SS:
COUNTY OF ESSEX)

On this _____ day of _____ 20____, before me personally came _____
_____ to me known, and known to me to be the
_____ of the Corporation described in and which executed the within instrument,
who being duly sworn did depose and say that he, the said _____ reside at
_____ and that he is _____ of said
corporation and knows the corporate seal of the said corporation; that the seal affixed to the within
instrument is such corporate seal and that it was so affixed by order of the Board of Directors of said
corporation, and that he signed his name thereto by like order.

Notary Public

CONTRACTOR'S ACKNOWLEDGEMENT

(If Individual)

STATE OF NEW YORK) SS:
COUNTY OF ESSEX)

On this _____ day of _____ 20____, before me personally came
_____ to me known, and known to me to be
the same person described in and who executed the within instrument and he duly acknowledged to
me that he executed the same for the purpose herein mentioned and, if operating under and trade
name, that the certificate required by the New York State Penal Law, Sections 440 and 440-b has been
filed with the County Clerk of Essex County.

Notary Public

CONTRACTOR'S ACKNOWLEDGEMENT

(If Co-Partnership)

STATE OF NEW YORK) SS:
COUNTY OF ESSEX)

On this _____ day of _____ 20____, before me personally came
_____ to me known, and known to me to be a member of the
firm of and the person described in, and who executed the within instrument in behalf of said firm for
the purposes herein mentioned and that the certificate required by the New York State Penal Law,
Sections 440 and 440-b has been filed with the County Clerk of Essex County.

Notary Public

APPENDIX C

INSURANCE REQUIREMENTS - TIMBER SALE

I. The Contractor and each of its subcontractors shall procure and maintain during the entire term of the contract the following required insurance:

→ **Commercial General Liability Insurance**

\$1,000,000 per occurrence/ \$2,000,000 aggregate, including coverage for liability assumed by contract, completed operations, explosion, collapse, underground hazard and products liability.

→ **Automobile Liability**

\$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.

→ **Workers' Compensation**

Statutory Workers' Compensation and Employers' Liability Insurance for all employees.

→ **Excess/Umbrella Liability Insurance**

\$1,000,000 per occurrence / \$2,000,000 aggregate.

II. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Contractor hereby agrees to name the County as:

→ an additional insured on the Contractor's Commercial General Liability, Automobile Liability and Excess/Umbrella Liability insurance policies.

III. The policy/policies of insurance furnished by the Contractor shall:

- be from an A.M. Best rated "A" New York State licensed insurer; and
- contain a 30-day notice of cancellation

IV. The Contractor agrees to indemnify the County for any applicable deductibles.

V. Contractor acknowledges that failure to obtain such insurance on behalf of the County constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the County. Prior to commencement of work or use of facilities, the Contractor shall provide to the County proof that such requirements have been met by furnishing certificate(s) of such insurance, and the declarations pages from the policies of such insurance. The failure of the County to object to the contents of the certificate(s) and/or declarations pages, or the absence of same, shall not be deemed a waiver of any and all rights held by the County.

VI. All certificates of insurance will provide 30 days notice to the county of cancellation or non-renewal.

VII. Contractor and subcontractor waives all rights of subrogation against the owner and will have the General Liability, Umbrella Liability Workers' Compensation policies endorsed setting forth this Waiver of Subrogation.

VIII. All policies will also contain no exclusions with respect to Section 240 and 241 of the NYS Labor Law.

IX. The County shall be listed as an additional insured on a primary and non-contributory basis.

APPENDIX D
General Provisions

1. APPLICABILITY The terms and conditions set forth herein are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the Office of the Essex County Purchasing Agent where incorporated by reference in its Bid Documents. The provisions herein shall govern such procurement or contract unless expressly modified or amended by the terms of a Bid Specifications, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. GOVERNING LAW The laws of the State of New York shall govern and apply to the procurement, any resulting contract and for determinations in a court of competent jurisdiction in New York of any and all disputes, litigation or interpretations arising from or connected with the procurement or contract, except where expressly superseded in a specific contract letting or where the Federal supremacy clause requires otherwise. These specifications are modeled after and upon the specifications developed and used by the New York State Office of General Services for procurements by New York State.

3. APPENDIX C / INSURANCE The mandatory terms for all Essex County contracts are expressly incorporated herein and in all bid documents and/or resulting contracts, such terms being set forth in Appendix C attached and incorporated herein.

4. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the requirements of the *General Municipal Law*, the *Public Officers Law*, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State and/or municipalities. In signing the bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving Essex County and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

5. CONFLICT OF CLAUSES Conflicts between procurement or contract documents shall be resolved in the following order of precedence:

(a) **Appendix A** (*Standard Clauses for Essex County Contracts*)

(b) **Contract/Clarification Documents** Writing(s) setting forth the final agreements, clarifications, terms, statement of work and/or modifications between the Bid Documents and Contractors Bid or Mini-bid.

(c) **Bid Documents** - Bid Specifications prepared by Essex County

(d) **Contractors Bid or Proposal**

6. DEFINITIONS

Terms used in this document shall have the following meanings:

AGENCY OR AGENCIES Essex County, New York, acting by or through one or more departments, boards, commissions, offices or institutions of Essex County.

ANCILLARY PRODUCT: Product which is purchased or licensed on a restricted use basis in conjunction with the principal manufacturers Product being acquired (e.g. may be used only in combination, or by educational institutions for research use).

AUTHORIZED USER(S) Agencies, or any other entity authorized by Essex County to participate in Essex County procurement contracts (including but not limited to political subdivisions, public authorities, school districts and public benefit corporations), provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation. The term “Authorized User” shall include “Licensees.”

BID OR BID PROPOSAL An offer or proposal submitted by a Bidder to furnish a described product or a solution or means of achieving a practical end, at a stated price for the stated contract term.

BIDDER and/or BUYER Any individual or other legal entity, (including but not limited to partnership, firm or corporation) which submits a bid in response to a Bid Solicitation. The term Bidder shall also include “offeror” and/or “contractor”.

BID DOCUMENTS Writings setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, e.g. Appendix A (*Standard Clauses for NYS Contracts*), Appendix B, (*General Specifications*). Where these General Specifications are incorporated in negotiated contracts which have not been competitively bid, the term “Bid Documents” shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

BID SOLICITATION The notice or advertisement of an intent to purchase a specified Product by or on behalf of Authorized User(s).

BID SPECIFICATION A written description drafted by Essex County or an authorized user setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where these *General Specifications* are incorporated in negotiated contracts which have not been competitively bid, the term “Bid Specifications” shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

CONTRACT The writing(s) which contain the agreement of the Commissioner and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law.

CONTRACT AWARD NOTIFICATION An announcement to Authorized Users that a contract has been established.

CONTRACTOR/BUYER Any successful Bidder(s) to whom a contract has been awarded by the Purchasing Agent.

COUNTY Essex County, New York.

EMERGENCY An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

GROUP A classification of Product (commodities, services or technology).

INVITATION FOR BIDS (IFB) A type of Bid Document which is most typically used where requirements can be stated and award will be made to the lowest responsive bid submitted by the most responsible Bidder(s).

LATE BID For purposes of bid openings held and conducted by the Essex County Purchasing Agent, a bid not received in such place as may be designated on the Bid Specifications or in the Office of the Essex County Purchasing Agent, at or before the date and time established in the Bid Specifications for the bid opening.

LETTER OF ACCEPTANCE A letter to the successful Bidder(s) indicating acceptance of its bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a contract but is not an order for Product, and Contractor should not take any action with respect to actual contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

MULTIPLE AWARD A determination and award of a contract in the discretion of the Purchasing Agent to more than one responsive and responsible Bidder who meets the requirements of a specification, where the multiple award is made on the grounds set forth in the Bid Document in order to satisfy multiple factors and needs of Authorized Users (e.g., complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, geographic location or other pertinent factors).

PROCUREMENT RECORD Documentation by the Essex County Purchasing Agent of the decisions made and approach taken during the procurement process.

PRODUCT A deliverable under any Bid or Contract which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

PURCHASE ORDER The County's fiscal form or format which is used when making a purchase.

REQUEST FOR PROPOSALS (RFP) A type of Bid Document which is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value", as defined by the County's Procurement Policy and New York Law.

RESPONSIBLE BIDDER A Bidder that is determined to have skill, judgment and integrity, and that is found to be competent, reliable, experienced and qualified financially, as determined by the Purchasing Agent.

RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the Purchasing Agent.

SINGLE SOURCE A procurement where two or more offerors can supply the required Product, and the Purchasing Agent may award the contract to one Bidder over the other.

Bid Submission

7. BID LANGUAGE & CURRENCY All offers (tenders), and all information and Product documentation required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$ US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

8. BID OPENING Bids may, as applicable, be opened publicly. The Purchasing Agent reserves the right at anytime to postpone or cancel a scheduled bid opening.

9. BID SUBMISSION The submission of a bid will be construed to mean that the bidder is fully

informed as to the extent and character of the supplies, material, or equipment required and a representation that the bidder can furnish the supplies, materials, or equipment satisfactorily in complete compliance with the specifications.

All bids shall comply with the following:

(a) Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their bids to the location set forth in the Bid Specifications prior to the stated bid opening date/time.

(b) A bid return envelope, if provided with the Bid Specifications, should be used with the bid sealed inside. If the bid response does not fit into the envelope, the bid envelope should be taped onto the outside of the sealed box or package with the bid inside. If using a commercial delivery company which requires use of their shipping package or envelope, Bidders sealed bid, labeled as detailed below, should be placed within the shippers sealed envelope to ensure that the bid is not prematurely opened. All bids must have a label on the outside of the package or shipping container outlining the following information:

SEALED BID
ESSEX TIMBER BID

In the event that a Bidder fails to provide such information on the return bid envelope or shipping material, the County reserves the right to open the shipping package or envelope to determine the proper bid number or Product group, and the date and time of bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the bid or the procurement. Notwithstanding the County's right to open a bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the bid not being identified, packaged or labeled in accordance with the foregoing requirements.

10. FACSIMILE SUBMISSIONS Unless specifically authorized by the terms of the Bid Specifications, facsimile bids ARE PROHIBITED AND SHALL NOT BE ACCEPTED.

11. LATE BIDS Any bid received at the specified location after the time specified will be considered a late bid. A late bid shall not be considered for award unless acceptance of the late bid is in the best interests of Essex County and either (a) no timely bids meeting the requirements of the Bid Documents are received, or (b) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of Essex County, shall not excuse late bid submissions. Otherwise, all late bids will not be considered and will be returned unopened to the bidder. The bidder assumes the risk of any delay in the mail or in the handling of the mail by employees of the County. Whether sent by mail or by means of personal delivery, the bidder assumes responsibility for having his bid deposited on time at the place specified.

12. EXTRANEIOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection of the bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) which are attached or referenced with the submission shall not be considered part of the bid, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms which meet all the following requirements will be considered as having been submitted as part of the Bid:

- (a) Each proposed extraneous term (addition, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- (b) The writing must identify the particular specification requirement (if any) which Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- (c) The Bidder shall enumerate the proposed addition, counteroffer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a contract unless the Purchasing Agent expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

13. CONFIDENTIAL / TRADE SECRET MATERIALS Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the *Freedom of Information Law* must request the exemption in writing, setting forth the reasons for the claimed exemption, at the time of submission. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

14. PREVAILING WAGE RATES - Public Works and Building Services Contracts If any portion of work being bid is subject to the prevailing wage rate provisions of Labor Law, the following shall apply:

(a) "Public Works" and "Building Services" – Definitions

i. Public Works *Labor Law* Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a "public works" project (distinguished from public "procurement" or "service" contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the contract. The wage and hours provision applies to any work performed by contractor or subcontractors.

ii. Building Services *Labor Law* Article 9 applies to contracts for building service work over \$1,500 with a public agency, which 1) involve the care or maintenance of an existing building, or 2) involve the transportation of office furniture or equipment to or from such building, or 3) involve the transportation and delivery of fossil fuel to such building, and 4) the principal purpose of which is to furnish services through use of building service employees.

(b) Prevailing Wage Rate Applicable to Bid Submissions A copy of the applicable prevailing wage rates to be paid or provided are attached to this solicitation. Bidders must submit bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Where the Bid Documents require the Bidder to enumerate hourly wage rates in the bid, Bidders may not submit bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. **Bids which fail to comply with this requirement will be disqualified.**

(c) Wage Rate Payments / Changes During Contract Term The wages to be paid under any resulting contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the contract term that apply to the classes of individuals supplied by the contractor on any projects which result from this contract which are subject to the provisions of the *Labor Law*. Contractor is solely liable for and must pay such required prevailing wage adjustments during the contract term as required by law.

(d) Public Posting & Certified Payroll Records In compliance with Article 8, Section 220

of the *Labor Law*, as amended by Chapter 565 of the Laws of 1997:

i. Posting The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

ii. Payroll Records Contractors and sub-contractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and sub-contractors on public works projects must submit monthly payroll transcripts to Essex County which has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For mini-bid solicitations, the payroll records must be submitted to the entity preparing the agency mini-bid project specification. For "agency specific" bids, the payroll records should be submitted to the entity issuing the purchase order. For all other Essex County procurement contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and Essex County, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor so long as: 1) the contractor/subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the contractor or subcontractor attesting to the truth and accuracy of the records accompanies the disk. **This provision does not apply to building services contracts.**

iv. Records Retention Contractors and subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded contract.

(e) Days Labor - Defined for Article 8, Public Works (For Purposes of Article 8 of the Labor Law) No laborer, worker or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do all or part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the Essex County Purchasing Agent for the preservation of the contract site or for the protection of the life and limb of the persons using the contract site.

15. TAXES

(a) Unless otherwise specified in the Bid Specifications or set forth in this clause, the quoted bid price includes all taxes applicable to the transaction.

(b) Purchases made by Essex County and certain non-County Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a County Agency or the invoice forwarded to authorize payment for such items will be sufficient evidence that the sale by the Contractor was made to the County, an exempt organization under Section 1116 (a) (1) of the *Tax Law*. Non-County Authorized Users must offer their own proof of exemption where required. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor. For tax free transactions under the Internal Revenue Code, the Essex County Registration Number is 14 6002889.

(c) Purchases by Authorized Users other than Essex County may be subject to such taxes, and in those instances the tax should be computed based on the bid price and added to the invoice submitted to such entity for payment.

16. EXPENSES PRIOR TO AWARD Essex County is not liable for any costs incurred by a Bidder in the preparation and production of a bid or for any work performed prior to contract award and/or issuance of an approved Purchase Order.

17. ADVERTISING BID RESULTS A Bidder in submitting a bid agrees not to use the results therefrom as a part of any commercial advertising without the prior written approval of the Purchasing Agent. In addition to any other sanctions or remedies available to it in law or equity, the Purchasing Agent may suspend from bidding on its requirements or terminate a contract of any Bidder/Contractor who violates the terms of this clause.

18. SITE INSPECTION Where Bidder is required by the Bid Specifications to deliver or install Product, or to service installed product(s) or equipment, Bidder shall be given an opportunity and shall be required to inspect the site prior to submission of the Bid, including environmental or other conditions or pre-existing deficiencies in the installed product, equipment or environment, which may affect Bidders ability to deliver, install or otherwise provide the required product. All inquiries regarding such conditions may only be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed, and to have included the costs of repair in its bid. Bidder must provide a detailed explanation of work intended to be performed under this clause. Bidder shall be required to remedy any pre-existing deficiencies or conditions at the commencement of the contract term. Reimbursement for the cost of repairing the conditions or deficiencies shall be separately enumerated in the bid.

19. ADDENDA / INTERPRETATION No verbal interpretation of the intent of any of the specifications or other Contract Documents will be made before receipt of bids. Requests for interpretations prior to receipt of bids must be presented, in writing, to the Purchasing Agent, 100 Court Street, P.O. Box 217, Elizabethtown, NY 12932, and to be given consideration must be received by the Purchasing Agent at least seven (7) days prior to the date set for the opening of bids.

Any interpretation, and any additional information or instruction will, if issued, be in the form of a written Addendum or Addenda sent to all holders of Contract Documents at the addresses furnished therefor, at least five (5) days prior to the date of the opening of bids.

Failure of any bidder to receive any Addenda shall not relieve such bidder from any obligation under this bid as submitted. All Addenda so issued shall become a part of the Contract Documents.

Bid Evaluation

20. BID EVALUATION The Purchasing Agent reserves the right to accept or reject any and all bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Purchasing Agent determines the best interests of the County will be served. The Purchasing Agent, in his/her sole discretion, may accept or reject illegible, incomplete or vague bids and his/her decision shall be final. A conditional or revocable bid which clearly communicates the terms or limitations of acceptance may be considered and contract award may be made in compliance with the Bidders conditional or revocable terms in the offer.

Where a bidder is requested to submit a bid on individual items and/or on a total sum or sums, the right is reserved to award bids on individual items or on total sums. The County reserves the right to award in whole or in part based on the lowest responsible bid.

The following three items will automatically render a bid unacceptable to Essex County:

- a. Failure to sign bid proposal page.
- b. Failure to include necessary bid deposit (as required).
- c. Failure to sign and submit non-collusive bidding certificate.

It shall be fully understood that any deviations from the inclusion of the above items will be grounds to see the bid as non-compliant and will not be considered for award.

The Purchasing Agent reserves the right to reject such bids, as in his/her opinion, are incomplete, conditional, obscure, or which contain irregularities of any kind including unbalanced bids. One in which the amount bid for one or more separate items is substantially out of line with the current market prices for the materials and/or work covered thereby.

21. CONDITIONAL BID Unless the Bid Specifications provides otherwise, a bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.

22. CLARIFICATIONS / REVISIONS Prior to award, the Purchasing Agent reserves the right to seek clarifications, request bid revisions, or to request any information deemed necessary for proper evaluation of bids from all Bidders deemed to be eligible for contract award. Failure to provide requested information may result in rejection of the bid.

23. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent bids as to pricing or other factors, the decision of the Purchasing Agent to award a contract to one or more of such Bidders shall be final.

24. PERFORMANCE QUALIFICATIONS The Purchasing Agent reserves the right to investigate or inspect at any time whether or not the Product, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Documents. Contractor shall at all times during the contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Purchasing Agent, to present evidence of experience, ability and financial standing, as well as a statement as to plant, machinery and capacity of the manufacturer for the production, distribution and servicing of the Product bid. If the Purchasing Agent determines that the conditions and terms of the Bid Documents or Contract are not complied with, or that items or Product proposed to be furnished do not meet the specified requirements, or that the qualifications, financial standing or facilities are not satisfactory, or that performance is untimely, the Purchasing Agent may reject such bid or terminate the contract. Nothing in the foregoing shall mean or imply that it is obligatory upon the Purchasing Agent to make an investigation either before or after award of a contract, but should such investigation be made, it in no way relieves the Bidder/Contractor from fulfilling all requirements and conditions of the contract.

25. DISQUALIFICATION FOR PAST PERFORMANCE Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidders employment, has previously failed to perform satisfactorily in connection with public bidding or contracts.

26. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of bids may be submitted under the *Freedom of Information Law*. Information, other than the Bid Tabulation, shall be released as required by law after contract award. Written requests should be directed to the Purchasing Agent.

27. TIME FRAME FOR OFFERS The Purchasing Agent reserves the right to make awards within sixty

(60) days after the date of the bid opening, during which period, bids must remain firm and cannot be withdrawn. If, however, an award is not made within the sixty (60) day period, bids shall remain firm until such later time as either a contract is awarded or the Bidder delivers to the Purchasing Agent written notice of the withdrawal of its bid. Any bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Purchasing Agent, be accepted or rejected.

TERMS & CONDITIONS

28. CONTRACT CREATION / EXECUTION Except as may be otherwise provided by law or by the Purchasing Agent, upon receipt of all required approvals a Contract shall be deemed executed and created with the successful Bidder(s) upon the Purchasing Agent's mailing or electronic communication to the address on the bid of (a) a Letter of Acceptance and (b) a fully executed contract, or (c) a Purchase Order authorized by the Purchasing Agent.

29. COMPLIANCE WITH LAWS, ETC. The Bidder shall comply with all the provisions of the laws of the State of New York and of the United States of America which affect municipalities and municipal contracts, and any and all State and Federal rules and regulation, and of amendments and additions thereto, insofar as the same shall be applicable to any contract awarded hereunder with the same force and effect as if set forth at length herein. The Bidder's special attention is called to the following laws: *General Municipal Law* Section 1 03-d, *State Finance Law* Section 167-b prohibiting the purchase of tropical hardwood products, and the New York State Public Employee Safety & Health Act of 1980.

30. MODIFICATION OF TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Purchasing Agent and Contractor.

31. SCOPE CHANGES The Purchasing Agent reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the contract specifications, such changes to be within the general scope of the contract. The Purchasing Agent may make an equitable adjustment in the contract price or delivery date if the change affects the cost or time of performance.

With respect to any specific quantity stated in the contract, the Purchasing Agent reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the contract. Notwithstanding the foregoing, the Purchasing Agent may purchase greater or lesser percentages of contract quantities should the Purchasing Agent and Contractor so agree.

32. EMPLOYEES / SUBCONTRACTORS / AGENTS All employees, subcontractors or agents performing work under the contract must be trained technicians who meet or exceed the technical and training qualifications set forth in the Bid Specifications or the Bid, whichever is greater, and must comply with all rules and requirements of the Contract. The Purchasing Agent reserves the right to conduct a security background check or otherwise approve any employee or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause, including but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized Users security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the contract terms. The Purchasing Agent reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.

33. ASSIGNMENT / SUBCONTRACTORS The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract, other than the assignment of the right to receive moneys due, without the prior written consent of Essex County. Prior to an assignment of the right to receive moneys becoming effective, Contractor shall file a written notice of such assignment simultaneously with Essex County and participating Authorized User(s).

The Purchasing Agent reserves the right to reject any proposed subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed transferee is on the Department of Labor's list of companies with which New York State cannot do business; the Purchasing Agent determines that the company is not qualified; unsatisfactory contract performance or service has been previously provided; or attempts were not made to solicit minority and women's business enterprises (M/WBE) bidders for the subcontract.

34. PERFORMANCE / BID BOND Essex County reserves the right to require the Bidder/Contractor to furnish without additional cost, a performance, payment or bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the contract, whenever the Purchasing Agent in his/her sole discretion deems such bond or security to be in Essex County's best interest. Where required, such bond or other security shall be in the form prescribed by the Purchasing Agent.

35. STOP / SUSPENSION OF WORK

(a) Stop Work Order The Purchasing Agent reserves the right to stop the work covered by this contract at any time that the successful Contractor becomes unable or incapable of performing the work or meeting any requirements or qualifications set forth in the contract. In the event of such stopping, the Purchasing Agent shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Contractor shall be liable for any such cost on account thereof.

(b) Suspension of Work Order The Purchasing Agent, in his/her sole discretion, reserves the right to suspend any or all activities under this contract, at anytime, in the best interests of the State or Issuing Entity. In the event of such suspension, the contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on County spending, declaration of emergency, or other such circumstances. Upon issuance of such suspension of work, the Contractor is not to accept any purchase orders, as specified in the Suspension Order. Activity may resume at such time as the Purchasing Agent issues a formal written notice authorizing a resumption of work.

36. CANCELLATION A contract may be canceled by the Purchasing Agent, and/or an Authorized User may cancel its participation, license or service order under the contract, at the Contractors expense upon non-performance, or upon a determination that Contractor is non-responsive, or non-responsible.

37. FORCE MAJEURE The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor negligence of the Contractor, its officers, employees or agents contributed to such delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires or floods, or other similar cause beyond the control of the Contractor, or for any of the foregoing which affect subcontractors or suppliers and no alternate source of supply is available to the Contractor. In such event, Contractor shall notify the Purchasing Agent, by certified or registered mail, of the delay or potential delay and the cause(s) thereof either (a) within ten (10) calendar days after the cause which creates or will create the delay first arose if the Contractor could reasonably foresee that a delay could occur by reason thereof, or (b), if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe a delay could result. The foregoing shall constitute the Contractors sole remedy or excuse with respect to such delay. In the event performance is suspended or delayed, in whole or in part, by reason of any of the aforesaid causes or occurrences and proper notification is given the Purchasing Agent, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Purchasing Agent that the delay will significantly impair the value of the contract to the County or to Authorized Users, whereupon the Purchasing Agent may:

(a) Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to County Agencies with respect to Product subjected to allocation; and/or

(b) Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the contract quantity; or

(c) Terminate the contract or the portion thereof which is subject to delivery delays, and thereby discharge any unexecuted portion of the contract or the relative part thereof.

38. REMEDIES FOR BREACH It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted

by law:

(a) Cover / Substitute Performance Upon the failure of the Contractor to properly perform within the time specified, failure to provide acceptable service, or upon the revocation of the Contract by the Purchasing Agent for cause, or upon repudiation of the contract by the Contractor, the Purchasing Agent may, with or without formally bidding same:

(b) Withhold Payment In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Purchasing Agent. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

(c) Reimbursement of Costs Incurred The Contractor agrees to reimburse the County and/or Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the County or Authorized User in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the contract, the Purchasing Agent may authorize an ordering Authorized User to rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction.

(d) Deduction / Credit Sums due as a result of these remedies may be deducted or offset by the County or Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the County or Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Purchasing Agent reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc. which arise from the administration of the contract.

39. ASSIGNMENT OF CLAIM Contractor hereby assigns to the County any and all its claims for overcharges associated with this contract which may arise under the antitrust laws of the United States, 15 U.S.C. Section 1, *et seq.* and the antitrust laws of the State of New York, *General Business Law* Section 340, *et seq.*

40. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance as defined by Section 875 of the *Labor Law*, shall provide such Authorized User with not less than two copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the *Labor Law*.

Before any chemical product is used or applied on or in any building, a copy of the product label and

Material Safety Data Sheet must be provided to and approved by the user agency representative.

41. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the County or Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this contract, to maintain at Contractors expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including workers compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

42. SECURITY / CONFIDENTIALITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the County and any Authorized User(s) in performance of the Contract.

Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the County or any Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such confidential material which is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the County or Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State Laws and Regulations. This warranty shall survive termination of this Contract for a period of five (5) years. Contractor further agrees to take appropriate steps to instruct its personnel, agents, officers and any subcontractors regarding the obligations arising under this clause to insure such confidentiality.

43. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party agents, including but not limited to subcontractors of the Authorized User, relating to delivery of product or coordination of services.

44. CONTRACT TERM - EXTENSION In addition to any stated renewal periods in the Contract, any contract or unit portion thereof let by the Purchasing Agent may be extended by the Purchasing Agent for an additional period(s) of up to one year (cumulatively) with the written concurrence of the Contractor.

45. WARRANTIES & GUARANTEES Contractor hereby warrants and guarantees:

(a) To fully defend, indemnify and save harmless the County, Authorized Users and their respective officers, agents and employees from suits, actions, damages and costs of every name and description arising out of the acts or omissions of Contractor, its officers, employees,

subcontractors, partners, or agents, in any performance under this contract including: i) personal injury, damage to real or personal tangible or intangible property, without limitation; ii) negligence, either active or passive, without limitation, or iii) infringement of any law or of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or other third party intellectual proprietary rights, without limitation, provided that the County or Authorized User shall give Contractor: (a) prompt written notice of any action, claim or threat of infringement suit, or other suit, promptness of which shall be established by Authorized User upon the furnishing of written notice and verified receipt, (b) the opportunity to take over, settle or defend such action, claim or suit at Bidders sole expense, and (c) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the County or Authorized User may require Bidder/Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Purchasing Agent shall require.

(b) To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the contract.

(c) Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Purchasing Agent that it meets or exceeds all requirements of the bid and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by the Purchasing Agent. Failure to do so may constitute grounds for the County to cancel or suspend this contract, in whole or in part, or to take any other action deemed necessary by the Purchasing Agent.

The Contractor further warrants and guarantees:

ii. To furnish adequate protection from damage for all work and repair damages of any kind for which he or his workmen are responsible, to the building or equipment, to his own work, or to the work of other successful bidders.

iii. To carry adequate insurance to protect the County from loss in case of accident, fire, theft, etc.