

REQUEST FOR PROPOSALS

NOTICE IS HEREBY GIVEN; that the Undersigned, on behalf of the Essex County Board of Supervisors, will accept sealed proposals until April 17th at 2:00 P.M. for Internet Auction Services.

Specifications are available by contacting the Office of the Purchasing Agent, Linda M. Wolf, Essex County Government Center, Elizabethtown, New York 12932 or by calling 518-873-3330. Specifications are also available on the Essex County Website at www.co.essex.ny.us.

Sealed proposals will be received at the Office of the Purchasing Agent, Essex County Government Center, 7551 Court Street, Elizabethtown, New York 12932 until April 17th at 2:00 P.M. All proposals submitted in response to this notice shall be marked "SEALED PROPOSAL—Internet Auction Services" clearly on the outside of the envelope.

In addition to the proposal, the proposer shall submit executed non-collusion bid certificates signed by the proposer or one of its officers as required by the General Municipal Law Sec. 103d.

The successful proposer will be notified promptly by letter and must be prepared to enter into a contract to furnish the materials or services.

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

PLEASE TAKE FURTHER NOTICE that Essex County affirmatively states that in regard to any contract entered into pursuant to this notice, 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.

Dated: March 30, 2009

Linda M. Wolf, CPA
Purchasing Agent
Essex County Government Center
Elizabethtown, New York 12932
(518) 873-3330

A. General Information

The purpose of this RFP is to County of Essex is requesting proposals from qualified auctioneers to provide Web Based Auctioneering Services for the County. The successful proposer will be requested to provide professional auctioneer services and conduct the on-line auctions in accordance with all Federal and State laws, rules and regulations as well as have all necessary licenses, permits, and certificates.

The County intends for the web based auction service to be used primarily for disposal of surplus property and seized and unclaimed vehicles and property, including real property. The County does not intend to use this service for Tax Sale Properties. All listed property should be sold to the highest bidder "as-is, where-is", with no warranty expressed, implied or otherwise, and with the County retaining the right to reject any bids they feel are not in the best interest of the County. Sold items are the responsibility of the highest bidder to pick up at the county or pay for shipping/delivery charges.

Personnel qualifications and experience should be detailed as part of the technical Proposal. Include resumes for all personnel and subcontractors to be assigned to this project.

Proposal submissions must be received no later than April 17th at 2:00 P.M. and should be submitted to:

**Linda M. Wolf, CPA
Purchasing Agent
7551 Court Street
Essex County Government Center
Elizabethtown, New York 12932**

Three (3) copies of each proposal must be received in a sealed package with the designation "SEALED PROPOSAL – Online Auctioneer Services" conspicuously marked on the outer envelope. All proposals will be opened and logged in on the above stated date and time. All proposals submitted will be a matter of public record.

During the evaluation process, the County reserves the right, where it may

serve the County's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions.

Essex County will not be liable for any costs incurred by firms associated with the development or delivery of proposals.

Any questions concerning this Request for Proposals should be directed to Linda M. Wolf, Purchasing Agent at (518) 873-3330.

B. Term of Engagement

The contract term will cover the fiscal year ending December 31, 2009 with the option to extend the contract for an additional year. The County reserves the right to terminate the agreement at any time through the initial term (or thereafter) with appropriate notice to the vendor.

C. Scope of Work to be Performed

A web-based auction is to be conducted in a highly professional manner in an atmosphere conducive for a successful auction and the highest obtainable sales. The vendor and his staff shall ensure that good public relations are exhibited and maintained prior to, during and after the auction. Essex County desires the most thoroughly engineered and acceptable system service. The following section outlines the minimum requirements of the proposed service. They are provided to assist proposers in understanding the objectives of the County and submitting a thorough response. The successful proposer shall:

1. Be experienced at auctioning of public auctions, including sale of motor vehicles and real estate and have considerable knowledge of the advertising media and prospective markets and must have a minimum of five (5) years of municipal experience. Provide a copy of taxpayer identification number.
2. Website operation: The proposer must document at least three years of commercially viable experience in website operation of online auctioning services. Such experience shall include incorporation of digital photography into the advertisements for individual items put up for auction, maintenance of complete and accurate records of the bidding for each of the auction items, the chronology of the bidding for each of the auction

items. The proposer must also document the successful development, installation and maintenance of adequate information systems on its website(s) to guide prospective bidders through the entire survey, bidding, award of bid, payment, delivery and general information requirements of prospective bidders as well as a customer service function for the benefit of bidders. The proposer must also document its capability to include information modules on its website for the county to track status of items transferred to proposer for Online Auction Sale.

3. Property inventory system: The proposer must document its capability to develop, operate and maintain a property inventory system which will track all auction items from designation by County of availability for auction, transfer to proposer, processing for auction offering, secure storage during auction process and collection of funds for purchase and confirmation of receipt of goods. Experience has show that significant value can be added by grouping or ungrouping auction items for maximum selling price. Proposer should clearly describe how such grouping and ungrouping will be accomplished and how the accounting for the resulting sale units will be reconciled back to the original County listing of property available for auction. Proposer's inventory system must be able to reconcile each and every item transferred from County to proposer from initial transfer to confirmation for receipt by winning bidder and also reconcile with statements to County of distribution of distribution of proceeds from sales. The auctioneer shall keep all records of sale of surplus property/real estate under this agreement for not less than six years. Duly authorized, the County of Essex representatives shall have access to the auctioneer's records on five working days notice, for the purposes of examination and/or audit.

ror The Contractor shall be required to document all items for auction on site to include taking pictures, documenting vehicle and equipment conditions, and gather any other information required to place the items on line.

4. Bidder billing and collection system: The proposer must document its capability to develop, operate and maintain a bidder billing and collection system which will track financial information on all auction items from award of winning bid, receipt of credit card payment, and confirmation of receipt by purchaser.

5. Auction accounting system: The proposer must document its capability

to accurately document receipt of all property received from the County, the prices for each winning bid, billing to the winning bidders, receipt of funds from the winning bidders, confirmation of receipt by the winning bidders and reconciliation of each of these transactions against each item made available by the County.

6. Bidder customer service system: The proposer must document its structure and procedures for handling customer service matters such as return requests, credit card payment disputes, delivery carrier problems and claims by individuals that items offered at auction are their rightfully owned property.

7. Payment submission system: The proposer selected to become the contractor to the County for the online auctioning of unclaimed excess property will be required to provide a report for each sale accompanied by a check for payment of sale proceeds due to County for all sales. This statement must include the information cited in the auction accounting system section above and clearly delineate the contractor and County allocation of the proceeds for the sale of each item sold and reconcile with the amount of each payment.

8. Credit card reconciliation system: The proposer must document its system for reconciling its receipts from credit card companies against all sales of items auctioned on behalf of the County during that sale. Further, these records must be available for County inspection at all times.

9. The contractor will evaluate and test items obtained from the County. In addition, at the discretion of the contractor, some items will be further evaluated by experts in the related field at which time they are appraised and given an approximated value. The contractor must be able to demonstrate a successful history of providing value-added services which increase the selling price of property in similar circumstances for similar government agencies.

10. The on-line auction format will be similar to established current on-line auctions (i.e., E-Bay) with familiar prompts and navigation for easy access to auction items. Contractor must indicate whether the contractor's own website will be used or whether a shared website will be used. If a shared website will be used, the contractor should indicate how contractor will control the mix of total goods available for sale so that "price erosion",

caused by listing too many similar items, is avoided.

11. The contractor will be responsible for determining all aspects of the auction listing, including auction length, opening bid and timing.

12. The contractor shall pre-qualify and register all bidders so that bid manipulation and shill-bidding are eliminated. Also, contractor shall indicate what, if any, fraud detection and prevention features will be provided.

13. Contractor shall use its best efforts in auctioning and selling the property on the Web. Contractor shall sell all property "as is" without any liability to the County, including but not limited to, any warranties of title. The auctioneer shall not misrepresent the condition of any County property to a prospective buyer and shall clearly state in all notices of sale and advertisements that the items are sold "as is, where is" without warranty express or implied. Further the auctioneer agrees to indemnify the County of Essex against any claims or lawsuits arising out of such sale. Contractor shall be solely responsible for identifying and resolving sales and tax collection issues arising from property sales, including the necessity of charging and collecting such taxes.

14. The County reserves the right to add and delete items up the day the sale begins.

15. Contractor shall additionally provide step by step information on how they would conduct a real estate auction to include providing a fee schedule with all associated fees.

16. Provide a detailed marketing schedule for your planned advertising including specifics like "what?", "how?" and "when?".

PROPOSAL REQUIREMENTS

A. General Requirements

1. **Inquiries** — Inquiries concerning the request for proposals and the subject of the request for proposals must be made to:

Linda M. Wolf, CPA
7551 Court Street, P.O. Box 217
Elizabethtown NY 12932
518-873-3330

2. **Time and Acceptance** - Each proposal must state that it is a firm proposal that may be accepted within a period of sixty (60) days. Although the contract is expected to be awarded prior to that time, the sixty (60) day period is requested in order to allow for unforeseen delay.

3. **Safeguarding of “Confidential” Information** — Any trade secrets or other data which the proposer does not wish disclosed to other than County personnel involved in the evaluation or contract administration will be kept confidential if identified as follows: Each page shall be identified in boldface at the top and bottom as “Confidential”; and any section of the proposal, which is to remain confidential, should, in addition, be so marked in boldface on the title page of that section. Net cost information may not be deemed confidential.

4. **Cost for proposal preparation** — Any costs incurred by a proposer in preparing or submitting proposals are the proposer’s sole responsibility. The County will not reimburse any proposer for any costs incurred prior to award.

5. **Declination to Submit Proposal** — Any organization which receives a copy of this RFP but which declines to submit a proposal is requested to notify the County by phone or in writing of such declination.

6. **Exceptions** — Any exceptions to terms, conditions, or other requirements in any part of the RFP must be clearly pointed out in a distinct section of the appropriate cost proposal or technical proposal. Otherwise, the County will consider that all items proposed are in strict

compliance with the RFP, and the successful proposer will be responsible for compliance.

7. Advertising — In submitting its proposal, the proposer agrees not to use the results there from as a part of any news release or commercial advertising without written approval of the County.

8. Confidentiality of Proposals — In submitting a proposal, the proposer agrees not to discuss or otherwise reveal his technical or cost information to any other sources, government or private, until after the award of the contract. Proposers not in compliance with this provision may be disqualified, at the option of the County, from contract award. Only discussions authorized by the County are exempt from this provision.

9. Right to Submitted Materials — All responses, inquiries, or correspondence relating to or in reference to this RFP, and all other reports, charts, display, schedules, exhibits and other documentation submitted by the proposers, will become the property of the County when received.

10. Legal Compliance — Under penalty of perjury, the signer of any proposal submitted in response to this RFP thereby certifies that this proposal has not been arrived at collusively nor otherwise in violation of any Federal or State laws, rules or regulations.

11. Proposer's Representatives- Proposers shall submit the name, address, and telephone number of the person(s) with the authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.

12. Submission of Proposals - The following material is required to be received by April 17th at 2:00 PM for a proposing firm to be considered:

- a. Three (3) copies of the "Technical" proposal to include the following:
 - (i) *Title Page* - Title page showing the request for proposals subject; the firm's name; the name, address, and telephone number of the contract person; and the date of the

proposal.

- (ii) *Table of Contents*
 - (iii) *Transmittal Letter*— A signed letter of transmittal briefly stating the proposer’s understanding of the work to be done, the commitment to perform the work within the time period, a statement why the firm believes itself to be best qualified to perform the engagement, and a statement that the proposal is a firm and irrevocable offer.
 - (iv) *Detailed Proposal*— *The detailed proposal should follow the order set forth in Section B (Technical Proposal) of this request for proposals.*
- b. The proposer should send three (3) copies of its “Cost” proposal. Such proposal should contain the estimated dollar cost for the equipment listed in the specification section of the proposal and installation fees and as set forth in Section C (Sealed Dollar Cost Bid) of this request for proposals.
 - c. Proposer’s should send the completed “Technical” and “Cost” proposals under separate cover to the following address:

Linda M Wolf, CPA
Essex County Purchasing
7551 Court Street, P.O. Box 217
Elizabethtown, NY 12932

B. Technical Proposal

1. General Requirements -The purpose of the proposal is to demonstrate the qualifications, competence and capacity of the proposers in conformity with the requirements of this request for proposals. As such, the substance of proposals will carry more weight than their form or manner of presentation. The proposal should demonstrate the qualifications of the company. It should also specify a project approach that will meet the request for proposals requirements.

The proposal should address all the points outlined in the request for

proposals. The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the request for proposals. While additional data may be presented, the following subjects, item Nos. 2 through 5, must be included. They represent the criteria against which the proposal will be evaluated.

2. **Company Overview & Qualifications** — The proposer should have extensive experience on projects similar to that proposed. List memberships such as NAA.
3. **Prior Projects with the County** List separately all projects within the last three (3) years for the County by type of engagement. Indicate the scope of work, date and the name and telephone number of the principal client contact.
4. **Similar Projects With Other Entities** List the most significant engagements (minimum-3) performed in the last five (5) years that are similar to the project described in this request for proposal. Indicate the scope of the project, date and the name and telephone number of the principal client contact.
5. **Deliverables** -The proposal should include description and samples of the types of reports used to summarize and provide detailed information on vulnerabilities and the necessary counter measures and recommended corrective actions.

NO DOLLARS SHOULD BE INCLUDED IN THE TECHNICAL PROPOSAL

C. Cost Proposal

**AUCTIONEER SERVICE
FEE SCHEDULE**

BUYERS PREMIUM FEE _____

DECLINED BID FEE _____

SET-UP FEE (if charged) _____

ADVERTISING FEE
(if charged for each on-line auction) _____

TOWING WITHIN COUNTY LIMITS
FLAT FEE PER VEHICLE (if charged) _____

LOW BOY HAULING WITHIN COUNTY LIMITS
FLAT FEE PER VEHICLE (if charged) _____

LISTING FEE PER ITEM _____

LIST ANY ADDITIONAL FEES NOT LISTED ABOVE

EVALUATION PROCEDURES

A. Review of Proposals

The Selection Committee will review qualifications of the proposals. Companies with unacceptably low technical qualifications will be eliminated from further consideration.

After the qualifications for each firm has been established, the dollar cost bid will be examined.

The County reserves the rights to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected.

B. Evaluation Criteria

Proposals will be evaluated using three sets of criteria. Firms meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria that will be considered during the evaluation process.

1. **Mandatory Elements**

- The professional auctioneer is a member of the National Auctioneers Association (NAA) and the NYS Auctioneers Association (NYSAA).
- The firm adheres to the instructions in this request for proposal on preparing and submitting the proposal.

2. **Firm's Experience and Background:**

- The Organization has completed work of a similar type 10
- Qualifications of individuals 10
- The Firm has the ability to perform the necessary range of services in the time requested and in compliance with our specifications. 10
- Sensitivity and responsiveness to County needs and issues including past

experience with the County 10

3. Proposer's Services.

- Online live simultaneous bidding in real time 10
- Silent online auction similar to E-Bay. 10
- Advertising database and plan 5
- Accounting System and payment processing system. 5
- Internet Bidders Registration Package. 5

4. Price 25

Cost will not be the primary factor in the selection process.

The proposed price will be graded based upon the following formula

$$\frac{\text{Average Bid}}{\text{Your Bid}} = \% \text{ (not to exceed 100\%)}$$

$$\% \times 25 = \text{points earned}$$

Maximum Points 100

C. Oral Presentations

During the evaluation process, the Selection Committee at their discretion, may request any one or all firms to make oral presentations. Such presentations will provide firms with an opportunity to answer any questions that the Committee may have on a firm's proposal. Not all firms may be asked to make such oral presentations.

D. Right to Reject Proposals

Submission of a Proposal indicates acceptance by the firm of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the County and the firm selected.

The County reserves the right without prejudice to reject any or all proposals.

APPENDIX C
INSURANCE REQUIREMENTS - PROFESSIONAL SERVICE PROVIDERS

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

- = **Workers' Compensation**
Statutory Workers' Compensation and Employers' Liability Insurance for all employees, *except that in the event the Contractor has no employees and is exempt by law from having such insurance coverage the Contractor may provide an exemption statement.*
- = **Professional Liability Insurance**
\$1,000,000 per occurrence / \$2,000,000 aggregate for the negligent or wrongful professional acts of the Contractor.
- = **Commercial General 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 (except as to workers' compensation insurance coverage) to either effectuate

- (a) the naming of the County as an "additional insured as funding source for contract services" on the contractor's insurance policies, or
- (b) the inclusion of a contractual liability endorsement covering the Contractor's contract with the County.

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

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

IV. In the event that the Contractor is unable to furnish professional liability insurance other than on a "claims made" basis, the Contractor shall procure and maintain a separate "tail" policy of such insurance providing the required coverage, or furnish proof of continuous coverage under the existing policy, for a period of one year and ninety days following the termination date of this contract.

V. The contractor agrees to indemnify the County for any applicable deductibles.

VI. 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 the 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.

APPENDIX D - STANDARD CLAUSES FOR ESSEX COUNTY CONTRACTS

1. Independent Contractor Status

The parties each acknowledge, covenant and agree that the relationship of the Contractor to the County shall be that of an independent contractor. The Contractor, 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 County; and
- (c) will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the County, including but not limited to workers' compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.

2. Contractor To Comply With Laws/Regulations

The Contractor shall at all times comply with all applicable state and federal laws, rules and regulations governing the performance and rendition of the services to be furnished under this agreement.

3. Licenses, Permits, Etc.

The Contractor 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 services to be furnished by the Contractor under this agreement.

4. Termination

This agreement may be terminated without cause by either party upon 30 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 County:

- (a) for the Contractor's breach of this agreement, by serving written notice of such termination stating the nature of the breach upon the Contractor by personal delivery or by 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 discontinuance 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 neither 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.

5. **Defense & Indemnification**

The Contractor shall defend, indemnify and hold harmless the County to the fullest extent allowed by law from and against any and all liability, suits, judgments, 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 Contractor's negligence and/or its performance or failure to perform this agreement

6. **Discrimination Prohibited**

The services to be furnished and rendered under this agreement by the Contractor 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.

7. **Non-Discrimination In Employment**

The Contractor will 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 Contractor 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.

The Contractor agrees to be subject to fines of \$50.00 per person per day for any violation of this paragraph, as well as to possible termination of this contract or forfeiture of all moneys due hereunder for a second or subsequent violation.

8. **Damage/Injury To Persons & Property**

The Contractor shall promptly advise the County of all damages to property of the County or of others, or of injuries incurred by persons other than employees of the Contractor, in any manner relating, either directly or indirectly, to the performance of this agreement.

9. **Records**

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter collectively "the Records") 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 Contractor within the State of New York, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

The County shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate 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 County's right to discovery in any pending or future litigation.

10. **Claims For Payment**

All invoices or claims for which payment is sought from the County must be submitted in accordance with the following:

- (a) each claim for payment must include
 - (1) an invoice detailing the claim,
 - (2) copies of all documentation supporting the claim,
 - (3) a properly completed County standard voucher, which includes
 - (i) the County contract number under which payment is being claimed, **AND**
 - (ii) the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. *[Failure to include this number or numbers will prevent and preclude payment by the County; except that where the payee does not have such number or numbers, the payee, on the invoice or County voucher, must give the reason or reasons why the payee does not have such number or numbers and such reasons constitute a valid excuse under law.]*
- (b) Unless otherwise provided in this agreement, each claim for payment must be submitted to the County no later than 30 days after the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (c) Notwithstanding any other provision of this agreement, no claim for payment shall be valid, and the County shall not be liable for payment thereof, unless it is submitted to the County within 30 days of the close of the calendar year in which the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (d) Unless otherwise provided in this agreement, the requirements of this paragraph 10, and/or of any other provisions of this agreement which supersede the same, shall constitute conditions precedent to the County's payment obligation, and failure to comply with any or all of said requirements shall entitle the County to deny payment.

11. **Consent**

In the event that State or Federal law requires the recipient of services to be furnished and rendered under this agreement to give his/her prior consent thereto, the contractor shall obtain such person's consent and furnish proof thereof to the County.

12. **Executory Clause**

The County shall have no liability under this contract to the Contractor or to anyone else beyond the funds appropriated and available for this contract.

13. **Public Work & Building Service Contract Requirements**

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof:

- (a) neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department; and
- (b) the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

14. **Public Work Contracts – Hazardous Substances**

If this is a contract for public work, the Contractor agrees as follows:

- (a) the Contractor acknowledges that the County uses and/or produces various substances which may be classified as hazardous under OSHA's Hazard Communication Standard;
- (b) the Contractor recognizes the use of said substances by the County and acknowledges that the County has provided, or upon request will provide, the Contractor with a description of such substances which may be present in the area of the County's facility/facilities to which the Contractor may have accessed during the performance of this contract;
- (c) the Contractor acknowledges that the County has provided, or upon request will provide, suggestions for appropriate protective measures which should be observed when the Contractor is in the area of any such hazardous substances;
- (d) the Contractor agrees to be solely responsible for providing training and information to its employees regarding any such hazardous substances, as well as of any protective measures suggested by the County;
- (e) the Contractor agrees to be solely responsible to ensure that the Contractor's employees observe protective measures during the performance of their duties in the performance of the contract, and that all such protective measures will be at least as stringent as those suggested or which would have been suggested by the County;
- (f) in the event that the Contractor's performance of the work under this contract requires the use of any hazardous substances, the Contractor shall notify the

- County in advance of bringing in and/or using such substances in or upon County property and suggest to the County appropriate measures to be observed by the County, its officers and employees, and/or the public; and
- (g) in the event the Contractor fails in whole or in part to comply with the terms of this paragraph, the County shall have the right to interrupt the Contractor's work and/or terminate this contract, and the Contractor shall be prohibited from renewing such work until all applicable safety and health procedures and practices are implemented by the Contractor.

15. **Disputes**

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.

16. **Non-Assignment**

This agreement may not be assigned, subcontracted, transferred, conveyed, sublet or otherwise disposed of in whole or in part, by the Contractor, without the prior written consent of the County, and any attempts to assign the contract without the County's written consent are null and void.

17. **No Collusion**

If this contract was awarded based upon the submission of bids, the Contractor 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 Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on Contractor's behalf.

18. **International Boycott**

In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000.00, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation, has participated, is participating, or shall participate in an International boycott in violation of the federal Export Administration Act of 1979, or regulations thereunder. If such contractor, or any of the aforesaid affiliates of Contractor, is convicted, or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the County Manager within five (5) business days of such conviction, determination or disposition of appeal.

19. **County's Rights of Set-Off**

The County shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold for

the purposes of set-off any moneys due to the Contractor under this agreement up to any amounts due and owing to the County 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 County for any other reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The County shall exercise its set-off rights in accordance with normal County practices, including, in cases of set-off pursuant to an audit, the acceptance of such audit by the County Board of Supervisors or its designated representative.

20. **Contractor Defined**

Whenever the term "Contractor" is used in this agreement, such term shall include and apply to all employees, all officers, directors and agents, if any, of the Contractor.

21. **Amendment**

This agreement may not be amended, modified or renewed except by written agreement signed by the Contractor and the County.

22. **Ownership Of Work Products**

All final and written or tangible work products completed by the Contractor shall belong to the County. In the event of premature discontinuance of performance, the Contractor agrees to deliver all existing products and data files to the County.

23. **Executive Order Debarment/Suspension**

In the event that this contract involves the Contractor furnishing goods and services in excess of \$100,000.00, or constitutes a subaward to subrecipients, under any Federal program, grant or other funding source, then by executing this agreement the Contractor certifies that neither it nor any of its principals are suspended or debarred within the scope or meaning of Executive Orders 12549 and 12689, any Federal or State regulation implementing or codifying the same, or any other Federal or State law, rule or regulation.

24. **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

In the event that this contract involves the use or disclosure of protected health information within the meaning or application of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the regulations thereunder, the following provisions of this paragraph shall apply.

- (a) **Definitions.** The terms used, but not otherwise defined, in this Agreement shall have the same meaning as given such terms in 45 CFR §160.103 and §164.501, as the same may be amended from time to time, including but not limited to the following.
- (1) "Business Associate" shall mean the Contractor, its officers, employees, agents and subcontractors.
 - (2) "Covered Entity" shall mean Essex County (the "County"), its departments,

agencies, officers and employees.

(3) "Individual" shall have the same meaning as given such term in 45 CFR §164.501 and shall also include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.

(5) "Protected Health Information" shall have the same meaning as given such term in 45 CFR §164.501, limited to the information created or received by Contractor from or on behalf of the County.

(6) "Required by law" shall have the same meaning as given such term in 45 CFR §164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

(b) *Obligations and Activities of Contractor.*

Contractor agrees to:

(1) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law;

(2) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;

(3) mitigate, to the extent practicable, any harmful effect that is known, should have been known, and/or discovered to/by Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement;

(4) report to the County any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware;

(5) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of the County agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information;

(6) provide access, at the request of the County, and in the time and manner designated by the County or the Secretary, to Protected Health Information in a Designated Record Set, to the County or, as directed by the County, to an Individual in order to meet the requirements under 45 CFR §164.524;

(7) make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to pursuant to 45 CFR §164.526 at the request of the County or an Individual, and in the time and manner designated by the County or the Secretary;

(8) make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, the County available to the County, and/or to the Secretary, in a time and manner designated by the County or by the Secretary, for purposes of the Secretary determining the County's compliance with the Privacy Rule;

- (9) document such disclosures of Protected Health Information and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528;
- (10) provide to the County or an Individual, in time and manner designated by the County or the Secretary, information collected in accordance with the above subparagraph (b)(9) of this Agreement, to permit the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(c) Permitted Uses and Disclosures by Contractor.

Except as otherwise limited in this Agreement, Contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the persons entitled to services under this Agreement:

- (1) solely for the purposes of performing Contractor's obligations under this Agreement, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the County or the minimum necessary policies and procedures of the County; or
- (2) provided that such use or disclosures are required by law; or
- (3) Contractor
 - (A) obtains written authorization(s) from the individual to which the information pertains permitting the specific uses or disclosures of such information to third persons,
 - (B) represents and agrees in writing with such individual that the information to be used and/or disclosed will remain confidential and used or further disclosed only as required by law or for the purposes specified in the written authorization(s), and
 - (C) such third persons agree in writing to notify the County as soon as practicable and in writing of any instances of which such third person(s) is/are aware in which the confidentiality of the information has been breached; or
- (4) provide Data Aggregation services to the County as permitted by 42 CFR §164.504(e)(2)(i)(B); or
- (5) report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

(d) County To Inform Contractor of Privacy Practices and Restrictions.

The County agrees to notify the Contractor of any

- (1) limitation(s) in its notice of privacy practices of the County in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Contractor's use or disclosure of Protected Health Information;
- (2) changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Contractor's use or disclosure of Protected Health Information; and/or
- (3) restriction to the use or disclosure of Protected Health Information that the County has agreed to in accordance with 45 CFR §164.522, to the extent that

such restriction may affect Contractor's use or disclosure of Protected Health Information.

(e) Permissible Requests by County.

The County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the County; except that in the event that the services to be furnished by the Contractor under this Agreement requires data aggregation by the Contractor, the Contractor may use or disclose protected health information for such data aggregation or management and administrative activities of Contractor.

(f) Survival of Provisions.

The obligations of the Contractor under this paragraph 24 shall survive the expiration of the term of this Agreement and/or the termination of this Agreement, and said obligations shall remain effective and shall not terminate until all of the Protected Health Information provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in subparagraph (g) below.

(g) Return or Destruction of Protected Health Information.

Except as otherwise provided below, upon termination of this Agreement for any reason, Contractor shall return or destroy all Protected Health Information received from the County, or created or received by Contractor on behalf of the County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.

In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon determination by the County that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

(h) Termination for Cause.

Upon the County's knowledge of a material breach of this paragraph by Contractor, the County shall:

- (1) either:
 - (A) provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement within the time specified by the County, or
 - (B) immediately terminate this Agreement if cure is not possible; and
- (2) report the violation to the Secretary.

(l) **Miscellaneous.**

(1) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Contractor under this paragraph 24 of this Agreement shall survive the termination of this Agreement.

(4) Interpretation. Any ambiguity in this Agreement shall be resolved to permit the County to comply with the Privacy Rule.

25. **Severability**

If any term or provision of this agreement or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

26. **Entire Agreement**

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.

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 a Corporation)

STATE OF NEW YORK)
COUNTY OF)

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 by
me and did depose and say that the said _____ resides at _____
_____ and that he is the _____ of 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 hereto by like order.

Notary Public

CONTRACTOR'S ACKNOWLEDGEMENT

(If an Individual)

STATE OF NEW YORK)
COUNTY OF)

On this _____ day of _____, 20____, before my 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 any trade name, that the certificate required by the New York State Penal Law,
Section 440 and 440-b has been filed with the County Clerk of Essex County.

Notary Public

CONTRACTOR'S ACKNOWLEDGEMENT

(If a Co-Partnership)

STATE OF NEW YORK)
COUNTY OF)

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 on behalf of said firm, and he
acknowledged to me that he executed the same on behalf of, and as the act of said firm for the purposes
herein mentioned and that the certificate required by the New York State Penal Law, Section 440 and 440-
b has been filed with the County Clerk of Essex County.

Notary Public