

GENERAL INFORMATION

1. **SCOPE:**

1.1 The Wayne-Finger Lakes BOCES and certain school districts, counties, cities, towns, and villages require electricity. The BOCES, et al, have agreed to form a Cooperative Bid Group as authorized by General Municipal Law Section 119-o. It is the intent of the Cooperative Bid Group (hereinafter referred to as "Participants") to contract with vendor(s) and to establish prices for this service for the stated contract term.

1.2 This Invitation for Bids and Specification describes a contract for the purchase of electricity directly from electric producers or electric supply companies. The direct purchase of electricity is in conformance with electric deregulation action of the Federal Energy Regulatory Commission, the New York State Legislature, and the New York State Public Service Commission. The bid for the supply of electricity to the Participants is developed to allow any qualified bidder to be considered.

1.3 ADDITIONS:

- a) The Participants reserve the right to add additional sites to the contract at any time.
- b) The BOCES reserves the right to add to, or remove from, the contract at any time using Organizations, Departments, Agencies and School Districts ***when mutually agreeable with the awarded vendor(s).***

1.4 DELETIONS: The Participants reserve the right to remove from the contract any site for reasons including but not limited to sale, fire, demolition, etc. Notice will be given, if possible.

2. **AMENDMENTS TO BID:**

Any verbal information obtained from or statements made by representatives of Wayne-Finger Lakes BOCES at the time of examination of the documents or site shall not be construed as, in any way, amending contract documents. Only such corrections or addenda as are used by the BOCES in writing to all Contracts shall become a part of the Contract. Any addendum issued during the time of bidding shall be included in bids and become a part of the Contract Agreement.

3. **RESPONSIBILITY OF CONTRACTOR:**

The contractor shall be responsible for providing the services ordered resulting from this bid. The contractor is responsible for following all instructions as described in this document.

4. **BOCES' RESPONSIBILITY:**

Although this bid was issued, evaluated, and awarded by the Wayne-Finger Lakes BOCES at the request of itself and the other participants, BOCES' liability under contract is limited to coordination and BOCES issued purchase orders only. Participants are required to generate their own purchase orders (to the successful vendors) in accordance with the bid provisions and the attached schedule of awards.

5. **PARTICIPANTS' RESPONSIBILITY:**

Purchase Orders will be issued to the designated vendor(s) by the participants listed, authorized in accordance with established Municipal Accounting Practices. Those participants are solely responsible in contract for obligations entered into with the vendors.

6. **OBLIGATION OF BIDDERS:**

At the time of the opening of the bids, each bidder will be presumed to have read and be thoroughly familiar with the contract documents. The failure or omission of any bidder to receive or examine any

form, instrument, or document shall in no way relieve any bidder from any obligation in respect to the submitted bid.

7. IRAN DIVESTMENT ACT:

7.1 By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2013" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

7.2 During the term of the Contract, should BOCES receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, BOCES will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then BOCES shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

7.3 BOCES reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

8. CONTRACT PERIOD:

Contract period shall be from January 1, 2023 and shall expire on December 31, 2023. The contract may be extended for up to one (1) additional period of one year or less by mutual agreement of the parties. This extension includes price, terms and conditions mutually agreed upon by both parties.

9. SHORT TERM EXTENSION:

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the BOCES, may be extended unilaterally by the BOCES for an additional period of up to one month, or less upon notice to the Seller with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one-month extension), price, and delivery requirements. With the concurrence of the Seller, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

10. DISCREPANCY:

In the event of any discrepancy, disagreement or ambiguity among the documents which comprise this Bid and the Vendor's Bid, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity; 1) the Bid Document; 2) the Vendor's proposal or bid.

11. GOVERNING LAW:

Any dispute arising under this Contract shall be governed by the laws of the State of New York, County of Wayne, Town of Arcadia. Any litigation under this Contract if commenced by Contractor shall be brought in a Court of competent jurisdiction in the State of New York. However, if the issue in dispute is not

covered by the New York law or if there is a conflict between New York law and Federal law, i.e., decisions of the Federal courts, regulations and statues, the New York court shall apply the Federal law. Pending the resolution of any dispute, the Contractor shall proceed as directed by BOCES in writing.

12. EXECUTORY CLAUSE:

12.1 The Contractor specifically agrees that this contract shall be deemed executory only to the extent of monies available and no liability shall be incurred by BOCES or the Participants beyond the monies available for this contract.

12.2 For purposes of this clause "force majeure" which interferes with the Participant's ability to use Electricity shall be deemed to occur no later than twelve (12) hours after receipt of notification thereof by the Participant.

13. NO ARBITRATION:

Disputes involving this contract including breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

14. FORCE MAJEURE:

14.1 All obligations of the parties to this agreement (except for the payment of money for electricity delivered) shall be suspended while and for so long as compliance is prevented in whole or in part by an act of God, strike, lockout, war, civil disturbance, explosion, breakage, accident to machinery or electric lines, failure of generators or sources of electric supply, federal or state or local law, inability to secure material or rights of way or permits or approvals or licenses, binding order of a Court of Government Agency, the failure of any local distribution company to accept electricity for delivery for any reason, the default of any party to other contracts (other than Buyer and Seller), or by any other cause beyond the reasonable control of Buyer and Seller.

14.2 For purposes of this clause "force majeure" which interferes with the Participant's ability to use electricity shall be deemed to occur no later than twelve (12) hours after receipt of notification thereof by the Participant.

15. JUDGMENTS/LEGAL FINDINGS:

By submitting a bid for consideration, the vendor affirms that they currently have no judgments or other legal findings against the company or any of its executives, with any federal, state or local governmental entities that in any way could impact or have the potential to impact their ability to complete any contract awarded them as a result of this bid. Failure to disclose any such judgments and/or findings will result in the termination of any contracts and other penalties as deemed legal and appropriate by BOCES.

16. NEW YORK STATE SEXUAL HARASSMENT LAWS:

By submission of this Bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the NYS labor law. A model policy and training has been created by the NYS Department of Labor and can be found here: <https://www.ny.gov/programs/combating-sexual-harassment-workplace>

17. PAYMENTS:

Payments of any claim or invoice shall not preclude BOCES or Participants from making claims for adjustments on any item found not to have been in accordance with the contract specifications.

18. NON-ASSIGNMENT:

It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or his right, title, or interest therein, or his power to execute such Contract, to any other person, company, or corporation, without the previous written consent of BOCES.

19. EXCEPTIONS:

Any exceptions to this bid must be in writing and written on the Questionnaire Form.

20. TIEBREAKING:

20.1 In the event that BOCES receives two or more low responsive and responsible tie bids for a solicitation, BOCES shall use the recognized "lottery method" to break the tie bid to determine the awardee. Supplier early payment discounts shall not be used in determining the low bidder.

20.2 All bidders that participated in the solicitation shall be notified by email of the tie bid and shall be invited to publicly witness the breaking of the tie bid in the BOCES Business Office. Those bidders shall be asked to respond back, via email, to the agency regarding their intention to witness this event.

20.3 The "lottery method" is based on a random selection drawing of a name from the pool of tie bidders. Pieces of paper (buyer's business card, etc.) with one tie bidder's name per piece of paper shall be put into a container and either the buyer or another designated agency staff member will draw one lot with the winning tie bidder's name. At least two BOCES' staff members shall be required to witness this lottery drawing.

21. COMPLAINTS:

Both Participants and Vendor(s) shall submit all complaints in writing to:
Wayne-Finger Lakes BOCES Business Office,
Attn.: Lisa Parkison, NIGP-CPP, CPPO, CPPB
Purchasing Director
131 Drumlin Court
Newark, NY 14513-1863

Within four (4) days of occurrence. The Coordinator will maintain a file of all complaints that are submitted from both the Participants and the Vendor(s).

The BOCES reserves the right to reject any or all bids or to accept any proposal, which in the opinion of the BOCES is in the best interest of the Participants.