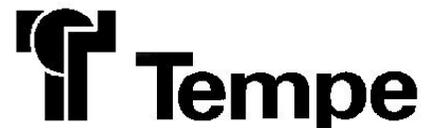


Staff Summary Report



Council Meeting Date:

03/26/2009

Agenda Item Number: _____

SUBJECT: Request to award a one-year contract with four one-year renewal options to RFP Depot LLC. Dba Bidsync to provide reverse auction administration services to be used by the City's Procurement division of the Financial Services Department.

DOCUMENT NAME: 20090326fsmg12 PURCHASES (1004-01)

COMMENTS: (RFP 09-072) Total amount not to exceed \$50,000.

PREPARED BY: Michael Greene, Central Services Administrator, 480-350-8516

REVIEWED BY: Jerry Hart, Financial Services Manager, 480-350-8505
Gene Obis, ITD Administrator, 480-350-8353

LEGAL REVIEW BY: N/A

FISCAL NOTE: The cost of this service shall be paid primarily by the vendors who are successful in the reverse auction event so there will be no direct impact on City funds. The City does have the option of paying for the reverse auction event, and in that case, sufficient funds have been placed in the appropriate cost centers for the anticipated expenditures in the current fiscal year.

RECOMMENDATION: Award the contract

ADDITIONAL INFO: The purpose of this award is to establish a long term agreement with the recommended firm to provide an electronic reverse auction software solution that will improve and enhance the City's competitive contracting process. Instead of bidding prices up as normally seen with traditional auctions, the reverse auction encourages vendors to bid prices down in order to win the real time viewable event. Although reverse auctions are still relatively new to the public sector, many companies have had considerable success in lowering acquisition costs by using this tool.

The City may choose to pay for the reverse auction event directly at a \$400 per event charge or the City may require the successful firm to pay the fee based on a 1% charge of the total award amount. The City received six offers. The offers were evaluated and scored resulting in the top three rated firms being brought forward for interviews, demonstrations, and best and final submissions. The evaluation committee unanimously recommends RFP Depot LLC. Dba Bidsync for this award.



BIDSYNC

Regarding: Best and Final Offer to RFP# 09-072 "Reverse Auction Administration Services"

Due Date: Tuesday, March 3, 2009 at 4:00 PM MST

To: Mr. Michael Greene
Central Services Administrator
Procurement Office
PO BOX 5002
Tempe, AZ 85280

Fax #: 480-350-8661

From: Joseph McCaul
President/CEO
RFP Depot LLC. Dba BidSync
629 East Quality Drive, Suite 101
American Fork, UT 84003

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1. *Background* – Please confirm the following:

a. Provide an estimate of the total number of reverse auctions conducted under the current RA platform that is being offered the city.

BidSync estimates that it has successfully conducted thousands of Reverse Auction events.

b. Provide a split between the percent of RA's conducted with public accounts versus private accounts.

BidSync has only assisted in conducting Reverse Auctions for public government agencies to date.

c. Provide the number of registered suppliers with your firm.

BidSync currently has roughly 250,000 registered vendors.

2. *Scope of Work* – The City wishes to clarify its intent with this award. We are only seeking at this time a qualified firm who can assist us in administering Reverse Auctions. We plan to use our traditional solicitation approach and simply augment pricing with this tool. We will need those services that support that approach including assistance with planning and selecting a particular RA event, sourcing support, actual conducting of the RA event in real time to include both supplier and buyer training, and report generation on RA results. Any additional e-procurement strategies will need to be solicited via a separate RFP process, if needed in the future. Please respond to this clarification to ensure understanding.

BidSync understands the specific need of the City of Tempe as delineated in this RFP.

3. *Pricing Option* – Please include both a City paid option and a vendor paid option. Also, please clarify your firm's approach with how fees will be determined over the life of any "term" contract awarded versus a one-time "firm contracted" award project. The City may like to choose between the two pay models based on the nature of the commodity being auctioned.

The following pay models are offered independently and will not be applied simultaneously.

a. "City Paid Option" - \$400.00 per Reverse Auction event billed on a monthly basis throughout the life of the contract. This fee is to be billed to the City regardless if the Reverse Auction results in award or not or if the City purchases from the awarded vendor or not.

b. "Vendor Paid Option" - 1% of actual spend on a per PO basis paid by the vendor to BidSync directly. Payable by the vendor only when the City purchases from them. The City will provide BidSync copies of each PO. BidSync will follow up with each vendor in order to make sure collection occurs. A \$20,000 cap will be put in place.

c. Shared City and Vendor Paid Option With Rebate to City - The winning vendor on a Reverse Auction will be charged 2% of the amount awarded to them. BidSync will collect the 2% fee and rebate 50% of the 2% collected back to the agency.

The City will be permitted to choose between pay models based on the nature of the commodity being auctioned.

4. *Procurement Training* – Please describe the training your firm will provide the seven member procurement team made up of four contract officers and three support associates. Be clear with any costs related to this training.

BidSync training costs are rolled into the fee structures presented in number 3 above. There are no additional training fees.

Deliverables and Training Time Lines

The following are generalized time lines due to not knowing the desired award, contract signing, and “go live” date. Time lines as well depend on the amount of information to be collected from the City to be imported, etc. Time lines are based on business days (excluding national holidays).

1. Hold Kick off Meeting(s) within 1 week of contract signing.
2. City shall submit names of all City departments involved, department buyer and end user names, contact information, roles, desired permissions, and standard documents per City department within 2 weeks of Kick off Meeting(s).
3. City shall submit their vendor lists for import within 2 weeks of Kick off Meeting(s).
4. BidSync imports names of all City departments involved, department buyer and end user names, contact information, roles, desired permissions, standard documents, and vendor lists within 1 week of receiving them.
5. City shall submit department delivery locations, internal work flow, and vendor qualifications within 1 week of submitting the items from number 2 of the “Deliverables and Training Time Lines”.
6. BidSync imports department delivery locations, internal work flow, and vendor qualifications within 1 week of receiving them.
7. Ensure that all City users have all needed resources (User Guide) to work in the BidSync system prior to training.
8. Train all users within 1 week of completing all aspects found in numbers 1-7 above of the “Deliverables and Training Time Lines.”

Training Plan

See “Deliverables and Training Time Lines” above for time lines for training activities

To initiate training, BidSync will need a list of all buyers and end users, their contact information, roles, desired permissions and standard documents. This information will allow BidSync to perform preliminary work to convert user lists and documents into an electronic format prior to training sessions. User lists, submitted in spreadsheet format, and standard documents will be collected. User spreadsheets are to include each user's first and last name, phone and email address, physical office address, department, and role or scope of work in order to determine the level of training needed. See example spreadsheet below. The City will as well provide BidSync a list of its vendors in order to inform them of the City's intentions of utilizing BidSync to conduct Reverse Auctions and for them to be notified automatically about bids that may be of interest to them.

	A	B	C	D	E	F	G	H	I	J	K
1	First Name	Last Name	Phone #	Address Line 1	Address Line 2	City	State	Zip	E-mail Address	Department	Position
2	Lisa	Parson	402-504-6621	67 Vine St		Paradise	Utah	84331	lparson@purchasing.gov	Facilities	Senior Buyer
3	Trent	Smith	402-504-6624	67 Vine St	Bldg 12	Paradise	Utah	84331	tsmith@purchasing.gov	Purchasing	Purchaser
4	Morgan	Kensington	402-504-6630	22 Round Ave	Suite 104	Paradise	Utah	84331	mmorgan@purchasing.gov	Transportation	Administrator

A kickoff meeting involving stakeholders, key personnel from BidSync, and City contract officers and

support associates will be formulated. During the kickoff meetings, BidSync will present a preliminary schedule for training. Any scheduling conflicts and concerns will be addressed at this time as well.

Trainings will be in 2, 2 hour sessions performed through our web-based training environment that as well lends to hands on training. The training will include all material regarding administration tools along with a comprehensive training on all aspects of the Reverse Auction system.

BidSync will send a schedule reminder as well as daily reminders of the training time slots along with a training syllabus. Curriculum and material is included in the "Course Outlines and Requirements" section of this section ("Training Plan").

Lab time will be set aside at the end of the second session to give each user the opportunity to apply material covered in the classroom, using the BidSync training site. BidSync recommends that there be a lab of internet accessible computers available to class participants. If a lab with internet access is not available, trainees will be able to work from their own work spaces with a list of tasks to accomplish on the training system and an Agency Support Representative assigned to them to call in case they have questions.

Each department will be asked to submit additional information to BidSync, including delivery locations and internal approval work flow for bids. They will also be asked for a list of qualifications or certifications they track, if applicable. Additional information may be required based on other City needs or intended use of the BidSync system.

Two assistant trainers also referred to herein as Quality Assurance Trainers will work remotely throughout the training process. These trainers will check lab work completed by end users to determine each participant's comprehension of material. Results found by the assistant trainers will be communicated to the BidSync Project Manager to ensure that classroom material adapts to the users' needs. These results will also be communicated to department administrator and stakeholders along with steps taken by the trainers to increase the trainees' comprehension.

City project manager will be updated with a list of their users that have attended a training session.

It is proposed that weekly project status meetings be held with key personnel from the City and BidSync each Friday to review progress and status of tasks, issues & work accomplished in the previous week and to discuss the schedule for the following week. These meetings will allow BidSync trainers and other key personnel to make any and all adjustments before the next week.

Project steering committee meetings will also be held monthly with executive staff and stakeholders to review project status and accomplishments to date.

Common Training Concerns and Control Plan

- Scheduling variances and ensuring that users attend scheduled trainings with minimal rescheduling

BidSync will allocate resources to send an initial schedule to all users with the date and time of their training and send e-mail reminders to users one day prior to their training.

- Information retention

Small groups of trainees allows trainers to maintain interaction with all users. Labs are

also recommended to allow each user the opportunity to apply information covered in the training sessions with the trainer still available for questions.

- Users' resistance to change

Trainers will track all questions & concerns that arise in trainings. Department managers and trainers will communicate all concerns brought to them in their weekly meetings and discuss solutions if the question or concerns merits such. It is recommended that department managers be highly involved in the participation and transition of all their personnel as a cultural and organizational change management technique.

Course Outline and Requirements

Training Course

Description

This course covers all functions of the BidSync site needed to manage a department's bidding, purchasing, and reporting. Participants in this session will gain hands-on experience with the BidSync system and its functions. At the end of this course, administrators will have a better understanding of how the BidSync system will streamline the bidding and purchasing process, save time on reports, and manage supplier information and notifications.

Who Should Take This Course?

This course is designed for department administrators and key personnel that will be involved in overseeing a departments bidding and purchasing activity, user access, and account management.

Materials Needed

A classroom large enough to accommodate the 7 participants. A projector, computer with internet access, and conference telephone will also be needed. A lab with internet-accessible computers, allowing each participant to apply the material introduced in the training sessions is recommended for review and training quality assurance. User tutorials will be provided by the trainer.

Course Objectives

Review department information online
Create a bid
Send automatic notifications to vendors
Monitor bid activity
Award bids
Share tabulation results quickly

Course Outline

Session 1

Introduction
Discuss Department Needs & Goals
End User Lists & Permissions
Review Standard Documents
Establish Potential Work flows
Create Needed Qualifications/Certifications
Administration: Tools

Session 2

Search: Using the system as a spec library
Bids: Creating a Bid
Bids: Releasing a Bid
Bids: Current
Bids: Tabulations
Bids: Awarding

Lab

Using the training site each administrator will edit a user's information, create a bid, etc. All lab work will be reviewed by BidSync assistant trainers to ensure user comprehension.

5. *Supplier Training* – Please describe the training your firm will provide vendors who are selected to participate in any RA event. Be clear with any costs related to this training.

BidSync does not charge fees for training vendors.

Each one of the City of Tempe's Reverse Auction events will be assigned to individual Vendor Support Team Members. These support team members review the list of invited vendors and contact each one by telephone to verify they received the automatic bid notification and to verify their intent to respond and answer any questions they may have. They offer a walk through of how to use the system to respond to the Reverse Auction. If the vendor accepts, the training only takes 15 minutes. The BidSync system was designed to be very straight forward, thus not requiring in depth training.

6. *Minimum RA Values* – Indicate your firm's policy regarding the minimum value of any RA event.

BidSync does not impose minimum RA values. The City is free to post any Reverse Auction event for any commodity, service etc at any quantity.

7. *Cancellations* – Indicate any costs related to RA cancellation after the RA event has been conducted.

BidSync does not impose additional costs* for canceling a conducted Reverse Auction. It is the sole discretion of the City to award/not award and purchase/not purchase from the Reverse Auction conducted.

* - See section 3a above.

8. *Bidding* – Confirm if your product allows for “open bidding” where bid prices are revealed to each participant and “closed bidding” where the participants only see their ordinal rank as compared to other firms. Also, please indicate if the system allows for both showing and concealing the identity of firms participating in the auction.

BidSync complies with all Federal guidelines created by the GSA regarding reverse auctions.

The BidSync product allows for “open bidding” where bid prices are revealed to each participant and “closed bidding” where the participants only see their ordinal rank as compared to other firms.

The BidSync system allows for both showing and concealing the identity of firms participating in the auction.

9. *Contracts* – Please confirm if your firm will require the City to sign any separate agreement as the result of an award to you. Also, confirm if suppliers will be required to sign separate agreements as well. The City would

prefer to not sign any separate agreement and instead rely on the terms and conditions of the published RFP to guide future conduct.

BidSync will utilize the City's T&Cs found in the RFP as its agreement for terms of use.

BidSync requires all vendors who choose to register on the system to accept terms of use in order to protect BidSync, the agencies who use the system, and the vendor itself.

SUPPLIER USER AGREEMENT

Below are the terms and conditions under which you (as a Supplier) may have access to our online auction system to respond to requests for quotes, proposals and information. By accessing our system, you agree to these terms and conditions.

We may amend this Agreement at any time by posting the amended terms on our site. Except as stated below, all amended terms will automatically be effective ten (10) days after they are initially posted on our site. This Agreement may not be otherwise amended except in writing signed by you and us (BidSync, LLC; hereinafter referred to as "BidSync")

1. Eligibility. The BidSync system is available only to individuals and entities that can form legally binding contracts under applicable law. Without limiting the foregoing, our system is not available to minors (under 21 years of age) or to those suspended from its use. If you do not qualify, please do not use our system. Furthermore, you may not assign or transfer your account or user identification with us to any other party.

2. Fees.

Free Bids: Certain Agencies/Organizations including States, Counties, Cities, Colleges, Universities, and School Districts have chosen to sponsor their bids. Therefore, BidSync will not charge any fees whatsoever for these bids. The bids will be clearly marked with a money symbol icon that shows that the bid is free. Additionally, most agencies will include language in the bid documents explaining that all fees to the suppliers for a particular bid are waived.

Percentage Fee Bids: Certain Agencies/Organizations including States, Counties, Cities, Colleges, Universities, and School Districts have selected a pricing model that includes a % fee that will be charged to the winning vendor(s) of the awarded bid(s). The bids will be clearly marked with a 1% icon (1%) that shows that there is a fee associated with the bid. Additionally, agencies will include language in the bid documents that detail the 1% fee. By registering to use BidSync, you agree to pay BidSync a fee of One Percent (1%) of the total amount of all contracts, and extensions thereto, for goods and/or services **awarded** to you "via this system" (a 2% fee is charged on a small number of *designated* bids 2%). To assure that all Vendors are treated equally, the fee will be payable whether your bid/proposal is submitted electronically, or by paper means. The cap range on the 1% and 2% bids will vary from \$10,000 to \$50,000 dependent upon what is stated in the actual bid documents. Unless Vendor and BidSync agree to another arrangement prior to the awarding of a contract, the fee for "one-time" purchases shall be paid to BidSync within thirty (30) days following the receipt of awarded contract by Vendor. The fee for contracts with "multiple" purchases or payments shall be paid in equal installments based on the total value of the contract, divided by the number of months in the contract period, i.e. a one-year contract would result in Vendor making twelve monthly payments to BidSync. *Exception: If Buyer provides BidSync with a monthly report of Purchase Order(s) they send to Vendor, then BidSync will bill Vendor the amount stated in the Purchase Order(s) instead of equal payments.* Should actual purchases or payments made by Buyer, pursuant to the awarded contract, be greater or lesser than the amount indicated when awarded, fee shall be adjusted accordingly at the end of the contract period; and refund by BidSync to Vendor, or additional

payment from Vendor to BidSync (as circumstances dictate) shall be based on Buyer's issuance of a Rescission, or Purchase Order(s) indicating the differing amount. A late fee will accrue at the rate of two percent (2%) per month for any fees not paid when due. Vendor will also be required to pay all costs of collection. Notwithstanding the foregoing to the contrary, the fees charged pursuant to this section shall not contravene laws of the State where Vendor is based. We may, in our sole discretion, change our fee policies, the fees we charge, and some or all of our system or services at any time. All fees must be paid in U.S. Dollars. Vendor is responsible for paying any and all applicable taxes.

Yearly Subscription Fee Bids: Certain Agencies/Organizations including States, Counties, Cities, Colleges, Universities, and School Districts have adopted a yearly subscription pricing model to access their bids. In order to access the bids for the agencies that have adopted this pricing model, a supplier will be required to pay an annual fee of \$30.00 per regional area.

3. Communication System Only. Although the BidSync system is sometimes called an online auction system, it does not perform the function of a traditional auctioneer. You acknowledge that our site merely provides the communication system and means to allow you to make bids and quotations and sell products and services. We are not involved in the actual transaction between Suppliers and Buyers. As a result, we do not verify the identity of each Buyer, the truth or accuracy of statements made, or the ability of Buyers to buy products or services. Please use caution, common sense, and practice safe trading when using our site. We do not ensure that a Buyer will actually complete a transaction. You may wish to take steps to confirm identities and provide additional security to the transaction.

4. Release. Disputes between Buyers and Suppliers will be settled between them without our involvement, and we will have no liability whatsoever arising from communications or transactions made. Because we are not involved in the actual transaction between Buyers and Suppliers, in the event of a dispute, you release BidSync ("us"), and our officers, directors, agents, subsidiaries and employees from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes. If you are a California resident, you waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

5. Quoting and Selling. As a Supplier, you must be legally and physically able to sell the item(s) for which you make quotations on our site. You must confirm that your item matches the item sought by Buyer and all terms of sale on the request for quotations made by each Buyer. Once your bid has been accepted, you must deliver the item in accordance with the terms of the request for quotations and bid.

6. Fraud or Manipulation. We may suspend or terminate your account if we suspect that you (by conviction, settlement, insurance or escrow investigation, or otherwise) have engaged in fraudulent activity in connection with our site. Neither Buyers, nor Suppliers may manipulate the price of any item nor interfere with other user's communications or transactions.

7. Accuracy of Information and Restrictions. You are solely responsible for all information you provide to us or other users on our site or in connection with the registration, request for quotation, bidding, or sale process ("**Your Information**"). We act as a passive conduit for the online distribution and publication of Your Information. You agree that Your Information and any items sold through this site: (a) will not be false, inaccurate or misleading; (b) will not be fraudulent or involve the sale of counterfeit or stolen items; (c) will not infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or

privacy; (d) will not violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising); (e) will not be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (f) will not contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; and (g) will not create liability for us or cause us to lose (in whole or in part) the services of our Internet Service Providers or other suppliers. Furthermore, you may not consummate any transaction that was initiated using our service that, by paying to us the transaction fee, could cause us to violate any applicable law, statute, ordinance or regulation. Solely to enable us to use Your Information, so that we are not violating any rights you might have in Your Information, you agree to grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable (through multiple tiers) right to exercise the copyright, publicity, and database rights (but no other rights) you have in Your Information, in any media now known or not currently known, with respect to Your Information.

8. Access and Interference. The BidSync site contains robot exclusion headers and you agree that you will not use any robot, spider, other automatic device, or manual process to monitor or copy our web pages or the content contained herein without our prior expressed written permission. You agree that you will not use any device, software or routine to bypass our robot exclusion headers, or to interfere or attempt to interfere with the proper working of our site or any transaction being communicated or conducted on our site. You agree that you will not take any action that imposes an unreasonable or disproportionately large load on our infrastructure. Much of the information on our site is updated on a real time basis and is proprietary or is licensed to us by our users or third parties. You agree that you will not copy, reproduce, alter, modify, create derivative works, or publicly display any content (except for Your Information) from our site without the prior expressed written permission of BidSync. Furthermore, you may not provide access to, or information from, the BidSync site to any other party without the prior expressed written permission of BidSync.

9. Breach. Without limiting other remedies, we may immediately issue a warning, temporarily suspend, indefinitely suspend or terminate your access to our site and system and refuse to provide our services to you: (a) if you breach this Agreement or the documents it incorporates by reference; (b) if we are unable to verify or authenticate any information you provide to us; or (c) if we believe that your actions may cause legal liability for you, our users or us.

10. Warranty. WE PROVIDE OUR SITE AND SERVICES "AS IS" AND WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. WE SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. Some States do not allow the disclaimer of implied warranties, so the foregoing disclaimer may not apply to you. This warranty gives you specific legal rights and you may also have other legal rights that vary from State to State.

11. Liability Limit. IN NO EVENT WILL WE OR OUR SUPPLIERS BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH OUR SITE, OUR SERVICES OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE).

OUR LIABILITY TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO THE GREATER OF (A) THE AMOUNT OF FEES YOU PAY TO US IN THE 12 MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY, AND (B) \$100. Some States do not allow the exclusion or limitation of incidental or consequential damages, so the

above limitation or exclusion may not apply to you.

12. Indemnity. You agree to indemnify and hold us and (as applicable) our parent, subsidiaries, affiliates, officers, directors, agents, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your breach of this Agreement or the documents it incorporates by reference, or your violation of any law or the rights of a third party.

13. Legal Compliance. You will comply with all applicable domestic and international laws, statutes, ordinances and regulations regarding your use of our service and your requesting quotations, submitting quotations, bidding, listing, purchase, solicitation of offers to purchase, and sale of items.

14. No Agency. You and BidSync are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

15. Notices. Except as explicitly stated otherwise, any notices will be given by postal mail to BidSync, 629 East 700 South Suite 101, American Fork, UT 84003 (in the case of BidSync) or to the e-mail address you provide to BidSync during the registration process (in your case). Notice will be deemed given 24 hours after e-mail is sent, unless the sending party is notified that the e-mail address is invalid. Alternatively, we may give you notice by certified mail, postage prepaid and return receipt requested, to the address provided to BidSync during the registration process. In such case, notice will be deemed given 3 days after the date of mailing.

16. Arbitration. Any legal controversy or legal claim arising out of or relating to this Agreement or our services (excluding legal action taken by BidSync to collect our fees and/or recover damages for, or obtain an injunction relating to, the BidSync site, operations, intellectual property, and our services) that the parties to this Agreement are unable to resolve within thirty (30) days after written notice by one party to the other of the existence of such controversy or claim, will be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim will be arbitrated on an individual basis, and will not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration will be conducted in the State of Utah, and judgment on the arbitration award may be entered into any State or Federal Court within the State of Utah having jurisdiction thereof. Either you or BidSync may seek any interim or preliminary relief from a court of competent jurisdiction in Orem, or Salt Lake City, Utah necessary to protect the rights or property of you or BidSync pending the completion of arbitration. Each party will bear their own attorneys' fees. The fees and expenses of the arbitrators will be apportioned between the parties by the arbitrator in accordance with the findings and results of the arbitration. Should either party file an action contrary to this provision, the other party may recover attorneys' fees and costs up to \$1000.00.

17. General. This Agreement will be governed in all respects by the laws of the State of Utah as such laws are applied to agreements entered into and to be performed entirely within Utah between Utah residents. We do not guarantee continuous, uninterrupted or secure access to our services, and operation of our site may be interfered with by numerous factors outside of our control. If any provision of this Agreement is held to be invalid or unenforceable, such provision will be struck and the remaining provisions will be enforced. You agree that this Agreement and all incorporated agreements may be automatically assigned by BidSync, in our sole discretion, to a third party in the event of a merger or acquisition. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. This Agreement sets forth the entire understanding and

agreement between us with respect to the subject matter hereof.