

## TERMS AND CONDITIONS FOR ONLINE AUCTIONS

Please read all Terms and Conditions.

**DEFINITIONS:** The following words as used herein shall mean:

- **Agent:** Government Contractor acting on behalf of the U.S. Department of Energy (DOE) in selling government-owned property
- **Contracting Officer:** DOE, its duly authorized representative or representatives
- **Government:** United States of America
- **Purchaser:** Successful Bidder hereunder to whom award of bid is made
- **Business days:** Monday through Thursday, excluding federal holidays
- **Invitation:** Instructions given by Offeror to Purchaser for pick-up of property

**CONDITIONS:**

1. This item/lot is being offered as is, where is, with no warranties or guarantees either expressed or implied as to its condition or fitness for use.
2. Unless otherwise stated, the condition of this item/lot (or its fitness for any use/purpose) is unknown.

**TERMS:**

1. **All sales are final.**
2. When applicable, items being sold are subject to the Special Auction Terms and Conditions, which are incorporated herein by reference, and such other special terms and conditions as may be contained herein. In the event there is a discrepancy, the Special Terms and Conditions supersede the Terms and Conditions of Online Auctions.
3. Purchaser must provide the completed "Sale Solicitation and Agreement" form (PDF) at the time of payment. The Agent will provide this form to the Purchaser.
4. MSTs will not ship any auctioned material.
5. **Sales Tax** - As required by the Nevada Revised Statutes (NRS 360, 360B, and 372) and the Nevada Administrative Code (NAC 360, 360B, and 372), Nevada State sales tax at the applicable county rate will be added to all winning bids.
6. Each auction item is offered on a competitive bid basis and must be paid for within 5 business days after Notice of Award is sent from the Auction Site.
7. Each auction item is offered on a competitive bid basis and must be removed from NNSS within 2 weeks after notice of award, unless extended by written agreement between the parties. Offeror reserves the right to postpone any pick up to a date certain, in its sole discretion.
8. NNSS access requirements apply. No Minors are allowed on site. All Purchasers must be at least 18 years of age. Sales are limited to U.S. persons only. Current, valid photo identification must be presented.

9. Purchaser agrees to obtain all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States, its Territories, applicable State laws, and political subdivisions through which the materials and/or property will be transported and to which the material and/or property is moved.
10. Purchaser is responsible for compliance with all applicable transportation requirements.
11. The Purchaser will be the Offeror / Shipper. Securing the load on the transporting vehicle is the responsibility of the Purchaser or Purchaser's Carrier.
12. Purchaser agrees to indemnify and hold harmless DOE, the Government, MSTs, their past, present, and future affiliates, partners, stockholders, successors, assigns, officers, directors, owners, managers, joint ventures, insurers and reinsurers, attorneys, agents, representatives, employees, former employees, and any other person, firm or corporation with whom any of them are now or may hereafter be affiliated (collectively "MSTs") from any and all claims, liabilities, costs, and other detriments (including, but not limited to, reasonable attorney fees, settlements, fines and penalties, and damages for personal injury, property damage or destruction, environmental remediation, and natural resources damages) that arise out of or relate to any loading, unloading, transportation, use, management, processing, disposal, and/or sale of or other disposition by the Purchaser, its employees, agents, contractors and customers, of material and/or property obtained under this auction.
13. Purchaser understands that transportation, management, processing, sale, and disposal of the material and/or property sold under this Auction is subject to federal, state, and local laws, including, but not limited to, the *Clean Air Act*; the *Clean Water Act*; the *Resource Conservation and Recovery Act*; the *Toxic Substances Control Act*; the *Atomic Energy Act*; the *Comprehensive Environmental Response, Compensation and Liability Act*; the *Hazardous Materials Transportation Act*; and the *Emergency Planning and Community Right-to-Know Act*.
14. Purchaser further understands that the Purchaser is solely responsible for identifying and complying with all applicable legal requirements.
15. The original Purchaser will in no way be released from full compliance with the terms and conditions of the sale by Purchaser's resale of the property.
16. When paying for awarded item(s), Mission Support and Test Services LLC (MSTs) employees are required to identify themselves as employees.

## **PERSONS PROHIBITED FROM BIDDING:**

If Bidder is an employee of the Agent, DOE, or a cost-type contractor of DOE, the Bidder hereby represents that Bidder:

- Has not participated in the Agent's determination to dispose of the property
- Has not participated in the preparation of the property for sale
- Has not participated in the determining of the method of sale
- Has not acquired information not otherwise available to the general public regarding usage, condition, quality, or value of the property

## **DOE PROPERTY MANAGEMENT REGULATIONS ACKNOWLEDGEMENT**

### **41 CFR 109-1.5303, "EXPORT RESTRICTION NOTICE":**

The use, disposition, export and re-export of this property are subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 et seq.); the Export Administration Act of 1979 (50 U.S.C. Append 2401 et seq.); Assistance to Foreign Atomic Energy Activities (10 CFR part 810); Export and Import of Nuclear Equipment and Material (10 CFR part 110); International Traffic in Arms Regulations (22 CFR parts 120 et seq.); Export Administration Regulations (15 CFR part 730 et seq.); Foreign Assets Control Regulations (31 CFR parts 500 et seq.); and the Espionage Act (50 U.S.C. 791 et seq.) which among other things, prohibit:

- a. The making of false statements and concealment of any material information regarding the use or disposition, export or reexport of the property; and
- b. Any use or disposition, export or reexport of the property which is not authorized in accordance with the provisions of this agreement.

### **41 CFR 109-45.301.51, "EXPORT/IMPORT CLAUSE":**

Personal property purchased from the U.S. Government may or may not be authorized for export/import from/into the country where the personal property is located. If export/import is allowed, the purchaser is solely responsible for obtaining required clearances or approvals. The purchaser also is required to provide to the appropriate party DOE's export control guidance if the property is resold or otherwise disposed.

## **PROLIFERATION-SENSITIVE PROPERTY ACKNOWLEDGEMENT:**

1. In the event that proliferation-sensitive property, as identified on the U.S. Munitions List (22 CFR 121) or the International Atomic Energy Agency (IAEA) Information Circular (INFCIRC) 254 Part I and Part II (the Trigger List), is inadvertently included in this sale, the Purchaser agrees that the sale is void as to that property.
2. If such property has been received by the Purchaser, Purchaser agrees to return the property to MSTs.
3. If payment has been made, the purchase price only shall be refunded to the Purchaser.

## **DISPUTES:**

In the event of a dispute, the parties will endeavor to settle any dispute through discussion and negotiation. If such efforts fail, either party may bring legal proceedings in a court of competent jurisdiction in Clark County, Nevada. The provisions of all terms and conditions will be construed and interpreted under the laws of the state of Nevada without reference to its choice of law provisions.

**INSPECTION:**

1. Prior to submitting bids, Bidders are invited and urged to inspect the property to be sold.
2. By appointment only, with required 24-hour advance notice, property will be available for inspection at the NNSS, Mercury, NV, Monday through Thursday (except holidays) from 7:30 a.m. to 4:00 p.m.
3. Appointments can be made by calling (702) 295-7226. The Agent and the Government will not be obligated to furnish any labor for such purpose.
4. In no case will failure to inspect constitute grounds for a claim or for the withdrawal of a bid after opening.

**CONDITION OF PROPERTY:**

1. All property listed herein is offered for sale "As Is" and without recourse against the Agent or Government.
2. The description is based on the best available information, but Agent and Government make no guaranty, warranty, or representation, expressed or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property, or its fitness for any use or purpose.
3. No claim will be considered for allowance or adjustment or for rescission of the sale based upon failure of the property to correspond with the standard expected; this sale is not by sample.

**TITLE, RISK OF LOSS, AND AGENT OR GOVERNMENT LIABILITY:**

1. Title to the property sold hereunder shall vest in the Purchaser only when both loading and payment are completed.
2. The Agent will furnish a "Certificate of Release," Standard Form 97, for each piece of equipment requiring licensing by a state.
3. On all purchases, the Agent will issue to the Purchaser written authorization to permit the removal of property.
4. After the award of bid and prior to removal of property, the responsibility of Agent and Government will be limited to the exercise of reasonable care for the protection of property.
5. After the date specified for the removal of the property, all risk of loss, damage, or destruction from any cause whatsoever shall be borne by the Purchaser.
6. In any case where liability of the Agent or Government to the Purchaser has been established, Agent or Government liability shall not, in any event, exceed refund of the purchase price or such portion thereof as the Agent may have received.
7. Any sales contract agreement will be entered into between the Bidder and the Sales Agent acting for the U.S. DOE. Bidder agrees with and accepts all sales Terms and Conditions of this sale as published and posted. Additional terms may be announced or posted during the sale.

## **REMOVAL OF PROPERTY:**

1. Purchaser shall be entitled to obtain the property upon vesting of the property title to Purchaser, unless otherwise specified.
2. Purchaser shall remove the property at the Purchaser's expense. Purchaser must make all arrangements necessary for packing, removal, and transportation of property.
3. Agent will not act as liaison in any fashion between the Purchaser and any Carrier, nor will the Agent recommend a specific Carrier. Loading will only be performed as set forth in the Invitation, and unless otherwise provided in the Invitation, loading will not be performed on Fridays, Saturdays, Sundays, federal holidays, or any day that the installation where the property is located cannot allow for public access.
4. Unless otherwise stated, the Agent will make the initial placement of the property on conveyance(s) furnished by the Purchaser. The Agent will not block, chock, brace, lash, band, or in any other manner secure the cargo on such conveyance(s) furnished by the Purchaser.
5. The Purchaser shall reimburse the Agent or the Government for any damage to the government property caused by the removal operations of the Purchaser.
6. In addition to the foregoing rights, Agent or Government may resell the property after thirty (30) days (calculated from the date of mailing) after written notice of default/cancellation is sent to the Purchaser.
7. Any details regarding removal of the property as may not be provided for herein shall be arranged with the authorized representative of the Agent; arrangements shall be reduced to writing.
8. Purchaser shall remove the property at Purchaser's expense within the period of time allowed in the Invitation.
9. If Agent determines that failure to remove the property within the period of time originally allowed arose out of causes beyond the control and without the fault or negligence of the Purchaser, such determination shall be reduced to writing, and a reasonable extension of time for removal shall be allowed. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and/or unusually severe weather.
10. Items purchased will be released only to Purchaser or Purchaser's authorized representative. The authorized representative must furnish written authorization from Purchaser to the Custodian of the property at the property location before any release will be made.
11. When property is described as being boxed, packed, crated, skidded, or in containers, the Agent does not warrant that the property as packaged is suitable for shipment.
12. Segregation, culling, or selection of property for the purpose of effecting partial or incremental removals will not be permitted except as specifically authorized and prescribed by the Agent.
13. At no time will Purchaser resell items purchased without first removing such items from DOE facilities.

### **ADJUSTMENT FOR VARIATION IN QUANTITY OR WEIGHT:**

1. Any variation between the quantity or weight listed for any item and the quantity of such item tendered or released to the Purchaser will be adjusted on the basis of the unit price quoted for such item.
2. No adjustment for such variation will be made where an award is made on a "price per lot" basis.

### **VERBAL MODIFICATIONS:**

Any oral statement by any representative of Agent or Government modifying or changing any condition of this contract is an expression of opinion only, and confers no right upon Purchaser.

### **OFFICIALS NOT TO BENEFIT:**

No Member of, or Delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise there from, unless it be made with a corporation for its general benefit.

### **ASSIGNMENT OF CONTRACTS:**

Any subcontract awarded is subject to the provisions of 41 USC 15, which generally preclude assignment of such contract.

### **WITHDRAWAL OF PROPERTY AFTER AWARD:**

1. The Agent reserves the right to withdraw for its use any or all of the property offered in an auction, if/when the property becomes unavailable for sale for any reason. Said reason for unavailability shall be determined at the sole discretion of the Agent.
2. The Agent reserves the right to withdraw for its use any or all of the property offered in an auction, if a bona fide requirement for the property develops or exists prior to actual removal of the property from Government control.
3. In the event of a withdrawal under this condition, the Agent shall be liable only for the refund of the auction price of the withdrawn property or such portion of the subcontract price as it may have received.

## **ELIGIBILITY OF BIDDERS:**

Bidder warrants that he/she is not any of the following:

- a. Under 18 years of age.
- b. An employee of an agency of the Federal Government (either as a civilian or as a member of the Armed Forces of the United States, including the United States Coast Guard, on active duty) prohibited by the regulations of that agency from purchasing property sold hereunder.
- c. A person prohibited from bidding, as set forth above.
- d. An Agent or immediate member of the household of the employee in (b) above. For breach of this warranty, the Agent shall have the right to void this auction without liability.

**DO NOT BID** unless you have read, understand, and agree to all the Auction Terms and Conditions of this sale. Failure to abide by these Auction Terms and Conditions could result in fines, penalties, and/or forfeiture of sale property. The Agent is not responsible, and will not be held responsible, for non-receipt of bids or loss of bids due to system outage or failure of electronic or mechanical equipment to perform to expectations.