



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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October 3, 2017

Via Electronic Mail [preis@orasure.com] and USPS Regular Mail

Pat Reis
OraSure Technologies, Inc.
220 East First Street
Bethlehem, PA 18015

Re: I/M/O RFP #17DPP00064 OraSure Technologies, Inc.
Protest of Notice of Proposal Rejection
T0115 Scientific Equipment Accessories and Supplies

Dear Ms. Reis:

This letter is in response to your email of September 27, 2017, on behalf of OraSure Technologies, Inc. hereinafter ("OraSure") which was received by the Division of Purchase and Property's (hereinafter "Division") Hearing Unit. In that correspondence, OraSure protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation {Request for Proposal} #17DPP00064: T0115 Scientific Equipment Accessories, Supplies and Maintenance Statewide (hereinafter "RFP"). The record of this procurement reveals that OraSure's Quote {Proposal} (hereinafter "Proposal") was rejected because OraSure did not submit the completed and signed *Ownership Disclosure Form* with its Proposal submission.

In consideration of OraSure's protest, I have reviewed the record of this procurement, including the RFP, OraSure's Proposal, the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed Final Agency Decision on the merits of the protest. I set forth herein the Division's Final Agency Decision.

By way of background, on March 22, 2017, the Division's Procurement Bureau (hereinafter "Bureau") issued the RFP on behalf of State Using Agencies and Cooperative Purchasing Program Partners, to solicit Proposals for educational/instructional and professional/laboratory grade scientific equipment, accessories, supplies, chemicals and reagents, instrument rental and maintenance. RFP § 1.1 *Purpose and Intent*. It is the State's intent to award Statewide Blanket P.O.s {Contracts} (hereinafter "Contracts") for each specific brand bid (one award per brand) for price lines one (1) through four (4), to those responsible Vendors {Bidders} (hereinafter "Bidders"), whose Proposals, conforming to the RFP, are most advantageous to the State, price, and other factors considered. Price lines five (5) and six (6) will be awarded to all Bidders awarded contracts for prices lines one (1) through four (4). RFP § 7.2 *Final Blanket P.O. {Contract} Award*.

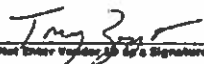
On July 6, 2017, the Bureau issued Bid Amendment {Addendum} #6 responding to the questions posed by potential Bidders. On August 15, 2017, the Bureau issued Bid Amendment {Addendum} #9 extending the Proposal opening date to August 25, 2017, 2:00 pm eastern time. On August 25, 2017, the Proposal Review Unit opened 55 Proposals received by the submission deadline of 2:00 pm eastern time. A review of the Proposal submitted by OraSure reveals that OraSure did not submit a completed and signed *Ownership Disclosure Form* with its Proposal as required. Therefore, the Proposal Review Unit issued a Notice of Proposal Rejection.

On September 27, 2017, OraSure wrote to the Division's Hearing Unit stating:

I received the attached Notice of Proposal Rejection and I do not understand why the Ownership Disclosure Form is not considered acceptable. I have attached a copy for your review. We marked Item 1 box: NO and then it says if you answer NO that you just need to sign and date the form which is what we did. Could you please provide me with further clarification?

With its protest, OraSure submitted a completed and signed *Ownership Disclosure Form*, shown below.

STATE OF NEW JERSEY -- DIVISION OF PURCHASE AND PROPERTY OWNERSHIP DISCLOSURE FORM															
Bid Solicitation Number: 17DPP00064	Vendor Bidder: OraSure Technologies, Inc.														
PART 1: PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR "NO" BOX. <small>ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO COMPLETE THIS FORM PURSUANT TO N.J.S.A. 17:28-34.2 PLEASE NOTE THAT VENDOR BIDDER SHOULD PRINT THE SPOUSE'S NAME IN ALL CAPS PLEASE CHECK THE "YES" OR "NO" BOXES TO DISCLOSE OR DENY OWNERSHIP INTEREST.</small>															
	YES NO														
1. Are there any individuals, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Vendor Bidder?	<input type="checkbox"/> <input checked="" type="checkbox"/>														
<small>IF THE ANSWER TO QUESTION 1 IS "NO" PLEASE SIGN AND DATE THE FORM. YOU DO NOT HAVE TO COMPLETE ANY MORE QUESTIONS ON THIS FORM. IF THE ANSWER TO QUESTION 1 IS "YES" PLEASE ANSWER QUESTIONS 2-4 BELOW.</small>															
2. Of those parties owning a 10% or greater interest in the Vendor Bidder, are any of those parties individuals?	<input type="checkbox"/> <input type="checkbox"/>														
3. Of those parties owning a 10% or greater interest in the Vendor Bidder, are any of those parties corporations, partnerships, or limited liability companies?	<input type="checkbox"/> <input type="checkbox"/>														
4. If your answer to Question 3 is "YES", are there any parties owning a 10% or greater interest in the corporation, partnership or limited liability company referenced in Question 3?	<input type="checkbox"/> <input type="checkbox"/>														
IF ANY OF THE ANSWERS TO QUESTIONS 2-4 ARE "YES" PLEASE PROVIDE THE REQUESTED INFORMATION IN PART 2 BELOW.															
PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO QUESTIONS 2-4 ANSWERED AS "YES". <small>If you answered "YES" for question 2, 3 or 4, you must disclose identifying information related to the individuals, corporations, partnerships, and/or limited liability companies owning a 10% or greater interest in the Vendor Bidder. Further, if one or more of these entities is itself a corporation, partnership, or limited liability company, you must also disclose all parties that own a 10% or greater interest in that corporation, partnership, or limited liability company. This information is required by statute.</small> <small>TO COMPLETE PART 2, PLEASE PROVIDE THE REQUESTED INFORMATION PERTAINING TO EITHER INDIVIDUALS, CORPORATIONS, PARTNERSHIPS, OR LIMITED LIABILITY COMPANIES HAVING A 10% OR GREATER INTEREST IN THE VENDOR BIDDER. IF YOU NEED TO MAKE ADDITIONAL ENTRIES, CLICK THE "ADD AN ENTRY" BUTTON IN THE APPROPRIATE ENTITY BOX.</small>															
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center;">Individuals</th> </tr> </thead> <tbody> <tr> <td style="width: 50%;">Name: _____</td> <td style="width: 50%;">Date of Birth: _____</td> </tr> <tr> <td colspan="2">Home Address: _____</td> </tr> <tr> <td>City _____</td> <td>State _____ Zip Code _____</td> </tr> <tr> <td colspan="2" style="text-align: center;"> Are there additional entities holding a 10% or greater ownership interest in the Vendor Bidder and its parent corporation, partnership or limited liability company? </td> </tr> <tr> <td colspan="2" style="text-align: center;"> <input type="checkbox"/> Yes or <input type="checkbox"/> No </td> </tr> <tr> <td colspan="2" style="text-align: center;"> <input type="button" value="Add An Additional Individual Entry"/> </td> </tr> </tbody> </table>		Individuals		Name: _____	Date of Birth: _____	Home Address: _____		City _____	State _____ Zip Code _____	Are there additional entities holding a 10% or greater ownership interest in the Vendor Bidder and its parent corporation, partnership or limited liability company?		<input type="checkbox"/> Yes or <input type="checkbox"/> No		<input type="button" value="Add An Additional Individual Entry"/>	
Individuals															
Name: _____	Date of Birth: _____														
Home Address: _____															
City _____	State _____ Zip Code _____														
Are there additional entities holding a 10% or greater ownership interest in the Vendor Bidder and its parent corporation, partnership or limited liability company?															
<input type="checkbox"/> Yes or <input type="checkbox"/> No															
<input type="button" value="Add An Additional Individual Entry"/>															

Partnerships/Corporations/Limited Liability Companies	
Entry Name: _____	Delete Entry
Partner Name: _____	
Business Address: _____	
City _____ State _____ Zip Code _____	
Are there additional entities holding a 10% or greater ownership interest in the Vendor Bidder and its parent corporation, partnership or limited liability company? <input type="checkbox"/> Yes or <input type="checkbox"/> No	
Add An Additional Partnership/Corporation/ Limited Liability Company Entry	
<p>In the alternative, to comply with this section, a bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the Federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit data in the subsection containing the last annual filings with the Federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. <u>N.J.S.A. 52:25-24.2</u></p>	
<p>Certification: I hereby certify that the foregoing information and my attachments herein, to the best of my knowledge are true and complete. I certify that I am authorized to execute this form on behalf of the Vendor Bidder, and acknowledge that the State of New Jersey is relying on the information contained herein and that the Vendor Bidder is under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.</p>	
Signature: 	Date: <u>5/14/17</u>
Do Not Erase Vendor Bidder's Signature	
Print Name and Title: <u>Tony Zazzo Business Unit Leader - ID</u>	
EIN/SSN: <u>38-4370066</u>	

Pursuant to the Division’s governing regulations, a Proposal must “[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required” or “be subject to automatic rejection.” N.J.A.C. 17:12-2.2. To assist Bidders in preparing and submitting a Proposal, the RFP advises Bidders to visit the [NJSTART Vendor Support Page](#) and to utilize the available Quick Reference Guides. Specifically, RFP § 1.33 [NJSTART](#) states in pertinent part:

Vendors {Bidders} are strongly encouraged to visit the [NJSTART Vendor Support Page](#), which contains Quick Reference Guides (QRGs), supporting videos, a glossary of [NJSTART](#) terms, and helpdesk contact information.

The Vendor {Bidder} should utilize the QRGs before attempting to submit its Quote {Proposal} using the [NJSTART](#) process. It is the Vendor’s {Bidder’s} responsibility to ensure that the [NJSTART](#) Quote {Proposal} and attachments have been properly submitted.

The *Ownership Disclosure Form* is a statutorily required document that must be submitted with the Bidder’s Proposal. The New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated the requirements that a bidder must comply with in order to enter into a contract with the State. N.J.S.A. 52:25-24.2 states in pertinent part:

No corporation, partnership, or limited liability company shall be awarded any contract nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, **unless prior to the receipt of the bid or accompanying the bid**, of said corporation, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

[*Emphasis added.*]

The *Ownership Disclosure Form* is specifically addressed in RFP Section 4.4.1.2.1 *Ownership Disclosure Form* which states:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, limited liability company, or partnership, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote {Proposal}. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote {Proposal} will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award of a Blanket P.O. {Contract} to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote {Proposal} submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote {Proposal}.

Vendors {Bidders} using **NJSTART** to submit a Quote {Proposal} shall make the appropriate certification on the "Maintain Terms and Categories" Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Ownership Disclosure Form. Vendors {Bidders} not using **NJSTART** to submit a Quote {Proposal}

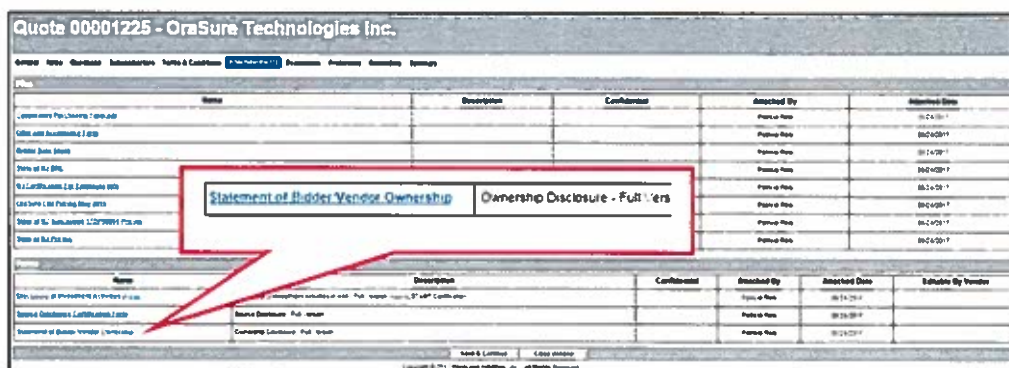
must complete the full Ownership Disclosure Form located on the [Division's website](#). This form is also available in [NJSTART \(www.njstart.gov\)](#).

Vendors {Bidders} may refer to the QRGs “Vendor Forms” and “Attaching Files” for instructions on submitting the forms required by this section of the Bid Solicitation {RFP} through [NJSTART](#). Vendors {Bidders} may also refer to the QRG “Vendor Categories and Certifications” for additional instructions on completing shortened versions of required forms by completing certifications on the “Maintain Terms and Categories” Tab within its profile in [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

Vendors {Bidders} utilizing [NJSTART](#) should designate one (1) version of the Ownership Disclosure Form as the Primary Form. In the event that a Vendor {Bidder} fails to attach an Ownership Disclosure Form, or the attached Ownership Disclosure Form is deemed deficient, the Division may access the Primary Form and consider it as part of the Quote {Proposal}. Note: The Primary Form must have a Date Created within six (6) months of the Quote {Proposal} submission deadline to be considered valid.

In reviewing Proposals submitted in response to an RFP, the Division does not have the power to waive the legislative requirement that a Bidder provide its ownership information prior to or accompanying the Proposal submission. [N.J.S.A. 52:25-24.2](#). Only the New Jersey Legislature can change a requirement it has mandated. Accordingly, in order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community an *Ownership Disclosure Form* to be completed and submitted with the Proposal.

The Division’s Hearing Unit’s independent review of OraSure’s Proposal reveals that OraSure did not submit a completed and signed *Ownership Disclosure Form* with its Proposal. In creating its Proposal OraSure attached the following files:



One of the documents uploaded by OraSure was annotated on the attachment list as the “Statement of Bidder/Vendor Ownership – Ownership Disclosure – Full Version”. However, as shown in the screenshot below, this form was not completed or signed. With its Proposal, OraSure submitted the blank [NJSTART Ownership Disclosure Form](#), not the hard copy form submitted with its protest.

Statement of Bidder/Vendor Ownership
 STATE OF NEW JERSEY - DIVISION OF PURCHASE AND PROPERTY - OWNERSHIP DISCLOSURE FORM

BID SOLICITATION NUMBER: _____ VENDOR BIDDER: _____

PART 1. PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR "NO" BOX

ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO COMPLETE THIS FORM PURSUANT TO N.J.A.C. 17:25-24.2. PLEASE NOTE: IF THE VENDOR BIDDER IS A NON-PROFIT, THIS FORM IS NOT REQUIRED. PLEASE COMPLETE THE SEPARATE DISCLOSURE OF INVESTIGATIONS FORM.

1. Are there any individuals, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Vendor Bidder?
 IF THE ANSWER TO QUESTION 1 IS NO, PLEASE SIGN AND DATE THE FORM. YOU DO NOT HAVE TO COMPLETE ANY MORE QUESTIONS ON THIS FORM. IF THE ANSWER TO QUESTION 1 IS YES, PLEASE ANSWER QUESTIONS 2-4 BELOW.

2. Of those parties owning a 10% or greater interest in the Vendor Bidder, are any of those parties individuals?
 3. Of those parties owning a 10% or greater interest in the Vendor Bidder, are any of those parties corporations, partnerships, or limited liability companies?
 4. If you answer to Question 2 is "YES", are there any parties owning a 10% or greater interest in the corporation, partnership, or limited liability company referenced in Question 2?
 IF ANY OF THE ANSWERS TO QUESTIONS 2-4 ARE YES, PLEASE PROVIDE THE REQUESTED INFORMATION IN PART 2 BELOW.

PART 2. PLEASE PROVIDE FURTHER INFORMATION RELATED TO QUESTIONS 2-4 ANSWERED AS "YES"

If you answered "YES" for question 2, 3 or 4, you must disclose identifying information relative to the individuals, corporations, partnerships, and/or limited liability companies owning a 10% or greater interest in the Vendor Bidder. Further, if one or more of those entities is itself a corporation, partnership, or limited liability company, you must also disclose all parties that own a 10% or greater interest in that corporation, partnership, or limited liability company. This information is required by statute.

TO COMPLETE PART 2, PLEASE PROVIDE THE REQUESTED INFORMATION PERTAINING TO EITHER INDIVIDUALS, CORPORATIONS, PARTNERSHIPS OR LIMITED LIABILITY COMPANIES HAVING A 10% OR GREATER INTEREST IN THE VENDOR BIDDER. IF YOU NEED TO MAKE ADDITIONAL ENTRIES, CLICK ON THE "X" SIGN IN THE TOP LEFT CORNER OF THE APPROPRIATE ENTITY TYPE.

INDIVIDUALS

NAME _____
 DATE OF BIRTH _____
 HOME ADDRESS _____
 CITY _____
 STATE _____
 ZIP CODE _____

PARTNERSHIPS; CORPORATIONS; LIMITED LIABILITY COMPANIES

ENTITY NAME _____
 PARTNER NAME _____
 BUSINESS ADDRESS _____
 CITY _____

STATE _____
 ZIP CODE _____

In the alternative to comply with this section, a bidder with any direct or indirect parent entity which a publicly traded entity, shall submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity, as of the last annual filing with the Federal Securities and Exchange Commission to the "large" issuer, and, if there is any person that holds a 10 percent or greater beneficial interest, also enter submit this to the website concerning the last annual filing with the Federal Securities and Exchange Commission of the foreign issuer, and the relevant page numbers of the filing if applicable, the information of each issuer that holds a 10 percent or greater beneficial interest. N.J.A.C. 17:25-24.2

Certification: I hereby certify that the foregoing information and any attachments hereto to the best of my knowledge are true and complete. I certify that I am authorized to execute this form on behalf of the Vendor Bidder, and acknowledge that the State of New Jersey is relying on the information contained herein and that the Vendor Bidder is under a continuing obligation from the date of the certification through the completion of any contracts with the State to notify the State in writing of any changes to the information contained herein. This form certifies that it is a criminal offense to make a false statement or misrepresentation in this certification and if it is so, I am subject to criminal prosecution under the law and that I will disclose a material violation of my agreement with the State, including the State to ensure any contract resulting from this certification void and unenforceable.

SIGNATURE _____ TITLE _____
 PRINT FULL NAME _____ DATE _____
 PER SIGN _____

An asterisk (*) indicates a required field.

Moreover, a review of the 10 other files which comprised OraSure's Proposal does not reveal a completed and signed *Ownership Disclosure Form*.

As noted in RFP § 4.4.1.2.1 above, Bidders using *NJSTART* to submit a Proposal are required to make the appropriate certification regarding ownership disclosure on the "Maintain Terms and Categories" Tab within its profile. As shown in the screenshot below, OraSure did not complete the Ownership Disclosure category.

The screenshot shows a web-based form titled "Vendor Profile - OraSure Technologies, Inc." with a navigation bar containing "Information", "Address", "Company Logo and Services", "Support", "Vendor Information", "Submittals", and "Vendor Performance". The main content area is titled "Terms and Categories Information" and includes sections for "Payment Terms", "Freight Terms", "Shipping Method", and "Shipping Terms". Below these are several "MANDATORY FIELDS" sections: "Category 1 Primary Business Function", "Category 2 Business Formation", "Category 4 Business Taxes Transfer Certification", "Category 5 Tax ID Certification", and "Category 6 Business Registration". Each section contains a description and a "Yes/No" field. At the bottom, there is a "Category 7 AA/EEOC Compliance" section with a "Yes/No" field and a date field. The footer of the form includes "Copyright © 2017 - ProcureSource, Inc. All Rights Reserved".

Because OraSure did not complete the Ownership Disclosure category within **NJSTART**, it was required to submit the *Ownership Disclosure Form* with its proposal, have one on file with the Division within the six (6) month window prior to the Proposal opening deadline, or attach the form to its Vendor Profile within **NJSTART**. Unfortunately, OraSure did not comply with any of these options.

The **NJSTART** system does not prevent a Bidder from submitting a Proposal without all of the required forms and documents attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, including the Proposal, are uploaded into **NJSTART** necessarily and appropriately rests solely with the Bidder. RFP § 1.4.2 *Vendor {Bidder} Responsibility*. Here, unfortunately, although it may have been inadvertent, OraSure submitted a Proposal without the *Ownership Disclosure Form* being completed and signed as required.

Notwithstanding OraSure's interest in competing for this procurement, to allow Continental OraSure to submit a completed and signed *Ownership Disclosure Form* after bid opening would violate the Legislative requirement outlined in N.J.S.A. 52:25-24.2, a requirement that this Division is not authorized to waive. This is an unfortunate situation for the State as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Proposal. However, in light of the findings set forth above, I have no choice but to uphold the Proposal Review Unit's Notice of Proposal Rejection issued to OraSure. This is my final agency decision on this matter.

Thank you for your interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,

Maurice A. Griffin
Acting Director

MAG: RUD

- c: J. Kerchner
- K. Thomas
- C. Murphy
- A. Nelson
- D. Rodriguez