

MIDDLE RIO GRANDE CONSERVANCY DISTRICT



REQUEST FOR BID

FOR:

FRESNO SLIDE GATES

DEADLINE FOR RESPONSE:

**TUESDAY AUGUST 27, 2019
10:00 A.M.**

COMMODITY CODES; 00262, 02049, 67017

PREPARED BY:

**Richard DeLoia, Purchasing Agent
Middle Rio Grande Conservancy District
1931 Second Street, S.W. Post Office Box 581
Albuquerque, New Mexico 87103
(505) 247-0234**

SECTION I

GENERAL INFORMATION

The Middle Rio Grande Conservancy District (MRGCD) is seeking bids for a fixed price Agreement from vendors for Fresno Slide Gates and Replacement Parts in accordance with specifications contained in this Request for Bid. **This Price Agreement will be for a period of 12 months.**

BID REQUIREMENTS:

- A. The Middle Rio Grande Conservancy District will be accepting sealed bids for the following;
 - 1. Fresno Slide Gates 101C
 - 2. Replacement Parts

TIME - PLACE – AWARD:

- A. All bids must be made on official bid forms, in the manner prescribed in these specifications.
- B. Envelopes shall be clearly marked "Slide Gates and Components" in the lower left-hand corner. The filing date and time marked or stamped on bid envelope by MRGCD shall be conclusive evidence of the date and time the bid was filed. Failure to properly identify this Request for Bid (RFB) on the lower left corner of your sealed envelope may result in either premature opening of your bid or failure to open it upon the correct closing date and time.
- C. Bids may be mailed, but to be considered, must be received on or before 12:00 p.m. Tuesday August 27th, 2019

Middle Rio Grande Conservancy District
Attn: Richard DeLoia
1931 Second Street, S.W.
Albuquerque, New Mexico 87102
(505) 247-0234
richard@mrgcd.us

- D. Should any amendment to the RFB be deemed necessary, it will be distributed in writing to all recipients of the original RFB and posted on the District www.mrgcd.com. If an amendment requires a time extension, the submission date will be changed as part of the written amendment.
- E. A bid may be modified by a bidder prior to the deadline for submission of bids by delivery of a written modification to the above address.
- F. Any bids or modification received after the deadline will be considered late, and will not be considered.

**SECTION II
CONDITIONS GOVERNING THIS PROCUREMENT**

This section of the RFB contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

A. Sequence of Events

ACTION	RESPONSE	DATE
Issue of RFB	MRGCD	August 15, 2019
Acknowledgement of Receipt Form	Bidder	August 19, 4:30 p.m.
Deadline for Bids	Bidder	August 27, 2019, 12:00 p.m.
Bid Evaluation	MRGCD	August 27, through September 3, 2019
Bid Approval	MRGCD Board	September 9, 2019
Notice of Award	MRGCD	September 10, 2019

B. Explanation of Events

1. Issue of RFP

This RFP is being issued by the Middle Rio Grande Conservancy District.

2. Acknowledgement of Receipt

Potential Bidders should hand deliver, return by facsimile or registered/certified mail or online at www.mrgcd.com the "Acknowledgement of Receipt of Request for Bid Form" Exhibit "B. The form should be signed by an authorized representative of the organization, dated and returned by close of business August 19th, 2019 by 4:30 p.m. Mountain Standard Time.

The Acknowledgement Form will be used for the distribution of written responses to questions and any RFB amendments.

Failure to return this form can constitute a presumption of receipt and rejection of the RFB, and the potential Bidder's organization shall not appear on the distribution list nor will receive any other information or amendment(s) pertaining to this RFB.

3. Submission of Bids

ALL BIDS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PURCHASING AGENT OR DESIGNEE NO LATER THAN 12:00 P.M. MOUNTAIN STANDARD TIME ON TUESDAY AUGUST 27, 2019. Bids received after this deadline will not be accepted. The date and time will be recorded on each bid. Bids must be addressed and delivered to Purchasing Agent at the address listed in Section I, Paragraph C. Bids must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the "**FRESNO GATES**". Bids submitted by facsimile will not be accepted.

4. Bid Evaluation

The evaluation of bids will be performed by MRGCD staff. This process will take place on August 27, 2019 through September 3, 2019.

5. Board Approval

MRGCD Board will take action for approval and award of this procurement on Monday, September 9, 2019. This contract shall be awarded to the bidder whose bid is most advantageous, taking into consideration the evaluation factors set forth in the RFB.

6. Notice of Award

Notification of Award will be issued September 10, 2019.

7. Protest Deadline

Any protest by any bidder must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The fifteen (15) day protest period for responsive bidders shall begin on the day following the contract award and will end as of 4:30 p.m. Mountain Standard Time on September 25, 2019. Protests must be written and must contain the name and address of the protestant, the name of this solicitation, and a statement of grounds for protest, including appropriate supporting exhibits. Protests received after the deadline will not be accepted. The protest must be address and delivered as follows:

Richard DeLoia, Purchasing Agent
Middle Rio Grande Conservancy District
PO Box 581
Albuquerque, NM 87103-0581
505 247-0234 ext. 1331
richard@mrgcd.us

EVALUATION OF BIDS

Evaluation of the bids will be based on the criteria as listed below.

1. Compliance with the Required Specifications
2. Total Cost for all Schedules
3. Delivery time frame
4. Submittal of Acknowledgement of Receipt Form
5. Debarment & Suspension Form
6. Campaign Contribution Form

B. General Requirements

This procurement is being conducted in accordance with MRGCD and State Procurement Regulations.

1. Acceptance conditions governing the Procurement:

Bidders must indicate their acceptance of the conditions governing this procurement and all amendments to the RFB (if any) in their letter of transmittal.

2. Incurring Cost:

Any cost incurred by the bidder in preparation, transmittal submitted in response to this RFB shall be borne solely by the bidder.

3. Vendor Responsibility:

Any contract that may result from this RFB shall specify that the vendor will be solely responsible for fulfillment of the contract with the MRGCD.

Responses to this RFB will be considered firm for ninety (60) days from the deadline date.

**Resident Business or Resident Veteran Business Certificate (As required by Section 13-1-22 NMSA if applying for a preference under Section 13-1-21 NMSA)
Resident Veterans Business Preference Certification
(If applying for Resident Veteran Business preference; See Appendix 3.)**

SECTION III

TERMS AND CONDITIONS

It is mandatory that the bidder document any exceptions to the specifications as stated on this Bid. In a case that materials received do not meet the required specifications, the District will demand that the supplier correct the error at his/her expense. It is necessary that the replacement or modifications be achieved in a timely manner as specified by the District.

The District reserves the right to reject any and all bids, to waive any minor technicalities

in bids and, unless otherwise specified by the bidder, to accept any item in the bid. In case of error in the extension of prices in the bid, the unit prices will govern. Bids will be awarded in whole not in part unless otherwise specified by the District.

The District will take advantage of payment discounts offered whenever possible; however, payment discounts will not be used as a means to determine the lowest responsible bidder. Time in connection with discounts offered, will be computed from date of the delivery of the supplies and or service completions, or from the date a correct invoice certified by the contractor is received.

In case of default of the contractor, the District may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby.

No officer or employee of the District or public officer of the District shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, directly or indirectly.

Delivery is an important consideration and may be a factor in determining the award. Please state your earliest delivery date on the bid response form. Deliveries will be made at the one (1) location listed below as per schedule. The District also reserves the right to cancel all items not shipped without any penalty.

DELIVERY OF MATERIAL

At minimum 24 hours, preferably 72 hours notice is required prior to any deliveries to District yards. Failure to comply may result in rejection of shipment. The following is the contact information and telephone numbers for each shipping location:

Albuquerque Division Yard
1930 Second Street, S.W.
Albuquerque, New Mexico
(505) 247-0234

Mr. Joe Brem, Division Manager Ext. 1347
Mr. Ricardo Varela, Supply Clerk Ext. 1348

INSTRUCTION TO BIDDERS

1. **MRGCD** reserves the right to refuse any shipment that is deemed unacceptable due to product concerns, changes or workmanship of Gates and attaching items. If an order is deemed unacceptable, MRGCD will notify Bidder within 24 hours. At that time, Bidder will have 72 hours to pick up shipment that is unacceptable to return to the Bidders facility for correction. Bidder will be responsible for freight cost to their facility and for the freight cost back to our facility for corrected product.
2. Samples of items, when required, must be furnished, free of expense, prior to the opening of bids, and if not destroyed will upon request, be returned at the bidder's expense.
3. Prices should be stated in units of quantity specified with packaging included.
4. Time of proposed delivery must be stated in definite terms. If time varies for different items the bidder shall so state.
5. If item bid had a trade name or brand, such trade name and brand must be stated in the bid.
6. To insure prompt payment, bills should be certified as follows: I certify that this bill is correct and just, and that payment therefore has not been received.

NOTICE

THE PROCUREMENT CODE, SECTIONS 13-1-29 THROUGH 13-1-199 NMSA 1978 IMPOSES CIVIL AND CRIMINAL PENALTIES FOR ITS VIOLATION. IN ADDITION, THE NEW MEXICO CRIMINAL STATUTES IMPOSE FELONY PENALTIES FOR ILLEGAL BRIBES, GRATUITIES AND KICKBACKS.

MINIMUM SPECIFICATIONS

SLIDE GATES

SLIDE GATES: Spigot back or Flat back (will be specified) with 6 foot frame height, (except where specified), right hand stem thread and 6 foot tall. Slide gates shall be Fresno 101C Gates. Gate designed for use on low head system. Hand Wheels on gates should be the same size as the gate.

STEMS

Right hand thread, fully threaded with lip.

REPLACEMENT PARTS

Replacement parts requiring right hand thread unless otherwise specified.

ACCEPTANCE OF GOODS CONDITION

MRGCD reserves the right to reject the shipment of gates and (or) replacement parts. Please refer to line 1 in "Instruction to Bidder" section.

SCHEDULE I

**THE FOLLOWING ITEMS TO BE DELIVERED
ALBUQUERQUE DIVISION
F.O.B. DESIGNATED DESTINATION
1930 SECOND ST SW.
ALBUQUERQUE, NM**

ITEM NO.	SLIDE GATES W/ FLAT BACK MOUNT	QUANTITY	UNIT PRICE	TOTAL AMOUNT
1.	18"	9 EACH	\$	\$
2.	24"	6 EACH	\$	\$

ITEM NO.	SLIDE GATES W/ SPIGOT BACK MOUNT	QUANTITY	UNIT PRICE	TOTAL AMOUNT
3.	12"	8 EACH	\$	\$
4.	15"	15 EACH	\$	\$
5.	18"	15 EACH	\$	\$
6.	24"	15 EACH	\$	\$

ITEM NO.	CARBON STEEL STUB	QUANTITY	UNIT PRICE	TOTAL AMOUNT
7.	18"	9 EACH	\$	\$
8.	24"	6 EACH	\$	\$
TOTAL SCHEDULE I				\$

SCHEDULE TOTALS

SCHEDULE I: \$ _____

GRAND TOTAL ALL SCHEDULES \$ _____

PROJECTED DELIVERY DATE FOR SCHEDULE

Delivery Schedule: _____

VENDOR INFORMATION

COMPANY NAME: _____

ADDRESS: _____

TELEPHONE # _____

E-MAIL ADDRESS: _____

CONTACT: _____

PLEASE PRINT

Date: _____

SIGNATURE

SECTION VII

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a bid or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, which has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed bid or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive bid.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office.

“Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“**Family member**” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“**Pendency of the procurement process**” means the time period commencing with the public notice of the request for bids and ending with the award of the contract or the cancellation of the request for bids.

“**Person**” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“**Prospective contractor**” means a person who is subject to the competitive sealed bid process set forth in the Procurement Code or is not required to submit a competitive sealed bid because that person qualifies for a sole source or a small purchase contract.

“**Representative of a prospective contractor**” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

“**Name(s) of Applicable MRGCD Public Official(s)**”

(Karen Dunning, John Kelly, Joaquin Baca, Valerie Moore, Barbara Baca, Stephanie Russo Baca and Michael T. Sandoval)

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable MRGCD Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (position)

Campaign Contributions Page 3 of 3

SECTION VIII

SUSPENSION AND DEBARMENT REQUIREMENT

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT AND OTHER RESPONSIBILITY MATTERS

The entering of a contract between Middle Rio Grande Conservancy District (MRGCD) and the successful Bidder pursuant to this RFP is a "covered transaction," as defined by 45 C.F.R. Part 76. MRGCD's contract with the successor Bidder shall contain a provision relating to debarment, suspension, and responsibility substantially in the form contained in Article 39 of Attachment D. All Bidders must provide as a part of their bids a certification to MRGCD in the form provided below. Failure of a Bidder to furnish a certification or provide such additional information as requested by the Procurement Manager for this RFP will render the Bidder non-responsible. Furthermore, the Bidder shall provide immediate written notice to the Procurement Manager for this RFP if, at any time prior to contract award, the Bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Although MRGCD may review the veracity of the certification through the use of the federal Excluded Parties Listing System or by other means, the certification provided by the Bidder in paragraph (a), below, is a material representation of fact upon which MRGCD will rely when making a contract award. If it is later determined that the Bidder knowingly rendered an erroneous certification, in addition to other remedies available to MRGCD, MRGCD may terminate the contract resulting from this request for bids for default.

The certification provided by the Bidder in paragraph (a), below, will be considered in connection with a determination of the Bidder's responsibility. A certification that any of the items in paragraph (a), below, exists may result in rejection of the Bidder's bid for nonresponsibility and the withholding of an award under this RFP. If the Bidder's certification indicates that that any of the items in paragraph (a), below, exists, the Bidder shall provide with its bid a full written explanation of the specific basis for, and circumstances connected to, the item; the Bidder's failure to provide such explanation will result in rejection of the Bidder's bid. If the Bidder's certification indicates that that any of the items in paragraph (a), below, exists, MRGCD, in its sole discretion, may request, that the U.S. Department of Health and Human Services grant an exception under 45 C.F.R. §§ 76.120 and 76.305 if MRGCD believes that the procurement schedule so permits and an exception is applicable and warranted under the circumstances. In no event will MRGCD award a contract to a Bidder if the requested exception is not granted for the Bidder.

(a)(1) By signing and submitting a bid, the Bidder certifies, to the best of his/her knowledge and belief, that:

(i) The Bidder and/or any of its Principals-

- (A) Are are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency;
- (B) Have have not , within a three-year period preceding the date of the Bidder's bid, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
- (C) Are are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this certification;
- (D) Have have not within a three-year period preceding the date of Bidder's bid, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and
- (E) Have have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. §1320a-7.

(ii) "Principal," for the purposes of this certification, shall have the meaning set forth in 45 C.F.R. §76.995 and shall include an officer, director; owner, partner, principal investigator, or other person having management or supervisory responsibilities related to a covered transaction. "Principal" also includes a consultant or other person, whether or not employed by the participant or paid with Federal funds, who: is in a position to handle Federal funds; is in a position to influence or control the use of those funds; or occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

(iii) For the purposes of this certification, the terms used in the certification, such as *covered transaction, debarred, excluded, exclusion, ineligible, ineligibility, participant, and person* have the meanings set forth in the definitions and coverage rules of 45 C.F.R. Part 76.

(iv) Nothing contained in the foregoing certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of a Bidder is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

BIDDER: _____

SIGNED BY: _____

TITLE: _____

DATE: _____

SPECIFICATION COMPLIANCE

IN THE INTEREST OF FAIRNESS AND SOUND BUSINESS PRACTICES, IT IS MANDATORY THAT YOU STATE ANY EXCEPTIONS TO THE ENCLOSED SPECIFICATIONS.

IT IS NOT THE RESPONSIBILITY OF THE MIDDLE RIO GRANDE CONSERVANCY DISTRICT TO FERRET OUT INFORMATION CONCERNING THE MATERIALS WHICH YOU INTEND TO FURNISH.

IF YOUR BID OR BID DOES NOT MEET OR EXCEED ALL THE STATED SPECIFICATIONS, YOU MUST SO STATE IN THE SPACE PROVIDED BELOW:

BIDS ON GOODS OR SERVICES, NOT SPECIFICALLY MEETING THE STATED SPECIFICATIONS, ARE WELCOMED AND WILL BE CONSIDERED BY THE DISTRICT AS LONG AS THE ITEMS BID EQUAL OR EQUIVALENT TO OUR SPECIFICATIONS. HOWEVER, ANY DEVIATIONS MUST BE LISTED ABOVE.

I MEET SPECIFICATIONS _____ I DON'T MEET SPECIFICATIONS _____
(Must Check One)

NAME _____
TITLE _____

NOTICE

TO ALL BIDDERS

THIS IS A REMINDER THAT THE MIDDLE RIO GRANDE CONSERVANCY DISTRICT IS NOT RESPONSIBLE FOR RECEIPT OF UNTIMELY BIDS OR BIDS WHETHER THE DELAYS ARE DUE TO UNTIMELY DELIVERY BY PUBLIC OR PRIVATE (POSTAL OR PERSONAL) DELIVERY SERVICE. THEREFORE, WE ASK YOU TO PLEASE MAKE APPROPRIATE ARRANGEMENTS TO HAVE YOUR BIDS OR BIDS IN BY THE DEADLINE DATE AND TIME AS DESIGNATED ON THE BID OR BID.

THANK YOU

APPENDIX NO. 3

**RESIDENT BUSINESS AND/OR RESIDENT VETERANS BUSINESS
CERTIFICATION**

(As per NMSA 1978 13-1-22)

**Points will be awarded based on Offerors ability to provide a copy of a current
Resident Business Certificate or Resident Veterans Certificate**

_____ **Resident Business Certificate**

_____ **Resident Veterans Certificate**

RESIDENT BUSINESS CERTIFICATION

Offeror's Company Name: _____

Resident Business Certificate Number: _____

Expiration Date: _____

Offeror "must" include a copy of Resident Business Certificate with their proposal

RESIDENT VETERAN'S BUSINESS CERTIFICATION

Offeror's Company Name: _____

Resident Veteran's Business Certificate Number: _____

Offeror must include copy of Resident Veteran's Business Certificate with their proposal.

Offeror's submitting a Resident Veteran's Business Certificate, must also complete the following certification of prior year's revenue.

Resident Veterans Preference Certification

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement.

Please check one box only

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the NM General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31st the following to be a true and accurate

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran contractor Preference under Section 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans' preference, I agree to report to the General Services Department the awarded amount involved. I will indicate in the report the award as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statement about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)*

DATE: _____

Must be an authorized signatory for the Business. The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or termination of award of the procurement involved if the statements are proven to be incorrect.