

Attachment #3

Exceptions Form

Please list any and all exceptions to this RFB in this section. Include section and reason for exception:
(Make additional pages if necessary)

Section	Exception
1. Request for Bids 4.3	Bidder has the exceptions noted below to the General Terms and Conditions.
2. 4.13	Bidder proposes the underlined changes shown on the attached page Attachment #3 - 4.13.
3. 4.14	Add the words "or repaired" after "new equipment".
4. 4.22	Bidder proposes the underlined changes shown on the attached page Attachment #3 -4.22.
5. General Terms and Conditions 1.8	Bidder proposes the underlined changes shown on the attached page Attachment #3 -1.8.
6. 1.9	Bidder proposes the underlined changes shown on the attached page Attachment #3 – 1.9.
7. 1.12	Delete all of Section 1.12 since Bidder is not selling any intellectual property rights to the State.
8. 1.13	Bidder proposes the underlined changes shown on the attached page Attachment #3 - 1.13.

Attachment #3 – 4.13

4.13 Insurance

The Contract will require the successful Bidder to maintain insurance coverage(s) in accordance with the contractual provisions. Bidder shall, at its sole expense, maintain in full force and effect, with insurance companies admitted to do business in the State of Iowa and acceptable to the Agency, insurance covering its work of the type and in amounts required by this Contract. Bidder's insurance shall, among other things, insure against any loss or damage resulting from or related to Bidder's performance of this Contract regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Contract shall remain in full force and effect for the entire term of this Contract. The State of Iowa and Agency shall be named as additional insureds on the General Liability policies, and coverage will be primary and non-contributory. Unless otherwise requested by the Agency, Bidder shall maintain insurance policies with the coverages set forth below:

Type of Insurance	Limit	Amount
General Liability (including contractual liability) written on an occurrence basis	General Aggregate Products – Comp/Op Aggregate Personal injury Each Occurrence	\$2 million \$1 Million \$1 Million \$1 Million
Automobile Liability (including contractual liability) written on an occurrence basis	Combined single limit	\$1 Million
Excess Liability, umbrella form	Each Occurrence Aggregate	\$1 Million \$1 Million
Workers Compensation and Employer Liability	As Required by Iowa law	As required by Iowa law

4.13.1 Certificates of Coverage

At the time of execution of this Contract, Bidder shall deliver to the Agency certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Bidder starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Bidder related to this Contract and certifying that no cancellation of the insurance will be made without at least thirty (30) days prior written notice to the Agency. All certificates of insurance shall be subject to approval by the Agency. Liability of Bidder Acceptance of the insurance certificates by the Agency shall not act to relieve Bidder of any obligation under this Contract. It shall be the responsibility of Bidder to keep the respective insurance policies and coverages current and in force during the life of this Contract. Bidder shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the Bidder shall have no claim or other recourse against the State or the Agency for any costs or loss attributable to any of the foregoing, all of which shall be borne

Comment [WN1]: Our insurance is not solely for this contract and to protect the State of Iowa.

Deleted: (i)

Deleted: be subject to the approval of the Agency,

Deleted: (ii)

Deleted: ; and

Deleted: (iii) not be canceled, reduced or changed without the Agency's prior written consent.

Deleted: all such

Deleted: all such policies shall include the following endorsement: "It is hereby agreed and understood that the State of Iowa and the Agency are named as additional insured, and that the coverage afforded to the State of Iowa and the Agency under this policy shall be primary insurance. If the State of Iowa or the Agency have other insurance which is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer's liability under this policy shall not be reduced by the existence of such other insurance."

Deleted: cause to be issued

Comment [WN2]: This coverage is not applicable to a contract for the supply of equipment.

Deleted: Property Damage

Deleted: Each Occurrence ¶
Aggregate

Deleted: \$1 Million ¶
\$1 Million

Deleted: or modification

Deleted: The Bidder shall simultaneously with the delivery of the certificates deliver to the Agency one duplicate original of each insurance policy.

solely by the Bidder. Notwithstanding any other provision of this Contract, Bidder shall be fully responsible and liable for meeting and fulfilling all of its obligations.

4.13.2 Waiver of Subrogation Rights

Bidder shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Agency or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Agency. Filing of Claims In the event either the Agency or the State suffers a loss and is unable to file a claim under any policy of insurance required under this Contract, the Bidder shall, at the Agency's request, immediately file a proper claim under such policy. Bidder will provide the Agency with proof of filing of any such claim In addition, Bidder agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the Agency and the State.

Deleted: and keep the Agency fully informed of any significant developments about the status of the claim provided such information does not create a conflict of interest.

Comment [WN3]: For an equipment supply contract, Property insurance is not applicable. Therefore this sentence does not apply. This is also true of Section 4.13.3 Proceeds.

Deleted: Bidder shall pay to the Agency and the State any insurance proceeds or payments in receives in connection with any such claim immediately upon Bidder's receipt of such proceeds or payments.

Deleted: 4.13.3 Proceeds ¶

¶ In the event the Agency or the State suffers a loss that may be covered under any of the insurance policies required, neither the Bidder nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the Agency and/or the State have fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Bidder hereby assigns to the Agency and the State all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Contract¶

Attachment #3 – 4.22

4.22 Adjustments in Pricing

Adjustments in pricing shall be at the discretion of the Issuing Officer.

•Original pricing shall remain firm and fixed for at least 365 calendar days after the effective date of the contract.

•Be the result of increases at the manufacturer's level, incurred after contract commencement date.

•Clearly identify the items impacted by the increase.

•Be filed with State Procurement Coordinator a minimum of 90 calendar days before the effective date of proposed increase.

•Be accompanied by documentation reasonably acceptable to the State Procurement Coordinator sufficient to warrant the increase.

•United States published indices such as the Producer Price Index or other government data will be referenced to help substantiate the Bidder's documentation.

•The Adjustment shall remain firm and fixed for at least 365 days after the effective date of the adjustment.

•Must not deviate from the contract pricing scheme/methodology.

•During the term of this contract, should the Contractor enter into pricing agreements with other state governmental customers providing lower pricing, Contractor shall immediately amend the State contract to provide similar pricing to the State if the contract with the other state governmental customers has similar usage quantities and similar conditions impacting pricing.

Deleted: •Not produce a higher profit margin than that on the original contract.¶

Deleted: •During the contract period, any price declines at the manufacturer's level or cost reductions to Contractor shall be reflected in a reduction of the contract price retroactive to Contractor's effective date.

Deleted: greater benefits or

Deleted: offers

Deleted: ,

Deleted: Contractor shall immediately notify the State Procurement Coordinator of any such contracts entered into by Contractor.

Attachment #3 – 1.8

1.8 Indemnification

1.8.1 By the Contractor

The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office, and the costs, expenses and reasonable attorneys' fees of other counsel retained by the Indemnified Parties related to, resulting from, or arising out of:

Deleted: directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims

1.8.1.1 Any breach of this Contract;

1.8.1.2 Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;

1.8.1.3 The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;

1.8.1.4 Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;

1.8.1.5 Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any third party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party.

The Indemnified Parties shall promptly notify the Contractor of any claim for which they are seeking indemnification hereunder and give Contractor the opportunity to defend against it.

1.8.2 Survives Termination.

Contractor's duties and obligations under this section shall survive the termination of this Contract regardless of the date any potential claim is made or discovered by the Agency or any other Indemnified Party, subject to any applicable statute of limitations.

Deleted: and shall apply to all acts or omissions taken or made in connection with the performance of this Contract

1.8.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, CONTRACTOR SHALL NOT BE LIABLE TO THE STATE, THE AGENCY OR ANY INDEMNIFIED PARTIES FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOSS OR INTERRUPTION OF BUSINESS, LOST PROFITS AND LOSS OF USE, WHETHER BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHERWISE, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Attachment #3 – 1.9

1.9 Insurance

1.9.1 Insurance Requirements

The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals thereof. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Agency shall be named as additional insureds for General Liability, or the Contractor shall obtain an endorsement to the same effect, as applicable.

Comment [WN4]: Loss payee relates to Property insurance and is not within scope for an equipment supply contract.

Deleted: or loss payees

1.9.2 Types and Amounts of Insurance Required

Unless otherwise requested by the Agency in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified on the Contract Declarations and Execution Page for each occurrence. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

1.9.3 Certificates of Coverage

Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract and any extensions or renewals thereof, and shall not permit such policies to be canceled ~~except~~ with the advance written approval of the Agency. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The certificates shall be subject to approval by the Agency. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Agency if the cancellation is for a legally permissible reason other than nonpayment of premium. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

Deleted: or amended

Comment [WN5]: This is the language from our policy

Deleted: .

1.9.4 Waiver of Subrogation Rights

The Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.

Attachment #3 – 1.13

1.13 Warranties

1.13.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law

Notwithstanding anything in this Contract to the contrary, all sales of Deliverables under this Contract shall be subject to the terms of the applicable Contractor warranty for such Deliverables. Warranties made by the Contractor in this Contract, whether: (1) this Contract specifically denominates the Contractor's promise as a warranty; or (2) the warranty is created by the Contractor's affirmation or promise, by a description of the Deliverables to be provided, or by provision of samples to the Agency, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties that arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Deliverables provided by the Contractor. The provisions of this section apply during the term of this Contract and any extensions or renewals thereof.

1.13.2 Contractor represents and warrants that: (1) all Deliverables shall be wholly original with and prepared solely by Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the Agency hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Agency hereunder or under any license agreement related hereto without violating any rights of any third party; (2) Contractor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the Agency herein; and (3) the Agency shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

1.13.3 Contractor represents and warrants that: (1) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (2) the Agency's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. Contractor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Contractor shall inform the Agency in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Contractor shall, at the Agency's request and at the Contractor's sole expense: (1) procure for the Agency the right or license to continue to use the Deliverable at issue; (2) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (3) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (4) accept the return of the Deliverable at issue and refund to the Agency all fees, charges and any other amounts paid by the Agency with respect to such Deliverable. In addition, Contractor agrees to indemnify, defend, protect and hold harmless the State and its officers, directors, employees, officials and agents as provided in the Indemnification section of this Contract, including for any breach of the representations and warranties made by Contractor in this section. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Agency and shall survive termination of this Contract.

1.13.4 Contractor represents and warrants that the Deliverables (in whole and in part) shall: (1) be free from material Deficiencies; and (2) meet, conform to and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Contractor's warranty. During the Warranty Period Contractor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within five business days of receiving notice of such Deficiencies or failures from the Agency or within such other period as the Agency specifies in the notice. In the event Contractor is unable to repair, correct or

Deleted: Special Terms

replace such Deliverable to the Agency's satisfaction, Contractor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Agency with questions, problems and concerns about the Deliverables, to inform the Agency promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverable may have been accepted by the Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverable.

1.13.5 Contractor represents, warrants and covenants that all services to be performed under this Contract shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Agency notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the Agency, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, Contractor shall reimburse the Agency any fees or compensation paid to Contractor for the unsatisfactory services.

1.13.6 Contractor represents and warrants that the Deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Contract, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board, the Iowa Department of Administrative Services, and Iowa Office of the Chief Information Officer.

1.13.7 Obligations Owed to Third Parties

The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Agency will not have any obligations with respect thereto.