NOTICE TO VENDORS

INVITATION TO BID

The Iowa Telecommunications and Technology Commission operating the Iowa Communications Network (ICN) will be receiving sealed bid proposals until 3:00 p.m., December 3, 2021 for:

ITB 21-079

Vendor to Provide Gigamon Products and Services as needed and requested by the Iowa Communications Network

Brian Clayton – Issuing Officer
Iowa Communications Network
400 East 14th Street
Grimes State Office Building
Des Moines, IA 50319
Telephone: 515-725-4616

Brian.clayton@iowa.gov

Vendors must comply with all affirmative action/equal employment opportunity provisions of State and Federal laws.

THIS INVITATION TO BID CONSISTS OF FOUR CHAPTERS AND FOUR ATTACHMENTS:

CHAPTER	TITLE
1	Administrative Issues
2	Contractual Terms
3	Requirements
4	Evaluation Criteria
Attachment 1	Bid Proposal Compliance Form
Attachment 2	Contractual Terms and Conditions – Sample Agreement
Attachment 3	Authorization To Release Information
Attachment 4	Bid Proposal Submittal Form

CHAPTER 1

ADMINISTRATIVE ISSUES

1.1 Purpose. The State of Iowa, Iowa Telecommunications and Technology Commission, operating the Iowa Communications Network (collectively ICN) is seeking bids from vendors who can provide Gigamon products and services as needed and requested by the Iowa Communications Network.

1.2 Schedule and Submission of Proposal.

1.2.1 Vendor Conference. A Vendor Conference is not scheduled for this solicitation.

1.2.2 Questions and Answers. Vendors are invited to submit written questions and/or requests for interpretation/consideration/acceptance concerning this ITB on or before 4:00 p.m. central time November 19, 2021. Vendors with questions concerning this ITB may submit their questions in writing by mail or hand delivery to Brian Clayton at the address below, facsimile at (515) 725-4774 or electronic mail at brian.clayton@iowa.gov. Oral questions will not be accepted, and verbal communications shall not override written communications. Only written communications are binding on ICN. ICN will prepare a written response to all pertinent questions submitted by Vendors. These questions and responses will be posted on the ICN webpage and transmitted via e-mail to all Vendors, no later than November 23, 2021 to all Vendors to whom the ITB has been sent.

1.2.3 Changes and Amendments. In the event it becomes necessary for ICN to amend, add to or delete any part of this ITB, the amendment will be provided to all Vendors to whom the ITB has been sent. Vendor's bid proposal must include acknowledgment of all addenda issued by ICN.

1.2.4 Receipt of Bid Proposals. Bid Proposals must be received at ICN's office no later than 3:00 p.m. central time December 3, 2021. **This requirement is a mandatory requirement and is not a minor deficiency subject to waiver by the ICN.** No bid proposals will be accepted after the date and time specified. A late bid proposal shall be returned unopened to the Vendor. Additionally, no bid proposal will be accepted by telephone, electronic mail or facsimile. **The bid proposals must be mailed (with mailing in sufficient time to arrive on or before this deadline requirement) or be delivered as follows:**

Mailing & Delivery Address:
Iowa Communications Network
Attn: Brian Clayton (ITB 21-079)
400 East 14th Street
Grimes State Office Building
Des Moines, IA 50319

1.2.5 Bid Proposal Opening. Bid Proposals will be opened at 3:00 p.m. central time on December 3, 2021. The bid proposals and the evaluation documents created by the ICN will remain confidential subject to Iowa Code Section 72.3 until the evaluation committee has evaluated all of the compliant bid proposals submitted in response to this ITB and the selection process is complete. The bid proposals submitted and the evaluation documents created by the ICN will be available for inspection subject to the exceptions described in Iowa Code Chapter 22 or other applicable law after the selection process is complete.

1.2.5.1 Failure to comply with or supply any and all information requested to accompany bid proposals may be cause for rejection of the proposal as non-compliant.

1.2.5.2 All bid proposals shall be firm for a period of 60 days to allow the evaluation committee to fully evaluate all proposals and make an award deemed to be in the best interest of ICN and the State of Iowa.

1.2.5.3 By submitting a bid proposal the Vendor agrees to the terms and conditions contained within this ITB.

1.3 Proposal Format.

1.3.1 Proposals shall be printed on 8.5" x 11" paper. One original and three (3) copies must accompany each submission. In addition, one copy shall be provided on a CD or USB drive. The original bid proposal and copies must be in a package very clearly marked "ITB 21-079". If the Vendor has identified portions of its proposal as confidential

in accordance with section 1.10, the Vendor must submit one copy of the bid proposal with the confidential material removed as required by section 1.10.4.

1.3.2 To achieve a uniform review process and the maximum degree of comparability, bid proposals shall be organized in the following manner:

1.3.2.1 Responses, including a positive statement of compliance, to each of the points in Chapter 3, Technical Specifications.

1.3.2.2 Completed Bid Proposal Compliance Form (Attachment 1).

1.3.2.3 Completed Authorization to Release Information Form (Attachment 3).

1.3.2.4 Completed Bid Proposal Submittal Form (Attachment 4).

1.4 Clarification of Proposals and Obtaining Information. ICN reserves the right to contact a Vendor after submission of bid proposals for the purpose of clarifying a bid proposal to ensure mutual understanding. This contact may include written questions, interviews, site visits, a review of past performance if the Vendor has provided goods or services to the ICN or any other political subdivision wherever located or requests for corrective pages in the Vendor's bid proposal. This information may be used to evaluate the Vendor's bid proposal. However, the information received from the Vendor shall not be considered in the evaluation of a Vendor's bid proposal if the information materially alters the content of the bid proposal. ICN reserves the right to obtain information concerning any Vendor or any bid proposal from any source and to consider such information in evaluating the Vendor's bid proposal.

1.5 Waiver of Deficiencies. ICN reserves the right to waive minor deficiencies in a bid proposal if, in the judgment of ICN, ICN's best interest will be served. The decision as to whether a deficiency will be waived or will require the rejection of a bid proposal will be solely within the discretion of ICN. There is no guarantee or assurance that any deficiency will be deemed minor and that a deficiency will be waived. Each Vendor is specifically notified that failure to comply with or respond to any part of this ITB requiring a response may result in rejection of the bid proposal as not responsive.

1.6 Cost of Bid Proposal. ICN is not responsible for any costs incurred by a Vendor which is related to the preparation or delivery of the bid proposal or any other activities carried out by the Vendor as it relates to this ITB.

1.7 Bid Proposal Obligations. The contents of the bid proposal and any clarification thereto submitted by the successful Vendor shall become part of the contractual obligation and incorporated by reference into the ensuing Contract.

1.8 Bid Proposals Property of ICN. Except as otherwise stated herein, all bid proposals become the property of the ICN and the State of Iowa and shall not be returned to the Vendor unless all bid proposals are rejected. In the event all bid proposals are rejected, Vendors will be asked to send prepaid shipping instruments to the ICN for return of the bid proposals submitted. In the event no shipping instruments are received by the ICN, the bid proposals will be destroyed by the ICN. Additionally, the evaluation documents created by the ICN will be destroyed in the event all bid proposals are rejected. Otherwise, at the conclusion of the selection process, the contents of all bid proposals will be placed in the public domain and be opened to inspection by interested parties subject to the exceptions provided in Iowa Code Chapter 22 or other applicable law.

1.9 Rejection of Bid Proposals.

1.9.1 ICN reserves the right to reject any and all bid proposals, in whole and in part, received in response to this ITB at any time prior to the execution of a written Contract. Issuance of this ITB in no way constitutes a commitment by ICN to award the Contract. This ITB is designed to provide Vendors with the information necessary for the preparation of competitive bid proposals. This ITB process is for ICN's benefit and is intended to provide ICN with competitive information to assist in the selection of goods and services.

1.9.2 A bid proposal shall be rejected outright and not evaluated for any one (1) of the following reasons:

1.9.2.1 Failure of Vendor, for whatever reason, to deliver the bid proposal by the due date and time.

1.9.2.2 Failure of Vendor to include the completed Bid Proposal Compliance Form (Attachment 1) signed by an officer of the Vendor submitting the bid proposal.

1.9.2.3 Failure of Vendor to include the completed Authorization to Release Information Form (Attachment 3) signed by an officer of the Vendor submitting the bid proposal.

1.9.2.4 Completed Bid Proposal Submittal Form (Attachment 4).

1.9.3 Failure of the Vendor to comply with additional information requests may be cause for rejection of the bid proposal as non-compliant.

1.10 Public Records and Requests for Confidentiality.

1.10.1 The release of information by ICN to the public is subject to Iowa Code Chapter 22 and other applicable provisions of law relating to the release of records in the possession of a State agency. Vendors are encouraged to familiarize themselves with these provisions prior to submitting a bid proposal. All information submitted by a Vendor may be treated as public information by ICN unless the Vendor properly requests that information be treated as confidential at the time of submitting the bid proposal**.** In the event the Vendor marks each page of its bid proposal as proprietary or confidential without adhering to the requirements of this Section, the ICN may reject the bid proposal as noncompliant.

1.10.2 Any requests for confidential treatment of information must be included in a cover letter with the Vendor's bid proposal and must enumerate the specific grounds in Iowa Code Chapter 22 or other legal reasons which support treatment of the material as confidential and must indicate why disclosure is not in the best interests of the public. The request must also include the name, address and telephone number of the person authorized by the Vendor to respond to any inquiries by ICN concerning the confidential status of the materials.

1.10.3 Any documents submitted which contain confidential information must be marked on the outside as containing confidential information, and each page upon which confidential information appears must be marked as containing confidential information. The confidential information must be clearly identifiable to the reader wherever it appears. All copies of the proposal submitted, as well as the original proposal, must be marked in this manner.

1.10.4 In addition to marking the material as confidential material where it appears, the Vendor must submit one copy of the bid proposal from which the confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the document as possible. These pages must be submitted with the cover letter and will be made available for public inspection.

1.10.5 The Vendor's failure to request in the bid proposal confidential treatment of material pursuant to this Section and the relevant laws and administrative rules will be deemed by ICN as a waiver of any right to confidentiality which the Vendor may have had.

1.11 Restrictions on Gifts and Activities. Iowa Code Chapter 68B contains laws which restrict gifts which may be given or received by State employees and requires certain individuals to disclose information concerning their activities with State government. Vendors are responsible for determining the applicability of this Chapter to their activities and for complying with these requirements. In addition, Iowa Code Chapter 722.1 provides that it is a felony offense to bribe a public official.

1.12 Restriction on Communication. In the event that a Vendor or someone acting on the Vendor's behalf attempts to discuss this ITB orally or in writing with any Commission member or any employee of the ICN other than the Contracting Officer, Vendor may be disqualified. No questions are to be asked of State of Iowa employees regarding this ITB, except for contact with the State Targeted Small Business Office by Vendors certified as Targeted Small Business Entities, without prior notification and approval by the ICN Contracting Officer, except as otherwise permitted by this ITB. All ITB contacts shall be made through the ICN Contracting Officer only.

1.13 Copyrights. By submitting a bid proposal, the Vendor agrees that ICN may copy the bid proposal for purposes of facilitating the evaluation or to respond to requests for public records. The Vendor consents to such copying by submitting a proposal and warrants that such copying will not violate the rights of any third party. ICN will have the right to use ideas or adaptations of ideas which are presented in the proposals. In the event the Vendor copyrights the bid proposal, the ICN may reject the bid proposal as noncompliant.

1.14 Conflict Between Terms. ICN reserves the right to accept or reject any exception taken by the Vendor to the terms and conditions of this ITB. Substantial variations between the Vendor's terms and conditions and those contained in this ITB may be grounds for rejection of the Vendor's bid proposal as non-responsive and non-compliant.

1.15 Release of Claims. With the submission of a bid proposal, Vendor agrees that it will not bring any claim or have any cause of action against ICN or the State of Iowa based on any misunderstanding concerning the information provided

herein or concerning ICN's failure, negligent or otherwise to provide the Vendor with pertinent information as intended by this ITB.

1.16 Construction of ITB with Laws and Rules. This ITB is to be construed in light of pertinent legal requirements including Iowa Code Chapter 8D and Iowa Administrative Code Chapter 751. Changes in applicable laws and rules may affect the award process or the resulting Contract. Vendors are responsible for ascertaining pertinent legal requirements and restrictions. Vendors are encouraged to visit a web site containing references to the Iowa Code and the Iowa Administrative Code for information. A suggested address is https://www.legis.iowa.gov/ or http://www.icn.iowa.gov

1.17 Bid Proposal Evaluation and Award. All bid proposals submitted shall be evaluated in accordance with the requirements set forth in Chapter 4 of this ITB. The ICN shall not necessarily award the Contract to the Vendor offering the lowest cost to the ICN. The ICN may award a Contract to the most responsible Vendor meeting the requirements of this ITB and which, in the sole discretion of the ICN, provides the best value to the State after considering price and compliance with the provisions of Chapter 3. The award of this Contract in the judgment of ICN may be made in more than 60 days after the Bid Proposals are received and opened. See 751 IAC 5.2(9).

CHAPTER 2

CONTRACTUAL TERMS

2.1 Contractual Terms Generally.

2.1.1 The Contract which the ICN expects to award as a result of this Invitation To Bid will be based upon the bid submitted by the successful Vendor and this solicitation. The Contract between the ICN and the Vendor shall be a combination of the specifications, terms and conditions of the Invitation To Bid, including the terms contained in the contract terms and conditions sample Agreement identified as Attachment 2, the offer of the Vendor contained in its bid proposal, written clarifications or changes made in accordance with the provisions herein, and any other terms deemed necessary by the ICN.

2.1.2 The Contract terms contained in Attachment 2 are not intended to be a complete listing of all Contract terms but are provided only to enable Vendors to better evaluate the costs associated with the ITB and the potential resulting Contract. Vendors should plan on such terms being included in any Contract awarded as a result of this ITB. All costs associated with complying with these requirements should be included in any pricing quoted by the Vendor.

2.1.3 By submitting a bid, Vendor acknowledges its acceptance of these specifications, terms and conditions without change except as otherwise expressly stated in the appropriate section of the Bid Proposal Compliance Form (Attachment 1). If a Vendor takes exception to a provision, it must state the reason for the exception and set forth in its bid proposal the specific Contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the ITB may be deemed non-responsive by the ICN, in its sole discretion, resulting in possible disqualification of the bid. The ICN reserves the right to either award a Contract without further negotiation with the successful Vendor or to negotiate Contract terms with the selected Vendor if the best interests of the ICN would be served.

2.2 Additional Cost Items Not In Contract. ICN is unaware of any additional Contract terms that would add cost. Notwithstanding the foregoing, should any Contract items arise that would cost additional monies; those costs shall be borne by the Vendor.

2.3 Vendor may be required to provide manufacturer's price lists during the term of the Contract. Any prices, which are shown to be marked up from the manufacturer's suggested list price, shall be cause to immediately terminate the Contract.

CHAPTER 3

REQUIREMENTS

3.1 Scope. ICN is seeking bid proposals from Vendors who can provide Gigamon products and services as needed and requested by the Iowa Communications Network.

3.2 Criteria for Compliance. The purpose of this Section is to identify the requirements and conditions a bid must fulfill before any consideration will be given. **Vendor shall confirm its understanding of each section and where requested provide details of how the Vendor complies with the requirement.**

3.2.1 ICN does not guarantee the purchase of any minimum quantity of any product from the successful Vendor. The Contract is being awarded, due to current product needs and as a convenience to the State for potential future needs.

3.2.2 Vendor shall confirm its understanding that if awarded a Contract it shall pass on volume discounts, distributor/manufacturer promotional pricing (monthly, quarterly, annually), etc. when better than Vendor's bid pricing. It is anticipated that ICN will obtain quotes for a high volume/cost items so that better than Vendor's bid pricing could be passed on.

3.2.3 The Vendor awarded a Contract will be required to provide ICN with a single point of contact for all Gigamon product or service related inquiries and orders. Contact information will include name, phone number, fax and an E-mail address.

3.2.4 Freight. All shipments shall be quoted and delivered F.O.B. point of destination, freight prepaid by the Vendor to any location in Iowa. The ICN expects common freight carriers to be used. No delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract.

3.2.5 All products purchased must be covered by a one-year warranty parts and labor, or the manufacturer's warranty, whichever is greater. Up to 30 days after delivery, defective products may be returned to the Vendor for replacement or refund.

3.2.6 The Vendor shall make available any return and repair and/or exchange option which the manufacturer makes available to the Vendor.

3.2.7 The Vendor must provide the manufacturer's technical instruction and installation manual with each piece of equipment purchased.

3.2.8 Installed Equipment: listed below is the equipment ICN currently has under support until 4-6-2022

(Qty 2) SMT-HCO-DD1
(Qty 4) TAP-HCO-D25BC0
(Qty 4) SMT-HCO-X16
(Qty 1) BPS-HC0-D25B4G
(Qty 2) SMT-HC0-NF1
(Qty 3) GVS-HC202

3.2.8.1 Vendor shall confirm its understanding that if the ICN chooses to bundle and co terminate the current equipment with the new purchase, contemplated below, the reseller will prorate the support for the items currently installed.

3.3 Pricing and Discounts. ICN must be assured an efficient and effective method to apply discounts to determine ICN's cost for products and or services. **Vendor shall confirm its understanding of each section and where requested provide details of how the Vendor complies with the requirement.**

3.3.1 With its bid response, Vendor must provide a copy of its current list price sheet, to which the discounts would be applied to.

3.3.2 Vendor(s) awarded a Contract must provide, at ICN's request at any time during the contract term an Excel spreadsheet, a PDF or an internet link to the manufacturer's current list prices.

3.3.3 Vendor shall confirm that the quoted discounts will remain firm for the first year of any resulting agreement.

3.3.3.1 Vendor acknowledges that the Contract may amend the percent discount off current list price annually at contract renewal time upon the mutual written consent of the Parties.

3.3.4 Category Discounts For Future Purchases: Vendor shall provide a percentage discount off of Gigamon list price for each category listed below. Vendor understands that the discount offered shall be the minimum discount applied to each order through the year.

3.3.5 Vendor shall indicate if it will share the additional "Deal Registration" discounts with the ICN and if so, Vendor shall detail the method it will use to determine the shared percentage.

Individual Gigamon Product Categories	**ICN Minimum Category Discount % off published list price**	**Additional % Discount, if / when a deal is registered with Gigamon**
Gigamon Hardware		
Gigamon Software		
Gigamon Maintenance & Support		
Vendor may add additional categories or modify them to correctly reflect the Gigamon product line.		

3.3.6 The list below combines the ICN's current installed Gigamon equipment and that which we may purchase for an additional location. Vendor shall provide its best discount structure and also indicate if there is additional discount to be shared after the deal is registered.

SKU	Description	Qty	List Price	% Discount	Net Price
GVS-HC2A1-HW	GigaVUE-HC2 base chassis, Control Card Version 2, 1 Fan Tray, CLI, 2 power supplies, AC power. Hardware only. Must pair with appropriate GigaVUE-OS Software License.	1	$6,355.00		
GVS-HC2A1-SW- TM	GigaVUE-OS Term Software License for GVS-HC2A1-HW. Includes Elite Software Support Program. 36 months	4	$35,460.00		
SMT-HC0-Q02X08- HW	Gen2 GigaSMART, GigaVUE-HC2, Front Module, 2 40G cages, 8 10G cages (includes Slicing, Masking, Source Port & GigaVUE Tunneling De-Encapsulation SW). Requires Control Card version 2. Hardware only. Must pair with appropriate GigaVUE-OS Software License.	1	$4,005.00		
SMT-HC0-Q02X08- SW-TM	GigaVUE-OS Term Software License for SMT-HC0Q02X08-HW. Includes Elite Software Support Program. 36 months	1	$36,900.00		
SMT-HC0-X16-HW	Gen1 GigaSMART, GigaVUE-HC2, Front Module, 16 10G cages (includes Slicing, Masking, Source Port & GigaVUE Tunneling De-Encapsulation SW). Hardware only. Must pair with appropriate GigaVUE-OS Software License.	1	$3,015.00		
SMT-HC0-X16-SW- TM	GigaVUE-OS Term Software License for SMT-HC0-X16HW. Includes Elite Software Support Program. 36 months	4	$38,340.00		
TAP-HC0-D25BC0- HW	TAP module, GigaVUE-HC2, SX/SR Internal TAP Module 62.5/125, 12 TAPs. Hardware only. Must pair with appropriate GigaVUE-OS Software License.	1	$2,805.00		
TAP-HC0-D25BC0- SW-TM	GigaVUE-OS Term Software License for TAP-HC0D25BC0-HW. Includes Elite Software Support Program. 36 months	4	$54,900.00		
SMT-HC2-GEN2- DD1-SW-TM	Monthly subscription license for GigaSMART, GigaVUEHC2, De-Duplication feature license per GigaVUE-HC2 Gen2 GigaSMART module; requires SMT-HC0-Q02X08. Includes embedded Elite Support. Initial term must be 12 months or longer. This is a Gen 2 license. 36 months	1	$29,340.00		
SMT-HC2-GEN2- NF1-SW-	Monthly subscription license for GigaSMART,	1	$29,340.00		

TM	GigaVUEHC2, NetFlow Generation feature license per GigaVUE- HC2 Gen2 GigaSMART module; requires SMT-HC0Q02X08. Includes embedded Elite Support. Initial term must be 12 months or longer. This is a Gen 2 license. 36 months				
SMT-HC0-GEN1- DD1-SW-TM	Monthly subscription license for GigaSMART, GigaVUEHC2, De-Duplication feature license per GigaSMART module. Includes embedded Elite Support. Initial term must be 12 months or longer. This is a Gen 1 license. 36 months	4	$22,140.00		
SMT-HC0-GEN1- NF1-SW-TM	Monthly subscription license for GigaSMART, GigaVUEHC2, NetFlow Generation feature license per GigaSMART module. Includes embedded Elite Support. Initial term must be 12 months or longer. This is a Gen 1 license. 36 months	4	$22,140.00		
GSS-FYS-ELT-PSS	Initial Gigamon Pass-through Support Type with ELITE Support Level (24x7/AHR), bought with product or within 1 year of original purchase of product, 36 months	1	$0.00		
GSS-FYS-HW- AHR-GMO	Gigamon AHR HW Replacement Program with direct Gigamon support, purchased with product or within 1 year of original purchase of product, 36 months	3	$11,649.60		
GPS-PSR-AWD	Gigamon PS add-on work day to Gigamon PS design/ deployment assistance packages, use w/in 6 months.	3	$2,500.00		
GPS-PSR-AHU	Gigamon PS After Hours Uplift to standard work day, used within 6 months of services kick off date.	2	$500.00		
GES-ILT-GCP	Single seat - GCP Boot Camp Public class (5-days) w/ hands-on labs. In person or remote attendance	4	$3,995.00		

3.4 Maintenance and Support Pricing:

3.4.1 It is a **mandatory requirement** that all support and maintenance be handled as a **"pass through"** by the Vendor and provided directly by Gigamon. Vendor shall confirm its understanding of this **mandatory requirement** and confirm its ability to provide maintenance and support as a "pass through". **Should a Vendor be unable to meet this mandatory requirement, the Vendor's bid proposal will not be considered for evaluation.**

3.4.2 Vendor shall confirm its ability to co-terminate future support with prior renewals.

CHAPTER 4

EVALUATION CRITERIA

4.1 Award Process.

4.1.1 An evaluation committee assigned by personnel within the ICN will review the Bid Proposals. The evaluation committee will consider all information provided when making its recommendations and may consider relevant information from other sources.

4.1.2 The evaluation committee will make a recommendation to the Executive Director of the ICN indicating the committee's recommendation for award based upon their evaluation of the ITB responses provided. The Executive Director will select the Vendor to receive the award. The Executive Director is not bound by the committee's recommendation. All Vendors submitting Bid Proposals will receive a copy of the Notice of Intent to award a Contract.

4.1.3 All applicable contracting requirements imposed by this ITB and Iowa law shall be met by the Vendor. The successful Vendor must, in a timely manner, enter into a Contract with the ICN to implement the services contemplated by this ITB. Failure of a successful Vendor to agree to the terms of a Contract within a timely manner may be grounds for the ICN to award to the next compliant Vendor.

4.2 Evaluation Criteria.

4.2.1 Bid Proposals will be evaluated based on the Vendor response to Chapter 3, including but not limited to; acknowledgement of Requirements, providing requested information, cost and discounts quoted within Chapter 3 and the overall benefit to the State of Iowa. The ICN will determine, in its sole discretion, which solution is the most cost-effective for the ICN.

ATTACHMENT 1

BID PROPOSAL COMPLIANCE FORM
ITB 21-079

Vendor affirms that the information contained in the bid proposal is true and accurately portrays all aspects of the goods or services or both contemplated by this ITB. The Vendor is aware that any substantive misinformation or misrepresentation may disqualify the bid proposal from further consideration.

Vendor hereby certifies total compliance with all other terms, conditions and specifications of this ITB except as expressly stated below and/or following the particular ITB section the exception applies to. If Vendor has taken any exceptions to the language or requirements within the ITB, Vendor shall at aa minimum indicate such within this Attachment.

Chapter 1, Administrative Issues _____

_____

Chapter 2, Contractual Terms & Conditions (includes Attachment 2) _____

_____

_____

Chapter 3, Requirements _____

_____

Chapter 4, Evaluation Criteria _____

_____

I certify that I have the authority to bind the Vendor indicated below to the specific terms and conditions imposed in this ITB and offered in this bid proposal, and that by my signature on this document I specifically agree to all of the waivers, restrictions and requirements of this ITB as conditions precedent to submitting this proposal. I further state that in making this bid proposal that the Vendor has not consulted with others for the purpose of restricting competition or violating State or Federal anti-trust laws and has not knowingly made any false statements in this proposal.

Authorized Signature: _____

Printed Name: _____

Title: _____

Telephone: _____

Fax Number: _____

E-Mail: _____

Business Name: _____

Address: _____

_____

Federal ID Number: _____

ATTACHMENT 2

Contractual Terms and Conditions
ITB 21-079
Sample Agreement

SECTION 1. IDENTITY OF THE PARTIES.

1.1 Iowa Telecommunications and Technology Commission operating the Iowa Communications Network (ICN) is authorized by Iowa Code Chapter 8D to operate a communications network in the State of Iowa. The ICN's address is Grimes State Office Building, 400 East 14th Street, Des Moines, IA 50319.

1.2 Vendor is a corporation/limited liability company/partnership/proprietorship qualified to resell Gigamon products and services and is authorized to conduct business in the State of Iowa. Vendor address is (address will be listed).

SECTION 2. TERM. This Agreement is effective upon signature of both parties and will continue for a one-year period. The Agreement may be renewed thereafter on an annual basis for five (5) one-year periods with mutual written agreement of the Parties.

SECTION 3. DOCUMENTS INCORPORATED BY REFERENCE.

3.1 Incorporation of Bid Proposal Documents. The Invitation to Bid, ITB 21-079 and the Vendor's bid proposal in response to this ITB, together with any clarifications, attachments, appendices, amendments or other writings of the ICN or the Vendor (collectively bid proposal) are incorporated into this Agreement by this reference as if fully set forth in this Agreement.

3.2 Contractual Obligations of Vendor. The terms and conditions of the bid proposal and of the ITB are made contractual obligations of the Vendor.

3.3 Contents of Agreement. The parties acknowledge that this Agreement consists of this document as well as the ITB and the bid proposal and that the parties are obligated to perform as set forth in the ITB and the bid proposal to the same extent that they are obligated to perform the specific duties set forth in this document.

3.3.1 Order of Preference. In the case of any inconsistency or conflict between the specific provisions of this document, the ITB or the bid proposal, any inconsistency or conflict shall be resolved as follows:

3.2.3 First by giving preference to the specific provisions of this Agreement.

3.2.4 Second, by giving preference to the specific provisions of the ITB.

3.2.5 Third, by giving preference to the specific provisions of the bid proposal.

3.4 Intent of References to Bid Documents. The references to the parties' obligations, which are contained in this document, are intended to change, supplement or clarify the obligations as stated in the ITB and the bid proposal. The failure of the parties to make reference to the terms of the ITB or bid proposal in this document shall not be construed as creating a conflict and will not relieve the Vendor of the contractual obligations imposed by the terms of the ITB and the bid proposal. Terms offered in the bid proposal, which exceed the requirements of the ITB, shall not be construed as creating an inconsistency or conflict with the ITB or this document. The contractual obligations of the ICN cannot be implied from the bid proposal.

SECTION 4. DEFINITIONS. The following words shall have the meanings set forth below. Words in the singular shall be held to include the plural and vice versa, and words of gender shall be held to include the other gender as the context requires. For the purposes of this Contract, the following terms and all other terms defined in this Contract shall have the meanings so defined unless the context clearly indicates otherwise.

4.1 "State" shall mean the State of Iowa and all of its departments, agencies, boards, and commissions, including the ICN.

4.2 "ICN" shall mean the Iowa Telecommunications and Technology Commission operating the Iowa Communications Network.

4.3 "Vendor" shall mean [Vendor will be listed].

SECTION 5. SCOPE OF WORK.

5.1 Scope of Services.

5.1.1. The services to be performed pursuant to and as a result of this Agreement by the Vendor are described on Schedule A attached hereto and made a part hereof by this reference.

5.1.2 The Vendor shall prepare and deliver specifications to the ICN which will detail the design, technical and functional capabilities, look and feel, and other attributes related to the project, all as more fully described in Schedule A.

5.2 Amendments to Scope of Services and Specifications. The parties agree that Schedule A, Scope of Services, and the specifications, may be revised, replaced, amended or deleted at any time during the term of this Agreement to reflect changes in service or performance standards upon the mutual written consent of the parties.

5.3 Industry Standards. Services rendered pursuant to this Agreement shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and with generally acceptable industry standards of performance for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Agreement the parties agree that the applicable specification shall be the generally accepted industry standard. As long as the ICN notifies Vendor promptly of any services performed in violation of this standard, Vendor will re-perform the services, at no cost to ICN, such that the services are rendered in the above-specified manner.

5.4 Non-Exclusive Rights. This Agreement is not exclusive. The ICN reserves the right to select other Vendors to provide services similar or identical to the Scope of Services described in this Agreement during the term of this Agreement.

5.5 The Contract shall be available to all State of Iowa, institutions, universities, schools, and political subdivisions.

SECTION 6. COMPENSATION.

6.1 Payment Terms. The Vendor shall identify services rendered and submit itemized invoices for amounts owed on a monthly basis. ICN shall pay all approved invoices in arrears and in conformance with Iowa Code. ICN may pay in less than 60 days as provided in Iowa Code; however, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code. Any sums owed to ICN by the Vendor shall be itemized and deducted from the Vendor's invoice prior to submission. Notwithstanding anything herein to the contrary, ICN shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if ICN believes the invoice is inaccurate or incorrect in any way. Invoices shall be submitted to ICN Finance - Accounts Payable, Grimes State Office Building, 400 East 14th Street, Des Moines, IA 50319.

6.2 Pricing. The pricing matrix is described in Schedule A. The parties agree that Schedule A, Pricing, may be revised, replaced, amended or deleted at any time during the term of this Agreement upon the mutual written consent of the parties.

6.3 Reimbursable Expenses. There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs and expenses, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, training, salaries, benefits, insurance, conferences, long distance telephone, and all other costs and expenses of Vendor.

6.4 Freight. The ICN requests that all shipments be quoted and delivered F.O.B. Point of Destination, Freight Paid by the Vendor. Vendor bears all risk of loss during shipment of goods. The Vendor shall properly package goods. The State will not accept noticeably damaged goods. The State reserves the right to inspect the goods at a reasonable time subsequent to delivery in the event the State is unable to perform an adequate inspection of the goods at the time of delivery. If the State discovers damaged or defective goods not readily apparent at the time of delivery, the State shall have the right to return goods at no cost to the State, regardless of when the damage or defect is discovered.

6.4.1 The ICN expects common freight carriers to be used. No delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract.

6.5 Set Off. In the event that Vendor owes ICN or the State of Iowa any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any law; ICN may set off the sum owed to ICN or the State

against any sum billed to ICN by the Vendor in ICN's sole discretion unless otherwise required by law. The Vendor agrees that this provision constitutes proper and timely notice under the law of setoff.

6.6 Delay of Payment Due To Vendor's Failure. If the ICN in good faith determines that the Vendor has failed to perform or deliver any service or product as required by this Contract, the Vendor shall not be entitled to any compensation under this Contract until such service or product is completed or delivered. In the event of partial performance, the ICN may withhold that portion of the Vendor's compensation, which represents payment for the unsatisfactory services.

6.7 The Vendor shall audit the invoices presented to the ICN to ensure that they are proper, current and correct. The Vendor has 30 days from the date of invoice to present and resolve any discrepancies with the ICN. The Vendor shall notify the ICN of any and all discrepancies that the audit(s) reveals.

SECTION 7. INSURANCE.

7.1 Coverage Requirements. The Vendor, and any subcontractors performing the services required under this Agreement, shall maintain in full force and effect, with insurance companies of recognized responsibility, at its own expense, insurance covering its work during the entire term of this Agreement and any extensions or renewals thereof. The insurance shall be of the type and in the amounts as reasonably required by the ICN. The Vendor's insurance shall, among other things, insure against any loss or damage resulting from or related to the Vendor's performance of this Agreement. All such insurance policies should remain in full force and effect for the entire life of this Agreement and shall not be canceled or changed except with the advance written approval of the ICN.

7.2 Types of Coverage. Unless otherwise requested by the ICN, Vendor shall, at its sole cost, cause to be issued and maintained during the entire term of this Agreement (and any extensions or renewals thereof) the insurance coverages set forth below, each naming the State of Iowa and the ICN additional insureds or loss payees, as applicable:

Type	*Amount*
Workers Compensation and Employer Liability	As Required By Iowa Law
General Liability (including contractual liability) written on an occurrence basis	
GENERAL AGGREGATE	$3 million
PRODUCT LIABILITY	$1 million
PERSONAL INJURY	$1 million
COMPREHENSIVE AGGREGATE	$1 million
EACH OCCURRENCE	$1 million
Automobile Liability, including any auto, hired autos and non owned autos COMBINED SINGLE LIMIT	$1 million

7.3 Coverage for State Property on Vendor Premises. The policies shall provide coverage for damages to the State's property, which occurs on the Vendor's premises or premises under the control of the Vendor or Vendor's subcontractors.

7.4 Claims Made Coverage. All insurance policies required by this Agreement must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

7.5 Notice Regarding Cancellation. Certificates of insurance, which provide that the ICN will be notified at least thirty (30) days prior to cancellation of the coverage required by this Agreement must be provided by the Vendor and any subcontractors to the ICN at the time of execution of the Agreement or at a time mutually agreeable to the parties.

7.6 No Limitation of Liability. The receipt of insured certificates by the ICN does not constitute approval of the coverage contained in the certificates, and the Vendor remains responsible for determining that its insurance coverage meets each and every requirement of this Agreement. Acceptance of the insurance certificates by the ICN shall not act to relieve the Vendor of any obligation under this Agreement. Only companies authorized to transact business in the State of Iowa shall issue the

insurance policies and certificates required by this Section. It shall be the responsibility of the Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement.

7.7 Warranty. The Vendor warrants that it has examined its insurance coverage to determine that the State of Iowa and the ICN can be named as additional insured without creating an adverse effect on the Vendor's coverage.

7.8 Waiver of Subrogation Rights. The Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against State of Iowa and the ICN. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the ICN.

SECTION 8. CONFIDENTIAL INFORMATION.

8.1 During the course of this Agreement each party may disclose, to the other either directly or indirectly, certain data which is proprietary which shall be referred to as "Confidential Information" of the disclosing party and which must remain confidential. Confidential Information may include without limitation, among other things, such items as security information, user information, data, knowledge, trade secrets and other proprietary information, methodologies, developments, software, software documentation, inventions, processes, and other nonpublic information in oral, graphic, written, electronic or machine-readable form.

8.2 The parties acknowledge that information and material in the hands of the ICN is generally public information unless it is specifically allowed by law to be maintained as Confidential Information.

8.3 The parties acknowledge that some information in the hands of the ICN is strictly confidential and is not subject to release as a matter of law. The Vendor shall abide by all such statutory provisions when handling sensitive ICN information identified as confidential.

8.4 All written or electronic Confidential Information shall be clearly marked as Confidential Information by the party providing the Confidential Information at the time of disclosure to the other party.

8.5 If the Confidential Information is disclosed orally, and reduced to writing, the receiving party must treat the information as Confidential Information.

8.6 The Vendor shall limit such identification to information it reasonably believes it is entitled to confidential treatment pursuant to Iowa Code Chapter 22 or other applicable law.

8.7 In the event a public records request is made to the ICN pursuant to Iowa Code Chapter 22, regarding the Confidential Information of the Vendor, the ICN shall immediately notify the Vendor of the request by telephone and fax. The ICN will respond to the request for information within 15 days thereafter with a release of the information unless the Vendor has obtained an injunction preventing release of the requested information.

8.8 The obligations of this Agreement do not apply to Confidential Information which:

8.8.1 Was rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the Confidential Information to receiving party.

8.8.2 Was known to the receiving party prior to the disclosure of the Confidential Information from the disclosing party;

8.8.3 Was disclosed to the receiving party without restriction by an independent third party having a legal right to disclose the Confidential Information;

8.8.4 Becomes public knowledge, other than through an act or failure to act of the disclosing party;

8.8.5 Is publicly available or in the public domain when provided;

8.8.6 Is independently developed by the disclosing party; or

8.8.7 Is disclosed pursuant to law, subpoena or the order of a court or government authority.

8.9 The parties shall have the following duties relating to the Confidential Information:

8.9.1 The Vendor shall designate one individual who shall remain the responsible authority in charge of all data collected, used or disseminated by the Vendor in connection with the performance of this Agreement. The Vendor shall accept responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the terms of this Agreement. The private and confidential data shall remain the property of the ICN at all times.

8.9.2 The Confidential Information of either party shall be held in strict confidence by the receiving party and shall not be disclosed or used by the receiving party without the prior written consent of the disclosing party, except as provided in this Agreement or as may be required by law pursuant to available confidentiality restrictions.

8.9.3 The parties shall use their best efforts to protect the Confidential Information in its possession.

8.9.4 The parties shall restrict disclosure of the Confidential Information solely to those of its employees, agents, consultants and attorneys with a need to know in order to accomplish the purpose of this Agreement.

8.9.5 The parties shall protect the Confidential Information from disclosure to or access by unauthorized persons.

8.9.6 The parties shall use the Confidential Information solely for the purpose of this Agreement and for no other purpose.

8.9.7 The parties shall not duplicate the Confidential Information in any form, except as may be necessary to accomplish the purpose of this Agreement.

8.9.8 The parties shall advise each of its employees, agents, consultants and attorneys who receive the Confidential Information of the obligations of confidentiality and restrictions on the use set forth herein.

8.9.9 The parties shall immediately return the Confidential Information and all copies thereof, to each other upon the earlier of the expiration of the need therefore or the termination of this Agreement in order to accomplish the purpose.

8.10 The provisions of this Agreement shall apply to all Confidential Information disclosed by the parties to each other over the course of this Agreement. The parties' obligations under this provision shall survive termination of this Agreement and shall be perpetual.

8.11 The Vendor shall indemnify the ICN for a violation of this Section. The Vendor shall notify the ICN prior to the destruction of these materials and shall provide the ICN with the opportunity for proper destruction of these materials.

8.12 No Confidential Information will be exported to any country in violation of the United States Export Administration Act and the regulations thereunder.

SECTION 9. VENDOR WARRANTIES.

9.1 Construction of Warranties Expressed in this Agreement with Warranties Implied by Law. All warranties made by the Vendor in all provisions of this Agreement and the bid proposal by the Vendor, whether or not this Agreement specifically denominates the Vendor's promise as a warranty or whether the warranty is created only by the Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the ICN, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.

9.2 The Vendor warrants that all the concepts, materials produced, the work product and the information, data, designs, processes, inventions, techniques, devices, and other such intellectual property furnished, used, or relied upon by the Vendor or the ICN will not infringe any copyright, patent, trademark, trade dress, or other intellectual property right of the Vendor or others. Any intellectual property provided to the ICN pursuant to the terms of this Agreement, shall be wholly original with the Vendor or the Vendor has secured all applicable interests, rights, licenses, permits, or other intellectual property rights in such concepts, materials and work.

9.3 The Vendor represents and warrants that the concepts, materials and the ICN’s use of same and the exercise by the ICN of the rights granted by this Agreement shall not infringe upon any other work, other than material provided by the

ICN to the Vendor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity.

9.4 The Vendor warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

9.5 The Vendor warrants that the deliverables under this Agreement will operate in conformance with the terms and conditions of this Agreement.

9.6 The Vendor warrants that it has full authority to enter into this Agreement and that it has not granted and will not grant any right or interest to any person or entity which might derogate, encumber, or interfere with the rights granted to the ICN.

9.7 The Vendor warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Vendor pursuant to this Agreement are or will be fully satisfied by the Vendor so that the ICN will not have any obligations with respect thereto.

9.8 The Vendor warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Vendor and any other materials, and methodologies used in connection with providing the services contemplated by this Agreement.

9.9 The Vendor expressly warrants to the standards in the industry all aspects of the goods and services provided by it or used by the Vendor and the ICN in performance of this Agreement.

9.10 The Vendor unconditionally warrants that all equipment supplied and installed for the purpose of fulfilling its obligations under this Agreement are fit for the purpose intended, that it complies with industry standards and that the equipment is compatible with the State's equipment.

SECTION 10. INDEMNIFICATION BY VENDOR. The Vendor agrees to defend, indemnify and hold the ICN, and the State of Iowa, its employees, agents, board members, appointed officials and elected officials, harmless from any and all demands, debts liabilities, damages, loss, claims, suits or actions, settlements, judgments, costs and expenses, including the reasonable value of time expended by the Attorney General's Office, and the costs and expenses and attorney fees of other counsel required to defend the ICN or the State of Iowa related to or arising from:

10.1 Any violation or breach of this Agreement including without limitation any of the Vendor's representations or warranties; or

10.2 Any acts or omissions, including, without limitation, negligent acts or omissions or willful misconduct of Vendor, its officers, employees, agents, board members, contractors, subcontractors, or counsel employed by Vendor in the performance of this Agreement, or any other reason in connection with the goods and services provided under this Agreement; or

10.3 Claims for any violation of any intellectual property right including but not limited to infringement of patents, trademarks, trade dress, trade secrets, or copyrights arising from the any of the goods or service performed in accordance with this Agreement; or

10.4 The Vendor's performance or attempted performance of this Agreement; or

10.5 Any failure by the Vendor to comply with all local, State and Federal laws and regulations; or

10.6 Any failure by the Vendor 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 Vendor to conduct business in the State of Iowa.

10.7 The Vendor's duty to indemnify as set forth in this Section shall survive the expiration or termination of this Agreement and shall apply to all acts taken in the performance of this Agreement regardless of the date any potential claim is made or discovered by the ICN.

SECTION 11. TERMINATION.

11.1 Termination For Lack Of Authority or Funding. Notwithstanding anything in this Agreement to the contrary and subject to the limitations, conditions and procedures set forth below, the ICN shall have the right to terminate this Agreement without penalty and without any advance notice as a result of any of the following:

11.1.1 The Legislature or Governor fails, in the sole opinion of the ICN, to appropriate funds sufficient to allow the ICN, or any state agency or department charged with responsibility to perform any of the ICN's obligations under this Agreement, to either meet its obligations under this Agreement or to operate as required to fulfill its obligations under this Agreement; or

11.1.2 If funds are de-appropriated, not allocated or if the funds needed by the ICN, in the ICN's sole discretion, are insufficient for any other reason; or

11.1.3 If the ICN's, or any responsible State agency's or department's authorization to conduct its business is withdrawn or there is a material alteration in the programs or any other program the ICN administers; or

11.1.4 If the ICN's duties are substantially modified.

11.1.5 Written Notice of Cancellation. The ICN shall provide Vendor with written notice of cancellation pursuant to this Section.

11.2 Termination for Cause. The ICN may terminate this Agreement upon written notice for the substantial breach by Vendor of any material term if such breach is not cured by Vendor within the time period specified in the ICN's notice of breach or any subsequent notice or correspondence delivered by the ICN to Vendor. If a cure is feasible and an opportunity to cure is provided, the notice shall specify the exact date by which the condition must be cured. Following expiration of the opportunity to cure or notice from the ICN, the ICN may seek any legal or equitable remedy authorized by this Agreement or by law. Substantial breach events include but are not limited to the following:

11.2.1 Vendor fails to perform as required by this Agreement.

11.2.2 Vendor fails to make substantial and timely progress toward performance or fails to meet any of the material specifications and requirements stated in this Agreement, including without limitation the warranties provided in this Agreement, in the ITB or in the Vendor's bid proposal.

11.3 Termination for Convenience. Following 30 days written notice, the ICN may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to the Vendor. Termination for Convenience can be for any reason or no reason at all if it is in the best interests of the ICN.

11.4 Immediate Termination. The ICN may terminate this Agreement effective immediately without advance notice and without penalty for any of the following reasons:

11.4.1 Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect or incomplete.

11.4.2 Vendor fails to perform, to the ICN's satisfaction, any material requirement of this Agreement or is in violation of any material provision of this Agreement, including, without limitation, the express warranties made by the Vendor.

11.4.3 The ICN determines that satisfactory performance of this Agreement is substantially endangered or that a default is likely to occur.

11.4.4 Vendor becomes subject to any bankruptcy or insolvency proceeding under Federal or State law to the extent allowed by applicable Federal or State law including bankruptcy laws.

11.4.5 Vendor terminates or suspends its business.

11.4.6 The ICN reasonably believes that Vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable Federal or State law.

11.4.7 It is alleged that Vendor's processes or materials violate any valid patent, trademark, copyright, other intellectual property right or contract, and the ICN reasonably believes that the allegation may impair Vendor's performance of this Agreement.

11.4.8 Vendor has failed to comply with all applicable Federal, State, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement.

11.4.9 Vendor has engaged in conduct that has or may expose the ICN to liability, as determined in the ICN's sole discretion.

11.4.10 Vendor has a conflict of interest that interferes with fair competition or conflicts with an interest of the ICN as determined in the ICN's sole discretion.

11.5 In the event of termination of this Agreement for any reason by the ICN, the ICN shall pay only the amounts, if any, due and owing to Vendor for services actually rendered up to and including the date of termination of the Agreement and for which the ICN is obligated to pay pursuant to this Agreement. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. This provision in no way limits the remedies available to the ICN in the event of a termination under this provision. However, the ICN shall not be liable for any of the following costs:

11.5.1 The payment of Unemployment Compensation to Vendor's employees;

11.5.2 The payment of Workers' Compensation claims which occur during the Agreement or extend beyond the date on which the Agreement terminates.

11.5.3 Any costs incurred by Vendor in its performance of the Agreement including but not limited to startup costs, overhead or other costs associated with the performance of the Agreement.

11.5.4 Any taxes that may be owed by Vendor for the performance of this Agreement including but not limited to sales taxes, excise taxes, use taxes, income taxes or property.

11.6 Vendor Obligations upon Termination. Upon expiration or termination of this Agreement, or upon request of the ICN, the Vendor shall:

11.6.1 Immediately cease using and return to the ICN any personal property or material, whether tangible or intangible, provided by the ICN to the Vendor and in its, or any subcontractor's, control or possession;

11.6.2 Upon request from the ICN, destroy any personal property or material, whether tangible or intangible at no additional cost to the ICN, and verify in writing that the designated property or material has been destroyed;

11.6.3 Comply with the ICN's instructions for the timely transfer of active files and work being performed by Vendor under this Agreement to the ICN or the ICN's designee;

11.6.4 Protect and preserve property in the possession of the Vendor in which the ICN has an interest;

11.6.5 Stop work under this Agreement on the date specified in any notice of termination provided by the ICN;

11.6.6 Cooperate in good faith with the ICN, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement Vendor.

11.7 Care of Property. The Vendor shall be responsible for the proper custody and care of any the State owned tangible personal property furnished for the Vendor's use in connection with the performance of the Agreement, and the Vendor will reimburse the ICN for such property's loss or damage caused by the Vendor, normal wear and tear excepted.

11.8 Reduction of Resources. If, during the Term, the ICN experiences a change in the scope, nature or volume of its business, or if the ICN elects to change the manner or method by which it does (including, but not limited to, an election by Iowa Legislature to effect a sale or other disposition of material assets), which have or may have the effect of causing a decrease in the quantity or quality of the Services that will be needed by ICN, then ICN may request Vendor to reduce the level of Services and the annual Service charges to ICN under this Agreement. However, any such reduction must not adversely impact upon Vendor's ability to reasonably perform its obligations under the Agreement.

SECTION 12. CONTRACT ADMINISTRATION.

12.1 Independent Contractor. The status of the Vendor shall be that of an independent contractor. The Vendor, its employees, agents and any subcontractors performing under this Agreement are not employees or agents of the State of Iowa or any agency, division or department of the State. Neither the Vendor nor its employees shall be considered employees of the ICN of Iowa for Federal or State tax purposes. The ICN will not withhold taxes on behalf of the Vendor (unless required by law).

12.2 Compliance with the Law and Regulations.

12.2.1 Compliance with the Law and Regulations. Vendor shall comply with all applicable Federal, State, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement, including without limitation all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management or the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws and laws relating the use of targeted small businesses as subcontractors or suppliers.

12.2.2 The Vendor declares that it has complied with all Federal, State and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this Agreement, including without limitation, laws governing State of Iowa procurement and contracting.

12.2.3 The Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. The Vendor shall make the provisions of this Section a part of its contracts with any subcontractors providing goods or services related to the fulfillment of this Agreement.

12.2.4 The Vendor shall comply with all of the reporting and compliance standards of the Department of Management regarding equal employment.

12.2.5 The Vendor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC Chapter 4.

12.2.6 The ICN may consider the failure of the Vendor to comply with any law or regulation as a material breach of this Agreement. In addition, the Vendor may be declared ineligible for future State contracts or be subjected to other sanctions for failure to comply with this Section.

12.3 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by the parties.

12.4 Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement. This Agreement is intended only to benefit the State and the Vendor.

12.5 Choice of Law and Forum.

12.5.1 The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law.

12.5.2 In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate.

12.5.3 This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the ICN or the State of Iowa.

12.6 Integration. This Agreement, including all the documents incorporated by reference, represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in this Agreement. The parties agree that if a Schedule, Addendum, Rider or Exhibit or other document is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

12.7 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

12.8 Consent to Service. The Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints _____ at _____ as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, the Vendor shall immediately appoint a new agent and provide the ICN with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the ICN. Nothing in this provision will alter the right of the ICN to serve process in another manner permitted by law.

12.9 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the ICN and the Vendor for the services provided in connection with this Agreement.

12.10 Waiver. Any breach or default by either party shall not be waived or released other than by a writing signed by the other party. Failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

12.11 Notices.

12.11.1 Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by electronic mail or facsimiles, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

If to the ICN: ICN Contracting Officer

Grimes State Office Building
400 East 14th Street
Des Moines, IA 50319

If to the Vendor: [Vendor may provide one (1) contact]

12.11.2 Each such notice shall be deemed to have been provided:

12.11.2.1 At the time it is actually received; or,

12.11.2.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day of delivery; or,

12.11.2.3 Within five days after deposited the U.S. Mail in the case of registered U.S. Mail.

12.11.2.4 When verified by automated receipt or electronic logs if sent by facsimile or email.

12.11.3 Copies of such notice to each party shall be provided separately.

12.11.4 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

12.12 Cumulative Rights. The various rights, powers, options, elections and remedies of either party, provided in this Agreement, shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law. Nothing in this Agreement shall be construed as affecting, impairing or limiting the equitable or legal remedies to which either party may be entitled as a result of any breach of this Agreement.

12.13 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the invalid portion shall be severed from this Agreement. Such a determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

12.14 Express Warranties. The Vendor expressly warrants all aspects of the items and services provided by it or used by the Vendor and the ICN in performance of this Agreement.

12.15 Warranty Regarding Solicitation. The Vendor warrants that no person or selling agency has been employed or retained to solicit and secure this Agreement upon an agreement or understanding for commission, percentage, brokerage or contingency except bona fide employees or selling agents maintained for the purpose of securing business.

12.16 Obligations of Joint Entities. If the Vendor is a joint entity consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the Agreement activities.

12.17 Obligations Beyond Agreement Term. This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. All obligations of the Vendor incurred or existing under this Agreement as of the date of expiration, termination or cancellation will survive the expiration, termination or cancellation of this Agreement.

12.18 Time is of the Essence. Time is of the essence with respect to the successful performance of the terms of this Agreement. The Vendor shall ensure that all personnel providing services to the ICN are responsive to the ICN's requirements in all respects.

12.19 Authorization. Each party to this Agreement represents and warrants to the other that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement. This Agreement constitutes a legal, valid and binding obligation upon the parties in accordance with its terms.

12.20 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

12.21 Counterparts and Facsimile Signatures. The parties agree that this Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument. The parties further agree that the signatures on this Agreement or any amendment or schedule may be manual or a facsimile signature of the person authorized to sign the appropriate document. All authorized facsimile signatures shall have the same force and effect as if manually signed.

12.22 Additional Provisions. The parties agree that if a Schedule, Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

12.23 Use of Third Parties/Prime Vendor Responsibilities. The ICN acknowledges that the Vendor may Agreement with third parties for the performance of any of the Vendor's obligations under this Agreement. All subcontracts shall be subject to advance written approval by the ICN. The Vendor may enter into these contracts to complete the project provided that the Vendor remains responsible for all services performed under this Agreement. All restrictions, obligations and responsibilities of the Vendor under this Agreement shall also apply to subcontractors. The ICN shall consider the Vendor to be the sole point of contact with regard to all matters related to this Agreement and is not required to initiate or maintain contact with any subcontractor. ICN may choose to deny use of any specific third-party contractor at ICN's sole discretion, in which case the Vendor must obtain a different third-party contractor.

12.24 Data Processing Warranty.

12.24.1 The Vendor warrants that each item of hardware, software, firmware, or a custom designed and developed software program or a system which is developed or delivered under, or used by Vendor in connection with its performance of this Agreement, shall accurately process data, including, but not limited to, calculating, comparing and sequencing, from, into, between and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the item(s) documentation provided by the Vendor.

12.24.2 If the items to be developed and delivered under this Agreement are to perform as a system with other hardware and/or software, then the warranty shall apply to the items developed and delivered as the items process, transfer, sequence data, or otherwise interact with other components or parts of the system. This warranty shall survive the term of this Agreement. The remedies available to the ICN for a breach of warranty includes, but is not limited to, repair or replacement of non-compliant items or systems.

12.24.3 Nothing in this warranty shall be construed to limit any rights or remedies of the ICN under this Agreement with respect to defects in the items other than the Date Processing Warranty.

12.25 Force Majeure. Neither Vendor nor the ICN shall be liable to the other for any delay or failure of performance of this Agreement; and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure".

12.25.1 As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other similar causes which are beyond the control and anticipation of the party effected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of the Vendor shall not be considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force majeure" does not include: financial difficulties of the Vendor or any parent, subsidiary, affiliated or associated company of Vendor; claims or court orders which restrict Vendor's ability to deliver the goods or services contemplated by this Agreement; or Year 2000 issues or Y2K-related difficulties or problem.

12.25.2 If a "force majeure" delays or prevents Vendor's performance, the Vendor shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be reasonably determined solely by the ICN.

12.25.3 During any such period, the Vendor shall continue to be responsible for all costs and expenses related to alternative performance.

12.25.4 This Section shall not be construed as relieving the Vendor of its responsibility for any obligation which is being performed by a subcontractor or supplier of services unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as described here.

12.26 Records Retention and Access. The Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State or any authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent validation records, financial records, accounting records, books, documents, papers, electronic or optically stored and created records or other records of the Vendor relating to or created as a result of the performance of this Agreement. These records shall be made available to the State, its designees, the Auditor, or an authorized representative of the United States government at reasonable times and at no cost to the State during the term of this Agreement and for a period of at least (5) years following the termination, cancellation or expiration of this Agreement.

12.27 Taxes. ICN declares and Vendor acknowledges that the Vendor and its subcontractors may be subject to certain taxes including but not limited to sales tax, motor vehicle fuel tax, personal or corporate income tax or other taxes or assessments, and to licensing fees or other miscellaneous fees or charges which may be imposed by Federal, State or local law or ordinance. The Vendor and its subcontractors shall be solely responsible for the payment of such taxes. The Vendor shall promptly pay all such taxes, fees or charges when due. ICN is a tax-exempt entity and the Vendor shall not attempt to pass on any costs, including surcharges and fees, to the ICN that are attributable to federal, state, or local taxes, including sales tax, motor fuel tax, property tax, or personal or corporate income tax.

12.28 Further Assurances and Corrective Instruments. The Vendor agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

12.29 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For purposes of construing this clause, a transfer of a controlling interest in Vendor shall be considered an assignment. If the State, in its sole discretion, determines that the Vendor's assignment of this Agreement to another person or entity is not in the State's best interests, the State may elect to terminate this Agreement with the Vendor without penalty upon thirty (30) days written notice to the Vendor.

12.30 Headings or Captions. The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs.

SECTION 13. BUSINESS DOWNTURN.

13.1 In the event of a business downturn or budget difficulties beyond the control of the ICN, including budget difficulties of other authorized users of the ICN or significant restructuring or reorganization, any of which significantly reduces the volume of Services required by the ICN, with the result that ICN will be unable to meet its revenue or volume

commitments under this Agreement, Vendor and the ICN will cooperate in efforts to develop a mutually agreeable alternative.

SECTION 14. REDUCTION OF RESOURCES.

14.1 If, during the Term, the ICN experiences a change in the scope, nature or volume of its business, or if the ICN elects to change the manner or method by which it does (including, but not limited to, an election by Iowa Legislature to effect a sale or other disposition of material assets), which have or may have the effect of causing a decrease in the quantity or quality of the Services that will be needed by ICN, then ICN may request Vendor to reduce the level of Services and the annual Service charges to ICN under this Agreement. However, any such reduction must not adversely impact upon Vendor's ability to reasonably perform its obligations under the Agreement.

14.2 In such event, Vendor shall estimate, in writing and in good faith, the aggregate decreased charges to Vendor from ICN's ceasing to perform such Services and shall provide such written estimate to ICN, no later than 30 days from Vendor's receipt of ICN's notice. ICN, upon receipt of such estimate, may then elect by written notice given to Vendor within 15 days following receipt of Vendor's written estimate to:

14.3 Withdraw its request for a cessation of part of the Services;

14.4 Implement such partial cessation of Services based upon the estimate of Vendor; or

14.5 Request that Vendor negotiate with ICN regarding the aggregate reduction in the Annual Service Charges due to Vendor from ICN hereunder as a result of the partial cessation of Services. If ICN shall elect to request Vendor to negotiate, the parties shall promptly negotiate in good faith regarding the amount.

SECTION 15. EXECUTION.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION
Operating the IOWA COMMUNICATIONS NETWORK

By: _____ Date: _____

Name: _____

Title: _____

[VENDOR will be listed]:

By: _____ Date: _____

Name: _____

Title: _____

ATTACHMENT 3

AUTHORIZATION TO RELEASE INFORMATION
ITB 21-079

_____ (Name of Vendor) hereby authorizes any person or entity, public or private, having any information concerning the Vendor's background, including but not limited to its performance history regarding its prior rendering of services similar to those detailed in this ITB, to release such information to the State.

The Vendor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The Vendor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the State or may otherwise hurt its reputation or operations. The Vendor is willing to take that risk. The Vendor agrees to release all persons, entities, and the State of Iowa from any liability whatsoever that may be incurred in releasing this information or using this information.

_____
Printed Name of Vendor Organization

_____ _____
Signature of Authorized Representative Date

ATTACHMENT 4
BID PROPOSAL SUBMITTAL FORM
ITB 21-079

Vendor providing bid proposal must complete each section of this Attachment and submit as part of its bid proposal.

Vendor Name (including all d/b/a or assumed names or other operating names of the Vendor):

Address: _____

_____

Phone: _____

Fax: _____

Form of business entity, i.e., corporation, partnership, proprietorship, limited liability company: _____

Number of employees: _____

Local office address that relates to the Vendor's performance under the terms of this ITB (if different from above):

_____

Phone: _____

Fax: _____

Vendor accounting firm: _____

Form of business entity, i.e., corporation, partnership, proprietorship, limited liability company: _____

State of incorporation (if a corporation) or formation (if a limited liability company or a limited partnership): _____

The successful Vendor will be required to register to do business in Iowa. If already registered, provide the date of the Vendor's registration to do business in Iowa. If not registered, Vendor must affirm that it will register if awarded the Agreement._____

Person to Contact Regarding This Bid Proposal: _____

Address: _____

_____

Phone: _____

Fax: _____

E-Mail: _____

Single Point Of Contact if Awarded Contract: _____

Address: _____

_____

Phone: _____

Fax: _____

E-Mail: _____