

# REQUEST FOR BIDS

## RFB COVER SHEET

### Administrative Information:

<b>TITLE OF RFB:</b>	Construction, Agricultural, and Ground Maintenance Equipment, OEM Parts, and Services for State Agencies		<b>RFB Number:</b>	RFB1117005168
<b>Agency:</b>	Iowa Department of Administrative Services			
<b>State seeks to purchase:</b>	Equipment, OEM Parts and Services	<b>Available to Political Subdivisions?</b>	Yes	
<b>Number of mos. or yrs. of the initial term of the contract:</b>	1 Year	<b>Number of possible annual extensions:</b>	5	
<b>Initial Contract term beginning:</b>	January 1, 2017	<b>Ending:</b>	December 31, 2017	
<b>State Issuing Officer:</b>				
Nancy Wheelock Phone: 515-725-2268 Fax: 515-725-0038 E-mail: nancy.wheelock@iowa.gov				
<b>Mailing Address:</b> Iowa Department of Administrative Services Hoover State Office Building, Floor 3 1305 East Walnut Street Des Moines, IA 50319-0105				
<b>PROCUREMENT TIMETABLE—Event or Action:</b>			<b>Date/Time (Central Time):</b>	
State Posts Notice of RFB on TSB website			November 28, 2016	
State Issues RFB			December 4, 2016	
RFB written questions, requests for clarification, and suggested changes from Bidders due:			December 9, 2016 3:00 PM CST	
Bid Due Date:			December 16, 2016	
Bid Due Time:			3:00 PM CST	
<b>Relevant Websites:</b>	<b>Web-address:</b>			
Internet website where Addenda to this RFB will be posted:	<a href="http://bidopportunities.iowa.gov/">http://bidopportunities.iowa.gov/</a>			
Internet website where contract terms and conditions are posted:	<a href="https://das.iowa.gov/sites/default/files/procurement/pdf/050116%20terms%20goods.pdf">https://das.iowa.gov/sites/default/files/procurement/pdf/050116%20terms%20goods.pdf</a>			
Number of Copies of Bids Required to be Submitted:			One (1) Paper and One (1) Electronic	
<b>Firm Bid Terms</b> Per Section 3.2.13, the minimum Number of Days following the deadline for submitting bids that the Bidder guarantees all bid terms, including price, will remain firm:			120 Days	

## SECTION 1 - INTRODUCTION

### 1.1 Bidder Instructions

Bidder is to download this document and save to computer. Once saved, type in responses to the required sections and save again. Finally, print this document and submit one (1) paper copy and one (1) electronic copy of this document with your bid response. If not included in the bid response, the bid may be disqualified. Bidder will also review Section 3 (9) for a list of other documents and information to include when submitting the bid.

**Bidder will submit the bid documents to the Issuing Officer and location on the RFB Cover Sheet.**

### 1.2 Purpose

The purpose of this Request for Bids (RFB) is to solicit bids from qualified providers to provide the goods and/or services described further in this RFB to the Lead Agency and any Participating Agencies. Any contract(s) resulting from the RFB shall not be an exclusive contract.

### 1.3 Request for Bid (RFB) Definitions

**Definitions** – For the purposes of this RFB and the resulting contract, the following terms shall mean:

**“Agency”** means the agency identified in the solicitation that is issuing the RFB and any other agency that purchases from the Contract.

**“Alternative Bid”** means a response to a bid that does not meet the exact requirements of the specification but offers an alternative for consideration. An alternative bid is submitted with an intentional variation to a provision, specification, term or condition of the solicitation. This alternative, in the opinion of the bidder, achieves the same end result. Alternative bids may be rejected as non-responsive.

**“Bid”** means the Bidder’s bid submitted in response to the RFB.

**“Bidder”** means a vendor submitting a bid in response to this RFB.

**“Contract”** means the contract(s) entered into with the successful Bidder(s).

**“Political Subdivisions”** means cities, counties and educational institutions.

**“Responsible Bidder”** means a Bidder that has the capability in all respects to perform the requirements of the Contract. In determining whether a Bidder is a Responsible Bidder, the Agency may consider various factors including, but not limited to, the Bidder’s competence and qualifications to provide the goods or services requested, the Bidder’s integrity and reliability, the past performance of the Bidder relative to the quality of the goods or services offered by the Bidder and the best interest of the Agency and the State.

**“Responsive Bid”** means a Bid that complies with each of the provisions of this RFB, or is either an alternative bid or a bid with an exception, if accepted by the Agency.

**“RFB”** means this Request for Bids and any addenda hereto.

**“State”** means the State of Iowa, the Agency identified in the solicitation, and all state agencies, boards, and commissions, and any political subdivisions making purchases from the Contract as permitted by this RFB.

**1.4 Contract Term**

The initial term of the contract will begin January 1, 2017 and end on December 31, 2017. The Contract may be renewed by mutual agreement of both parties for up to five annual extensions. The resulting contract will be available to all State Agencies and political subdivisions.

**1.5 Background Information**

This RFB is designed to provide Bidders with the information necessary for the preparation of competitive Bids. The RFB process is for the Lead Agency’s and Participating Agencies’ benefit and is intended to provide the Lead Agency with competitive information to assist in the selection process. It is not intended to be comprehensive. Each Bidder is responsible for determining all factors necessary for submission of a comprehensive Bid.

The Department of Administrative Services is seeking eligible bidders to provide the various equipment, OEM replacement parts and maintenance/repair services per the specifications provided in this document and attachments.

This is a multiple award bid with the objective of statewide coverage to service the various state agencies located throughout the state of Iowa.

## SECTION 2 – ADMINISTRATIVE INFORMATION

### 2.1 Issuing Officer

The Issuing Officer identified in the solicitation is the sole point of contact regarding the RFB from the date of issuance until selection of the successful Bidder.

### 2.2 Restriction on Communication

From the issue date of this RFB until announcement of the successful Bidder, Bidders may contact only the Issuing Officer. The Issuing Officer will respond only to electronic questions regarding the procurement process. Questions related to the interpretation of this RFB must be submitted as provided in the solicitation. Oral questions related to the interpretation of this RFB will not be accepted. Bidders may be disqualified if they contact any State employee other than the Issuing Officer about the RFB except that Bidders may contact the State Targeted Small Business Office on issues related to the preference for Targeted Small Businesses.

The Agency assumes no responsibility for oral representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFB through an addendum.

### 2.3 Amendment to the RFB

The Agency reserves the right to amend the RFB at any time using an addendum. The Bidder shall acknowledge receipt of all addenda in its Bid.

It is the Bidder's sole responsibility to check daily for addenda to posted documents.

### 2.4 Bid Amendment and/or Withdrawal

The Bidder may amend or withdraw and resubmit its Bid at any time before the Bids are due. The amendment must be submitted by the Bidder to the bid and received by the time set for the receipt of Bids.

### 2.5 Submission of Bids

The Agency must receive the Bid on before the "Bids Due" date and time. **This is a mandatory requirement and will not be waived by the Agency. Any Bid received after this deadline will not be accepted.** It is the Bidder's responsibility to ensure the bid is received prior to the deadline. Email and faxed Bids will not be accepted.

Bidders must furnish all information necessary to enable the Agency to evaluate the Bid. Bids that fail to meet the mandatory requirements of the RFB may be rejected. Oral information provided by the Bidder shall not be considered part of the Bidder's Bid unless it is in writing.

### 2.6 Bid Opening

The Agency will open Bids after the deadline for submission of Bids has passed. However, the names of Bidders who submitted timely Bids will be publicly available after the Bid opening. See Iowa Code Section 72.3. The announcement of Bidders who timely submitted Bids does not mean that an individual Bid has been deemed technically compliant or accepted for evaluation.

### 2.7 Costs of Preparing the Bid

The costs of preparation and delivery of the Bid are solely the responsibility of the Bidder.

## **2.8 Rejection of Bids**

The Agency reserves the right to reject any or all Bids, in whole and in part, received in response to this RFB at any time prior to the execution of a written Contract. Issuance of this RFB in no way constitutes a commitment by the Agency to award a Contract. This RFB is designed to provide Bidders with the information necessary to prepare a competitive Bid. This RFB process is for the Agency's benefit and is intended to provide the Agency with competitive information to assist in the selection of a Bidder to provide goods and/or services. It is not intended to be comprehensive and each Bidder is responsible for determining all factors necessary for submission of a comprehensive Bid.

## **2.9 Disqualification**

The Agency will reject outright and will not evaluate Bids if the Bidder fails to deliver the Bid by the due date and time. The Agency may reject outright and may not evaluate Bids for any one of the following reasons:

- The Bidder acknowledges that a requirement of the RFB cannot be met.
- The Bidder's Bid materially changes a requirement of the RFB or the Bid is not compliant with the requirements of the RFB.
- The Bidder's Bid limits the rights of the Agency.
- The Bidder fails to include information necessary to substantiate that it will be able to meet a requirement of the RFB.
- The Bidder fails to timely respond to the Agency's request for information, documents, or references.
- The Bidder fails to include bid security, if required.
- The Bidder fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested.
- The Bidder presents the information requested by this RFB in a format inconsistent with the instructions of the RFB or otherwise fails to comply with the requirements of the RFB.
- The Bidder initiates unauthorized contact regarding the RFB with state employees.
- The Bidder provides misleading or inaccurate responses.
- The Bidder's Bid is materially unbalanced.
- There is insufficient evidence (including evidence submitted by the Bidder and evidence obtained by the Agency from other sources) to satisfy the Agency that the Bidder is properly responsive and responsible to satisfy the requirements of the RFB.
- The Bidder alters the language in Certification Letter or Authorization to Release Information Letter.

## **2.10 Nonmaterial Variances**

The Agency reserves the right to waive or permit cure of nonmaterial variances in the Bid if, in the judgment of the Agency, it is in the Agency's best interest to do so. Nonmaterial variances include minor informalities that do not affect responsiveness, that are merely a matter of form or format, that do not change the relative standing or otherwise prejudice other Bidders, that do not change the meaning or scope of the RFB, or that do not reflect a material change in the requirements of the RFB. In the event the Agency waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFB requirements or excuse the Bidder from full compliance with RFB specifications or other contract requirements if the Bidder is awarded the contract. The determination of materiality is in the sole discretion of the Agency.

**2.11 Reference Checks**

The Agency reserves the right to contact any reference to assist in the evaluation of the Bid, to verify information contained in the Bid and to discuss the Bidder's qualifications and the qualifications of any subcontractor identified in the Bid.

**2.12 Information from Other Sources**

The Agency reserves the right to obtain and consider information from other sources concerning a Bidder, such as the Bidder's capability and performance under other contracts, the qualifications of any subcontractor identified in the Bid, the Bidder's financial stability, past or pending litigation, and other publicly available information.

**2.13 Verification of Bid Contents**

The content of a Bid submitted by a Bidder is subject to verification. If the Agency in its sole discretion determines that the content is in any way misleading or inaccurate, the Bidder may be disqualified.

**2.14 Bid Clarification Process**

The Agency reserves the right to contact a Bidder after the submission of Bids for the purpose of clarifying a Bid to ensure mutual understanding. This contact may include written questions, interviews, site visits, a review of past performance if the Bidder has provided goods and/or services to the State or any other political subdivision wherever located, or requests for corrective pages in the Bidder's Bid. The Agency will not consider information received if the information materially alters the content of the Bid or alters the type of goods and/or services the Bidder is offering to the Agency. An individual authorized to legally bind the Bidder shall sign responses to any request for clarification. Responses shall be submitted to the Agency within the time specified in the Agency's request. Failure to comply with requests for additional information may result in rejection of the Bid as non-compliant.

**2.15 Disposition of Bids**

All Bids become the property of the Agency and shall not be returned to the Bidder at the conclusion of the selection process, the contents of all Bids will be in the public domain and be available for inspection by interested parties except for information for which Bidder properly requests confidential treatment according to exceptions provided in *Iowa Code Chapter 22* or other applicable law.

**2.16 Public Records and Requests for Confidential Treatment**

The Agency's release of public records is governed by Iowa Code chapter 22. Bidders are encouraged to familiarize themselves with Chapter 22 before submitting a Proposal. The Agency will copy and produce public records upon request as required to comply with Chapter 22 and will treat all information submitted by a Bidder as non-confidential records unless Bidder requests specific parts of the Proposal be treated as confidential at the time of the submission as set forth herein **AND the information is confidential under Iowa or other applicable law.**

A Bidder requesting confidential treatment of specific information must: (1) fully complete Form 22, (2) identify the request in the transmittal letter with the Bidder's Proposal, (3) conspicuously mark the outside of its Proposal as containing confidential information, (4) mark each page upon

which confidential information appears, and (5) submit a "Public Copy" from which the confidential information has been excised.

Form 22 will not be considered fully complete unless, for each confidentiality request, the Bidder: (1) enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that supports treatment of the material as confidential, (2) justifies why the material should be maintained in confidence, (3) explains why disclosure of the material would not be in the best interest of the public, and (4) sets forth the name, address, telephone, and e-mail for the person authorized by Bidder to respond to inquiries by the Agency concerning the confidential status of such material.

The Public Copy from which 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 Proposal as possible.

**Failure to request information be treated as confidential as specified herein shall relieve Agency and State personnel from any responsibility for maintaining the information in confidence. Bidders may not request confidential treatment with respect to pricing information and transmittal letters. A Bidder's request for confidentiality that does not comply with this section or a Bidder's request for confidentiality on information or material that cannot be held in confidence as set forth herein are grounds for rejecting Bidder's Proposal as non-responsive. Requests to maintain an entire Proposal as confidential will be rejected as non-responsive.**

If Agency receives a request for information that Bidder has marked as confidential and if a judicial or administrative proceeding is initiated to compel the release of such material, Bidder shall, at its sole expense, appear in such action and defend its request for confidentiality. If Bidder fails to do so, Agency may release the information or material with or without providing advance notice to Bidder and with or without affording Bidder the opportunity to obtain an order restraining its release from a court possessing competent jurisdiction. Additionally, if Bidder fails to comply with the request process set forth herein, if Bidder's request for confidentiality is unreasonable, or if Bidder rescinds its request for confidential treatment, Agency may release such information or material with or without providing advance notice to Bidder and with or without affording Bidder the opportunity to obtain an order restraining its release from a court possessing competent jurisdiction.

#### **2.17 Copyrights**

By submitting a Bid, the Bidder agrees that the Agency may copy the Bid for purposes of facilitating the evaluation of the Bid or to respond to requests for public records. The Bidder consents to such copying by submitting a Bid and warrants that such copying will not violate the rights of any third party. The Agency shall have the right to use ideas or adaptations of ideas that are presented in the Bids.

#### **2.18 Release of Claims**

By submitting a Bid, the Bidder agrees that it will not bring any claim or cause of action against the Agency based on any misunderstanding concerning the information provided herein or concerning the Agency's failure, negligent or otherwise, to provide the Bidder with pertinent information in this RFB.

**2.19 Bidder Presentations**

At the sole discretion of the State, Bidders may be required to make a presentation of the Bid. The presentation may occur at the Agency's offices or at the offices of the Bidder. The determination as to need for presentations, the location, order, and schedule of the presentations is at the sole discretion of the Agency. The presentation may include slides, graphics and other media selected by the Bidder to illustrate the Bidder's Bid. The presentation shall not materially change the information contained in the Bid.

**2.20 Evaluation of Bids Submitted**

Bids that are timely submitted and are not subject to disqualification will be reviewed in accordance with the RFB.

**2.21 Preference**

By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa. Preference application: Tied responses to solicitations, regardless of the type of solicitation, are decided in favor of Iowa products and Iowa-based businesses per 11 IAC 117.

**2.22 Determination of Responsible Bidder & Responsive Bid**

All Bids will be first evaluated to determine if they comply with the bid requirements (i.e. to determine if the Bidder is a Responsible Bidder submitting a Responsive Bid). To be deemed a Responsible Bidder and a Responsive Bid, the Bid must comply with the bid format instructions and answer "Yes" to all parts and include information demonstrating the Bidder will be able to comply with the bid requirements.

**2.23 Evaluation Criteria**

The Agency will evaluate the Responsive Bids submitted by Responsible Bidders to determine the lowest responsible bidder(s) and will award the Contract(s) to the Bidder(s) submitting the lowest responsible bid(s) based on price.

**2.24 Award Notice and Acceptance Period**

Notice of Intent to Award the Contract(s) will be sent to all Bidders submitting a timely Bid. Negotiation and execution of the Contract(s) shall be completed no later than thirty (30) days from the date of the Notice of Intent to Award. If the apparent successful Bidder fails to negotiate and deliver an executed contract by that date, the Agency, in its sole discretion, may cancel the award and award the Contract to the remaining Bidder the Agency believes will provide the best value to the State.

**2.25 Definition of Contract**

The full execution of a written contract shall constitute the making of a contract for the goods and/or services requested by the RFB and no Bidder shall acquire any legal or equitable rights relative to the contract for goods and/or services until the contract has been fully executed by the successful Bidder and the Agency.

**2.26 Choice of Law and Forum**

This RFB and the Contract are to be governed by the laws of the state of Iowa. Changes in applicable laws and rules may affect the award process or the Contract. Bidders are responsible



for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFB shall be brought in the appropriate Iowa forum.

**2.27 Restrictions on Gifts and Activities**

Iowa Code Chapter 68B restricts gifts which may be given or received by State employees and requires certain individuals to disclose information concerning their activities with State government. Bidders are responsible to determine the applicability of Chapter 68B to their activities and to comply with its requirements. In addition, pursuant to Iowa Code Section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

**2.28 Appeals**

Appeals of the Notice of Intent to Award are governed by the Agency's Bidder appeal process. Bidders may obtain information about the appeal process from the Issuing Officer and at Iowa Administrative Code chapter 11-117.

**2.29 Unit Price**

If a discrepancy between the unit price and the item total exists, the unit price prevails.

**2.30 Price Adjustments to Term Contract(s)**

Bid prices shall remain firm the first year of the contract. Price adjustments may be taken into consideration during the contract renewal process. The State reserves the right to accept or reject any proposed price(s) changes. Requested price changes should be submitted to the Iowa Department of Administrative Services – Central Procurement, sixty (60) days prior to the contract anniversary date.

**2.31 Registration**

The successful Bidder will be required to register to do business in Iowa before payment can be made. For Bidder registration documents, go to:

[https://vss.iowa.gov/webapp/VSS\\_ON/AltSelfService](https://vss.iowa.gov/webapp/VSS_ON/AltSelfService)

**2.32 Questions and Requests for Clarification**

Bidders are invited to submit written questions and requests for clarifications regarding the RFB. **The questions and requests for clarifications must be received by the Issuing Officer by December 9, 2016 no later than 3:00PM CST.** Oral questions will not be permitted. If the questions and requests for clarifications pertain to a specific section of the RFB, the page and section number(s) must be referenced. Written responses to questions and requests for clarifications will be issued in the form of an addendum and sent to Bidders who received RFBs.

## SECTION 3 – SPECIFICATIONS

All items listed in this Section are Bid Requirements. *Bidders should complete all highlighted items in Section 3, all items in Section 4, and the attachments of this document.*

### 1. Manufacturer and Manufacturer's Authorized Dealers (Who may submit a bid)

Manufacturers and Manufacturer's Authorized Dealers are eligible to submit a bid for this RFB. Each dealer location which submits a bid must be an authorized dealer for each manufacturer's equipment being bid and must be able to provide documentation upon request. Bidders who are dealers for several manufacturers' equipment may submit one bid for all equipment makes they are authorized to sell. All Bidders must have a physical distribution location within the contiguous U.S. or Canada.

### 2. Part I: Equipment Specifications

This bid is for latest model of, new, unused equipment per the bid specifications. The equipment makes and models provided on the attached **Spreadsheet** are currently in use by state agencies. Bidder will bid equipment for one or more of the equipment makes on the spreadsheet. Bidder will submit the completed spreadsheet with their bid submission.

Bidder may introduce makes of equipment other than those makes listed on the spreadsheet if the equipment fits into the equipment groups listed on the attached spreadsheet. The state has sole discretion on determining whether the new makes of equipment will serve the needs of state agencies and may reject new equipment entries. All newly introduced equipment should be added to the bottom of the spreadsheet so it is easily identified during the evaluation process.

Bidder agrees to provide the state's Contract Manager with updated equipment specifications and sales/service contact information within 10 days of the updates becoming effective for the duration of the contract including renewals.

The state reserves the right to add new makes and models of equipment to the contract for the duration of the contract including renewals.

### 3. Part II: Equipment Parts Discount

Bidder should provide the discount percentage off manufacturer's list price for OEM replacement parts for all of the equipment brands bid. Bidder shall provide parts pricing either through an online link(s) or an electronic price list for all equipment bid.

#### A. Website for Parts Pricing:

The state would prefer Bidder provide the link to a website(s) which will display the list price and the final discounted state price for all equipment bid since pricing will be updated automatically on the website. Online pricing should show the discounted state price or the percent discount per item along with the list price. State auditors must be able to verify pricing on invoices through the website link provided.

*Enter link(s) to online website(s) containing list price and discounted price information here, if applicable:*

[www.mtidistributing.com/esales/esales\\_signup.pdf](http://www.mtidistributing.com/esales/esales_signup.pdf)

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**B. Optional Electronic Price Lists in Excel or PDF Format:**

In lieu of a website link, Bidder may provide an electronic copy in Excel or PDF format of their parts list showing the list price, discount percentage, and the final discounted state price with their bid. Bidder agrees to provide updated electronic price lists in Excel or PDF format for the duration of the contract including renewals if they cannot provide a link to pricing on their website.

**4. Part III: Equipment Repair and Routine Maintenance Services**

The state is seeking a flat labor rate for diagnostic services and hourly labor rates for routine annual maintenance and repair services for the equipment bid. Bidder should provide their pricing for diagnostic services, routine maintenance, and repair services on Tab 3 of the attached **Spreadsheet**. If Bidder has a schedule of various services, they may provide that schedule as long as a Hourly labor rate is provided for all other services not listed on the schedule.

If Bidder has a dealer network, Bidder may either provide consistent service rates through a service rate program for the state of Iowa which their dealers will participate in and/or the Bidder may have their dealers provide their individual service rates using the attached **Dealer Service Rate Template** on Tab 4 of the **Spreadsheet** provided which can be emailed or faxed to the dealers for completion. Bidder will then submit their dealers' rate forms with their bid.

Bidders with no dealer network or physical service locations in Iowa will explain below how they will handle repair services for the equipment they bid and any fees associated with services such as shipping, etc. Bidder will also explain the normal turnaround time for repair services performed outside of Iowa.

**Bidders with no physical locations in Iowa explain their service process here:**

MTI Distributing, Inc

3841 SE Capital Circle

Grimes, IA 50111

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All service rates will remain firm for the first two years of the contract. Beginning with the third year of the contract, service rates may be adjusted based on Section 4.22 of this document. Bidder shall send a request for service rate adjustments for consideration to the state's Contract Manager at least 60 days prior to the contract expiration date.

**5. Dealer List**

Bidder will submit with their bid a list of authorized dealers in Iowa or closest location to Iowa. Bidder agrees to send updated dealer lists to the state's Contract Manager as they become available or at a minimum during the annual renewal period of the contract. The list of authorized

dealers should provide the physical address, phone number, fax number, and contact name (if applicable).

**6. Warranty**

Dealer should provide the period of warranty for the equipment bid in **Column I** on Tab 1 of the **Spreadsheet**. Warranty information will be provided with each piece of equipment purchased by a state agency or governmental entity.

**7. Manuals**

All equipment manuals and instructions paperwork will be provided with each piece of equipment purchased by a state agency or governmental entity.

**8. Customer Service**

Bidder will provide 800 or other telephone numbers which can be used by state agencies for customer service questions or technical questions concerning the equipment. Bidder and Bidder's dealers agree to respond to general sales inquiries within 48 hours after receipt of inquiry excluding weekends and holidays. Bidder is expected to respond to equipment technical assistance questions within four (4) hours from receipt of request with a maximum response time of 24 hours from time of receipt excluding weekends or holidays.

**9. Checklist for Bid Documents to be Submitted With Bid**

Bidders will submit one (1) paper copy and one (1) electronic copy (flash drive or CD) of the following documents with their bid:

- ☐ **RFB Criteria document** - Bidders should complete all items in Section 3, Section 4 and the Attachments of this document.
- ☐ **Spreadsheet** attached with Equipment Discounts, Equipment Parts Discounts, and Equipment Service Rates.
- ☐ **Authorized Dealer Contact List**
- ☐ **Equipment Parts Pricing list** in Excel or PDF format if not providing an online link or completing Tab 2 of the **Spreadsheet** for parts discounts.
- ☐ **Service Rate Sheet(s)** from Dealer(s) in PDF or Excel format, if applicable. (See Tab 4 of Spreadsheet.)
- ☐ **Sample of Quarterly Sales Report** to be provided to state's Contract Manager per Section 4.17.

## SECTION 4 - FORM OF BID

**Instructions** – Bidder is to complete the following. Fill out items with blanks. Indicate “yes” or “no” on items requesting agreement. If a “no” response is indicated, exception must be noted on Attachment 3.

### 4.1 Bidder Information

Business Name: MTI Distributing, Inc.

Official Address: 4830 Azelia Avenue North, Suite 100

Brooklyn Center, MN 55429-3836

Firm's State or Foreign Country of Residence: Minnesota

Sales contact: Craig Jerome

Telephone Number: 763-592-5636

Fax Number: 763-592-6636

Email: craig.jerome@mtidistributing.com

### 4.2 Contract Terms and Conditions

The Contract(s) that the Agency expects to award as a result of this solicitation will be based upon the final Bid submitted by the successful Bidder and the solicitation. The contract between the Agency and the successful Bidder shall be a combination of the specifications, terms and conditions of the solicitation, the contract terms and conditions in the solicitation, the offer of the Bidder contained in the final Bid submitted by the Bidder, written clarifications or changes made in accordance with the provisions of the solicitation, and any other terms deemed necessary by the Agency, except that no objection or amendment by a Bidder to the provisions or terms and conditions of the solicitation shall be incorporated into the Contract unless the Agency has explicitly accepted the Bidder's objection or amendment in writing. The contract terms and conditions contained in the solicitation will be incorporated into the Contract.

The contract terms and conditions may be supplemented at the time of Contract execution and are provided to enable Bidders to better evaluate the costs associated with the solicitation requirements and the Contract. Bidders should plan on the contract terms and conditions contained in the solicitation being included in any contract awarded as a result of this solicitation. All costs associated with complying with these requirements should be included in any pricing quoted by the Bidder. By submitting a Bid, each Bidder acknowledges its acceptance of the solicitation terms and conditions without change except as otherwise expressly stated in Attachment 3. If a Bidder takes exception to a provision, it must state the reason for the exception and the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the solicitation may be deemed non-responsive by the State, in its sole discretion, resulting in possible disqualification

of the Bid. The Agency reserves the right to either award a Contract(s) without further negotiation with the successful Bidder or to negotiate contract terms with the selected Bidder if the best interests of the Agency would be served.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

#### 4.3 Terms and Conditions

The parties agree to comply with the terms and conditions viewable at:

<https://das.iowa.gov/sites/default/files/procurement/pdf/050116%20terms%20services.pdf>

and which are by this reference made a part of the Agreement.

**Bidder has read and agrees to this section:** Yes ☐ No ☒

#### 4.4 Terms of Pcard Acceptance

The State of Iowa prefers to pay Bidders using its Purchasing Card Program (Pcard) whenever possible. Bidders accepting Pcard payments shall comply with the following security measures:

- Bidder shall comply with the most current Payment Card Industry Data Security Standards (PCI DSS) to assure confidential card information is not compromised;
- Bidder shall adhere to Fair and Accurate Credit Transactions Act requirements that limit the amount of consumer and account information shared for greater security protection;
- When accepting orders online, Bidder shall ensure Internet orders are processed via secure websites, featuring Verisign, TRUSTe, BBBOnline, or "https" in the web address;
- When accepting orders by phone, Bidder shall send itemized receipts (excluding card numbers) to the cardholder by fax, email, or mail (with delivery);
- Bidder shall process payment for items when an order is placed only for items currently in stock and available for shipment, and only for services already rendered;
- Bidder shall confirm that the name of purchaser matches the name on the card;
- Bidder shall shred any documentation with credit card numbers.

For additional information, see the [State of Iowa Purchasing Card Policy and Procedures Manual](#), or visit the [State Pcard website](#).

**Bidder has read and agrees to this section:** Yes ☐ No ☒

#### 4.5 Specifications

Bidder is able to provide and performed as specified in Section 3. By indicating "yes", a Bidder agrees that it shall comply with that requirement throughout the full term of the resulting Contract, if the Bidder is successful. In addition, for specific requirements, the Bidder shall provide, if requested, specific references and/or supportive information to verify the Bidder's compliance with the requirement. Failure to provide this information may cause the Bid to be deemed non-responsive and therefore rejected. The Agency reserves the right to determine whether the supportive information submitted by the Bidder demonstrates the Bidder will be able to comply with the Bid Requirements. If the Agency determines the supportive information does not demonstrate the Bidder will be able to comply with the Bid Requirements, the Agency may disqualify the Bid. Please enter the required information on the attachment and upload the document.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

#### 4.6 Terminations, Litigation, Debarment

The Bidder must provide the following information:

- During the last five (5) years, has the Bidder had a contract for goods and/or services terminated for any reason? If so, provide full details related to the termination.
- During the last five (5) years, describe any damages or penalties or settlements to resolve disputes entered into by Bidder under any of its existing or past contracts as it relates to goods and/or services performed that are similar to the goods and/or services contemplated by this RFB. If so, indicate the reason for the penalty or exchange of property, goods, or services and the estimated amount of the cost of that incident to the Bidder.
- During the last five (5) years, describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the Bidder to engage in any business, practice or activity.
- During the last five (5) years, list and summarize all litigation or threatened litigation, administrative or regulatory proceedings, or similar matters to which the Bidder or its officers have been a party.
- The Bidder must also state whether it or any owners, officers, or primary partners have ever been convicted of a felony. Failure to disclose these matters may result in rejection of the Bid or termination of any subsequent Contract.
- This is a continuing disclosure requirement. Any such matter commencing after submission of a Bid, and with respect to the successful Bidder after the execution of a Contract, must be disclosed in a timely manner in a written statement to the Agency.

Please see attachment 3

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#### 4.7 Preference

The Bidder shall provide the following general background information: For an out-of-state Bidder, Bidder certifies the Resident Preference given by the State or Foreign Country of Bidder's residence. Enter the resident preference in the text box or indicate no preference.

**Bidder's state has a preference law:** Yes ☒ No ☐ **Bidder's state** Minnesota

#### 4.8 Silence of Specification

The apparent silence of these specifications as to any details or the omission from it of a detail description concerning any point shall be interpreted as meaning that only the best commercial practices are to prevail, and that only materials and/or workmanship of finest quality shall be used.

**Bidder has read and agrees to this section:** Yes ☒ No ☐



**4.9 FOB Destination, Freight Prepaid**

**Bidder has read and agrees to this section:** Yes ☒ No ☐

**4.10 Delivery Time**

The successful Bidder shall ship all orders within the time specified below or, in the case of unanticipated problems causing a delay, notify the agency of the problem and when the shipment will be made.

Provide the expected number of days after receipt of order until delivered to the specified facility. Expected number of days for delivery: 14

**Bidder has read and agrees to this section:** Yes ☒ No ☐

**4.11 Award by Either**

The Iowa Department of Administrative Services reserves the right to award to the Bidder with the best overall price or to the Bidder with the best line item price.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

**4.12 Criminal History and Background Information**

The Bidder hereby explicitly authorizes the Agency to conduct criminal history and/or other background investigation(s) of the Bidder, its officers, directors, shareholders, or partners and managerial and supervisory personnel retained by the Bidder for the performance of the Contract.

**Bidder has read and agrees to this section:** Yes ☐ No ☒

**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: (i) be subject to the approval of the Agency; (ii) remain in full force and effect for the entire term of this Contract; and (iii) not be canceled, reduced or changed without the Agency's prior written consent. The State of Iowa and Agency shall be named as additional insureds on all such policies, and 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." Unless otherwise requested by the Agency, Bidder shall cause to be issued 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
Property Damage	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 or modification 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. The Bidder shall simultaneously with the delivery of the certificates deliver to the Agency one duplicate original of each insurance policy. 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 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 and keep the Agency fully informed about the status of the 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. 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.

#### 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.

**Bidder has read and agrees to this section:** Yes ☐ No ☒

#### 4.14 Defective Equipment

All equipment found to be defective within the manufacturer's warranty period shall be returned and replaced with new equipment at the successful Bidder's expense.

**Bidder has read and agrees to this section:** Yes ☐ No ☒

#### 4.15 Standard of Quality

The item(s) specified in this program by brand name are intended to establish a standard of quality, which will be required. Similar item or items of manufacturers other than those listed which are included in the bids submitted will be considered if comparable in quality and function. It will be the responsibility of the Bidder to provide all technical information as to the acceptability of the alternate item(s). All products delivered shall be fully guaranteed to be free of defects, first quality no seconds or irregulars shall be accepted.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

#### 4.16 Payment Terms

Per Iowa Code § 8A.514 the State of Iowa is allowed sixty (60) days to pay an invoice submitted by a Bidder.

What discount will you give for payment in 15 days? 0

What discount will you give for payment in 30 days? 0

**Bidder has read and agrees to this section:** Yes ☒ No ☐

#### 4.17 Quarterly Report

The Bidder shall provide an electronic detailed quarterly report on ALL sales made under this Contract via e-Mail to the Iowa Department of Administrative Services, Central Procurement. Attention: Nancy Wheelock at [nancy.wheelock@iowa.gov](mailto:nancy.wheelock@iowa.gov). The report file format shall be Microsoft Excel compatible format. The report at minimum shall include the date of sale, customer name and address, full product description, SKU Numbers, quantity, invoice number,

unit and extended invoice prices. Bidder's Bid must include a sample report and a description of the reporting that will be provided. The State reserves the right to request more detailed information (ad-hoc reporting) at any time and on an individual or specific basis for a specific product, department, time frame, or for a range of products, departments or time frames.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

**4.18 Public Entities (Political Subdivisions)**

The resulting Contract will be made available to Political Entities, i.e. cities, counties, and schools.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

**4.19 Bidder Registration**

A Bidder doing business in Iowa shall register with the labor commissioner.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

**4.20 Firm Contract Percentage Discounts**

Any contract that results from this bid will have firm percentage discounts for the duration of the contract including renewals. New equipment brands, models or makes added to the contract after initial contract execution or equipment added as replacement of discontinued models will also have a set percentage discount for the duration of the contract including renewals. Equipment and parts pricing may be adjusted for the duration of the contract including renewals. Equipment service rates will be held firm for the first two years of the contract and then may be adjusted per Section 4.22.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

**4.21 Invoicing**

All invoicing will be submitted to the attention of "Accounts Payable" and addressed to the facility receiving the goods or services. The State shall pay the Bidder monthly, within the period of time provided for by applicable State statute, after receipt of the Vendor's invoice for the goods and/or services supplied by the Bidder in the prior calendar month. The invoice will be itemized with a description goods or services provided that corresponds directly to a line item on the Contractual Agreement or Master Agreement that results from this RFB. Each line should also list the quantity, unit of measure, price per unit of measure, line item totals and invoice total. The remit to address on the invoice must match the remit to address that was submitted with registration to do business with the State of Iowa. Payment terms on the invoice must match the payment terms agreed to in the RFB bid submission.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

**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.
- Not produce a higher profit margin than that on the original contract.
- 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 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 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.
- During the term of this contract, should the Contractor enter into pricing agreements with other customers providing greater benefits or lower pricing, Contractor shall immediately amend the State contract to provide similar pricing to the State if the contract with other customers offers similar usage quantities, and similar conditions impacting pricing. Contractor shall immediately notify the State Procurement Coordinator of any such contracts entered into by Contractor.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

#### 4.23 Additional Items or Manufacturers

The State reserves the right to add additional items or manufacturers to the Contract during the life of the Contract, if it is to the best advantage to the State to do so. Items or manufacturers may only be added upon the agreement of the Department of Administrative Services, Procurement and the Contracted Supplier.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

#### 4.24 Substitution of Items During Term of Contract

Substitute brands or models may be considered during the contract period for discontinued models. The bidder shall not deliver any substitute item as a replacement to an awarded brand or model without express written consent of Department of Procurement Management, Bids & Contracts Division prior to such delivery. Substitute items must be of equal or better quality than the awarded item. Substitutes shall be considered only in emergency situations and excessive substitution requests may be cause to cancel the contract.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

#### 4.25 Country of Origin

Bidder must be able to provide country of origin, if requested.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

**4.26 Pricing**

Pricing must include all delivery, packaging and administrative costs including, but not limited to, any US import charges associated with the product. There shall be no minimum order quantities or total order amount required from the agency, by the respondent. All bid pricing must be rounded to the nearest hundredth (0.00), US currency.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

**4.27 Pricing Restrictions**

Pricing restrictions shall be disclosed at the time of bid. Bidders with pricing restrictions will be taken into consideration for minimum order quantities or total order amount required from the ordering agency.

**Bidder has read and agrees to this section:** Yes ☒ No ☐

## **Attachment #1**

### **Certification Letter**

**Alterations to this document are prohibited.**

**January 5, 2017**

Nancy Wheelock, Issuing Officer  
Iowa Department of Administrative Services  
Hoover State Office Building, Level 3  
1305 East Walnut Street  
Des Moines, IA 50319-0105

Subject: Request for Bid - Bid Certifications

Issuing Officer:

I certify that the contents of the Bid submitted on behalf of MTI Distributing, Inc. in response to Iowa Department of Administrative Services for RFB1117005168 for Equipment, Parts and Services are true and accurate. I also certify that Bidder has not knowingly made any false statements in its Bid.

#### **Certification of Independence**

I certify that I am a representative of Bidder expressly authorized to make the following certifications on behalf of Bidder. By submitting a Bid in response to the RFB, I certify on behalf of the Bidder the following:

1. The Bid has been developed independently, without consultation, communication or agreement with any employee or consultant to the Agency or with any person serving as a member of the evaluation committee.
2. The Bid has been developed independently, without consultation, communication or agreement with any other Bidder or parties for the purpose of restricting competition.
3. Unless otherwise required by law, the information found in the Bid has not been and will not be knowingly disclosed, directly or indirectly prior to Agency's issuance of the Notice of Intent to Award the contract.
4. No attempt has been made or will be made by Bidder to induce any other Bidder to submit or not to submit a Bid for the purpose of restricting competition.
5. No relationship exists or will exist during the contract period between Bidder and the Agency or any other State agency that interferes with fair competition or constitutes a conflict of interest.

#### **Certification Regarding Debarment**

I certify that, to the best of my knowledge, neither Bidder nor any of its principals: (a) are presently or have been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or State Agency; (b) have within a five year period preceding this Bid been convicted of, or had a civil judgment rendered against them for commission of fraud, a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes; commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are presently indicted for or criminally or civilly charged by a government entity (federal, state, or local) with the commission of

any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this Bid had one or more public transactions (federal, state, or local) terminated for cause.

This certification is a material representation of fact upon which the Agency has relied upon when this transaction was entered into. If it is later determined that Bidder knowingly rendered an erroneous certification, in addition to other remedies available, the Agency may pursue available remedies including suspension, debarment, or termination of the contract.

**Certification Regarding Registration, Collection, and Remission of Sales and Use Tax**

Pursuant to *Iowa Code sections 423.2(10) and 423.5(8) (2013)* a retailer in Iowa or a retailer maintaining a business in Iowa that enters into a contract with a state agency must register, collect, and remit Iowa sales tax and Iowa use tax levied under *Iowa Code chapter 423* on all sales of tangible personal property and enumerated services. The Act also requires Bidders to certify their compliance with sales tax registration, collection, and remission requirements and provides potential consequences if the certification is false or fraudulent.

By submitting a Bid in response to the (RFB), the Bidder certifies the following: (check the applicable box)

- ☒ Bidder is registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by *Iowa Code chapter 423*; or
- ☐ Bidder is not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in *Iowa Code subsections 423.1(47) and (48)*.

Bidder also acknowledges that the Agency may declare the Bidder's Bid or resulting contract void if the above certification is false. The Bidder also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract in addition to other remedies available to Agency.

Sincerely,

  
\_\_\_\_\_  
Signature

John McPhee, President  
Name and Title of Authorized Representative

1/5/17  
Date

**Attachment #2**  
**Authorization to Release Information Letter**  
Alterations to this document are prohibited.

(Date) January 5, 2017

Nancy Wheelock, Issuing Officer  
Iowa Department of Administrative Services  
Hoover State Office Building, Level 3  
1305 East Walnut Street  
Des Moines, IA 50319-0105

Subject: Request for Bid – Authorization to Release Information

Dear Issuing Officer:

**Bidder** hereby authorizes the Iowa Department of Administrative Services ("Agency") or a member of the Evaluation Committee to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful Bidder in response to this Request for Bids (RFB).

The Bidder acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The Bidder 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 Bidder is willing to take that risk.

The Bidder hereby releases, acquits and forever discharges the State of Iowa, the Agency, their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references obtained by the Agency or the Evaluation Committee in the evaluation and selection of a successful Bidder in response to the RFB.

The Bidder authorizes representatives of the Agency to contact any and all of the persons, entities, and references which are, directly or indirectly, listed, submitted, or referenced in the Respondent's Bid submitted in response to RFB.

The Bidder further authorizes any and all persons, and entities to provide information, data, and opinions with regard to its performance under any contract, agreement, or other business arrangement, its ability to perform, business reputation, and any other matter pertinent to the evaluation of the Bidder's Bid. The Bidder hereby releases, acquits and forever discharges any such person or entity and their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the Bidder that it may have or ever claim to have relating to information, data, opinions, and references supplied to the Agency in the evaluation and selection of a successful Bidder in response to RFB.

Sincerely,

  
\_\_\_\_\_  
Signature

John McPhee, President  
Name and Title of Authorized Representative

1/5/17  
Date



**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)

<u>Section</u>	<u>Exception</u>
1. _____	Please see additional pages _____
2. _____	_____ _____
3. _____	_____ _____
4. _____	_____ _____
5. _____	_____ _____
6. _____	_____ _____
7. _____	_____ _____
8. _____	_____ _____
9. _____	_____ _____
10. _____	_____ _____

**RFB Section 4.3 (Terms and Conditions)**

- MTI requests the following be added as a
- **Section 1.12.1:**
  - MTI does not assign its intellectual property rights when it sells product. MTI cannot agree to the second sentence of this Section and requests it be deleted. (~~“Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title, and interest in and to all Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto.”~~).
  - MTI does not agree to pay the Agency royalties or other compensation in connection with the products being sold and requests that the fourth sentence of this Section be modified as follows: “The Contractor (and Contractor’s employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency ~~and the payment of such royalties or other compensation as the Agency deems appropriate.”~~”
- **Section 1.13.1:** MTI warrants its products in accordance with the product warranties submitted in the RFB documentation. MTI requests that this Section be deleted in its entirety and replaced with the following: “Contractor warrants the Deliverables to be free from defects in materials and workmanship in accordance with its warranty for each product category. For complete warranty details, time periods, and hour limitations refer to Contractor’s written warranty for each product category. Except as provided herein, Contractor’s applicable warranties are accepted by the Agency in lieu of all other warranties, express or implied.”
- **Section 1.13.3:** MTI provides the warranty against intellectual property infringement and remedies requested in this Section. However, MTI and/or its affiliates are involved in patent litigation cases in the ordinary course of business and do not provide reporting relating to these cases to its customers, but rather provide public disclosures as required by the SEC in its public filings, which are publicly available. To prevent possible infringement of our patents by others, we periodically review competitors’ products. To avoid potential liability with respect to others’ patents, we regularly review certain patents issued by the USPTO and foreign patent offices. We believe these activities help us minimize our risk of being a defendant in patent infringement litigation. We are currently involved in patent litigation cases by or against competitors, where we are asserting and defending against claims of patent infringement. Such cases are at varying stages in the litigation process.

MTI requests that the following be deleted from this Section : ~~“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 misappropriate of a trade secret."~~

- **Section 1.13.4:** MTI warrants its products in accordance with the product warranties submitted in the RFB documentation. MTI requests the second sentence through fifth sentences of this Section be revised as follows:

~~"During the Warranty Period, Contractor shall, at its expense, repair, correct, or replace and Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with the Specifications, as provided in and according to the terms of its warranty for each product category. within five business days of receiving notice of such Deficiencies or failures from the Agency or within such other period as the Agency specified in the notice. In the event Contractor is unable to repair, correct, or 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 and Deliverables not performing in accordance with Contractor's warranty for each product category and 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 Deliverables.

- **Section 1.14:** MTI warrants is products in accordance with the product warranties submitted in the RFB documentation. Any issues relating to deficiencies or defects in the products discovered by the Agency would be addressed according to the product warranty. MTI requests that Sections 1.14, 1.14.1, 1.14.2, 1.14.3, 1.14.4 be deleted and replaced with the following:

"Contractor warrants the Deliverables to be free from defects in materials and workmanship in accordance with its warranty for each product category. For complete warranty details, time periods, and hour limitations refer to Contractor's written warranty for each product category. Except as provided herein, Contractor's applicable warranties are accepted by the Agency in lieu of all other warranties, express or implied."

- **Section 1.15.4:** MTI requests that the last sentence of this Section (~~"If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-~~

~~exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.”)~~ be deleted, as it does not appear to be applicable and MTI does not grant its customers copyrights or licenses in the intellectual property rights of its products.

- **Section 1.15.36:** MTI requests that this Section be deleted in its entirety. MTI does not grant customers the right to directly address its board of directors in this manner.

**RFB Section 4.4 (Terms of Pcard Acceptance):** MTI’s current system constraints do not permit it to comply with the Terms of Pcard Acceptance. This Section must be deleted.

**RFB Section 4.6 (Terminations, Litigation, Debarment)**

- **Bullet Point 1:** We are involved in commercial disputes in the ordinary course of business. We have not had any litigation relating to the matters stated during the stated time period.
- **Bullet Point 2:** We are involved in commercial disputes in the ordinary course of business. We have not had any litigation relating to the matters stated during the stated time period.
- **Bullet Point 3:** None.
- **Bullet Point 4:** MTI and/or its affiliates are a party to litigation in the ordinary course of business. Litigation occasionally involves claims for punitive, as well as compensatory, damages arising out of the use of our products. Although we are self-insured to some extent, we maintain insurance against certain product liability losses. We are also subject to litigation, administrative, and judicial proceedings with respect to claims involve asbestos and the discharge of hazardous substances into the environment. Some of these claims assert damages and liability for personal injury, remedial investigations or clean-up, and other costs and damages. We are also typically involved in commercial disputes, employment disputes, and patent litigation cases in the ordinary course of business. To prevent possible infringement of our patents by others, we periodically review competitors’ products. To avoid potential liability with respect to others’ patents, we regularly review certain patents issued by the USPTO and foreign patent offices. We believe these activities help us minimize our risk of being a defendant in patent infringement litigation. We are currently involved in patent litigation cases by or against competitors, where we are asserting and defending against claims of patent infringement. Such cases are at varying stages in the litigation process.
- **Bullet Point 5:** MTI has never been convicted of a felony. MTI is a wholly owned subsidiary of The Toro Company, a publicly traded and owned company, which has also never been convicted of a felony.
- **Bullet Point 6:** Agreed.

**RFB Section 4.7 (Preference)** Yes. Minnesota has a bidder preference law (Minn. Stat. § 16.06C, subd. 7).

**RFB Section 4.12 (Criminal History and Background Information)** No. MTI cannot accept this clause. MTI can consent to criminal history and/or background investigations on the Bidder entity, but cannot authorize the same for its officers, directors, shareholders, or partners. MTI is a subsidiary of a publicly traded and owned company (The Toro Company) and cannot consent to this on behalf of other individuals or entities due to legal and privacy obligations.

**RFB Section 4.13 (Insurance).** No. MTI carries the requested coverage, but MTI does not provide full copies of its insurance policies to its customers. MTI can provide the requested certificates of insurance,

State of Iowa Bid Responses  
Attachment #3

which is standard and sufficient evidence of coverage. MTI requests the following deletion from this Section: ~~“The Bidder shall simultaneously with the delivery of the certificates deliver to the Agency one duplicate original of each insurance policy.”~~

**RFB Section 4.14 (Defective Equipment)** Accepted with proposed modifications. “All equipment found to be defective within the manufacturer’s warranty period shall be repaired or replaced in accordance with the product warranty for each product category ~~returned and replaced with new equipment at the successful Bidder’s expense.~~”

**Attachment #4**  
**Form 22 – Request for Confidentiality**

Per section 2.16 of the Request for Bid (RFB), a Bidder requesting portions of its Bid be maintained in confidence must complete this form and submit it with its Bid. Bidders should read and familiarize themselves with chapter 22 of the Iowa Code regarding release of public records before completing this form. Section 2.16 of the RFB provides the Bidder instructions regarding how to request confidential treatment of portions of its Bid.

**NOTE:** Completion of this Form is the sole means of requesting confidential treatment. Completion of the form and agency's acceptance of Bidder's submission does not guarantee the agency will grant Bidder's request for confidentiality. The agency may reject Bidder's Bid entirely in the event Bidder requests confidentiality and does submit a fully completed Form or requests confidentiality for portions of its Bid that are improper under the RFB.

To request confidentiality, Bidder must provide the following information:

- 1 ☐ Bidder must conspicuously mark confidential material in its Bid in accordance with section 2.16 Public Records and Requests for Confidential Treatment. **Check box when completed.**
- 2 Bidder must specifically identify and list the Bid section(s) for which it seeks confidentiality and answer the following questions for each section listed :
  - 3.1 Explain the specific grounds in *Iowa Code Chapter 22* or other applicable law which support treatment of the material as confidential.
  - 3.2 Justify why the material should be kept in confidence.
  - 3.3 Explain why disclosure of the material would not be in the best interest of the public.
  - 3.4 Provide the name, address, telephone, and email for the person at Bidder's organization authorized to respond to inquiries by the Agency concerning the status of confidential materials.

Please provide the information in the table below. Bidder may add additional lines if necessary or add additional pages using the same format as the table below.

RFB Section:	Bidder must cite the specific grounds in <i>Iowa Code Chapter 22</i> or other applicable law which supports treatment of the material as confidential.	Bidder must justify why the material should be kept in confidence	Bidder must explain why disclosure of the material would not be in the best interest of the public.	Bidder must provide the name, address, telephone, and email for the person at Bidder's organization authorized to respond to inquiries by the Agency concerning the status of confidential materials.

- 3 ☐ Bidder must submit a Public Copy of the Bid 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 Bid as possible. **Check box when completed.**

This form must be signed by the individual who signed the Bidder's Bid and returned as part of the bid submittal. A copy of this document shall be placed in all Bids submitted including the Public Copy.

**\*Failure to provide the information required in this form may result in rejection of Bidder's request for confidentiality or rejection of the Bid as being non-responsive.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

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**Department of Administrative Services – Central Procurement Enterprise Review  
(for agency use only)**

- ☐ Bidder's Bid is rejected as non-compliant because one of more of the following reasons:
- ☐ Bidder requested confidentiality without submitting a fully completed Form 22.
  - ☐ Bidder requested confidentiality and failed to conspicuously mark such material as confidential within its Bid in accordance with the RFB.
  - ☐ Bidder requested confidentiality without submitting a public copy of its Bid with the confidential information redacted.
  - ☐ Bidder requested confidentiality on material in contravention of the RFB.
  - ☐ Other: \_\_\_\_\_.
- ☐ Bidder's submission is accepted.<sup>1</sup>

\_\_\_\_\_  
Purchasing Agent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
**NOTE:** Agency's acceptance of Bidder's submission should not be construed as Agency's approval of Bidder's request for confidentiality. Instead, acceptance of Bidder's submission simply means that Agency believes Bidder's Form 22 appears fully completed in accordance with the RFB.



**Attachment #5**  
**LOBBYING (31 USC. 1352, 49 CFR Part 19, 49 CFR Part 20)**

Byrd Anti-Lobbying Amendment, 31 USC. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 USC. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1)** No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2)** If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 USC. 1601, et seq.).
- (3)** The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Note:** Pursuant to 31 USC. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor, MTI Distributing, Inc, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC. A 3801, et seq., apply to this certification and disclosure, if any.

SIGNATURE 

TYPED OR PRINTED NAME John McPhee

TITLE President

COMPANY MTI Distributing, Inc

**Attachment #6**  
**CLEAN AIR CERTIFICATION**

The Bidder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401 et seq. The Contract Bidder agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office.

The Bidder also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

**SIGNATURE** John McPhee

**TYPED OR PRINTED NAME** John McPhee

**TITLE** President

**COMPANY** MTI Distributing, Inc

**DATE** 1/5/17

**Attachment #7**  
**CLEAN WATER CERTIFICATION**

The Bidder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC. 1251 et. seq. The Bidder agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office.

The Bidder also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

**SIGNATURE** 

**TYPED OR PRINTED NAME** John McPhee

**TITLE** President

**COMPANY** MTI Distributing, Inc

**DATE** 1/5/17

## Bidder Status Form

### To be completed by all bidders

### Part A

Please answer "Yes" or "No" for each of the following:

- ☐ Yes ☒ No My company is authorized to transact business in Iowa.  
(To help you determine if your company is authorized, please review the worksheet on the next page).
- ☒ Yes ☐ No My company has an office to transact business in Iowa.
- ☒ Yes ☐ No My company's office in Iowa is suitable for more than receiving mail, telephone calls, and e-mail.
- ☒ Yes ☐ No My company has been conducting business in Iowa for at least 3 years prior to the first request for bids on this project.
- ☒ Yes ☐ No My company is not a subsidiary of another business entity or my company is a subsidiary of another business entity that would qualify as a resident bidder in Iowa. ?

If you answered "Yes" for each question above, your company qualifies as a resident bidder. Please complete Parts B and D of this form.

If you answered "No" to one or more questions above, your company is a nonresident bidder. Please complete Parts C and D of this form.

### To be completed by resident bidders

### Part B

My company has maintained offices in Iowa during the past 3 years at the following addresses:

Dates: \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_ Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Dates: \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_ Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Dates: \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_ Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

You may attach additional sheet(s) if needed.

### To be completed by non-resident bidders

### Part C

1. Name of home state or foreign country reported to the Iowa Secretary of State:

Minnesota

2. Does your company's home state or foreign country offer preferences to resident bidders, resident labor force preferences or any other type of preference to bidders or laborers? ☒ Yes ☐ No

3. If you answered "Yes" to question 2, identify each preference offered by your company's home state or foreign country and the appropriate legal citation.

"Acquisition of goods and services must be awarded according to the provisions of [Minn. Stat. Chapter 16C.] except that a resident vendor shall be allowed a preference over a nonresident vendor from a state that gives or requires a preference to vendors from that state."

### To be completed by all bidders

### Part D

I certify that the statements made on this document are true and complete to the best of my knowledge and I know that my failure to provide accurate and truthful information may be a reason to reject my bid.

Firm Name: MTI Distributing Inc.

Signature: Jh McPhee

Date: 1/5/17

You must submit the completed form to the governmental body requesting bids per 875 Iowa Administrative Code Chapter 156. This form has been approved by the Iowa Labor Commissioner.

\* (continued) The preference shall be equal to the preference given or required by the state of the nonresident vendor. Minn. Stat. § 16C.06, subd. 7

## Worksheet: Authorization to Transact Business

This worksheet may be used to help complete Part A of the Resident Bidder Status form. If at least one of the following describes your business, you are authorized to transact business in Iowa.

- ☐ Yes ☒ No My business is currently registered as a contractor with the Iowa Division of Labor.
- ☐ Yes ☒ No My business is a sole proprietorship and I am an Iowa resident for Iowa income tax purposes.
- ☐ Yes ☒ No My business is a general partnership or joint venture. More than 50 percent of the general partners or joint venture parties are residents of Iowa for Iowa income tax purposes.
- ☐ Yes ☒ No My business is an active corporation with the Iowa Secretary of State and has paid all fees required by the Secretary of State, has filed its most recent biennial report, and has not filed articles of dissolution.
- ☐ Yes ☒ No My business is a corporation whose articles of incorporation are filed in a state other than Iowa, the corporation has received a certificate of authority from the Iowa secretary of state, has filed its most recent biennial report with the secretary of state, and has neither received a certificate of withdrawal from the secretary of state nor had its authority revoked.
- ☐ Yes ☒ No My business is a limited liability partnership which has filed a statement of qualification in this state and the statement has not been canceled.
- ☐ Yes ☒ No My business is a limited liability partnership which has filed a statement of qualification in a state other than Iowa, has filed a statement of foreign qualification in Iowa and a statement of cancellation has not been filed.
- ☐ Yes ☒ No My business is a limited partnership or limited liability limited partnership which has filed a certificate of limited partnership in this state, and has not filed a statement of termination.
- ☐ Yes ☒ No My business is a limited partnership or a limited liability limited partnership whose certificate of limited partnership is filed in a state other than Iowa, the limited partnership or limited liability limited partnership has received notification from the Iowa secretary of state that the application for certificate of authority has been approved and no notice of cancellation has been filed by the limited partnership or the limited liability limited partnership.
- ☐ Yes ☒ No My business is a limited liability company whose certificate of organization is filed in Iowa and has not filed a statement of termination.
- ☐ Yes ☒ No My business is a limited liability company whose certificate of organization is filed in a state other than Iowa, has received a certificate of authority to transact business in Iowa and the certificate has not been revoked or canceled.