

**PARTICIPATING ADDENDUM**  
**for Sourcewell**  
**Contract #092222-CMM for Electrical Power Generation Equipment**  
**Between Cummins Inc. and State of Iowa**

**1.1 Scope**

This participating addendum covers the contract #092222-CMM led by the Cummins Inc. for Electrical Energy Power Generation Equipment for use by state agencies and other governmental entities located in the State of Iowa authorized by State of Iowa statutes to utilize State contracts with the prior approval of the State of Iowa - Chief Procurement Officer. The Contract, as now or hereafter amended, is incorporated into this Participating Addendum as if set forth at length. Issues of interpretation and eligibility for participation are solely within the authority of the State of Iowa - Chief Procurement Officer.

**1.2 Participation**

Use of specific cooperative contracts by agencies, political subdivisions, and other entities (including cooperatives) authorized by State of Iowa statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

Within the State of Iowa, all state agencies, state facilities, cities, counties or education entities or any entity funded in part with state tax dollars, are eligible purchasers and authorized to purchase Product and/or Service under the terms of this Participating Addendum in lieu of a separate competitive selection process. (Exception: State of Iowa executive branch agencies must purchase according to applicable system standards and seek approval from the State of Iowa - Office of the Chief Information Officer when required as directed by Iowa Administrative Code before purchasing from this contract.)

**1.3 Order of Precedence**

1. This State of Iowa Participating Addendum ;
2. The Contract
3. The Sourcewell Request for Proposal ; and
4. Vendor's response to the Request for Proposal

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. No other terms and conditions shall apply, including terms and conditions listed or referenced on the Vendor's website, in the Vendor quotation/sales order or in similar documents subsequently provided by the Vendor, including any Purchase Order, Task Order, Work Order of any other document produced by the State of Iowa. For the avoidance of a doubt, this Participating Addendum shall govern and supersede all other terms and conditions, including but not limited to all quotes, invoices, Purchase Order, Purchase Instrument, Task Order, Work Order or other documents between the parties, and any such terms and conditions shall be void and the terms and conditions of this Agreement, unless otherwise agreed to by the parties in writing; provided, however, that any specifics contained in Purchase Order, Purchase Instrument, Work Order, Task Order, or quotes that are related to the price, quantity or specifications of the work will be enforceable.

#### **1.4 Terms**

The State of Iowa is agreeing to the terms of the Contract which shall be deemed incorporated herein and in each Purchase Instrument but only to the extent the terms are not in conflict with applicable law.

#### **1.5 Modifications or Additions to the Contract**

##### **1.5.1 Reports**

The Vendor shall submit quarterly reports to the State of Iowa Contract Administrator showing all sales made quarterly against this Participating Addendum within the State of Iowa. Such reports will show the quantities and dollar volume of purchases by each Purchaser.

##### **1.5.2 Pricing**

Pricing shall be in accordance with the Contract. Agencies shall be allowed to negotiate further discounting for large volume purchases.

##### **1.5.3 Invoicing**

For the duration of the Contract, all product pricing shown on invoices submitted to the State of Iowa shall:

- Not fall short of the Contract pricing.
- Products covered under the Contract are FOB Origin and shipping charges are to be included on any invoice. For expedited shipment, Agency would submit their order including related shipping charges, which may not exceed the cost of delivery by the carrier.

##### **1.5.4 Administrative Fee**

Without affecting the approved Product and/or Service prices or discounts specified in the Contract and this Participating Addendum, the State of Iowa shall be entitled to receive a one percent (1.00%) administrative fee on all sales made within the State of Iowa against this Participation Addendum. The administration fee due to the State of Iowa shall be paid quarterly by Vendor directly to the Participating State, made payable to the "Iowa Department of Administrative Services".

Send to:

State of Iowa – DAS/Central Procurement  
Attention: DAS – CPFSE COO  
1305 E. Walnut St.  
Des Moines, IA 50319

##### **1.5.5 Payment Terms**

Payment Terms shall be Net 60 days. Per Iowa Code § 8A.514 the State of Iowa is allowed sixty (60) days to pay an invoice submitted by a Vendor. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

##### **1.5.6 Terms and Conditions**

The terms and conditions found in Attachment 1 attached to this Participating Addendum shall govern this Participating Addendum.

**1.6 Orders**

Any order placed by a State of Iowa entity ordering under this Participating Addendum shall specify that it is issued under the Contract and when accepted in writing by the Vendor shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Contract unless the parties to the Purchase Instrument agree in writing that another contract or agreement applies to such Purchase Instrument. .

**1.7 Primary Contacts**

The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Vendor

Name	Jeff Wahl
Address	1680 N.E. 51st Avenue Des Moines, Iowa 50313
Telephone	314.210.8275
E-mail	jeff.wahl@cummins.com

State of Iowa



Name	David Kuldig
Address	Hoover Bldg Fl 3, 1305 E Walnut, Des Moines IA 50309
Telephone	(515) 357-0648
E-mail	<a href="mailto:david.kuldig@iowa.gov">david.kuldig@iowa.gov</a>

The Parties will keep and maintain current at all times a primary point of contact for administration of this Participating Addendum.

**1.8 Entire Agreement**

This Participating Addendum and the Contract (including all amendments and attachments thereto) constitute the entire agreement between the parties concerning the subject matter of this Participating Addendum and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This Participating Addendum may be modified only by a written document executed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Cummins Inc.	State of Iowa
By:  Jeff Wahl (Nov 29, 2022 14:28 CST)	By:  David Kuldig (Nov 29, 2022 14:28 CST)
Name: Jeff Wahl	Name: David Kuldig
Title: Sales Director	Title: Purchasing Agent III
Date: Nov 29, 2022	Date: Nov 29, 2022

**ATTACHMENT 1**  
**ADDITIONAL TERMS AND CONDITIONS**

**1.1 Definitions**

The following words shall be defined as set forth below:

**“Bid Proposal”** means the Vendor’s response to the Request for Proposal submitted in response to the Competitive Bidding Document.

**“Competitive Bidding Document”** means the Sourcewell Request for Proposals (and any addenda thereto) identified in the Contract that was issued to solicit the Product.

**“Participating Addendum”** means the document that contains basic information about the Contract and incorporates by reference the Contractor’s Bid Proposal in response to the Competitive Bidding Document, these General Terms and Conditions for Goods Contracts, the final pricing documentation for goods, and the Special Terms.

**“Product”** refers to any other products, goods, materials or items that are ordered, developed, produced, delivered, installed, licensed, performed, provided, or otherwise made available, under or through the Contract.

**“Purchase Instrument”** means the documentation issued by the State to the Vendor and accepted by the Vendor in writing for a purchase of Products in accordance with the terms and conditions of the Participating Addendum. . It may include an identification of the items to be purchased, the delivery date and location, the address where the Vendor should submit the invoices, and any other requirements deemed necessary by the State. Any pre-printed contract terms and conditions included on the State’s or Vendor’s forms or invoices shall be null and void.

**“Service”** refers to those services performed under or through the Contract.

**“State”** means the State of Iowa, the state agency identified on the Purchase Instrument and all state agencies, boards, and commissions, and any political subdivisions making purchases under the Participating Addendum.

**1.2 Availability of Contract to Other Entities**

All other agencies of the State of Iowa and all political subdivisions of the State of Iowa may make purchases pursuant to the Participating Addendum.

**1.3 Duration of the Participating Addendum**

The term of the Participating Addendum shall end on the date specified in the Contract unless extended or terminated earlier in accordance with the applicable Contract terms and conditions.

**1.4 Description of Goods**

**1.4.1 Specifications in Competitive Bidding Documents**

The Vendor shall provide Product and/or Service that comply with the specifications contained in the Competitive Bidding Document identified by bid number in the Participating Addendum.

**1.4.2 Product Shipment and Delivery**

Unless otherwise agreed in writing by the parties, all Products shall be shipped F.O.B. Origin. Destination shall be the location(s) specified in the Purchase Instrument. The Vendor shall properly package the Product. The State will not accept delivery of noticeably damaged Product. The State shall inspect the Product within ten (10) calendar days of delivery. If the State discovers non-conforming, damaged, or defective Product and notifies Vendor within said ten calendar days, the State shall have the right to return the Product at no cost to the State or require Vendor to promptly correct or replace the nonconforming Product. In the event the State requires Vendor to correct or replace the nonconforming Product, Vendor shall correct such non-conformity or defect within a commercially reasonable period of time. If no notice is received from the State within said ten (10) calendar days, the Product shall be deemed accepted. Repair, replacement, correction, and redelivery shall be subject to the terms of this Participating Addendum.

**1.4.3 Non-Exclusive Rights**

The Participating Addendum is not exclusive. The State reserves the right to select other vendors to provide goods similar or identical to goods described in the Contract during the term of the Participating Addendum. .

**1.4.4 No Minimums Guaranteed**

The Participating Addendum does not guarantee any minimum level of purchases.

**1.5 Compensation**

**1.5.1 Pricing**

Vendor will be compensated in accordance with the payment terms outlined in the Participating Addendum Payment Terms.

The Vendor shall submit an invoice for Product and/ or Service rendered in accordance with the Participating Addendum. The invoice shall comply with all applicable rules concerning payment of such claims. The Agency shall promptly verify the Vendor's performance of the Deliverables outlined in the invoice before making payment. The State shall pay all approved invoices in arrears and in conformance with [Iowa Code 8A.514](#). The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

Unless otherwise agreed in writing by the parties, the Vendor shall not be entitled to receive any other payment or compensation from the State for any Product and/or Service provided by or on behalf of the Vendor under this a Purchase Instrument. The Vendor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Purchase Instrument.

### **1.5.2 Billings**

The Vendor shall submit, on a regular basis an invoice for Product and/or Service supplied to the State under a Purchase Instrument at the billing address specified in the Purchase Instrument. The invoice shall comply with all applicable rules concerning payment of such claims. The State shall verify the Vendor's performance of the Services outlined in the invoice before making payment. The State shall pay all approved invoices in arrears and in accordance with applicable provisions of Iowa law.

### **1.5.3 Delay of Payment Due to Vendor's Failure**

If the State determines that the Vendor has failed to perform or deliver any Service or Product as required by the Purchase Instrument, the Vendor shall not be entitled to compensation until such Product and/or Service is performed or delivered. In this event, the State may withhold that portion of the Vendor's compensation which represents payment for Products that were not delivered.

### **1.5.4 Setoff Against Sums Owed by the Vendor**

In the event that the Vendor owes the State any sum under the terms of the Participating Addendum, pursuant to any judgment, or pursuant to any law, the State may set off the sum owed to the State against any sum owed by the State to the Vendor under the Participating Addendum in the State's sole discretion, unless otherwise required by law. The Vendor agrees that this provision constitutes proper and timely notice under the law of setoff.

## **1.6 Termination**

### **1.6.1 Immediate Termination by the State**

The State may terminate this Participating Addendum for any of the following reasons effective immediately without advance notice:

**1.6.1.1** In the event the Vendor is required to be certified or licensed as a condition precedent to providing the Products, the revocation or loss of such license or certification will result in immediate termination of the Participating Addendum effective as of the date on which the license or certification is no longer in effect;

**1.6.1.2** The State determines that the actions, or failure to act, of the Vendor, its agents, employees or subcontractors have caused, or reasonably could cause, a person's life, health or safety to be jeopardized;

**1.6.1.3** The Vendor fails to comply with confidentiality laws or provisions;

**1.6.1.4** The Vendor furnished any statement, representation or certification in connection with the Participating Addendum or the bidding process which is materially false, deceptive, incorrect or incomplete.

## **1.6.2 Termination for Cause**

The occurrence of any one or more of the following events shall constitute cause for the State to declare the Vendor in default of its obligations under its Participating Addendum.

- 1.6.2.1** The Vendor fails to deliver or has delivered nonconforming Product or fails to perform, to the State's satisfaction, any material requirement of its Participating Addendum or is in violation of a material provision of the Participating Addendum, including, but without limitation, the express warranties made by the Contractor;
- 1.6.2.2** The State determines that satisfactory performance of its Participating Addendum is substantially endangered or that a default is likely to occur;
- 1.6.2.3** The Vendor fails to make substantial and timely progress toward performance of the Base and/or Subsequent Contracts;
- 1.6.2.4** The Vendor becomes subject to any bankruptcy or insolvency proceeding under bankruptcy laws; the Vendor terminates or suspends its business; or the State reasonably believes that the Vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- 1.6.2.5** The Vendor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Participating Addendum;
- 1.6.2.6** The Vendor has engaged in conduct that has or may expose the State or the State to liability, as determined in the State's sole discretion; or
- 1.6.2.7** The Vendor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the State, or a third party.

## **1.6.3 Notice of Default**

If there is a default event caused by the Vendor, the State shall provide written notice to the Vendor requesting that the breach or noncompliance be remedied within the period of time specified in the State's written notice to the Vendor. If the breach or noncompliance is not remedied by the date of the written notice, the State may:

- 1.6.3.1** Immediately terminate its Participating Addendum without additional written notice; and/or,
- 1.6.3.2** Procure substitute goods from another source and charge the difference between the price of the Product and the substitute goods to the defaulting Vendor; and/or,
- 1.6.3.3** Enforce the terms and conditions of the Participating Addendum and seek any legal or equitable remedies.

**1.6.4 Termination Upon Notice**

Following 30 days' written notice, the State may terminate its Participating Addendum in whole or in part without the payment of any penalty or incurring any further obligation to the Vendor. Following termination upon notice, the Vendor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for Product and/or Services provided under the Participating Addendum to the State up to and including the date of termination.

**1.6.5 Termination Due to Lack of Funds or Change in Law**

The State shall have the right to terminate its Participating Addendum without penalty by giving 30 days' written notice to the Vendor as a result of any of the following:

**1.6.5.1** Adequate funds are not appropriated or granted to allow the State to operate as required and to fulfill its obligations under the Participating Addendum;

**1.6.5.2** Funds are de-appropriated or not allocated or if funds needed by the State, at the State's sole discretion, are insufficient for any reason;

**1.6.5.3** The State's authorization to operate is withdrawn or there is a material alteration in the programs administered by the State;

**1.6.5.4** The State's duties are substantially modified.

**1.6.6 Remedies of the Contractor in Event of Termination by the State**

In the event of termination of the Participating Addendum for any reason by the State, the State shall pay only those amounts, if any, due and owing to the Vendor for Products and/or Services actually rendered up to and including the date of termination of the Participating Addendum and for which the State is obligated to pay pursuant to its Participating Addendum or Purchase Instrument. Payment will be made only upon submission of invoices and federal or state law to the extent allowed by applicable federal or state law including proper proof of the Vendor's claim. This provision in no way limits the remedies available to the State under the Participating Addendum in the event of termination. The State shall not be liable for any of the following costs:

**1.6.6.1** The payment of unemployment compensation to the Vendor's employees;

**1.6.6.2** The payment of Vendor's workers' compensation claims, which occur during the Participating Addendum or extend beyond the date on which the Participating Addendum terminates;

**1.6.6.3** Any costs incurred by the Vendor in its performance of the Participating Addendum, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Participating Addendum;

**1.6.6.4** Any taxes that may be owed by the Vendor in connection with the performance of the Participating Addendum, including, but not limited to, , income taxes or property taxes.

**1.6.7 The Contractor's Termination Duties**

Upon receipt of notice of termination or upon request of the State, the Vendor shall:

**1.6.7.1** Cease work under the Participating Addendum and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Participating Addendum, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the State may require.

**1.6.7.2** Immediately cease using and return to the State, any personal property or materials, whether tangible or intangible, provided by the State to the Vendor.

**1.6.7.3** Comply with the State's instructions for the timely transfer of any active files and manuals produced by the Vendor under the Participating Addendum.

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

**1.6.7.5** Immediately return to the State any payments made by the State for Products and/or Services t h a t were not delivered or rendered by the Vendor.

**1.7 Confidential Information**

**1.7.1 Access to Confidential Data**

The Vendor's employees, agents, and subcontractors may have access to confidential data maintained by the State to the extent necessary to carry out its responsibilities under the Participating Addendum. . The Vendor shall presume that all information received pursuant to the Participating Addendum is confidential unless otherwise designated by the State.

**1.7.2 Ownership**

The State's private or confidential data shall remain the property of the State all times.

**1.7.3 No Dissemination of Confidential Data**

No confidential data collected, maintained, or used in the course of performance of the Participating Addendum shall be disseminated except as authorized by law and with the written consent the State, either during the period of the Participating Addendum or thereafter. Any data supplied to or created by the State shall be

considered the property of the State. The Vendor must return any and all data collected, maintained, created or used in the course of the performance of the Participating Addendum, in whatever form it is maintained, promptly at the request of the State.

**1.7.4 Subpoena**

In the event that a subpoena or other legal process is served upon the Vendor for records containing confidential information, the Vendor shall promptly notify the State and cooperate with the State in any lawful effort to protect the confidential information.

**1.7.5 Reporting of Unauthorized Disclosure**

The Vendor shall immediately report to the State any unauthorized disclosure of confidential information.

**1.7.6**

If Vendor requests confidential treatment with respect to any information or material and if a judicial or administrative proceeding is initiated to compel the release of such material, the Vendor shall, at its sole expense, appear in the proceeding or otherwise obtain an order restraining the release of such material from a court of competent jurisdiction. The State may release the information or material with or without advance notice to the Vendor if no judicial or administrative proceeding is initiated and the State determines the information or material is not confidential under Iowa or other applicable law, or if the Vendor failed to properly request confidential treatment or if the Vendor rescinds its request for confidential treatment.

**1.7.7 Survives Termination**

This confidentiality obligation under the Participating Addendum shall survive termination or expiration of the Participating Addendum.

**1.8 Indemnification**

**1.8.1**

The Vendor agrees to indemnify and hold harmless the State of Iowa, its officers, and agents (collectively the "indemnified parties") from any and all third party costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including either reasonable value of the time spent by the Attorney General's Office, or the costs and expenses and reasonable outside attorneys' fees of other counsel required to defend the indemnified parties, arising out of Vendor's performance of the Participating Addendum to the extent caused by:

**1.8.1.1** Any negligent, intentional or wrongful act or omission of Vendor;

**1.8.1.2** Any failure of Vendor to comply with applicable law;

**1.8.1.3** Any failure to make all reports, payments and withholdings required by federal and state law by the Vendor to conduct business in the State of Iowa or United States.;

**1.8.1.4** Any infringement of Vendor of any copyright, trademark, patent, trade dress, or other intellectual property right; or

**1.8.1.5** Any failure by the Vendor to adhere to the confidentiality provisions of the Contract.

**1.8.2 Survives Termination**

The indemnification obligation of the Vendor shall survive termination of the Contract.

**1.9 Performance Bond**

When applicable, and with Vendor's written consent, the Vendor shall post a performance bond in an amount equal to the amount shown on the Purchase Instrument and provide a copy of the bond to the State within (10) days of execution of the Purchase Instrument. . The State shall bear the cost of the bond. In the event that the Vendor or any sub or any officer, director, employee or agent of the Vendor or any sub-Vendor or any parent or subsidiary corporation of the Vendor or any sub-Vendor fails to fully and faithfully perform any material requirement of this Contract, including without limitation the Vendor's obligation to indemnify the State and pay damages to the State, the performance bond shall be forfeited to the State. The bond shall be in a form customarily used in the Vendor's industry and shall be written by a surety authorized to do business in Iowa and that is acceptable to the State. The bond shall be in effect at all times during the term of this Purchase Instrument. The Vendor warrants that it will maintain the required performance bond coverage as described herein without any lapse in coverage. A lapse of the bond will be a material breach of the Contract and shall be considered cause for the State to declare the Vendor in default under this Contract.

**1.10 Warranties**

**1.10.1 Intentionally omitted.**

**1.10.2 Warranty – Nonconforming Goods**

All Product delivered by Vendor to the State shall be free from any defects in material or workmanship in accordance with the applicable manufacturer's standard warranty, commencing upon the later of the State's acceptance or successful startup and commissioning, and any rights thereto shall pass on to State. All Service shall be guaranteed for ninety (90) days beginning the final day of services rendered. If any Products and/or Service provided by the Vendor are found to be defective in material or workmanship, or do not conform to Vendor's warranty, the Vendor shall repair defective Product or reperform non-conforming Service at Vendor's expense. Payment for Product shall not constitute acceptance. Acceptance by the State shall not relieve the Vendor of its warranty or any other obligation under the Participating Addendum.

EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, VENDOR EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.

**1.10.3 Compliance with Federal Safety Acts**

Vendor warrants and guarantees to the State that the Products provided under the Participating Addendum are in compliance with applicable laws.

**1.10.4 INTELLECTUAL PROPERTY**

Vendor represents and warrants that Vendor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in the Products Vendor manufactured and the State's use of same do not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Vendor represents and warrants that it is the owner of or otherwise has the right to use and distribute the Products.

**1.10.5 Authority to Enter into Contract**

The Vendor represents and warrants that it has full authority to enter into the Participating Addendum and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State.

**1.10.6 Title to Property**

The Vendor represents and warrants that title to any Product conveyed to the State is good and that transfer of title or license to the State is rightful and that all Product shall be delivered free of any security interest or other lien or encumbrance.

**1.10.7 Industry Standards. Intentionally omitted.**

**1.11 Campaign**

In the event that either party believes a field campaign should be conducted, the parties will work in good faith with one another to develop a mutually agreed plan (the "Field Campaign Plan") that will consist of at least the following: an identified root cause, campaign logistics, campaign timetable, and allocated costs and expenses for the field campaign. Any party that conducts a field campaign in the absence of a mutually agreed upon Field Campaign Plan shall be solely responsible for any and all costs, regulatory reporting obligations, and administration of the campaign without the assistance of the other party.

**1.12 Contract Administration**

**1.12.1 Incorporation of Documents.**

The parties acknowledge that the Participating Addendum consists of these contract terms and conditions as well as the Competitive Bidding Document and the Bid Proposal. The Competitive Bidding Document and the Vendor's Bid Proposal are incorporated into the Contract by reference, except that no objection or amendment by Vendor to the Competitive Bidding Document requirements shall be incorporated by reference into the Contract unless the State has explicitly accepted the Vendor's objection or amendment in writing.

**1.12.2 Intent of References to Competitive Bidding Documents**

The references to the parties' obligations, which are contained in this document, are intended to supplement or clarify the obligations as stated in the Competitive Bidding

Document and the Vendor's Bid Proposal. The failure of the parties to make reference to the terms of the Competitive Bidding Document or the Vendor's 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 Competitive Bidding Document and the Contractor's Bid Proposal. The contractual obligations of the State cannot be implied from the Vendor's Bid Proposal.

**1.12.3 Compliance with the Law; Nondiscrimination in Employment**

The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Vendor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Participating Addendum, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers.

Upon the State's written request, the Vendor shall submit to the State a copy of its affirmative action plan, as required under Iowa Administrative Code chapter 11—121.

The Vendor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Participating Addendum.

In the event Vendor contracts with third parties for the performance of any of the Vendor obligations under this Participating Addendum as set forth in section 1.13.8, Vendor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

Notwithstanding anything in this Participating Addendum to the contrary, Vendor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Participating Addendum and the State may cancel, terminate, or suspend, in whole or in part, this Participating Addendum.. The State may further declare Vendor ineligible for future state contracts in accordance with authorized procedures or the Vendor may be subject to other sanctions as provided by law or rule.

**1.12.4 Amendments**

The Participating Addendum may be amended in writing from time to time by mutual consent of the parties. All amendments to the Participating Addendum must be in writing and fully executed by the parties.

**1.12.5 Third-Party Beneficiaries**

There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit the State and the Vendor.

**1.12.6 Choice of Law and Forum**

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

law. Any and all litigation commenced in connection with this Contract shall solely be brought in the District Court for the State of Iowa in the county where venue is appropriate. Alternatively, if venue is proper in federal court, suit shall solely be brought in the United States District Court for the Northern or Southern District of Iowa, wherever jurisdiction is appropriate. Nothing contained in this provision shall be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity or Eleventh Amendment immunity, which may be available to the State.

**1.12.7 Assignment and Delegation**

The Participating Addendum may not be assigned, transferred or conveyed in whole or in part without the prior mutual written consent of the parties. . For the purpose of construing this clause, a transfer of a controlling interest in the Vendor shall be considered an assignment.

**1.12.8 Use of Third Parties**

The State acknowledges that the Vendor may contract with third parties for the performance of any of the Vendor obligations under the Participating Addendum. All subcontracts shall be subject to prior approval by the State. The Vendor may enter into these contracts to complete the project provided that the Vendor remains responsible for all Products delivered and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Vendor under the Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the State. The State shall have the right to request the removal of a subcontractor for good cause.

**1.12.9 Integration**

The Participating Addendum, including this Attachment 1, represents the entire agreement between the parties. The parties shall not rely on any representation that may have been made which is not included in the Contract.

**1.12.10 Headings or Captions**

The paragraph headings or captions used in the Participating Addendum are for identification purposes only and do not limit or construe the contents of the paragraphs.

**1.12.11 Not a Joint Venture**

Nothing in the Participating Addendum shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for goods and acting toward the mutual benefits expected to be derived herefrom. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.

**1.12.12 Joint and Several Liability**

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 activities and obligations of the Contract, and for any default of activities and obligations.

**1.12.13 Supersedes Former Contracts or Agreements**

Unless otherwise specified, this Participating Addendum supersedes all prior contracts or agreements between the State and the Vendor for the goods provided in connection with the Contract.

**1.12.14 Waiver**

Except as specifically provided for in a waiver signed by duly authorized representatives of the State and the Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

**1.12.15 Notice**

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Participating Addendum on behalf of the party at the address identified in the Purchase Instrument at the address specified on the forms. Each such notice shall be deemed to have been provided:

**1.12.15.1** At the time it is actually received; or,

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

**1.12.15.3** Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail. 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.

**1.12.16 Cumulative Rights**

The various rights, powers, options, elections and remedies of any party provided in the Participating Addendum shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

**1.12.17 Severability**

If any provision of the Participating Addendum is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Participating Addendum. Further, if any provision of the Participating Addendum is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law.

**1.12.18 Vendor Responsiveness**

Vendor shall ensure that all personnel providing Product and/or Service to the State are responsive to the State's requirements and requests in all respects.

**1.12.19 Authorization**

Vendor represents and warrants that:

**1.12.19.1** It has the right, power and authority to enter into and perform its obligations under the Participating Addendum. .

**1.12.19.2** It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Participating Addendum , and the Participating Addendum constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

**1.12.20 Successors in Interest**

All the terms, provisions, and conditions of the Participating Addendum shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

**1.12.21 Record Retention and Access**

The Vendor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State throughout the term of the Participating Addendum a period of at least three (3) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. No more than once per any calendar year during the term of this Participating Addendum, the Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit any relevant records, upon a minimum of five (5) business days' notice.. . The Vendor shall not impose a charge for audit or examination of the Vendor's books and records. Evidence of criminal conduct will be turned over to the proper authorities.

**1.12.22 Solicitation**

The Vendor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or

retained to solicit and secure the Participating Addendum upon an agreement or understanding for commission, percentage, brokerage or contingency.

**1.12.23 Public Records**

The laws of the State of Iowa require procurement records to be made public unless otherwise provided by law.

**1.12.24 Clean Air and Water Certification**

Vendor certifies that none of the facilities it uses to produce the Products are on the Environmental Protection Agency (EPA) List of Violating Facilities. Vendor will immediately notify the State of the receipt of any communication indicating that any of Vendor's facilities are under consideration to be listed on the EPA List of Violating Facilities

**1.12.25 Debarred, Suspended, and Ineligible Status**

Vendor certifies that the Vendor has not been debarred, suspended, or declared ineligible by any agency of the State of Iowa or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Vendor will immediately notify the State if Vendor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Vendors by a federal entity.

**1.12.26 Use of Name or Intellectual Property**

Vendor agrees it will not use the name or any intellectual property, including but not limited to, any State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the specific State agency involved. The State shall not use the Vendor's name or any intellectual property, including but not limited to any trademark or logo, without the expressed prior written consent of Vendor.

**1.12.27 Taxes**

The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Vendor's employee's wages. The State is exempt from State and local sales and use taxes on the Product and/ or Service. [State of Iowa Tax Exempt Letter](#)

**1.12.28 Certification Regarding Sales and Use Tax**

By executing the Participating Addendum the Vendor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by the Iowa Code chapter 423; or (b) 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) & (48). The Vendor also acknowledges that the State may declare the Participating Addendum void if the above certification is false. The Vendor also understands that fraudulent certification may result in the State or its representative filing for damages for breach of contract.

**1.12.29 Contractor Assignments of Rights -Antitrust Claims**

In consideration of the mutual promises contained herein, Contractor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title, and interest in and to all causes of action it may now or hereafter acquire

against Vendor's suppliers under the anti-trust laws of the United States and the State of Iowa relating to the subject of the Contract, but only in the event Vendor fails to pursue such claims in a timely manner.

**1.12.30 Delays or Impossibility of Performance**

Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Participating Addendum includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Vendor or any parent, subsidiary, or affiliated or company of Vendor; claims or court orders that restrict Vendor's ability to deliver the Product and/ or Service contemplated by this Participating Addendum ; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Vendor shall not be excused from compliance with the terms and obligations of the Participating Addendum unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Participating Addendum. If a "force majeure" delays or prevents the Vendor's performance, the Vendor shall immediately 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 determined solely by the State. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused. AS A RESULT OF THE OUTBREAK OF THE DISEASE COVID-19 ARISING FROM THE NOVEL CORONAVIRUS, TEMPORARY DELAYS IN DELIVERY, LABOUR OR SERVICES FROM VENDOR AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, VENDOR'S DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND VENDOR RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOUR OR SERVICE. WHILE VENDOR SHALL MAKE EVERY COMMERCIALY REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE.

**1.12.31 Obligations Beyond Contract Term**

The Participating Addendum shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Participating Addendum. All obligations of the Vendor incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.

**1.12.32 Counterparts**

The parties agree that the Contract 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.

**1.12.33 Further Assurances and Corrective Instruments**

The parties agree that they 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 the Contract.










# Cummins PA - Unsigned 11.28.22

Final Audit Report

2022-11-29

Created:	2022-11-29
By:	David Kuldig (david.kuldig@iowa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAQNmM2hwiIbsYIFP1pIOjf0rZWUDGbhC

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-  Document created by David Kuldig (david.kuldig@iowa.gov)  
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