



March 14, 2006

TO: INTERESTED VENDORS

FROM: Mollie K. Anderson

RE: Limitations on Vendor Liability

During the 2005 calendar year and on the advice of counsel, the Department of Administrative Services began including language in all Requests For Proposals (RFP) indicating that any contract resulting from a RFP will not include contract provisions limiting the vendor's potential liability with respect to a project for which a RFP is issued. A number of vendors have expressed concerns and indicated that continued inclusion of this language may result in fewer vendors participating in the State's competitive bidding process.

The Department has participated in several meetings involving representatives from the Governor's Office, the Attorney General's Office, Legislators, and the vendor community. The Department has also continued to discuss this issue with the Attorney General's Office, seeking an appropriate disposition of this issue. The position of the Department, consistent with the Governor's Office and the Attorney General's Office, is that the State should refrain from entering into a contract that limits the liability of a vendor or prevents the State from recovering its actual damages caused by a vendor.

However, the Department will assess the risks associated with each project, and based upon that assessment, make a determination as to whether consideration of a limitation on a particular vendor's potential liability is appropriate and will not expose the State and its taxpayers to unwarranted risk. A vendor proposal will not be deemed to be noncompliant with the requirements of an RFP (and therefore automatically rejected) if the vendor includes language in its proposal requesting or indicating that a limitation on the vendor's potential liability should be considered, unless the Department has determined based upon its assessment of the risks associated with a particular project that vendors must agree that there will be no limitation on potential vendor liability and vendors are notified of that determination through the applicable Request For Proposals.

While the Department appreciates the concerns expressed by the vendor community on this issue, it should be noted that the State of Iowa has traditionally worked in good faith to resolve differences with vendors when they arise and has not sought to resolve these differences through the courts, except as a last resort. We look forward to continuing to work with the vendor community in the future in a positive manner.