

After the EDMS RFP was released, many vendors told the Judicial Branch that they would not submit proposals unless any contracts that result from the RFP include provisions limiting their liability. More specifically, these vendors claim that the absence of a limitation of liability provision imposes unlimited liability on the successful vendor and fails to share the risk. As a result, those vendors asked the Judicial Branch to reconsider its position on limitation of liability provisions.

The Judicial Branch disagrees with the vendors' claims that the absence of a limitation of provision imposes unlimited liability on the successful vendor. Iowa law limits the liability of a person for breach of contract and for tortious conduct. Moreover, vendors can limit their risk through various means, including through honoring their contractual obligations and obtaining liability insurance. Likewise, the Judicial Branch disagrees that a limitation of liability provision shares risk between the successful vendor and the State of Iowa. These provisions transfer or shift the liability from the successful vendor to the State of Iowa and its taxpayers.

Nevertheless, the Judicial Branch has decided to include a restricted, narrow limitation of liability provision in any contracts that result from this RFP to ensure that it receives competitive proposals from as many qualified vendors as possible for this important project.

Even though the Judicial Branch will include a restricted, narrow limitation of liability provision in any contracts, it remains concerned about its authority to agree to limitation of liability provisions as well as the enforceability of those provisions. Consequently, the Judicial Branch will be amending the form contracts included with the RFP to include limitation of liability provisions. The amended form contracts will be provided to all vendors who submitted letters of intent by posting them on the Web site. Vendors may not take any exception to the limitation of liability provisions, and the Judicial Branch may reject any proposal that takes any exception to the limitation of liability provisions.