

**OTIS ELEVATOR / ESCALATOR MAINTENANCE (BID NO. BLD2114940Q1)  
OTIS Elevator Company Exceptions**

Page/section of the exception	Title of the exception	Broward County's language	Vendor's language (exception)	FMD's issue with Vendor's exception	FMD's Business Decision and Comments
<b>SECTION: GENERAL CONDITIONS</b>					
1	<b>Page 22 of 62, #12 (c)</b>	<p>The Awarding Authority may terminate the contract for convenience upon no less than thirty (30) days written notice. In the event the contract is terminated for convenience, Vendor shall be paid for any goods properly delivered and services properly performed to the date the contract is terminated; however, upon being notified of County's election to terminate, Vendor shall cease any deliveries, shipment or carriage of goods, and refrain from performing further services or incurring additional expenses under the terms of the contract. In no event will payment be made for lost or future profits. Vendor acknowledges and agrees that is has received good, valuable and sufficient consideration from County, the receipt and adequacy of which are hereby acknowledged for County's right to terminate this contract for convenience.</p>	<p>OTIS does not agree to termination for convenience. In the event our Agreement is terminated through no fault of ours, we shall be paid for all material furnished, or manufactured, and labor performed up to the date of termination, including a reasonable margin. This Agreement may be terminated for default provided that we are first allowed a reasonable time, upon receipt of written notice, to commence and continue to cure a deficiency.</p>	<p>Preference to retain standard language.</p>	<p>1/22/18 OTIS requested that County show just cause for termination for convenience and that County pay 75% of what is owned under the contract to OTIS.</p> <p>1/25/18 Broward County Legal noted that showing just cause for termination for convenience is incompatible. <b>FMD requests removal of clause based on sole source nature of this contract.</b></p>
2	<b>Page 22 of 62, #14</b>	<p>Unless otherwise stipulated in the solicitation, all manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupational Safety and Health Act (OSHA) and any standards thereunder. All sources of energy associated with machinery/equipment purchased shall be capable of being locked-out in accordance with OSHA 29 CFR 1910.147, Hazardous Energy Control.</p>	<p>We agree to abide by Customer's Safety Policy as long as said policy is not in conflict with our own Safety Policy.</p> <p>OTIS agrees to accept liability for the cost of penalties incurred by you pursuant to governing Occupational Health &amp; Safety acts that</p>	<p>Preference to retain standard language.</p>	<p>1/22/18 OTIS removed the exception.</p>

	<p>result from our acts or omissions on the condition that the cost of any similar penalties imposed on OTIS because of your acts or omissions or anyone employed by you shall be borne by you.</p>	<p>1/22/18 OTIS suggested alternative language to this section of Indemnification language:</p> <p>“Vendor shall at all times hereafter indemnify, hold harmless and defend County and all of County’s current and former officers, agents, servants, and employees (collectively, “Indemnified Party”) from and against <del>any and all causes of action, demands, claims, losses, damages, losses liabilities and expenditures of any kind, including reasonable attorneys’ fees, court costs, and expenses</del> (collectively, a “Claim”), raised or asserted by any person or entity not a party to this Contract, which Claim is caused <del>or alleged to be caused, in whole or in part, by</del>”</p>
	<p>Preference to retain standard language.</p>	
<p>3 Page 23 of 62, #19</p>	<p><b>Indemnification</b></p>	<p>Vendor shall at all times hereafter indemnify, hold harmless and defend County and all of County’s current and former officers, agents, servants, and employees (collectively, “Indemnified Party”) from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorneys’ fees, court costs, and expenses (collectively, a “Claim”), raised or asserted by any person or entity not a party to this Contract, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless or negligent act or omission of Vendor, its current or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Contract. In the event any Claim is brought against an Indemnified Party, Vendor shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County’s option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of</p>
	<p>Notwithstanding any other provision to the contrary, we agree to indemnify you only for losses due to personal injury, or property damage to the extent caused by our negligent acts or omissions, or the negligent acts or omissions of our employees, agents and subcontractors during the performance of this contract, but not to the extent caused by others. Each party shall defend itself in the event of a lawsuit.</p>	
<p>In compliance with OSHA 29 CFR 1910.1200, Hazard Communication Standard, and Chapter 442, Florida Statutes, Occupational Safety and Health, any chemical substance delivered from a contract resulting from this solicitation must be compliant with the Global Harmonized System (GHS) for Hazard Communication accompanied by a Safety Data Sheet (SDS) consisting of 16 sections. A Safety Data Sheet (SDS) shall also be submitted to the Broward County Risk Management Division, 115 South Andrews Avenue, Room 218, Fort Lauderdale, FL 33301-1803.</p>		

<p>1/25/18 Broward County Legal approved the revised language with the exception that "or alleged to be caused" must remain. OTIS agreed. FMD requests the acceptance of OTIS revised language based on the sole source nature of the contract.</p>							
<p>this section shall survive the expiration or earlier termination of this Contract. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due Vendor under this Contract may be retained by County until all of County's claims for indemnification pursuant to this Contract have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County. For construction contracts, Vendor shall indemnify and hold harmless County, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful misconduct of Vendor and persons employed or utilized by Vendor in the performance of this Contract. To the extent considered necessary by Contract Administrator and County Attorney, any sums due Vendor under this Contract may be retained by County until all of County's claims for indemnification pursuant to this Contract have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by County. The indemnifications shall survive the expiration or earlier termination of this Contract.</p>							
<p>OTIS agrees, upon reasonable request, to substantiate that our billing is in conformity with the terms of the agreement and to furnish documents verifying each charge billed to the Customer on a time and material basis or to the extent required by</p>							
<p>4 Page 26 of 62, # 32</p>					<p>Audit Right and Retention Records</p>		

<p>examined and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period of three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Vendor's records, Vendor shall comply with all requirements thereof; however,</p>	<p>law. OTIS does not agree to other audit privileges.</p>	<p>1/25/18 Broward County Legal notes that language varies from standard language but does not object to change. <b>FMD requests the acceptance of OTIS revised language based on the sole source nature of this contract.</b></p>
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**INSURANCE REQUIREMENTS (P. 45)**

<p>5 Page 45-48 of 62</p>	<p><b>Insurance Requirements</b></p>	<p>1/19/18 Broward County Risk Management provided feedback to vendor on Insurance Requirements.  1/25/18 OTIS modified the insurance exception language to:</p>
<p>A. The insurance requirement designated in the <b>Insurance Requirement Form</b> indicates the minimum coverage required for the scope of work, as determined by the Risk Management Division. Vendor shall provide verification of compliance such as a Certificate of Insurance, or a letter of verification from the Vendor's insurance agent/broker, which states the</p>	<p><b>Add: Insurance</b> We will supply an insurance certificate evidencing the insurance carried by us conditioned on the understanding that it represents full compliance with all insurance requirements applying to us on this project. OTIS does not provide copies of its</p>	<p>Broward County Risk Management did not approved proposed language and the revised Insurance Requirements.</p>

<p>ability of the Vendor to meet the requirements upon award. The verification must be submitted within three business days of County's request. Vendor may be deemed non-responsive for failure to fully comply within stated timeframes. Final award shall be subject to receipt and acceptance by the County of proof of meeting all insurance requirements of the bid.</p> <p>B. Without limiting any of the other obligations or liabilities of Vendor, Vendor shall provide, pay for, and maintain on a primary basis in force until all of its work to be performed under this Contract has been completed and accepted by County (or for such duration specified), at least the minimum insurance coverage and limits set forth in the Insurance Requirement Form under the following conditions listed below. If a limit or policy is not indicated on Insurance Requirement certificate by a checked box, it is not required as a condition of this contract.</p> <p>1. Commercial General Liability with minimum limits per occurrence, combined single limit for bodily injury and property damage, and when indicated a minimum limit per aggregate. County is to be expressly included as an Additional Insured in the name of Broward County arising out of operations performed for the County, by or on behalf of Vendor, or acts or omissions of Vendor in connection with</p>	<p>insurance policies, certified or otherwise. Coverage will be on an occurrence basis and in accordance with the coverage limits outlined in the contract documents. Renewal certificates will be provided during the term of the contract. In lieu of naming parties as additional insured, such parties shall be named insured on an Owner's and Contractor's Protective (OCP) Liability policy with a limit of \$2,000,000.</p> <p>If the project is covered by an Owner/Contractor Controlled Insurance Program (OCIP/CCIP), OTIS agrees to participate provided it is at no cost to OTIS and subject to its review and acceptance of the proposed program. The OCP obligation is waived and any obligation of OTIS to name others as Additional Insured shall be for off-site operations only.</p> <p>You shall maintain "All Risk" insurance upon the full value of our Work and material delivered to the job site, at no cost to OTIS.</p>	<p>Per Section 627.4137 of Florida State Statutes, vendor will be required to provide copy of policy in the event of a claim.</p> <p>Broward County does not maintain "All Risk" Insurance.</p>	<p>"We will supply an insurance certificate evidencing the insurance carried by us conditioned on the understanding that it represents full compliance with all insurance requirements applying to us on this project. OTIS does not provide copies of its insurance policies, certified or otherwise. Coverage will be on an occurrence basis in accordance with the coverage limits outlined in the contract documents. Renewal certificates will be provided during the term of the contract. OTIS shall provide additional insured at a cost of \$33,000 per thousand of the total contract price. Cost shall be \$524.00 p/month with a total cost of \$31,440.00. The \$33.00 per thousand for additional insured is the OTIS standard. OTIS has agreed to reduce the cost of additional insured thus reducing the price to \$262.00 per month with a total cost of \$15,720.</p> <p>1/25/18 OTIS to provide Certificate of Insurance based on new insurance requirements set forth by Risk Management on 1/19/18.</p> <p>OTIS to provide copy of insurance policy in event of</p>
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<p>claim as required by Section 627.4137 of Florida State Statutes.</p>	<p><b>FMD accepts the cost of the additional insured of \$262.00 per month for a total of \$15,720.00 given the sole source nature of this contract.</b></p>				<p>1/25/18 OTIS removed the exception.</p>
					<p>Preference to retain standard language.</p>
<p>general supervision of such operation. If Vendor uses a subcontractor, then Vendor shall require that subcontractor names County as an Additional Insured.</p>	<p>2. Business Automobile Liability with minimum limits per occurrence, combined single limit for bodily injury and property damage. Scheduled autos shall be listed on Vendor's certificate of insurance. County is to be named as an additional insured in the name of Broward County.</p>				<p><b>Add: Delays</b> Notwithstanding any other provision in the contract to the contrary, or any resulting contract, neither party shall be liable to the other for any loss, damage or delay due to any cause beyond either party's reasonable control,</p>
<p><b>Note:</b> Insurance requirements for Automobile Liability are not applicable where delivery will be made by a third party carrier. All vendors that will be making deliveries in their own vehicles are required to provide proof of insurance for Automobile Liability and other pertinent coverages as indicated on the Insurance Requirement certificate, prior to award. If deliveries are being made by a third party carrier, other pertinent coverages listed on the Insurance Requirement certificate are still required.</p>					
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including but not limited to acts of government, strikes, lockouts, other labor disputes, fire, explosion, theft, weather damage, flood, earthquake, riot, civil commotion, war, malicious mischief or act of God.

Under no conditions, shall either party be liable for special, indirect, liquidated, or consequential damages in contract, tort, including negligence, warranty or otherwise, notwithstanding any indemnity provisions to the contrary. Notwithstanding any provision in any contract document to the contrary, our acceptance is conditioned on being allowed additional time for the Performance of the Work due to delays beyond our reasonable control. OTIS will provide union labor and will make reasonable efforts to ensure that they will work in harmony with others. To effect this, OTIS agrees to provide sufficient workers, equipment and materials for prompt and diligent prosecution of the work. Notwithstanding any language to the contrary contained in the contract documents, a work stoppage, whether caused by strikes, lockouts or other labor disputes, shall not constitute a breach of contract or an event of default.

		<p>Our ability to maintain scheduled job progress is conditioned upon us being allowed additional time for delays beyond our control as well as the timely furnishing to us of completed and code compliant hoistway(s) (wellways) and machine rooms, necessary approvals and power of proper characteristics, all for our uninterrupted use.</p>	<p>It is understood that the work is to be performed for a fixed price, at the amount indicated in the Agreement. This amount shall only be adjusted by properly approved change orders or written directives indicating related modifications to the scope of work and/or to the terms and conditions. Any and all proposed change orders or written directives must be sent to OTIS for approval prior to handover of the equipment.</p>	<p>1/22/18 OTIS removed exception.</p>
<p>Page 20 of 62, #6.</p>	<p><b>Prices, Terms, and Payments (Change Order)</b></p>	<p><b>Prices, Terms, and Payments:</b> Firm prices shall be provided and include all handling, set up, shipping and inside delivery charges to the destination shown herein unless otherwise indicated.  <b>The Vendor:</b> In submitting this solicitation response certifies that the prices provided herein are not higher than the prices at which the same commodity(ies) or service(s) is sold in approximately similar quantities under similar terms and conditions to any purchaser whomsoever.  <b>F.O.B.:</b> Unless otherwise specified, prices shall be provided as F.O.B. Destination, freight included and inclusive of all costs. Current and/or anticipated applicable fuel costs should be considered and included in the prices provided.  <b>Ties:</b> The Purchasing Division will break tie responses in accordance with the Procurement Code.  <b>Taxes:</b> Broward County is exempt from Federal Excise and Florida Sales taxes on direct</p>	<p>Preference to retain standard language.</p>	

			<p>purchase of tangible property. Exemption numbers appear on purchase order. The Vendor shall pay all applicable sales, consumer, land use, or other similar taxes required by law. The Vendor is responsible for reviewing the pertinent State Statutes involving the sales tax and complying with all requirements.</p> <p>(e) <b>Discounts:</b> Vendors may offer a cash discount for prompt payment. However, such discounts will not be considered in determining the lowest net cost for evaluation purposes. Vendors should reflect any discounts to be considered in the evaluation in the unit prices submitted.</p> <p>(f) <b>Mistakes:</b> Vendors are cautioned to examine all specifications, drawings, delivery instructions, unit prices, extensions, and all other special conditions pertaining to this solicitation. Failure of the Vendor to examine all pertinent documents shall not entitle them to any relief from the conditions imposed in the contract. In case of mistakes in extension, the unit price shall govern. Multiplication or addition errors are deemed clerical errors and shall be corrected by the County.</p> <p>(g) <b>Ordering:</b> The County reserves the right to purchase commodities/services specified herein through contracts established by other governmental agencies or through separate procurement actions due to unique or special needs. If an urgent delivery is required, within a</p>

		<p>shorter period than the delivery time specified in the contract and if the seller is unable to comply therewith, the County reserves the right to obtain such delivery from others without penalty or prejudice to the County or to the seller.</p>			
	<p>Contract does not require surety bond.</p>	<p>OTIS will provide surety bond(s) in the form provided by OTIS' Surety at no cost to OTIS. This is in lieu of participation in any type of surety wrap-up or Subguard program.</p>		<p><b>Surety</b></p>	
<p>1/22/18 <b>OTIS removed exception.</b></p>	<p>Contract does not address software.</p>	<p>All software supplied with your elevator is licensed to you or your successors but only for use with, and for the operation of this elevator. Use of such software for any other purpose is prohibited. We will supply an owner's manual with instructions on how to operate and maintain this</p>		<p><b>Software</b></p>	<p>1/22/18 OTIS maintained that proposed language be added. 1/25/18 <b>FMD accepts addition of OTIS' proposed language given the sole source nature of this contract.</b></p>

		<p>elevator. OTIS will not supply any additional information such as internal OTIS manuals, manufacturing drawings or source code. Any counters, meters, tools, remote monitoring devices, communication devices, resident software or other service equipment ("OTIS Peripherals") which we may use or install to deliver service under this Contract remains our property, solely for the use of our employees. OTIS Peripherals are not considered as part of the elevator. If this contract or subsequent maintenance service is terminated for any reason, we will be given access to the premises to remove the OTIS Peripherals at our expense.</p>			
<p>1/22/18 OTIS removed exception.</p>		<p>You shall be responsible to erect/maintain all barricades at all of OTIS' elevator hoistway locations throughout the job site in strict conformance with good safety practices, the Code of Federal Regulations as governed by the Occupational Safety Health Act, and any other applicable regulations.</p>		<p><b>Barricades</b></p>	
<p>1/22/18 OTIS removed exception.</p>		<p>You will provide suitable, secure storage areas, adjacent to the elevator shafts, for our material and equipment during the course of the work. Added costs to OTIS resulting from off-site storage or relocation of the storage facilities at your</p>		<p><b>Storage</b></p>	

<p><b>Pages 10-12 of 62 AND Page 17 of 62, Section E.</b></p>	<p><b>Overtime</b></p>	<p>request shall be reimbursed by you. Should OTIS agree to work overtime, you agree to pay us overtime premium wages. If OTIS is solely responsible for a delay, it may, at its own expense, work overtime to complete the work.</p>	<p>Preference to retain contract language on overtime.</p>	<p>1/22/18 OTIS removed exception.</p>	
<p><b>Page 43 of 62 #4.</b></p>	<p><b>Searches and Tests</b></p>	<p>For work outside of normal preventive maintenance scope of work. Unit Price shall be for each hour. Billing may be prorated to nearest quarter hour. Total quantity is 5-year estimate.  Overtime Hours Service: Overtime hours service shall be from 4:31 pm to 7:59 am, Monday through Friday; all hours on Saturday and Sunday and approved work scheduled during County recognized holidays. Overtime Hours Service shall be approved by the Building Manager and/or Contract Administrator in advance, prior to work being performed. Contractor will absorb overtime premium portion on all "call back service" except for those calls related to vandalism, misuse, power related, and other acts of God, etc.</p>	<p>OTIS supports your efforts in attempting to maintain a safe, healthy and productive working environment; however, we cannot agree to authorize any party to search our employees or require our employees to submit to any tests. OTIS will take appropriate action in the event that you advise us of any action by any of our employees that is contrary to the maintenance of a safe, healthy and productive workplace.</p>	<p>Preference to retain standard language.</p>	<p>1/22/18 OTIS removed exception.</p>

		<p>any employee or other person to enter the AOA unless and until such employee other person has executed a written consent-to-search/inspection form acceptable to the Aviation Department. Consultant/contractor acknowledges and understands that the forgoing requirements are for the protection of users of the Airport and are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts and other unlawful activities at the Airport. For this reason, consultant/contractor agrees that persons not executing such consent - to-search/inspection form shall not be employed by the consultant/contractor or by any sub consultant/contractor at the Airport in any position requiring access to the AOA or allowed entry to the AOA by the consultant/contractor or by any sub consultant/contractors.</p>	<p>1/22/18 OTIS removed exception.</p>
			<p>Contract location is new construction.</p>
			<p>You agree to notify OTIS if you are aware or become aware prior to the completion of the work of the existence of asbestos or other hazardous material in any elevator hoistway, machine room, hallway or other place in the building where OTIS' personnel are or may be required to perform their work. In the event it should become necessary to abate, encapsulate or remove asbestos or other hazardous material from the building, you agree to be responsible for such abatement, encapsulation or removal.</p>
			<p><b>Hazardous Materials</b></p>

			and any governmental reporting, and in such event OTIS shall be entitled to (i) delay its work until it is determined to OTIS' satisfaction that no hazard exists and (ii) compensation for delays encountered.		
<b>Page 22 of 62, #16.</b>	<b>Re-Inspection Cost</b>	<b>Inspection, Acceptance and Title:</b> Inspection and acceptance will be at delivery destination unless otherwise specified. Title and risk of loss or damage to all items shall be the responsibility of the Vendor until accepted by the County.	OTIS agrees to pay for the cost of one inspection after completion of the Work. Should additional inspections be necessary for causes not attributable to OTIS, Customer agrees to pay for said inspections.	Preference to retain contract language on re-inspection costs.	1/22/18 <b>OTIS removed exception.</b>
	<b>Buy American</b>		The equipment that OTIS will provide under this order is produced from components procured from a variety of sources located throughout the world. Therefore, we cannot confirm compliance with the Buy American Act (or applicable Domestic Sourcing Act). However, these components are selected or designed to meet applicable U.S. standards and the final unit is assembled in the United States.	This is not a construction contract.	1/22/18 <b>OTIS removed exception.</b>
	<b>Restricted Parties Law</b>		If the event the transactions contemplated hereunder are restricted by U.S. Government or other applicable laws and regulations, including but not limited to those designating certain parties as "denied", "restricted" or similarly ineligible to do business with U.S. entities, this agreement will be deemed void and	Item not relevant to this contract.	1/22/18 <b>OTIS removed exception.</b>

		<p>Customer shall pay OTIS all sums owed for the goods and services that may have been provide up to such time according to the rates contained in this agreement. You are responsible for complying with all regulations, including but not limited to those related to seismic activity and floodplains, regarding the geologic conditions of the site where the equipment will be installed.</p>		<p><b>Florida Tax</b></p>	
<p>1/22/18 OTIS removed exception.</p>	<p>Item not relevant to this contract.</p>	<p>To the extent the performance of the Agreement will take place in the State of Florida, the parties hereby agree that title and risk of loss to the materials provided hereunder will pass to the Customer upon delivery of such materials to the applicable site. Upon such delivery and transfer of title, such transaction will meet the definition of "Retail sale plus installation contract" as described in Florida Tax Regulation 12A-1.051(3)(d).</p>			