

Terms and Conditions Attachment:

**Addendum 1 to Master Agreement 23181
between
Iowa Department of Administrative Services ("Agency")
and
Abbott Rapid Dx North America, LLC ("Contractor")**

Dated: March 27, 2023

Agency and Contractor agree to modify the Terms and Conditions as follows, where the Terms and Conditions referenced in RFB 005-RFB-0280-2023 Rapid HIV Antibody/Antigen Test & Controls Kit conflict with or differ from the Terms and Conditions of this Attachment, the provisions of this Attachment will control, and notwithstanding anything herein to the contrary, no reference to or incorporation of any contract, specification or document other than the aforementioned RFB and this Attachment shall grant rights to or impose any obligations upon either party relative to warranty, indemnity, insurance, delay, liquidated damages, payment or rights to drawings, computer code or other proprietary information:

General Terms and Conditions for Goods Contracts/Solicitations

1.4.2 Product Shipment and Delivery is hereby modified as follows: "All products shall be shipped F.O.B. Destination. Destination shall be the location(s) specified in the Purchase Instrument. Contractor bears all risk of loss during shipment of goods. The Contractor shall properly package goods. The State will not accept noticeably damaged goods. The State reserves the right to inspect the goods ~~at a reasonable time subsequent to delivery in the event the State is unable to perform an adequate inspection of the goods~~ at no later than ten (10) calendar days after the time of delivery. If the State discovers damaged or defective goods not readily apparent at the time of delivery, the State ~~shall have the right~~ may, at its option and at Abbott's expense: (a) to return goods products at no cost to the State, and for a full refund; (b) require Abbott to promptly correct or replace the nonconforming products; or (c) obtain replacement products from another source, subject to Abbott being responsible for any cover costs regardless of when the damage or defect is discovered."

1.6.3 Notice of Default

Sub-article 1.6.3.1 is hereby modified as follows: "Immediately terminate its Contract without additional written notice; ~~and/or,~~"

Sub-article 1.6.3.2 is hereby deleted in the entirety and replaced as follows: "Enforce the terms and conditions of the Contract and seek any legal or equitable remedies."

Sub-article 1.6.3.3 is hereby deleted in the entirety.

1.6.7 The Contractor's Termination Duties

Sub-article 1.6.7.1 is hereby modified as follows: "Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish ~~a report~~ outstanding invoices within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the State may require as applicable."

1.8 Indemnification is hereby deleted in the entirety and replaced as follows: "Abbott shall indemnify and hold harmless the Agency, the State of Iowa, and its employees, directors, officers and assigns from and against all third party actions, suits, liability, claims, fines, damages, losses and expenses (including the reasonable value of the time spent by the Attorney General's Office fees through trial and upon appeal) related to or arising out of: (i) the negligent acts or omissions of Abbott, any of its employees, subcontractors or authorized agents (collectively "Staff") in the performance of this Agreement; (ii) the material breach by Abbott of the terms and conditions of this Agreement; (iii) violation of any applicable law by Abbott or its Staff in the performance of this Agreement; and (iv) as to Abbott's indemnification obligations only, the infringement of any valid US patent by reason of the sale or use of any Products purchased or furnished hereunder when such Product is used in accordance with its product insert or Documentation. The Agency shall give Abbott prompt notice of any claim that could give rise to a claim for indemnity under this Agreement, provided that failure to give or delay in giving such notice shall not relieve Abbott of any liability it may have to the Agency except to the extent that Abbott demonstrates that the defense of the claim is prejudiced thereby. At Abbott's request, the Agency shall reasonably cooperate with Abbott in the defense of any claim for which indemnity is provided; provided, however, that Abbott shall reimburse the Agency for all reasonable out-of-pocket costs incurred by the Agency (including, without limitation, reasonable attorneys' fees and expenses) in providing such cooperation. Abbott shall be permitted to defend the claim and make all decisions related thereto, including but not limited to negotiations for settlement or hiring counsel of its choosing; provided, however, that (a) the Agency may defend or respond to a claim, at Abbott's expense, if Agency's counsel determines, in its sole discretion, that such defense or response is necessary to preclude a default judgment from being entered against an indemnitee; and, (b) Agency shall have the right, at its own expense, to monitor Abbott's defense of a claim. This Section shall survive the termination or expiration of this Agreement for one year."

1.9.1 Insurance Requirements is hereby modified as follows: "The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals and for five (5) years after the termination of this Contract. The Contractor's insurance shall, among other things, be ~~occurrence claim~~ based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract ~~regardless of the date the claim is filed or expiration of the policy.~~ The State of Iowa and the purchasing agency shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable."

1.9.3 Certificates of Coverage is hereby modified as follows: "All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with ~~the advance~~ 30 days prior written approval of notice to the State. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the State upon execution of this Contract. The Bidder shall provide a declaration of insurance to the Agency. The certificates shall be subject to approval by the State. ~~The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the State.~~ Approval of the insurance certificates by the State shall not relieve the Contractor of any obligation under this Contract."

1.10 Performance Bond is hereby deleted in the entirety.

1.11 Warranties is hereby deleted in the entirety and replaced as follows: "Abbott warrants and represents full ownership and clear title, free of all liens and encumbrances, to the Products delivered

directly to the Agency under this Contract. Abbott warrants for a period of one (1) year that: the Products (1) conform to published specifications set forth in Abbott's Response and applicable package insert(s) for such Product; (2) not be adulterated or misbranded within the meaning of the U.S. Food, Drug and Cosmetic Act; (3) be of good quality and free from defects in materials and workmanship; (4) are suitable for the ordinary purposes for which such Products are used; (5) are suitable for any special purposes identified in Abbott's Response; and (6) are designed and manufactured in a commercially reasonable manner. Except as to warranties specifically set forth in this paragraph, the only other warranties made by Abbott with respect to Products and Equipment are those specifically and expressly stated as warranties in the Abbott package insert specifications and manuals. Abbott MAKES NO OTHER WARRANTIES; EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER MATTER. Notwithstanding the foregoing, any warranties provided by Abbott will not apply to any Product or Equipment if (a) it has been misused, altered, damaged or used other than which was intended under this Contract; (b) it has been used in combination with other articles, substances or reagents (or any combination thereof) (collectively, "Substances") not provided, recommended, or intended for use by Abbott with such Product or Equipment; (c) the serial or lot number of any Product or Equipment has been altered, defaced, or removed; (d) or if any repair is attempted by personnel who has not been authorized by Abbott to perform such repair; or (e) the Product or Equipment was purchased from an unauthorized distributor (subsections (a) through (d), collectively, "Warranty Exclusions")."

1.13.21 Record Retention and Access is hereby modified as follows: "The Contractor shall maintain books, records and documents which sufficiently ~~and properly document and calculate all charges billed to the State~~ throughout the term of the Contract for a period of at least five (5) 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.~~ The Contractor 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, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Until the expiration of one (1) year after the furnishing of goods or services pursuant to this Agreement Abbott shall, as required by law, make available upon written request of the U. S. Secretary of Health and Human Services or the U. S. Comptroller General (or any of their authorized representatives) copies of books, documents and records of Abbott or any subcontractor that are necessary to verify the nature and extent of costs of goods and services hereunder so as to comply with Section 952 of the Omnibus Reconciliation Act of 1980, as amended. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and ~~appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities~~ any further assistance provided by the State Auditor."