

# RAILROAD COMMISSION OF TEXAS

## CONTRACT MANAGMENT

### ADDENDUM #2

**DATE:** 04/23/2021

**RFP# 455-21-1008**

**TITLE:** Statewide Laboratory Testing Services

**PROPOSAL DEADLINE:** Thursday May 6, 2021 at 2:00 PM Central Time

#### Addendum Item #1:

**Purpose of this Addendum is to publicize submitted questions with answers:**

No.	QUESTIONS	ANSWERS
1	<p>In order to accept the potential for liquidated damages or late delivery penalties, the laboratory needs to have some commitments on the part of its clients to help in scheduling, so that the laboratory can assure that lab capacity is available when needed. Can the following be added to this section:</p> <p>Such penalties or liquidated damages shall apply only to the extent that RRC has informed Vendor of the sample delivery schedule in advance, Vendor has specifically committed after such notice to the turnaround time for delivery, and samples arrived within 2 days of the schedule, without significant differences in the sample volume or analysis parameters from the advance notice. In the event that delays are due to sample matrix interferences, beyond the control of the laboratory, RRC shall be informed promptly and penalties shall not apply.</p>	<p><b>RRC Response: Proposed addition rejected. Please note that Attachment 1 details the work order process and the normal and expedited delivery times.</b></p>
2	<p>In the interest of fairness, the laboratory requests that it only be liable under Section 3.2.24.1 to the extent that any claims for negligence are directly or indirectly attributable to it. In no instance shall the laboratory defend RRC from its own negligent acts or omissions. <b>Therefore, can we add the following to the beginning of the first sentence:</b></p> <p><b>“TO THE EXTENT THAT SUCH ACTS OR OMISSIONS ARE NOT DIRECTLY OR INDIRECTLY</b></p>	<p><b>RRC Response: Proposed additions rejected.</b></p>

	<p>ATTRIBUTABLE TO THE STATE OF TEXAS AND RRC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, ASSIGNEES, AND/OR DESIGNEES,..."</p> <p>The laboratory cannot accept the potential for unlimited damages in any project because it cannot incorporate the risk of any unforeseeable damages into its prices. <b>It is further requested that the following limitation of liability language be added to the indemnification provision:</b></p> <p>Notwithstanding anything to the contrary stated elsewhere in this Contract, Vendor's maximum liability under this Contract or any other attachments hereto, whether based in contract, tort, warranty, negligence or otherwise shall not exceed amounts recoverable under the scope and limits of the insurance required under this Contract, up to a maximum of \$3,000,000. In no event shall Vendor be liable to RRC for any special, indirect, or consequential damages occasioned by the services performed.</p>	
3	<p>The laboratory understands and agrees to 2.02(a) as modified below. In the interest of equity, however, the laboratory still expects to be paid for all properly performed work/samples that are in-house and being processed at the time notice of termination for cause is given. Therefore, it is proposed that 2.02(a) be modified as follows:</p> <p>RRC may terminate this Contract immediately for cause by providing written notice to Vendor of such termination if Vendor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of abandonment or default, Vendor and RRC shall negotiate costs, and Vendor will be responsible for paying damages to RRC, including but not limited to, the cost to re-solicit this Contract and other reasonable costs any consequential damages to the State of Texas or RRC resulting from Vendor's non-performance. Notwithstanding the foregoing, Vendor shall not be liable for damages that Vendor could not reasonably foresee on entry into this Contract. In the event of termination for cause, Vendor will not be eligible for consideration in the re-solicitation, if any, and may not be considered in future solicitations for the same type of work unless the scope of work is significantly changed.</p> <p>Notwithstanding the above-stated, even in the event of a termination for cause, RRC shall pay Vendor for all work performed through the date of termination, and Vendor shall complete any work in progress on the date of such termination and shall be paid in full for such work, even if completed after the date of such termination.</p>	<p>RRC Response: Proposed additions rejected.</p>

4	<p>The laboratory agrees to the language in 2.02(c); however, the laboratory requests that it also be compensated for and work in progress at the time notice of termination is given but completed after the date of termination (for example, a lab report for a samples that were in-house and being processed at the date notice of termination was given is not produced until after the effective date of termination).  <b>Therefore, it is requested that the last sentence be modified to include the following language:</b></p> <p>In the event of termination by RRC, RRC shall pay Vendor for all work satisfactorily performed up to the effective date of termination, even if such work is completed after the date of termination.</p>	<p>RRC Response: Proposed additions rejected.</p>
5	<p><b>Can the laboratory have the opportunity to provide proof that an invoice was properly submitted to RRC in the event that Integral deems an invoice untimely or otherwise not submitted?</b></p> <p>Payments to Vendor will be made in accordance with the terms and conditions of the Contract, and within thirty (30) days from receipt of a complete, correct, and approved invoice or statement of payment in accordance with Texas Government Code Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by RRC. Vendor shall be paid for completion of work accepted and approved by RRC. In the event that RRC deems an invoice untimely, Vendor shall have the opportunity to provide RRC proof that a properly prepared invoice was submitted.</p>	<p>RRC Response: Proposed additions rejected. However RRC is committed to amicable dispute resolution pursuant to section 3.1.33.</p>
6	<p>The laboratory cannot accept the potential for unlimited damages in any project because it cannot incorporate the risk of any unforeseeable damages into its prices. <b>It is further requested that the following limitation of liability language be added to the Contract:</b></p> <p>Notwithstanding anything to the contrary stated elsewhere in this Contract, Vendor's maximum liability under this Contract or any other attachments hereto, whether based in contract, tort, warranty, negligence or otherwise shall not exceed amounts recoverable under the scope and limits of the insurance required under this Contract, up to a maximum of \$3,000,000. In no event shall Laboratory be liable to RRC for any special, indirect, or consequential damages occasioned by the services performed.</p>	<p>RRC Response: Proposed additions rejected.</p>
7	<p>Responses shall be submitted to RRC either by US Postal service, overnight delivery, or electronically via email.</p> <ol style="list-style-type: none"> <li>a) What are the file size restrictions for email?</li> <li>b) Can we split into multiple emails?</li> </ol>	<p>a). RRC Response: 35 MB is the maximum attachment size on email</p> <p>b). RRC Response: Yes, responses can be split into multiple emails.</p>

8	Respondent's Vendor Identification Number (11-digit number issued by the Texas CPA); Is this the same as the CMBL #? That code has 13 digits.	RRC Response: No, a Vendor Identification Number is issued by the Texas CPA is made up of your federal tax identification number.
9	<p>Under the Mandatory Rate Submission Sheet E. Coli (Colisure) is listed under #21.</p> <ul style="list-style-type: none"> <li>a) What matrix is that?</li> <li>b) Can other EPA coliform methods be used such as Colilert by IDEXX?</li> <li>c) Can BTEX be analyzed in method 8260 in lieu of 8021?</li> </ul>	<ul style="list-style-type: none"> <li>a) RRC Response: The matrix for Colisure analysis is "water".</li> <li>b) RRC Response: Colisure is preferred because it will provide for determination of presence or absence of coliform with a holding time of up to 48 hours.</li> <li>c) RRC Response: Staff would not object to substituting method 8260 for 8021 provided the selected method can detect and quantify the specific volatile organic chemicals (VOCS) at concentrations below the data quality objectives, typically Texas Risk Reduction Program (TRRP) Protective Concentration Levels (PCLs).</li> </ul>
10	If we meet the HUB RFP goal percentage of 26% or more, then do we need to complete an HSP for the portions that we will be subcontracting?	RRC Response: The HUB goal for this solicitation is 26%. If this goal is met then you have made the "Good Faith Effort", and yes you will still need to complete the entire HSP and for the portions that you will be subcontracting that's asked in Section 2. of the HSP.

All other aspects of the **RFQ# 455-21-1008** remain as is.

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Contract Management

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**RECEIPT OF ADDENDUM #1 OF RFQ #455-21-1021**