

STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION



**REQUEST FOR PROPOSALS # 31865-00454
AMENDMENT # 1
FOR ACTUAL ACQUISITION COST (AAC)
PROGRAM FOR SINGLE-SOURCE AND MULTI-
SOURCE LEGEND
AND OVER THE COUNTER DRUGS**

DATE: AUGUST 25, 2016

RFP # 31865-00454 IS AMENDED AS FOLLOWS:

1. This RFP Schedule of Events updates and confirms scheduled RFP dates. Any event, time, or date containing revised or new text is highlighted.

EVENT	TIME (central time zone)	DATE	CONFIRMED/ UPDATED
1. RFP Issued		August 1, 2016	CONFIRMED
2. Disability Accommodation Request Deadline	2:00 p.m.	August 5, 2016	CONFIRMED
3. Pre-response Conference	2:00 p.m.	August 10, 2016	CONFIRMED
4. Notice of Intent to Respond Deadline	2:00 p.m.	August 12, 2016	CONFIRMED
5. Written "Questions & Comments" Deadline	2:00 p.m.	August 18, 2016	CONFIRMED
6. State Response to Written "Questions & Comments"		August 25, 2016	UPDATED
7. Response Deadline	12:00 p.m.	September 13, 2016	UPDATED
8. State Completion of Technical Response Evaluations		September 26, 2016	CONFIRMED
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	September 27, 2016	CONFIRMED
10. State Notice of Intent to Award Released and RFP Files Opened for Public Inspection	2:00 p.m.	September 29, 2016	CONFIRMED

11. End of Open File Period		October 6, 2016	CONFIRMED
12. State sends contract to Contractor for signature		October 7, 2016	CONFIRMED
12. Contractor Signature Deadline		October 10, 2016	CONFIRMED
13. Contract Start Date		November 1, 2016	CONFIRMED

2. State responses to questions and comments in the table below amend and clarify this RFP.

Any restatement of RFP text in the Question/Comment column shall NOT be construed as a change in the actual wording of the RFP document.

QUESTION / COMMENT	STATE RESPONSE
<p>1 <i>Pro Forma</i> Contract, A. Scope, Article A.5, page 36 – Will the semi-annual survey process be mandatory or voluntary for selected TennCare participating pharmacy providers?</p>	<p>Yes, the semi-annual survey of invoices will be mandatory for all providers.</p>
<p>2 <i>Pro Forma</i> Contract, A. Scope, Article A.12, page 37 – What “other State Contractors and State Agencies” does the State anticipate the contractor will work with based on the following language in this section: “The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with any and all other State Contractors and State Agencies”?</p>	<p>The State anticipates that any of the following State Contractors and Agencies and organizations may request involvement:</p> <ul style="list-style-type: none"> Department of Commerce & Insurance, TennCare Oversight Division Tennessee Pharmacists Association (TPA) Tennessee Medical Association (TMA) Tennessee Hospital Association (THA) Tennessee Board of Pharmacy TennCare’s PBM Vendor, currently Magellan Medicaid Administration TennCare’s (current end date options through May 31, 2018) PBM Vendor’s auditing vendor, NorthStar HealthCare Consulting
<p>3 <i>Pro Forma</i> Contract, A. Scope, Article A.23, page 39 – Will the State expect assistance from the selected vendor in developing an access monitoring plan as part of SPA assistance? If so, we recommend this be clearly stated in the RFP requirements and experience scored as part of the RFP evaluation process.</p>	<p>No.</p>
<p>4 <i>Pro Forma</i> Contract, A. Scope, Article A.23, page 39 - Does the State anticipate submitting its</p>	<p>The State anticipates that we will submit our SPA prior to June 30, 2017, with an effective date of April 1, 2017.</p>

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SPA prior to April 1, 2017?	
<p>5 RFP Attachment 6.3., Cost Proposal. Section 3.1.2, p. 6, requires “A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.” However, Attachment 6.3 does not appear to allow for variable or undefined work as outlined in the <i>Pro Forma</i> Contract, Attachment 6.6, Section A., Scope. For example, the contract scope requires in A.24., “The Contractor shall provide expert testimony when requested by the State.”</p> <p>Additionally, A.17 requires that the contractor shall perform analyses for specialty drug pricing “as requested by the State, on a scheduled or ad hoc basis.” How would the Contractor invoice for services provided for the undefined scope? We suggest adding a line to the Cost Proposal form that denotes, “Ad hoc projects” and request a blended billable hour rate. An additional option would be to include a contractual requirement for “up to XXXX ad hoc hours” at the submitted hourly rate to allow for equitable comparison of vendors during the RFP evaluation process. This additional line and estimate hours to be budgeted would allow Contractors to bill for services not included as part of the two deliverables currently on Attachment 6.3, Cost Proposal.</p> <p>Similarly, how would the Contractor invoice for “Control Memorandum” requests that are related, but not currently contemplated, as part of the scope of work without some billable hourly rate authorizing billing and payment?</p>	<p>There are many deliverables and Contractor responsibilities included in the <i>Pro Forma</i> Contract. The Cost Proposal as written is for monthly rates to include all aspects of scope of work required by the Contractor, including any requirement, should there be a need, to provide expert testimony regarding pricing disputes. The expectation, however, is that there would be no need for expert testimony.</p> <p>The State is contracting for industry intelligence and any ad hoc reporting, should there be a need for such, will be requested by the State with reasonable timeframes.</p> <p>The respondent is expected to factor all services of this contract into the monthly rate submitted in the cost proposal. There will be no additional billing rates to support additional hours for ad hoc reports, provision of expert testimony, nor the Control Memorandum process.</p> <p>Please refer to Item #2 of this amendment for modified A.17.</p>
<p>6 RFP Attachment 6.2, Section C.3, page 24 requires: “Respondent shall propose several possible methodologies (including the use</p>	

QUESTION / COMMENT	STATE RESPONSE
<p>of CMS's National Average Drug Acquisition Cost (NADAC)) for TennCare to choose from to adopt a new AAC pricing methodology that incorporates FUL, 340B and specialty pricing.”</p> <p>How will the State negotiate pricing with the selected vendor if it selects a methodology option or combination of options (e.g., differential options for 340B as compared to Specialty) that require significantly more Contractor hours than another option put forth but better meets the needs of the State and provider network given the Cost Proposal, Attachment 6.3, specifically asks for a fixed monthly cost per month with and without NADAC for an undefined methodology?</p>	<p>The State will not negotiate pricing specific to response to technical responses. The pricing in RFP Attachment 6.3, Cost Proposal and Scoring Guide, includes pricing for possible methodologies. Please refer to State's response to question #5.</p> <p>Please refer to Item #3 of this amendment, modified RFP Attachment 6.2, Section C.</p>
<p>7 RFP Attachment 6.6, <i>Pro forma</i> Contract, page 34: Is the State amenable to negotiating the terms and conditions of the <i>Pro Forma</i> Contract? If yes, where in its proposal should the vendor include a request to negotiate the terms and conditions? If yes, should the vendor include specific exceptions to the terms and conditions in its proposal? If the vendor can include exceptions in its proposal, it is not necessary for the State to answer the following questions. In past procurement processes, the State has requested vendors ask about exceptions to terms and conditions during the question period so we include the following questions:</p> <p>1) Attachment 6.6 <i>Pro Forma</i> Contract - Contractor believes that any damages incurred by the parties should be determined by a trier of fact. Would the State consider removing the liquidated damages provision of the Contract?</p> <p>2) Attachment 6.6 <i>Pro Forma</i></p>	<p>The respondent should not include any exceptions to terms in response. As Mandatory requirement to ensure responses are evaluated, all respondents must sign RFP Attachment 6.1, Statement of Certification and Assurances, agreeing to the terms and conditions set out in RFP Attachment 6.6, <i>Pro Forma</i> Contract.</p> <p>Denied, however, it is never the intent of the State to assess LDs without due diligence to resolve any issue. Please refer to <i>Pro Forma</i> Section A.25.</p>

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<p>Contract - Contractor believes that any damages incurred by the parties should be determined by a trier of fact. Would the State consider removing the provisions with respect to the State's senior management's decision as to any damages owed by Contractor being binding upon Contractor?</p>	<p>Denied.</p>
<p>3) Attachment 6.6 <i>Pro Forma</i> Contract, Section D.5 – Would the State be willing to make the right to terminate the Contract for convenience mutual?</p>	<p>Denied. All sections in Pro Forma Section D are Mandatory Terms and Conditions as provided by the State Central Procurement Office and Comptroller of the State of Tennessee to be included in all State of TN contracts.</p>
<p>4) Attachment 6.6 <i>Pro Forma</i> Contract, Section D.6 – Would the State be willing to include a 30 day cure period to the termination for cause provision prior to any termination of the Contract?</p>	<p>Denied. Should there be a need for termination due to cause the situation would need immediate response and termination.</p>
<p>5) Attachment 6.6 <i>Pro Forma</i> Contract, Section D.6 – Would the State be willing to include a termination for cause right for Contractor upon an uncured material breach of the Contract by the State?</p>	<p>Denied.</p>
<p>6) Attachment 6.6 <i>Pro Forma</i> Contract, Section D.12 – This Section seems inapplicable to the Services being performed under this RFP. Would the State be willing to remove this Section?</p>	<p>Denied. This section is applicable and shall remain in the contract.</p>
<p>7) Attachment 6.6 <i>Pro Forma</i> Contract, Section D.18 – Is the State willing to add language such as the following, “In no event shall Contractor be liable in connection with the Contract for loss of profits or any indirect, incidental, punitive, special or consequential damages arising in any manner from the Agreement regardless of foreseeability</p>	<p>Denied.</p>

QUESTION / COMMENT	STATE RESPONSE
<p>thereof.”</p> <p>8) Attachment 6.6 <i>Pro Forma</i> Contract, Section D.19 – Contractor believes that it should have no responsibility for any losses, liabilities or damages to the extent they are attributable to the acts or omissions of an indemnified person or any third party other than Contractor’s subcontractors. Is the State willing to include such a provision in the Contract?</p> <p>9) Attachment 6.6 <i>Pro Forma</i> Contract D.28 – Is the State willing to replace this Section with the following language: “It is the intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Agreement or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified, deleted or interpreted in such a manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Agreement as modified, enforceable and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent.”</p> <p>10) Attachment 6.6 <i>Pro Forma</i> Contract E.3 – Contractor believes that only those deliverables created or developed by Contractor specifically and exclusively for the State pursuant to the Contract should be considered ‘work made for hire’ and exclusively owned by the State. Is the State</p>	<p>Denied.</p> <p>Denied.</p> <p>Denied. E.3 specifies that the rights are for “goods provided by the Contractor under this Contract”.</p>

QUESTION / COMMENT	STATE RESPONSE
<p>willing to revise Section E.3 to reflect such language?</p> <p>11) Attachment 6.6 <i>Pro Forma Contract</i> – Is the State willing to add a waiver of jury trial to the Contract?</p> <p>12) Attachment 6.6 <i>Pro Forma Contract</i> – Is the State willing to make the obligations of Confidentiality under the contract reciprocal?</p> <p>13) Attachment 6.6 <i>Pro Forma Contract</i> – Is that State willing to add a “provision of information and assistance” clause to the Contract?</p> <p>14) Attachment 6.6 <i>Pro Forma Contract</i> – Is the State willing to add a “no third party beneficiaries” clause to the Contract?</p>	<p>Denied.</p> <p>Denied.</p> <p>Denied.</p> <p>Denied.</p>
<p>8 Per section 1.1 Statement of Procurement Purpose -- Data required for response to RFP Attachment 6.2, Section C.2.</p> <p>Not all state departments use the same data formats or field namings. Will there be a data support contact at the state or documentation such as a data dictionary that can be used to guide accurate interpretation of the received claims data?</p>	<p>Yes. Please contact the RFP Coordinator for transfer of info between vendor and data support contact.</p>

2. RFP Attachment 6.6, Section A. 17 is deleted in its entirety and replaced with the following: (any sentence or paragraph containing revised or new text is highlighted)

A.17. The Contractor shall perform analyses of specialty drug pricing, or any other drug pricing, as necessary and requested by the State, on an as needed ad hoc basis. The Contractor shall not invoice the State for any such reporting, and the State shall not be liable to the Contractor for payment of any such reporting services in addition to the monthly rates specified in Contract Section C.3.

3. **RFP Attachment 6.2, Section C, is deleted in its entirety and replaced with the following:** (any sentence or paragraph containing revised or new text is highlighted)

RFP ATTACHMENT 6.2. — SECTION C

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's Raw Weighted Score for purposes of calculating the section score as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent complete s)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	Provide a narrative that illustrates how the Respondent will manage the project, ensure completion of the scope of services, and accomplish required objectives within the State's project schedule.		5	
	C.2.	Provide an analysis of TennCare's current EAC pricing methodology using historical paid claims provided by TennCare to respondent upon signing and submitting documents referenced in RFP Section 1.1. Using this data, the Respondent shall re-price historical pharmacy claims using AAC pricing (estimated or from a similar, neighboring state) and professional dispensing fee (estimated or from a similar, neighboring state) methodology to calculate budget impact.		5	
	C.3.	Respondent shall propose several possible methodologies (including the use of CMS's National Average Drug Acquisition Cost (NADAC)) for TennCare to choose from to adopt a new AAC pricing methodology that incorporates FUL, 340B and specialty pricing.		20	
	C.4.	Describe your solution for all pharmacy claims to be reimbursed using Average Actual Acquisition Cost. If there are products that cannot be reimbursed with AAC, please identify these products, and provide suggested solutions.		10	
	C.5.	Describe, in detail, Respondents ability to calculate an Average Actual Acquisition Cost for specialty drugs. Describe how you ensure that the invoices that are submitted by specialty pharmacies contain the actual amounts paid by pharmacies.		10	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent complete s)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.6.	Describe, in detail, Respondents ability to calculate an Average Actual Acquisition Cost for OTC products that are covered by TennCare. Link to OTC drugs covered by TennCare for adults: https://tenncare.magellanhealth.com/static/docs/Program_Information/OTC_Products_Adults.pdf Link to OTC drugs covered by TennCare for children under 21: https://tenncare.magellanhealth.com/static/docs/Program_Information/OTC_Products_Children.pdf		5	
	C.7.	Describe, in detail, Respondent's ability to calculate an Average Actual Acquisition Cost for drugs submitted by 340B pharmacies.		10	
	C.8.	The State of Tennessee currently has no Indian Health Service (IHS) Pharmacies or IHS Pharmacy providers. TennCare has other governmental agency pharmacy providers in our network: State Public Health Clinic Pharmacies. These pharmacy providers currently submit claims to TennCare in a batch claim format at their actual cost. Describe, in detail, your ability to calculate an Average Actual Acquisition Cost for drugs submitted by Indian Health Service pharmacies or other Federal/State Pharmacy network providers.		5	
	C.9.	Describe, in detail, Respondent's ability to calculate an Average Actual Acquisition Cost for covered active pharmaceutical ingredient (API) products used for compounded prescriptions that are covered by TennCare. Describe how you ensure that the invoices that are submitted by compounding pharmacies contain the actual amounts paid by pharmacies for API ingredients.		5	
	C.10.	Describe in detail, the timeline required for AAC pricing updates and the processes involved between the Contractor, TennCare's Pharmacy Benefits Manager (PBM) vendor, website updates and notifying TennCare of the updated AAC rates.		2	
	C.11.	Describe in detail, the timeline required, and methodology for calculating AAC rates for new market entry drugs.		3	
	C.12.	Describe how the Respondent ensures that the invoices that are submitted by pharmacies contain the actual amounts paid by pharmacies. Provide examples (without naming states, PBM's or pharmacies) of challenges that you have encountered in experiences with pharmacy invoices in other states and established methods to address these challenges.		3	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent complete s)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.13.	Describe in detail, the Respondents' plan to communicate and educate pharmacy providers, pharmacy associations and other stakeholders on all aspects of the AAC program.		2	
	C.14.	Please describe how you provide telephone and email support for network provider pharmacies. Include a description of how provider inquiries and disputes will work, and how you determine that the disputed reimbursement rate is based on an AAC that truly needs to be adjusted, or whether pharmacy is not purchasing well.		5	
	C.15.	Describe what tools the Respondent will provide to TennCare to ensure that the State has access to all provider communications, AAC changes, and other appropriate information.		5	
	C.16.	Describe in detail how the Respondent proposes to assist TennCare in providing all documentation required by CMS in the State Amendment Plan (SPA) submission process, including state plan language and federal budget impact by federal fiscal year and the potential impact to enrollee access to pharmacy services.		5	
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>			Total Raw Weighted Score: <i>(sum of Raw Weighted Scores above)</i>		
Total Raw Weighted Score <hr/> Maximum Possible Raw Weighted Score <i>(i.e., 5 x the sum of item weights above)</i>			X 40 <i>(maximum possible score)</i>		= SCORE:
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

4. **RFP Amendment Effective Date.** The revisions set forth herein shall be effective upon release. All other terms and conditions of this RFP not expressly amended herein shall remain in full force and effect.