



MISSISSIPPI DIVISION OF  
**MEDICAID**

# REQUEST FOR PROPOSALS

## Pharmacy Rate Setting

RFP #20160219

Contact:

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Procurement Officer

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Due Dates

Questions & Letter of Intent

E-MAIL or MAIL or HAND DELIVERY

5:00 PM Central Daylight Time, Friday, March 11, 2016

Answers Posted to Internet

[www.medicaid.ms.gov/resources/procurement](http://www.medicaid.ms.gov/resources/procurement)

5:00 PM Central Daylight Time, Friday, March 18, 2016

Sealed Proposals

MAIL or HAND DELIVERY ONLY

5:00 PM Central Daylight Time, Friday, March 25 2016

Table of Contents

1.0 SCOPE OF WORK.....	7
1.1 PURPOSE .....	7
1.2.1 <i>Mandatory Letter of Intent</i> .....	7
1.2.2 <i>Procedure for Submitting Questions</i> .....	8
1.2.3 <i>Proposal Submission Requirements</i> .....	8
1.2 BACKGROUND.....	9
1.4 TECHNICAL REQUIREMENTS .....	10
1.4.1 <i>Major Tasks</i> .....	10
1.5 RATE STRUCTURE DESIGN AND DEVELOPMENT .....	11
1.6 MAINTENANCE AND ADMINISTRATION OF PRICING BENCHMARK.....	12
1.7 REPORTING AND DELIVERABLES .....	13
1.8 KEY PERSONNEL .....	14
1.9 DIVISION OF MEDICAID RESPONSIBILITIES .....	15
1.11 CONTRACT PHASES .....	15
1.11.1 <i>Implementation Phase</i> .....	15
1.11.2 <i>Operations Phase</i> .....	15
1.11.3 <i>Turnover Phase</i> .....	15
1.12 CONTRACTOR PAYMENT .....	16
1.12.1 <i>Implementation Price</i> .....	16
1.12.2 <i>Operations Price</i> .....	16
1.12.3 <i>Turnover Price</i> .....	17
1.12.4 <i>Travel</i> .....	17
1.12.5 <i>Erroneous Issuance of Compensation</i> .....	17
1.12.7 <i>Release</i> .....	17
2 AUTHORITY 18	
2.1 ORGANIZATIONS ELIGIBLE TO SUBMIT PROPOSALS.....	18
2.2 PROCUREMENT APPROACH.....	19
2.3 ACCURACY OF STATISTICAL DATA .....	19
2.4 ELECTRONIC AVAILABILITY.....	19
3 PROCUREMENT PROCESS .....	21
3.1 APPROACH .....	21
3.2 QUALIFICATION OF OFFEROR.....	21
3.3 RULES OF PROCUREMENT .....	22
3.3.1 <i>Restrictions on Communications with DOM Staff</i> .....	22

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

3.3.2	<i>Amendments to this Request for Proposals</i> .....	22
3.3.3	<i>Cost of Preparing Proposal</i> .....	22
3.3.4	<i>Certification of Independent Price Determination</i> .....	23
3.3.5	<i>Acceptance of Proposals</i> .....	23
3.3.6	<i>Rejection of Proposals</i> .....	23
3.3.7	<i>Alternate Proposals</i> .....	24
3.3.8	<i>Proposal Amendments and Withdrawal</i> .....	24
3.3.9	<i>Disposition of Proposals</i> .....	24
3.3.10	<i>Responsible Contractor</i> .....	24
3.3.11	<i>Best and Final Offers</i> .....	25
3.4	<b>ORAL PRESENTATION</b> .....	25
3.5	<b>STATE APPROVAL</b> .....	25
3.6	<b>NOTICE OF INTENT TO AWARD</b> .....	25
3.7	<b>POST-AWARD DEBRIEFING</b> .....	25
3.7.1	<i>Debriefing Request</i> .....	25
3.7.2	<i>Scheduling the Debriefing</i> .....	26
3.7.3	<i>Information to Be Provided</i> .....	26
3.7.4	<i>Information Which Will Not Be Provided</i> .....	26
3.8	<b>PROTEST POLICY AND PROCEDURES</b> .....	26
3.8.1	<i>Form of the Protest</i> .....	26
3.8.2	<i>Protest Bond</i> .....	27
3.8.3	<i>DOM's Responsibilities Regarding Protests</i> .....	27
4.	<b>TERMS AND CONDITIONS</b> .....	28
4.1	<b>GENERAL</b> .....	28
4.2	<b>PERFORMANCE STANDARDS, ACTUAL DAMAGES, LIQUIDATED DAMAGES, AND RETAINAGE</b> .....	28
4.3	<b>TERM OF CONTRACT</b> .....	30
4.3.1	<i>Stop Work Order</i> .....	30
4.3.2	<i>Termination of Contract</i> .....	31
4.3.3	<i>Procedure on Termination</i> .....	33
4.3.4	<i>Assignment of the Contract</i> .....	34
4.3.5	<i>Excusable Delays/Force Majeure</i> .....	34
4.3.6	<i>Applicable Law</i> .....	35
4.4	<b>NOTICES</b> .....	35
4.5	<b>COST OR PRICING DATA</b> .....	35
4.6	<b>SUBCONTRACTING</b> .....	36

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

4.7.1	<i>Ownership of Documents</i> .....	36
4.7.2	<i>Ownership of Information and Data</i> .....	36
4.7.3	<i>Public Information</i> .....	37
4.7.3	<i>Right of Inspection</i> .....	37
4.7.4	<i>Licenses, Patents and Royalties</i> .....	37
4.7.5	<i>Records Retention Requirements</i> .....	38
4.8	REPRESENTATION REGARDING CONTINGENT FEES .....	38
4.9	INTERPRETATIONS/CHANGES/DISPUTES .....	38
4.9.1	<i>Conformance with Federal and State Regulations</i> .....	38
4.9.2	<i>Waiver</i> .....	39
4.9.3	<i>Severability</i> .....	39
4.9.4	<i>Change Orders and/or Amendments</i> .....	39
4.9.5	<i>Disputes</i> .....	40
4.9.6	<i>Cost of Litigation</i> .....	40
4.9.7	<i>Attorney Fees</i> .....	40
4.10	INDEMNIFICATION .....	40
4.10.1	<i>No Limitation of Liability</i> .....	41
4.10.2	<i>Third Party Action Notification</i> .....	41
4.11	STATUS OF THE CONTRACTOR.....	42
4.11.1	<i>Independent Contractor</i> .....	42
4.11.2	<i>Employment of DOM Employees</i> .....	42
4.11.3	<i>Conflict of Interest</i> .....	43
4.11.4	<i>Personnel Practices</i> .....	43
4.11.5	<i>No Property Rights</i> .....	43
4.12	EMPLOYMENT PRACTICES.....	43
4.13	OWNERSHIP AND FINANCIAL INFORMATION .....	44
4.13.1	<i>Information to Be Disclosed</i> .....	44
4.13.2	<i>When Information Will Be Disclosed</i> .....	45
4.13.3	<i>To Whom Information Will Be Disclosed</i> .....	45
4.13.4	<i>Federal Financial Participation</i> .....	45
4.13.5	<i>Information Related to Business Transactions</i> .....	45
4.13.6	<i>Disclosure of Identity of Any Person Convicted of a Criminal Offense</i> .....	45
4.13.7	<i>Disclosure to the Inspector General</i> .....	46
4.13.8	<i>DOM's Right of Refusal</i> .....	46
4.13.9	<i>Additional Requirements of DOM and Contractors</i> .....	46

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

4.14 RISK MANAGEMENT .....	46
4.14.1 Workers' Compensation .....	46
4.14.2 Liability.....	47
4.15 CONFIDENTIALITY OF INFORMATION .....	47
4.15.1 Confidentiality of Beneficiary Information.....	47
4.15.2 Release of Public Information .....	47
4.15.3 Transparency.....	48
4.16 THE CONTRACTOR COMPLIANCE ISSUES.....	48
4.16.1 Federal, State, and Local Taxes .....	48
4.16.2 License Requirements .....	48
4.16.3 Privacy/Security Compliance .....	49
4.16.4 Site Rules and Regulations .....	49
4.16.5 Environmental Protection.....	49
4.16.6 Lobbying .....	49
4.16.7 Bribes, Gratuities, and Kickbacks Prohibited .....	50
4.16.8 Small and Minority Businesses .....	50
4.16.9 Suspension and Debarment .....	50
4.16.10 E-Payment .....	50
4.16.11 Paymode .....	51
4.16.12 E-VERIFICATION.....	51
5. TECHNICAL PROPOSAL .....	52
5.1 INTRODUCTION.....	52
5.2 TRANSMITTAL LETTER.....	52
5.3 EXECUTIVE SUMMARY .....	54
5.4 CORPORATE BACKGROUND AND EXPERIENCE .....	54
5.4.1 Corporate Background.....	54
5.4.2 Audited Financial Statements .....	54
5.4.3 Corporate Experience.....	55
5.5 PROJECT ORGANIZATION AND STAFFING.....	56
5.5.1 Organization .....	56
5.5.2 Résumés .....	56
5.5.3 Responsibilities.....	57
5.5.4 Backup Personnel Plan.....	57
5.6 METHODOLOGY .....	57
5.7 PROJECT MANAGEMENT AND CONTROL.....	57

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

5.8 WORK PLAN AND SCHEDULE.....	58
6.BUSINESS/COST PROPOSAL.....	59
6.1 GENERAL.....	59
6.2 BID MODIFICATION IN THE EVENT OF A FEDERAL AND/OR STATE LAW, REGULATION OR POLICY.....	59
6.3 PROPOSAL CONTENT.....	59
7.PROPOSAL EVALUATION.....	60
7.1 GENERAL.....	60
7.2 EVALUATION OF PROPOSALS.....	60
7.2.1 Phase 1 - Evaluation of Offerors' Response to RFP.....	60
7.2.2 Phase 2 - Evaluation of Technical Proposal.....	60
7.2.3 Phase 3 - Evaluation of Business/Cost Proposal.....	63
7.3 Phase 4 and 5 - Selection.....	63
Appendix A - Budget Summary.....	64
Appendix B.....	66
Appendix C References.....	66
EXHIBIT 1.....	67
EXHIBIT 2.....	70

## 1.0 SCOPE OF WORK

### 1.1 PURPOSE

The State of Mississippi, Office of the Governor, Division of Medicaid (DOM), requests proposals from qualified firms, to provide assistance with the design and development of a reimbursement methodology rate structure for all outpatient drugs as defined in 42 U.S.C. 1396r-8, maintenance and administration of the rate structure, as necessary, and related analysis and consulting services. DOM is interested in considering all options available to the State. The goal of the program is to determine the appropriate ingredient cost of product(s) to use as a basis for pharmacy reimbursement. Section 1902(a)(30)(A) of the Social Security Act requires that States "assure that payments are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

At this time, DOM uses Estimated Acquisition Cost methodology (EAC) which uses a variety of pricing parameters: Average Wholesale Price (AWP), Federal Upper Limit (FUL), usual and customary and Wholesale Acquisition Costs (WAC). DOM will be responsible for complying with the Patient Protection and Affordable Care Act (ACA) FUL and intends to use the national published benchmark, National Average Drug Acquisition Cost (NADAC).

**Table 1: RFP and Procurement Timetable**

Date	Process
February 19, 2016	Public Release of RFP
March 11, 2016	Deadline for Letter of Intent and Written Questions
March 18, 2016	Response to Questions Posted
March 25, 2016	Proposal Deadline
April 4-8, 2016	Evaluation of Technical Proposal
April 11, 2016	Evaluation of Business Proposal
April 13, 2016	Executive Review and Award
June 1, 2016	Contract Start

#### 1.2.1 Mandatory Letter of Intent

The Offeror is required to submit a written Letter of Intent to Bid. The Letter of Intent is due by 5:00 p.m. CDT, March 11, 2016, and should be sent to:

Matthew Nassar  
Procurement Officer  
Division of Medicaid  
Walter Sillers Building  
550 High Street, Suite 1000  
Jackson, Mississippi 39201

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

The Letter of Intent shall be on the official business letterhead of the Offeror and must be signed by an individual authorized to commit the Offeror to the work proposed. Submission of the Letter of Intent shall not be binding on the prospective Offeror to submit a proposal. However, an Offeror that does not submit a Letter of Intent by 5:00 p.m. CDT, March 11, 2016, will not thereafter be eligible for the procurement.

Through February 19, 2016 to March 11, 2016, all RFP amendments will be sent to all organizations that request an RFP and will be posted on DOM's procurement website, <http://www.medicaid.ms.gov/resources/procurement>. After March 11, 2016, RFP amendments will only be distributed to Offerors that have submitted a Letter of Intent.

### **1.2.2 Procedure for Submitting Questions**

Multiple questions may be submitted using the template at [www.medicaid.ms.gov/resources/procurement](http://www.medicaid.ms.gov/resources/procurement). Written answers will be available no later than 5:00 p.m. CDT, Friday, March 18, 2016, via DOM's procurement website [www.medicaid.ms.gov/resources/procurement](http://www.medicaid.ms.gov/resources/procurement). Questions and answers will become part of the final Contract as an attachment. Written responses provided for the questions will be binding.

Questions should be sent to:

Matthew Nassar  
Procurement Officer  
Division of Medicaid  
Walter Sillers Building  
550 High Street, Suite 1000  
Jackson, Mississippi 39201

OR EMAIL: [Matthew.Nassar@medicaid.ms.gov](mailto:Matthew.Nassar@medicaid.ms.gov)

### **1.2.3 Proposal Submission Requirements**

Proposals shall be in writing and must be submitted in two (2) parts: 1) Technical Proposal; and 2) Business Proposal. The format and content of each proposal are specified in Sections 5 and 6, respectively, of this RFP.

Technical Proposals for the RFP must be submitted in three-ring binders with components of the RFP clearly tabbed. An original and four (4) copies of the Technical Proposal under sealed cover and an original and two (2) copies of the Business Proposal under separate sealed cover must be received by DOM no later than 5:00 p.m. CDT, on March 25, 2016. Due to the complex nature of the scope and the detailed Question and Answer period, DOM is allowing more than fourteen (14) business days after the last advertisement for proposal submission. The Offeror shall also submit one (1) full copy of the Technical Proposal and one (1) redacted version on CD in a single document in a searchable Microsoft Word or Adobe Acrobat (PDF) format.

Offerors shall also submit one (1) full copy of the Technical Proposal in a single document in a searchable Microsoft Word or Adobe Acrobat (PDF) format through MAGIC. MAGIC is the State of Mississippi's Accountability System for Governmental Information and Collaboration. Registering as a supplier with the State of Mississippi allows businesses to register for upcoming RFX (bid) opportunity notifications by the products



Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

they supply, search the system for upcoming RFXs, respond to an RFX electronically, and receive purchase orders by email. In order to register, please go the following website:

[http://www.mmrs.state.ms.us/vendors/Supplier\\_\(Vendor\)\\_Self-Service.shtml](http://www.mmrs.state.ms.us/vendors/Supplier_(Vendor)_Self-Service.shtml).

Any proposal received after this date and time will be rejected and returned unopened to the Offeror. Proposals should be delivered to:

Matthew Nassar  
Procurement Officer  
Division of Medicaid  
Walter Sillers Building  
550 High Street, Suite 1000  
Jackson, Mississippi 39201

The outside cover of the package containing the Technical Proposal shall be marked:

RFP #20160219  
Technical Proposal  
(Name of Offeror)

The outside cover of the package containing the Business Proposal shall be marked:

RFP # 20160219  
Business Proposal  
(Name of Offeror)

As the proposals are received, the sealed proposals will be date-stamped and recorded by DOM. The Offeror is responsible for ensuring that the sealed competitive proposal is delivered by the required time and to the required location and assumes all risks of delivery. A facsimile proposal will not be accepted. Each proposal must be signed in blue ink by an official authorized to bind the Offeror to the proposal provisions. Proposals and modifications thereof received by DOM after the time set for receipt or at any location other than that set forth above will be considered late and will not be considered for award.

## **1.2 BACKGROUND**

### DOM Drug Utilization Data for State Fiscal Year 2015 (July 1, 2014 – June 30, 2015)

1. Approximately 25% of Medicaid beneficiaries were enrolled in MSCAN and approximately 75% were enrolled in fee for service during Fiscal Year 2015.
2. Approximately 900 pharmacies are enrolled as Medicaid providers.
3. Approximately 6.4 million prescription drug claims were reimbursed.
4. The average reimbursement of a generic drug was \$34.56 compared to \$309.93 for a brand name drug.
5. The combined (fee for services and managed care) total reimbursement paid to pharmacies was \$551 million. Paid reimbursement amounts represent amounts reported on claims as paid to pharmacies. These amounts do not reflect the final actual cost to Medicaid after federal and supplemental rebates were collected.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

6. DOM's generic utilization rate ranged from 79% to 87%.

As of Fiscal Year 2016, approximately 65% of Medicaid beneficiaries are enrolled in MSCAN and 35% are enrolled in fee for service.

DOM reimburses pharmacies for drugs as outlined in the Mississippi Medicaid State Plan and Administrative Code Title 23, Part 214 Pharmacy Services. Coordinated Care Organizations (CCO) are required to reimburse all in-network providers enrolled in those organizations at rates no less than what Medicaid reimburses fee for service providers. This information can be found on the DOM website: <http://www.medicaid.ms.gov>.

DOM has no State Maximum Allowable Cost program. Xerox is the current pharmacy claims processor responsible for the State's Medicaid Management Information System (MMIS).

Offerors are encouraged to propose innovative solutions to meet or exceed the requirements of this RFP. All proposals must be consistent with current DOM policies, and federal and state law.

## **1.4 TECHNICAL REQUIREMENTS**

DOM seeks a Contractor with a minimum of eight (8) years of experience servicing government accounts to coordinate all phases of defining and maintaining the pharmacy rate setting methodology that is consistent with both federal and state law. The Contractor must provide proven methodologies, yet preserve flexibility for DOM to customize the pharmacy program to suit Mississippi's needs.

Like most states, Mississippi has a number of environmental and other factors relating to the provision of pharmacy products and services that are unique to the state. For example, the number of independently owned pharmacies which are highly dependent on Medicaid reimbursement must be carefully considered when setting and maintaining rates.

The Contractor will be required to adhere to the performance requirements of the contract as well as the requirements of any revisions in federal or state legislation or regulations which may be enacted or implemented during the period of performance of this contract that are directly applicable to the performance requirements of this contract.

The scope of work is written to describe the requirements for the Contractor. Proposals must clearly and succinctly state how the Offeror proposes to meet or exceed these requirements if they are selected as the Contractor.

### **1.4.1 Major Tasks**

Offerors should propose a solution to define and maintain a rate setting methodology. Offerors should propose:

1. Various methods to use in determining DOM's acquisition cost for pharmaceuticals covered by the Mississippi Medicaid program in accordance with Miss. Code § 43-13-117(A)(9)(b) (1972, amended);
2. Process for developing a rate structure to encompass a new pricing benchmark for drug ingredient costs including an evaluation of dispensing fees performed at an interval determined by DOM; and
3. Plans for maintaining and administering the accepted pricing benchmark, as necessary.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

4. Process for monitoring and forecasting the economic impact to MS Medicaid of drugs that are predicted to have a substantial economic impact, including but not limit to specialty or pipeline drugs). These drugs could include certain orphan drugs, which may have low utilization overall, but due to their anticipated higher cost, will impact DOM's spend when patients begin therapy. They may also include additional treatment options within a disease state.

Each of these major tasks must be accomplished and presented separately.

Requirements of this RFP and possible resulting contract are subject to future changes by CMS. Offerors are encouraged to propose innovative solutions to meet or exceed the requirements of the RFP. All proposals must be consistent with current DOM policies and limitations for covered services, provider types, state plan benefits, and federal and state law.

## **1.5 RATE STRUCTURE DESIGN AND DEVELOPMENT**

The Contractor shall create comprehensive plans to design, develop, implement, and maintain a drug reimbursement methodology for DOM covered drugs. DOM desires to implement a rate structure based on ACA.

DOM desires a drug pricing benchmark to include brand and generic legend drugs/products as well as covered over-the-counter medications/products:

1. The ability to accurately measure drug acquisition cost;
2. A price for all national drug codes (NDCs);
3. A method that can be used for many years;
4. Processes to update drug prices to reflect changes in the drug market;
5. The ability to clearly determine how the benchmark price was derived;
6. The ability to obtain benchmark prices from established resources;
7. The ability to identify and monitor national industry trends; and
8. The ability to identify and monitor drug shortages or other potential impacts on the market.

In addition to the drug ingredient cost, the Contractor must conduct an evaluation of the payment of a professional dispensing fee and include any proposed changes as part of the rate structure design. The current definition of dispensing fee is listed in the Code of Federal Regulations (CFR) 42 CFR 447.502.

The Contractor must conduct all activities associated with the rate structure design, development, implementation, and maintenance. In addition, the Offeror must create a proposed schedule for all activities necessary to complete all requirements. The Contractor must submit a final schedule for DOM approval thirty (30) calendar days prior to operations.

The Contractor will be required to conduct coordination activities with DOM, as well as seek input from stakeholders, pharmacy provider associations, or other interested parties, necessary to implement and maintain the project. This coordination may be done via phone/conference calls, memos, letters, etc., or may require face-to-face meetings. All presentations and written information shared with providers, pharmacy associations, and

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

other stakeholders shall be submitted to DOM for approval thirty (30) calendar days prior to use. The Offeror must demonstrate an ability to coordinate and manage these activities.

For purposes of acquiring any drug costs and/or evaluating professional dispensing fees, the Contractor must streamline the process of requesting, obtaining, analyzing, and reporting information/data to ensure minimal administrative tasks for providers. The Contractor must be able to accept surveys/invoices via fax, mail, and electronic means from the pharmacy and/or wholesaler. The Contractor must detail a process for the electronic collection of this data directly from the wholesaler with the allowance for manual submission only if requested by the provider. The Offeror must demonstrate an ability to coordinate and manage these activities.

The Offeror shall submit in their proposal data file formats and data fields required necessary to perform any and all functions of this contract. DOM shall provide the Contractor with data file formats, data fields available and user agreements after contract award.

The Offeror's proposal must include comprehensive plans to undertake all facets of the design, development, and implementation of the rate structure. The Contractor is encouraged to recommend additional plans and tasks to DOM for approval.

The Offeror must demonstrate knowledge of the MS environment, provider community, and applicable risks associated with developing and maintaining a payment methodology for the pharmacy program. The Offeror must demonstrate plans to ameliorate or minimize identified risks or potential risks.

## **1.6 MAINTENANCE AND ADMINISTRATION OF PRICING BENCHMARK**

The Offeror shall describe how they will maintain and administer the DOM drug pricing benchmark including regularly and consistently applied updates. The Offeror shall describe how they will respond to market changes (price changes, new generics, increased generic competition, generic manufacturer withdrawal from the market, etc.) and how they will provide appropriate and timely adjustments, if necessary. The Contractor must document and report any adjustments to prices.

Maintenance and administration of the pricing benchmark must include all of the same core requirements as described in Section 1.4 and be used in the design and development of the rate structure.

The Contractor must provide DOM with information on external factors affecting prescription drug pricing, including but not limited to federal legislation and program implementation, any legal issues or cases affecting drug pricing, trends in drug reimbursement, trends in professional dispensing fees, and/or pharmacy provider issues. The Contractor shall report this information on the 10<sup>th</sup> calendar day of every month following the month of service and within one (1) business day for any urgent developments.

The Contractor must evaluate and report to DOM price changes in brand and generic legend drugs/products as well as covered over-the-counter medications/products, changes in the number of manufacturers and/or wholesalers, and changes in availability, within one (1) business day of identification.

The Contractor must have the capability to provide NADAC prices directly to DOM's fiscal agent so as to address the time lag it takes for CMS to push out new NADAC prices or NADAC price updates to First Data Bank.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

For drugs that have no standard benchmark price, i.e., NADAC or WAC, the Contractor must ensure DOM provides fair and equitable reimbursement to pharmacy providers by providing an Average Acquisition Costs (AAC) to insure compliance with ACA (42 CFR Part 447 Medicaid Program Covered Drugs).

The Contractor must provide published on-line drug pricing access for providers. A link to the Contractor's site with the published drug pricing must be made available to DOM ten (10) calendar days prior to the Contract start date for placement on the DOM website.

The Contractor must be able to respond within one (1) business day to changing circumstances in the drug marketplace that require any prices to be reviewed and reduced, increased, added, or removed in the system.

The Contractor must provide support by telephone, fax, email, mail, internet, or other means and promptly investigate, respond to, and resolve any questions or concerns by providing some evidence of pricing or drug product availability. The Contractor must respond to DOM or provider or stakeholder questions within one (1) business day of receipt with a resolution or proposed resolution.

The Contractor must be prepared to provide expert testimony when necessary.

## **1.7 REPORTING AND DELIVERABLES**

The Contractor will support DOM with comprehensive administrative reports necessary for decision making and efficient program operation. The Contractor shall be required to provide at a minimum the following types of reports in a format and frequency as approved by DOM. The Offeror may make recommendations concerning additional reporting requirements.

The Contractor shall submit written reports of contract status to DOM on the 10<sup>th</sup> calendar day of every month following the month of service. The progress report must include:

- 1) Current schedule of activities related to the contract
- 2) Status of all activities
- 3) Completed activities
- 4) Actionable recommendations
- 5) Administrative summary
- 6) Industry updates

The Call Center report must include:

- 1) Call volume
- 2) Inquiry request log
- 3) Complaints and grievances
- 4) Complaints and grievances resolutions
- 5) Actionable recommendations
- 6) Administrative summary

The Drug Pricing report must include:

- 1) Monthly executive summary
- 2) Total claim volume

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

3) Individual pricing methodology volumes

The annual report must include, at a minimum:

- a. Executive Summary
- b. Accomplishments
- c. Provider education/concerns
- d. Patterns and trends
- e. Estimated savings, if applicable
- f. Assessment of the impact of the pharmacy reimbursement methodology, and
- g. Cumulative summary of all reports/deliverables with a narrative description

The annual report must be submitted by February 1<sup>st</sup> following the reporting year.

Ad hoc reports shall be provided as requested by DOM.

## **1.8 KEY PERSONNEL**

The Offeror shall propose personnel for each phase of the rate setting process who are fully qualified to perform the work required therein. DOM must have unlimited access to key personnel for discussion of all aspects of this contract.

The Contractor may not make any permanent or temporary changes in key personnel assigned to this Contract without DOM's prior written approval. DOM reserves the right to approve all key staff persons assigned to this Contract.

Key personnel for program implementation and operations shall include, at a minimum, the following:

1. Project Manager for each Phase – This key staff person will be responsible for implementation and/or operations of the contract requirements, including all deliverables. This person must have five (5) years' experience in project management in pharmaceutical reimbursement as described in this RFP and must have a college or university degree in pharmacy with a minimum of five years of clinical pharmacy experience. The individual must have general knowledge of the Medicaid program, particularly pharmacy coverage and payment rules, with relevant experience in managing complex projects.
2. Pharmacist for each Phase – This key staff person will be responsible for clinical oversight and support. This person must have five (5) years' experience in specialized government health related rate setting experience or a minimum of ten (10) years of work related experience in a pharmacy practice setting, as described in this RFP and must be a graduate of a pharmacy school with a bachelor of science in pharmacy degree or a doctorate of pharmacy degree.. The individual must have general knowledge of the Medicaid program, particularly pharmacy coverage and payment rules, with relevant experience in managing complex projects.
3. Certified Public Accountant for each Phase – This key staff person will be responsible for financial oversight and support. This person must have five (5) years' experience in pharmacoeconomic modeling and government related rate setting, as described in this RFP. The individual must have general knowledge of the Medicaid program, particularly pharmacy coverage and payment rules, with relevant experience in managing complex projects.

4. Other Key Support Staff – Other key staff persons as assigned by the Contractor. All duties must be clearly defined and responsibilities must be directly related to program operations.

## **1.9 DIVISION OF MEDICAID RESPONSIBILITIES**

DOM is responsible for the general administration of the Mississippi Medicaid program and management of the contract including establishment of policy and approval of overall administrative procedures. DOM will:

1. Provide overall project direction
2. Review and approve the Contractor's finalized work plan for each phase;
3. Monitor milestones and activities per the Project Plan;
4. Monitor the Contractor's performance;
5. Coordinate any and all data and system needs; and
6. Review and approve all reporting formats and deliverables.

## **1.11 CONTRACT PHASES**

### **1.11.1 Implementation Phase**

The Contractor shall be responsible for the preparation and execution of an implementation plan. This plan shall be based upon the requirements of this RFP and coordinated with DOM to ensure readiness to complete required tasks by operations date. The Contractor will develop an implementation plan to be approved by DOM that outlines in detail all steps necessary to begin operations.

During the Implementation Phase a written report of program progress shall be submitted to DOM every week. The progress report must specify accomplishments during the report period in a task-by-task format, including whether the planning tasks are being performed on schedule and any administrative problems encountered. The anticipated Implementation Phase is 30 Days and will begin on June 1, 2016.

### **1.11.2 Operations Phase**

During the operations phase, the Contractor must perform the responsibilities described in this RFP. The Contractor will be required to adhere to the performance requirements of the contract as well as the requirements of any revisions in federal and state legislation or regulations which may be enacted or implemented during the period of performance of this contract that are directly applicable to the performance requirements of this contract. Such requirements will become a part of this contract effort through execution of a written contract amendment. The anticipated operations start date is July 1, 2016.

### **1.11.3 Turnover Phase**

Prior to any transfer of the contract and the functions to another Contractor, the Contractor must provide assistance in turning over the responsibilities to DOM or its designated agent.

Upon receipt of notification of DOM's intent to transfer the contract functions to another contractor, the contractor must provide a Turnover Plan to DOM within the time frame specified by DOM. Time lines for

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

turnover activities will be specified by DOM. The Turnover Plan must include, but is not limited to, the following:

1. Proposed approach to turnover
2. Tasks and subtasks for turnover
3. Schedule for turnover
4. Detailed chart depicting the Contractor's total operation
5. Transfer of Medicaid documents to DOM or its designated agent

Deliverables must be produced in an organized manner according to reasonable and customary business standards. Deliverables must be turned over to DOM in a form and condition that is satisfactory to DOM and in the time frames specified by DOM. Deliverables include the following:

1. Turnover Plan
2. Detailed organization chart
3. All Medicaid documents
4. Turnover Results Reports

## **1.12 CONTRACTOR PAYMENT**

The total amount payable by DOM to the Contractor under this contract shall be limited to the following:

### **1.12.1 Implementation Price**

The Contractor shall be paid an implementation price of no more than the actual implementation costs up to the amount specified in the Contractor's proposal set forth in Appendix A. The payment schedule will be determined within 30 days of the contract signing and based on milestones and deliverables. The total bid price for implementation must be entered in the appropriate block of Appendix A.

### **1.12.2 Operations Price**

Beginning on the program operations start date, the Contractor will be paid on a monthly basis in accordance with the Contractor's bid price proposals set forth in Appendix A which shall be firm and fixed for the period of the contract.

Contractors shall submit as a component of the business/cost proposal, the method of price determination best suited for the proposed services, i.e., price per request, price per match, annual firm fixed price (with or without contingency adjustments), or a combination of pricing methods.

Regardless of the method of price determination, Contractors shall submit a total price per year that is inclusive of all costs for the services outlined in the scope of work, including operations, production of all reports, and system management functions as defined in this RFP. A separate per year price shall be submitted on Appendix



Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

A. The contract award will be based on the submitted price per year and the total amount payable under the resulting contract will not exceed the submitted price per year.

**1.12.3 Turnover Price**

No specific or lump-sum payment shall be made by DOM for Turnover Phase services. Payment for such services shall be encompassed in the Operations Phase.

**1.12.4 Travel**

All travel performed in conjunction with performing the responsibilities of this contract shall not include any profit for the Contractor. Travel costs should be included in the implementation and operations costs as necessary. All travel costs must be prior approved by DOM.

**1.12.5 Erroneous Issuance of Compensation**

In the event compensation to the Contractor of any kind is issued in error, the Contractor shall reimburse DOM the full amount of erroneous payment within 30 days of written notice of such error. Interest shall accrue at the statutory rate upon any amounts determined to be due and not repaid within 30 days following the notice. If payment is not made within 30 days following notice, DOM may deduct the amount from the Contractor's monthly administrative invoice.

**1.12.7 Release**

Upon final payment of the amounts due under this contract, the Contractor shall release DOM and its officers and employees from all liabilities and obligations whatsoever under or arising from this contract. Payment to the Contractor by DOM shall not constitute final release of the Contractor. Should audit or inspection of the Contractor's records subsequently reveal outstanding Contractor liabilities or obligations, the Contractor shall remain liable to DOM for such liabilities and obligations. Any overpayments by DOM shall be subject to any appropriate recoupment to which DOM is lawfully entitled. Any payment under this contract shall not foreclose the right of DOM to recover excessive or illegal payments as well as interest, attorney fees, and costs incurred in such recovery.

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Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

## **2 AUTHORITY**

This RFP is issued under the authority of Title XIX of the Social Security Act as amended, implementing regulations issued under the authority thereof, and under the provisions of the Mississippi Code of 1972, as amended. All prospective contractors are charged with presumptive knowledge of all requirements of the cited authorities in this RFP. The submission of a valid executed proposal by any prospective contractor shall constitute admission of such knowledge on the part of each prospective contractor. Any proposal submitted by any prospective contractor which fails to meet any published requirement of the cited authorities may, at the option of DOM, be rejected without further consideration.

Medicaid is a program of medical assistance for the needy administered by the states using state appropriated funds and federal matching funds within the provisions of Title XIX of the Social Security Act, as amended. In Mississippi, the state Medicaid agency also administers the separate CHIP program under Title XXI of the Social Security Act, as amended.

In addition, Section 1902(a)(30)(A) of the Social Security Act, as amended, requires that State Medicaid Agencies provide methods and procedures to safeguard against unnecessary utilization of care and services and to assure “efficiency, economy, and quality of care.”

The IT solution proposed in response to this RFP must be in compliance with the State of Mississippi’s Enterprise Security Policy. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and covers the following topics: web servers, email, virus prevention, firewalls, data encryption, remote access, passwords, servers, physical access, traffic restrictions, wireless, laptop and mobile devices, disposal of hardware/media, and application assessment/certification. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Contractor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

The Enterprise Security Policy is available to third parties on a need-to-know basis and requires the execution of a non-disclosure agreement with the Department of Information Technology Services (ITS) prior to accessing the policy. The Offeror or Contractor may request individual sections of the Enterprise Security Policy or request the entire document by contacting the procurement officer.

Instructions to acquire a copy of the Enterprise Security Policy can be found at the following link: <http://www.its.ms.gov/Services/Documents/Security/Instructions%20for%203Party%20Acquiring%20ITS%20ESP.pdf>

### **2.1 ORGANIZATIONS ELIGIBLE TO SUBMIT PROPOSALS**

To be eligible to submit a proposal, an Offeror must provide documentation for each requirement as specified below:

1. The Offeror has not been sanctioned by a state or Federal government within the last ten (10) years.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

2. The Offeror must have experience in contractual services providing the type of services described in this RFP.

The Offeror must be able to provide each required component and deliverable as detailed in the Scope of Work.

## **2.2 PROCUREMENT APPROACH**

The major steps of the procurement approach are described in detail in Section 3 of this RFP. Proposals must be submitted in two parts: Technical Proposal and Business Proposal. The format and content are each specified in Sections 5 and 6 of this RFP.

## **2.3 ACCURACY OF STATISTICAL DATA**

All statistical information provided by DOM in relation to this RFP represents the best and most accurate information available to DOM from DOM records at the time of the RFP preparation. DOM, however, disclaims any responsibility for the inaccuracy of such data. Should any element of such data later be discovered to be inaccurate, such inaccuracy shall not constitute a basis for contract rejection by any Offeror. Neither shall such inaccuracy constitute a basis for renegotiation of any payment rate after contract award. Statistical information is available on DOM's Website.

## **2.4 ELECTRONIC AVAILABILITY**

The materials listed below are on the Internet for informational purposes only. This electronic access is a supplement to the procurement process and is not an alternative to official requirements outlined in this RFP.

This RFP, any amendments thereto, and RFP Questions and Answers (following official written release) will be posted on the Procurement page of the DOM website at <http://www.medicaid.ms.gov/resources/procurement/>.

Information concerning services covered by Mississippi Medicaid and a description of the DOM organization and functions can also be found on the Procurement page of the DOM website.

DOM's website is <http://www.medicaid.ms.gov> and contains Annual Reports, Provider Manuals, Bulletins and other information. The DOM Annual Report Summary provides information on beneficiary enrollment, program funding, and expenditures broken down by types of services covered in the Mississippi Medicaid program for the respective fiscal years.

State financial information is available at <http://www.dfa.state.ms.us>.

The State of Mississippi portal is <http://www.mississippi.gov>.

MAGIC system information can be found at <http://www.mmrs.state.ms.us/MAGIC/index.shtml>.

Information regarding Mississippi Department of Information Technology Services Enterprise Security Policy can be found at <http://www.its.ms.gov/Services/Pages/ENTERPRISE-SECURITY-POLICY.aspx>.

Rules and Regulations of the Mississippi State Personnel Board/Personal Services Contract Review Board can be found at <http://www.mspb.ms.gov>.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

The Mississippi Code of 1972 covers all sections of and amendments to the Constitution of the United States and the Constitution of the State of Mississippi. Access to the Mississippi Code can be found at [http://www.sos.state.ms.us/ed\\_pubs/mscode/](http://www.sos.state.ms.us/ed_pubs/mscode/).

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### **3 PROCUREMENT PROCESS**

#### **3.1 APPROACH**

This RFP is designed to provide the Offeror with the information necessary to prepare a competitive proposal. Similarly, the RFP process is intended to also provide DOM with the necessary information to adequately assist DOM in the selection of a Contractor to provide the desired services. It is not intended to be comprehensive, and each Offeror is responsible for determining all factors necessary for submission of a comprehensive and accurate proposal. DOM reserves the right to interpret the language of this RFP or its requirements in a manner that is in the best interest of the State.

DOM will ensure the fair and equitable treatment of all persons and Offerors in regards to the procurement process. The procurement process provides for the evaluation of proposals and selection of the winning proposal in accordance with Federal and State laws and regulations. Specifically, the procurement process is guided by appropriate provisions of the State Personal Service Contract Review Board Regulations which are available for inspection at 210 East Capitol Street, Suite 800, Jackson, Mississippi or downloadable at [www.mspb.ms.gov](http://www.mspb.ms.gov).

Separate technical and business proposals shall be submitted simultaneously but will be opened at different stages of the evaluation process. Technical Proposals will be thoroughly evaluated in order to determine point scores for each evaluation factor and a final technical score determined before evaluation of the Business Proposal. The evaluation and selection process is described in more detail in Section 7 of this RFP.

Submission of a proposal in response to this RFP constitutes acceptance of the conditions governing the procurement process, including the evaluation factors contained in Section 7 of this RFP, and constitutes acknowledgment of the detailed descriptions of the Mississippi Medicaid Program.

No public disclosure or news release pertaining to this procurement shall be made without prior written approval of DOM. Failure to comply with this provision may result in the Offeror being disqualified.

#### **3.2 QUALIFICATION OF OFFEROR**

Each corporation shall report its corporate charter number in its transmittal letter or, if appropriate, have attached to its transmittal letter a signed statement to the effect that said corporation is exempt from the above described, and set forth the particular reason(s) for exemption. All corporations shall be in full compliance with all Mississippi laws regarding incorporation or formation and doing business in the State of Mississippi and shall be in compliance with the laws of the state in which they are incorporated, formed, or organized.

DOM may make such investigations as necessary to determine the ability and commitment of the Offeror to adhere to the requirements specified within this RFP and its proposal, and the Offeror shall furnish to DOM all such information and data for this purpose as may be requested. DOM reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capability to fulfill the requirements of the contract. DOM reserves the absolute right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fail to satisfy DOM that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work or furnish the items contemplated.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

DOM reserves the right to reject any and all proposals, to request and evaluate “best and final offers” from some or all of the respondents, to negotiate with the best proposed Offeror to address issues other than those described in the proposal, to award a contract to other than the lowest cost Offeror, or not to make any award if it is determined to be in the best interest of DOM and the State.

Discussions may be conducted by the procurement officer with any Offeror that submits a proposal determined to be reasonably susceptible of being selected for award. Proposals may also be accepted without such discussions. DOM reserves the right to request additional information or clarification of an Offeror’s proposal. The Offeror’s cooperation during the evaluation process in providing DOM staff with adequate responses to request for clarification will be considered a factor in the evaluation of the Offeror’s overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at DOM’s discretion, result in the disqualification of the Offeror’s proposal.

### **3.3 RULES OF PROCUREMENT**

To facilitate the DOM procurement, various rules have been established and are described in the following paragraphs.

#### **3.3.1 Restrictions on Communications with DOM Staff**

From the issue date of this RFP until a Contractor is selected and the contract is signed, Offerors and/or their representatives are not allowed to communicate with any DOM staff regarding this procurement except the RFP Issuing Officer Matthew Nassar.

For violation of this provision, DOM shall reserve the right to reject any proposal.

#### **3.3.2 Amendments to this Request for Proposals**

DOM reserves the right to amend the RFP at any time. All amendments will be posted to the DOM website at <http://www.medicaid.ms.gov/resources/procurement/>. After March 25, 2016, Offerors submitting proposals will be notified when amendments are released.

Offerors shall acknowledge receipt of any amendment to the solicitation by signing and returning the form provided with the amendment, and identifying the amendment number and date in the Offeror’s Transmittal Letter. The acknowledgment must be received by DOM by the time and at the place specified for receipt of bids.

#### **3.3.3 Cost of Preparing Proposal**

Costs of developing the proposals are solely the responsibility of the Offerors. DOM will provide no reimbursement for such costs. Any costs associated with any oral presentations to DOM shall be the responsibility of the Offeror and shall in no way be billable to DOM. If site visits are made, DOM’s cost for such visits shall be the responsibility of DOM and the Offeror’s cost shall be the responsibility of the Offeror and shall in no way be billable to DOM.

### **3.3.4 Certification of Independent Price Determination**

The Offeror certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Offeror or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

### **3.3.5 Acceptance of Proposals**

After receipt of the proposals, DOM reserves the right to award the contract based on the terms, conditions, and premises of the RFP and the proposal of the selected Contractor without negotiation.

All proposals properly submitted will be accepted by DOM. After review DOM may request necessary amendments from all Offerors, reject any or all proposals received, or cancel this RFP, according to the best interest of DOM and the State of Mississippi.

DOM also reserves the right to waive minor irregularities in bids providing such action is in the best interest of DOM and the State of Mississippi. A minor irregularity is defined as a variation of the RFP which does not affect the price of the proposal, or give one party an advantage or benefit not enjoyed by other parties, or adversely impact the interest of DOM.

Where DOM may waive minor irregularities as determined by DOM, such waiver shall in no way modify the RFP requirements or excuse the Offeror from full compliance with the RFP specifications and other contract requirements if the Offeror is awarded the contract.

DOM reserves the right to exclude any and all non-responsive proposals from any consideration for contract award. DOM will award a firm fixed price contract to the Offeror whose offer is responsive to the solicitation and is most advantageous to DOM and the State of Mississippi in price, quality, and other factors considered.

### **3.3.6 Rejection of Proposals**

A proposal may be rejected for failure to conform to the rules or the requirements contained in this RFP. Proposals must be responsive to all requirements of the RFP in order to be considered for contract award. DOM reserves the right at any time to cancel the RFP, or after the proposals are received to reject any of the submitted proposals determined to be non-responsive. DOM further reserves the right to reject any and all proposals received by reason of this request. Reasons for rejecting a proposal include, but are not limited to, the following:

1. The proposal contains unauthorized amendments to the requirements of the RFP.
2. The proposal is conditional.
3. The proposal is incomplete or contains irregularities that make the proposal indefinite or ambiguous.
4. The proposal is not signed by an authorized representative of the party.
5. The proposal contains false or misleading statements or references.
6. The Offeror is determined to be non-responsible as specified in Section 3-401 of the Mississippi State Personal Services Contract Review Board Regulations.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

7. The proposal ultimately fails to meet the announced requirements of the State in some material aspect.
8. The proposal price is clearly unreasonable.
9. The proposal is not responsive, i.e., does not conform in all material respects to the RFP.
10. The supply or service item offered in the proposal is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the RFP.
11. The Offeror does not comply with the Procedures for Delivery of Proposal as set forth in the RFP.
12. The Offeror currently owes the State money.

### **3.3.7 Alternate Proposals**

Each Offeror, its subsidiaries, affiliates, or related entities shall be limited to one Technical Proposal and one Business Proposal which is responsive to the requirements of this RFP. Failure to submit a responsive proposal will result in the rejection of the Offeror's proposal. Submission of more than one proposal by an Offeror may, at the discretion of DOM, result in the summary rejection of all proposals submitted. An Offeror's proposal shall not include variable or multiple pricing options.

### **3.3.8 Proposal Amendments and Withdrawal**

Prior to the proposal due date, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to DOM, signed by the Offeror.

An Offeror may submit an amended proposal before the due date for receipt of proposals. Such amended proposal must be a complete replacement for a previously submitted proposal and must be clearly identified as such in the Transmittal Letter. DOM will not merge, collate, or assemble proposal materials.

Unless requested by DOM, no other amendments, revisions, or alterations to proposals will be accepted after the proposal due date.

Any submitted proposal shall remain a valid proposal for one hundred eighty (180) days from the proposal due date.

### **3.3.9 Disposition of Proposals**

The proposal submitted by the successful Offeror shall be incorporated into and become part of the resulting contract. All proposals received by DOM shall upon receipt become and remain the property of DOM. DOM will have the right to use all concepts contained in any proposal and this right will not affect the solicitation or rejection of the proposal.

### **3.3.10 Responsible Contractor**

DOM shall contract only with a responsible Contractor who possesses the ability to perform successfully under the terms and conditions of the proposed procurement and implementation. In letting the contract, consideration shall be given to such matters as Contractor's integrity, performance history, financial and technical resources, and accessibility to other necessary resources.



### **3.3.11 Best and Final Offers**

The Executive Director of DOM may make a written determination that it is in the State's best interest to conduct additional discussions or change the State's requirements and require submission of best and final offers. The Procurement Officer shall establish a date and time for the submission of best and final offers. Otherwise, no discussion of or changes in the bids shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

### **3.4 ORAL PRESENTATION**

DOM does not anticipate conducting Oral Presentations.

### **3.5 STATE APPROVAL**

Approval from the Mississippi Personal Services Contract Review Board must be received before contract execution. Every effort will be made by DOM to facilitate rapid approval and a start date consistent with the proposed schedule.

### **3.6 NOTICE OF INTENT TO AWARD**

Award shall be made in writing to the responsible Offeror whose proposal is determined to be the most advantageous to the State taking into consideration price and evaluation factors set forth in the RFP. The notice of intended contract award shall be sent by e-mail with reply confirmation to the winning Offeror. Unsuccessful Offerors will be notified in the same manner after the award has been accepted or declined.

Consistent with existing State law, no Offeror shall infer or be construed to have any rights or interest to a contract with DOM until final approval is received from all necessary entities and until both the Offeror and DOM have executed a valid contract.

### **3.7 POST-AWARD DEBRIEFING**

#### **3.7.1 Debriefing Request**

Offerors may request a post-award debriefing, by email to the Procurement Officer, to be received by DOM within three (3) business days of notification of the contract award. The Offeror shall submit a list of written questions simultaneously with its debriefing request. A debriefing is a meeting and not a hearing; therefore, legal representation is not required. If a vendor prefers to have legal representation present, the Offeror shall notify DOM and identify the Offeror's attorney prior to the debriefing. DOM may include its own legal representation in the debriefing.

**Debriefings will not be held during the protest period. Offerors who submit a protest will not be granted a debriefing.**

### **3.7.2 Scheduling the Debriefing**

The debriefing may occur any time after the protest period has passed. The debriefing may be conducted during a face-to-face meeting, by telephone, or by any other method acceptable to both DOM and the Offeror. The Procurement Officer or designee shall chair the meeting, and where practicable, may include other staff with direct knowledge of the procurement.

### **3.7.3 Information to Be Provided**

The debriefing information may include the following:

1. Evaluation of significant weaknesses or deficiencies in the Offeror's proposal, if applicable;
2. The overall evaluated technical rating of the debriefed Offeror;
3. The overall ranking of all Offerors developed during the selection process;
4. A summary of the rationale for award; and,
5. Reasonable responses to relevant questions as submitted by the debriefed Offeror with its request for debrief. Questions may pertain to selection procedures contained in the RFP, applicable regulations, and other applicable authorities that were followed.

### **3.7.4 Information Which Will Not Be Provided**

The debriefing shall not include point-by-point comparisons of the debriefed Offeror's proposal with those of other Offerors. Moreover, DOM shall not reveal any information prohibited by law and/or the following:

1. Trade secrets as identified by the Offeror;
2. Privileged or confidential processes and techniques as identified by the Offeror;
3. Commercial and financial information that is privileged or confidential, to include Offeror's cost, breakdowns, profit, indirect cost rates, and similar information as identified by the Offeror and/or;
4. The names of individuals providing reference information about any Offeror's past performance.

DOM will not release copies of proposals or price information in the debriefing. These items may be requested through a Request for Public Information to DOM's Public Information Officer at [RFI@medicaid.ms.gov](mailto:RFI@medicaid.ms.gov).

## **3.8 PROTEST POLICY AND PROCEDURES**

### **3.8.1 Form of the Protest**

Offerors who submit technical and business proposals in response to this RFP may protest the award of the contract resulting from this RFP. Protests must be made in writing and must be received no later than seven (7) business days from the notice of non-award. Protests should be addressed to DOM's Executive Director and must contain specific grounds for the protest. Supporting documentation may be included with the protest.

A protest must state all grounds upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived. Protests submitted within the seven (7) business days may be supplemented and/or modified.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

Only the following are acceptable grounds for protest:

- Failure to follow any of the following: 1) DOM procedures established in the RFP, 2) DOM rules of procurement, or 3) PSCRB Rules and Regulations;
- Errors in computing scores which contributed to the selection of an Offeror other than the lowest and best bidder; or,
- Bias, discrimination, or conflict of interest on the part of an evaluator.

Disallowed grounds include:

- Evaluators' qualifications to serve on the Evaluation Committee;
- The professional judgment of the Evaluation Committee; and,
- DOM's assessment of its own needs regarding the solicitation.

A protest that is incomplete or not submitted within the prescribed time limits will be summarily dismissed.

### **3.8.2 Protest Bond**

Protests must be accompanied by a bond for two hundred fifty thousand dollars and zero cents (\$250,000.00) or the price of the contract whichever is lower. The protest bond shall be maintained through final resolution, whether at the agency level or through a court of appropriate jurisdiction.

DOM will return a protest bond if (1) the protesting Offeror withdraws its protest or (2) the bond is ordered to be returned by a court of competent jurisdiction. In the event DOM finds that an Offeror's protest has no merit, DOM shall at its own discretion retain all or a percentage of the submitted bond. Please refer to Section 4.9 for further details regarding proposal protests.

### **3.8.3 DOM's Responsibilities Regarding Protests**

The Notice of Non-Award shall be accompanied by redacted copies of the evaluation score sheets.

The Procurement Officer shall provide a copy of the protest documents to the successful Offeror within three (3) business days of receipt of the protest. The successful Offeror shall have the right to provide documentation supporting the decision to award.

The Executive Director shall review all documentation concerning the procurement and may request additional documentation. He/She shall then determine whether or not the award of the contract shall be delayed or cancelled; or, if the protest is clearly without merit or that award of the contract without delay is necessary to protect the interests of the State. The Executive Director will provide written notice of the decision to the protesting Offeror. This written notice will be the final agency decision.

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## **4. TERMS AND CONDITIONS**

### **4.1 GENERAL**

The contract between the State of Mississippi and the Contractor shall consist of 1) the contract and any amendments thereto; 2) this RFP and any amendments thereto; 3) the Contractor's proposal submitted in response to the RFP by reference and as an integral part of this contract; 4) written questions and answers. In the event of a conflict in language among the four documents referenced above, the provisions and requirements set forth and/or referenced in the contract and its amendments shall govern. The RFP in its entirety is a part of the Contract. In the event of a dispute or conflict among any of the components of the contract, the contract shall govern. After the Contract, the order of priority is: Att. D, Bidder Questions and Answers; Att. C or E, the Business Proposal or BAFO; if applicable Att. B, the Technical Proposal; and Att. A, the RFP. All the documents shall be read and construed as far as possible to be one harmonious whole; however, in the event of a conflict or dispute, the above list is the list of priority.

The contract shall be governed by the applicable provisions of the Mississippi *Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol Street, Suite 800, Jackson, Mississippi, 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.

No modification or change of any provision in the contract shall be made, or construed to have been made, unless such modification or change is mutually agreed upon in writing by the Contractor and DOM. The agreed upon modification or change will be incorporated as a written contract amendment and processed through DOM for approval prior to the effective date of such modification or change. In some instances, the contract amendment must be approved by CMS before the change becomes effective.

The only representatives authorized to modify this contract on behalf of DOM and the Contractor are shown below:

Contractor: Person(s) designated by the Contractor

DOM: Executive Director

### **4.2 PERFORMANCE STANDARDS, ACTUAL DAMAGES, LIQUIDATED DAMAGES, AND RETAINAGE**

DOM may require corrective action in the event that any deliverable, report or the like should indicate that the Contractor is not in compliance with any provision of this Contract. DOM may also require the modification of any policies or procedures of the Contractor relating to the fulfillment of its obligations pursuant to this Contract. DOM may issue a deficiency notice and may require a corrective action plan be filed within fifteen (15) calendar days following the date of the notice. A corrective action plan shall delineate the time and manner in which each deficiency is to be corrected. The corrective action plan shall be subject to approval by DOM, which may accept it as submitted, accept it with specified modifications, or reject it. DOM may extend or reduce the time frame for corrective action depending on the nature of the deficiency, and shall be entitled to exercise any other right or remedy available to it, whether or not it issues a deficiency notice or provides Contractor with the opportunity to take corrective action.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

DOM reserves the right to assess actual or liquidated damages, upon the Contractor's failure to provide timely services required pursuant to this contract. DOM may assess liquidated damages against the Contractor pursuant to this Section, and deduct the amount of the damages from the Contractor's next contingency payment. Any damages applied prior to recovery of money under this contract shall be applied against the first contingency payment. DOM, at its sole discretion, may establish an installment deduction plan for the amount of any damages. The determination of the amount of damages shall be at the sole discretion of DOM, within the ranges set forth below. Self-reporting by the Contractor will be taken into consideration in determining the amount of damages to be assessed. Unless specified otherwise, DOM will give written notice to the Contractor of the failure that might result in the assessment of damages and the proposed amount of the damages. The Contractor shall have fifteen (15) calendar days from the date of the notice in which to dispute DOM's determination. Unless a different amount is specifically set forth below, DOM may, at its sole discretion, assess damages between one dollar and zero cents (\$1.00) and five thousand dollars and zero cents (\$5,000.00) for each failure that occurs or remains uncorrected..

Assessment of any actual or liquidated damages does not waive any other remedies available to DOM pursuant to this contract or State or Federal law. If liquidated damages are known to be insufficient then DOM has the right to pursue actual damages.

1. Failure to submit a finalized work plan for each phase of the contract by the date agreed upon by the Contractor and DOM, the Contractor shall pay \$100 per business day for every day after the agreed upon due date until the finalized work plan is submitted.
2. Failure to submit reimbursement methodology options by the Contractor and DOM, the Contractor shall pay \$100 per business day for every day after the agreed upon due date until the methodology is submitted.
3. Failure to implement the DOM approved finalized reimbursement methodology as defined in Section 1.4 of this RFP by the date agreed upon by the Contractor and DOM, the Contractor shall pay \$500 per business day for every day after the agreed upon due date until the methodology is implemented.
4. Failure to provide status reports and/or deliverables (verbal and written) for each phase of the Contract by the due date agreed upon by the Contractor and DOM, the Contractor shall pay \$100 per business day for every day after the agreed upon due date until the status reports and/or deliverables are submitted.
5. Failure to respond within twenty-four (24) hours to changing circumstances in the drug marketplace as defined in Section 1.5 of this RFP, the Contractor shall pay \$500 per business day for every day after the twenty-four (24) hour deadline until a response is submitted.
6. Failure to respond to DOM, provider or stakeholder questions within one (1) business day of receipt of request, the Contractor shall pay \$200 per business day for every day after the one (1) day deadline until the response is submitted.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

7. Failure to provide a monthly summary of provider inquiries and their resolution by date agreed upon by the Contractor and DOM, the Contractor shall pay \$100 per business day for every day after the agreed upon due date until the summary is submitted.
8. Failure to obtain written approval from DOM for any temporary or permanent changes to key personnel assigned to the contract, the Contractor shall pay \$500 per instance.
9. Failure by the Contractor to submit by the due date any material required by the Contract. DOM will give written notice to the Contractor, via fax, e-mail, overnight mail or through regular mail of the late material. The Contractor shall have ten (10) calendar days following receipt of the notice in which to cure the failure by submitting the complete and accurate material. If the material has not been submitted within the ten (10) calendar day period, DOM, without further notice, may assess damages.
10. Failure to complete corrective action as described above, the Contractor shall pay liquidated damages in the amount of \$250 per calendar day for each day the corrective action is not completed in accordance with the timeline established in the corrective action plan.
11. Failure to produce deliverables in an organized manner according to reasonable and customary business standards, the Contractor shall pay liquidated damages in the amount of \$5,000 per instance.
12. Failure of the contractor to comply with the close out and turnover requirements of this RFP may result in the assessment of damages of up to \$10,000.00, which, if imposed shall be deducted from the final payment to be made to Contractor.
13. Any other failure of Contractor that DOM determines constitutes a substantial non-compliance with any material term of the Contract and/or RFP not specifically enumerated herein.

### **4.3 TERM OF CONTRACT**

DOM will award a contract based on proposals. The contract period begins June 1, 2016 and will terminate May 31, 2019. DOM may have, under the same terms and conditions as the existing contract, an option for two (2) one-year extension periods, provided DOM obtains approval from the Mississippi State Personal Services Contract Review Board to allow an extension period.

#### **4.3.1 Stop Work Order**

1. Order to Stop Work: The DOM Contract Administrator may, by written order to the Contractor at any time and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to the Contractor, unless the parties agree to any further

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the DOM Contract Administrator shall either:

- a. Cancel the stop work order; or
  - b. Terminate the work covered by such order as provided in the “Termination for Default by the Contractor” clause or the “Termination for Convenience” clause of this contract.
2. Cancellation or Expiration of the Order: If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
- a. The stop work order results in an increase in the time required for, or in the Contractor’s cost properly allocable to, the performance of any part of this contract; and
  - b. The Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the DOM Contract Administrator decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract
3. Termination of Stopped Work: If a stop work order or extension is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
4. Adjustments of Price: Any adjustment in contract price made pursuant to this clause shall be negotiated between DOM and the Contractor.

#### **4.3.2 Termination of Contract**

The contract resulting from this RFP may be terminated by DOM as follows:

1. For default by the Contractor;
2. For convenience;
3. For the Contractor’s bankruptcy, insolvency, receivership, liquidation; and,
4. For non-availability of funds.

At DOM’s option, termination for any reason listed herein may also be considered termination for convenience.

##### **4.3.2.1 Termination for Default by the Contractor**

DOM may immediately terminate this contract in whole or in part whenever DOM determines that the Contractor has failed to satisfactorily perform its contractual duties and responsibilities and is unable to

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

resolve such failure within a period of time specified by DOM, after considering the gravity and nature of the default. Such termination shall be referred to herein as "Termination for Default."

Upon determination by DOM of any such failure to satisfactorily perform its contractual duties and responsibilities, DOM may notify the Contractor of the failure and establish a reasonable time period in which to resolve such failure. If the Contractor does not resolve the failure within the specified time period, DOM will notify the Contractor that the contract in full or in part has been terminated for default. Such notices shall be in writing and delivered to the Contractor by certified mail, return receipt requested, or in person.

If, after Notice of Termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or make progress in performance was due to causes beyond the control and without error or negligence on the part of the Contractor or any subcontractor, the Notice of Termination shall be deemed to have been issued as a termination for the convenience of DOM, and the rights and obligations of the parties shall be governed accordingly.

In the event of Termination for Default, in full or in part as provided by this clause, DOM may procure, upon such terms and in such manner as DOM may deem appropriate, supplies or services similar to those terminated, and the Contractor shall be liable to DOM for any excess costs for such similar supplies or services for the remainder of the contract period. In addition, the Contractor shall be liable to DOM for administrative costs incurred by DOM in procuring such similar supplies or services.

In the event of a termination for default, the Contractor shall be paid for those deliverables which the Contractor has delivered to DOM. Payments for completed deliverables delivered to and accepted by DOM shall be at the contract price.

The rights and remedies of DOM provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

#### **4.3.2.2 Termination for Convenience**

DOM may terminate performance of work under the contract in whole or in part whenever for any reason DOM shall determine that such termination is in the best interest of DOM.

In the event that DOM elects to terminate the contract pursuant to this provision, it shall notify the Contractor by certified mail, return receipt requested, or delivered in person. Termination shall be effective as of the close of business on the date specified in the notice, which shall be at least thirty (30) days from the date of receipt of the notice by the Contractor.

Upon receipt of Notice of Termination for convenience, the Contractor shall be paid the following:

- The contract price(s) for completed deliverables delivered to and accepted by DOM; and,
- A price commensurate with the actual cost of performance for partially completed deliverables.

#### **4.3.2.3 Termination for the Contractor Bankruptcy**

In the event that the Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets, or shall avail itself of, or become subject to, any proceeding under the



Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

Bankruptcy Reform Act of 1978 or any other applicable Federal or State statute relating to insolvency or the protection of the rights of creditors, DOM may, at its option, terminate this contract in whole or in part.

In the event DOM elects to terminate the contract under this provision, it shall do so by sending Notice of Termination to the Contractor by certified mail, return receipt requested, or delivered in person. The date of termination shall be the close of business on the date specified in such notice to the Contractor. In the event of the filing of a petition in bankruptcy by or against a principal subcontractor, the Contractor shall immediately so advise DOM.

The Contractor shall ensure and shall satisfactorily demonstrate to DOM that all tasks related to the subcontract are performed in accordance with the terms of this contract.

#### **4.3.2.4 Availability of Funds**

It is expressly understood and agreed that the obligation of DOM to proceed under this contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of State and/or Federal funds. If the funds anticipated for the continuing fulfillment of the contract are, at any time, not forthcoming or insufficient, either through the failure of the Federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which the funds were provided or if funds are not otherwise available to DOM, DOM shall have the right upon ten (10) working days written notice to the Contractor, to terminate this contract without damage, penalty, cost, or expenses to DOM of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

### **4.3.3 Procedure on Termination**

#### **4.3.3.1 Contractor Responsibilities**

Upon delivery by certified mail, return receipt requested, or in person to the Contractor a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective, the Contractor shall:

- Stop work under the contract on the date and to the extent specified in the Notice of Termination;
- Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work in progress under the contract until the effective date of termination;
- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- Deliver to DOM within the time frame as specified by DOM in the Notice of Termination, copies of all data and documentation in the appropriate media and make available all records required to assure continued delivery of services to beneficiaries and providers at no cost to DOM;
- Complete the performance of the work not terminated by the Notice of Termination;

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

- Take such action as may be necessary, or as DOM may direct, for the protection and preservation of the property related to the contract which is in the possession of the Contractor and in which DOM has or may acquire an interest;
- Fully train DOM staff or other individuals at the direction of DOM in the operation and maintenance of the process;
- Promptly transfer all information necessary for the reimbursement of any outstanding claims; and
- Complete each portion of the Turnover Phase after receipt of the Notice of Termination. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any allowable delay in determining or adjusting the amount of any item of reimbursable price under this clause.

The Contractor has an absolute duty to cooperate and help with the orderly transition of the duties to DOM or its designated Contractor following termination of the contract for any reason.

#### **4.3.3.2 DOM Responsibilities**

Except for Termination for Contractor Default, DOM will make payment to the Contractor on termination and at contract price for completed deliverables delivered to and accepted by DOM. The Contractor shall be reimbursed for partially completed deliverables, accepted by DOM, at a price commensurate with actual cost of performance.

In the event of the failure of the Contractor and DOM to agree in whole or in part as to the amounts to be paid to the Contractor in connection with any termination described in this RFP, DOM shall determine on the basis of information available the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.

The Contractor shall have the right of appeal, as stated under Disputes (Paragraph 4.9.5) from any such determination made by DOM.

#### **4.3.4 Assignment of the Contract**

The Contractor shall not sell, transfer, assign, or otherwise dispose of the contract or any portion thereof or of any right, title, or interest therein without the prior written consent of DOM. Any such purported assignment or transfer shall be void. If approved, any assignee shall be subject to all terms and conditions of this contract and other supplemental contractual documents. No approval by DOM of any assignment may be deemed to obligate DOM beyond the provisions of this contract. This provision includes reassignment of the contract due to change in ownership of the Contractor. DOM shall at all times be entitled to assign or transfer its rights, duties, and/or obligations under this contract to another governmental agency in the State of Mississippi upon giving prior written notice to the Contractor.

#### **4.3.5 Excusable Delays/Force Majeure**

The Contractor and DOM shall be excused from performance under this contract for any period that they are prevented from performing any services under this contract as a result of an act of God, war, civil disturbance, epidemic, court order, government act or omission, or other cause beyond their reasonable

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

control. When such a cause arises, the Contractor shall notify DOM immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless DOM determines it to be in its best interest to terminate the Contract.

#### **4.3.6 Applicable Law**

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflict of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State of Mississippi. The Contractor shall comply with applicable Federal, State, and local laws and regulations.

#### **4.4 NOTICES**

Whenever, under this RFP, one party is required to give notice to the other, except for purposes of Notice of Termination under Section 4.3, such notice shall be deemed given upon delivery, if delivered by hand, or upon the date of receipt or refusal, if sent by registered or certified mail, return receipt requested or by other carriers that require signature upon receipt. Notice may be delivered by facsimile transmission, with original to follow by certified mail, return receipt requested, or by other carriers that require signature upon receipt, and shall be deemed given upon transmission and facsimile confirmation that it has been received. Notices shall be addressed as follows:

In case of notice to the Contractor:

Project Manager  
Street Address  
City, State Zip Code

In case of notice to DOM:

Executive Director  
Division of Medicaid  
550 High St., Suite 1000  
Jackson, Mississippi 39201

Copy to Contract Administrator, DOM

#### **4.5 COST OR PRICING DATA**

If DOM determines that any price, including profit or fee, negotiated in connection with this RFP was increased because the Contractor furnished incomplete or inaccurate cost or pricing data not current as certified in the Contractor's certification of current cost or pricing data, then such price or cost shall be reduced accordingly and this RFP shall be modified in writing and acknowledged by the Contractor to reflect such reduction.

## **4.6 SUBCONTRACTING**

The Contractor is solely responsible for fulfillment of the contract terms with DOM. DOM will make contract payments only to the Contractor.

The Contractor shall not subcontract any portion of the services to be performed under this contract without the prior written approval of DOM. The Contractor shall notify DOM not less than thirty (30) days in advance of its desire to subcontract and include a copy of the proposed subcontract with the proposed subcontractor.

Approval of any subcontract shall neither obligate DOM nor the State of Mississippi as a party to that subcontract nor create any right, claim, or interest for the subcontractor against the State of Mississippi or DOM, their agents, their employees, their representatives, or successors.

Any subcontract shall be in writing and shall contain provisions such that it is consistent with the Contractor's obligations pursuant to this Contract.

The Contractor shall be solely responsible for the performance of any subcontractor under such subcontract approved by DOM.

The Contractor shall give DOM immediate written notice by certified mail, facsimile, or any other carrier that requires signature upon receipt of any action or suit filed and prompt notice of any claim made against the Contractor or subcontractor which in the opinion of the Contractor may result in litigation related in any way to the contract with DOM.

## **4.7 PROPRIETARY RIGHTS**

### **4.7.1 Ownership of Documents**

Where activities supported by this contract produce original writing, sound recordings, pictorial reproductions, drawings, or other graphic representation and works of any similar nature, DOM shall have the right to use, duplicate, and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others do so. If the material is qualified for copyright, the Contractor may copyright such material, with approval of DOM, but DOM shall reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so.

### **4.7.2 Ownership of Information and Data**

DOM, DHHS, CMS, the State of Mississippi, and/or their agents shall have unlimited rights to use, disclose, or duplicate, for any purpose whatsoever, all information and data developed, derived, documented, or furnished by the Contractor under any contract resulting from this RFP.

The Contractor agrees to grant in its own behalf and on behalf of its agents, employees, representatives, assignees, and subcontractors to DOM, DHHS, CMS and the State of Mississippi and to their officers, agents, and employees acting in their official capacities a royalty-free, non-exclusive, and irrevocable license throughout the world to publish, reproduce, translate, deliver, and dispose of all such information now covered by copyright of the proposed Contractor.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

Excluded from the foregoing provisions in this Section 4.7.2, however, are any pre-existing, proprietary tools owned, developed, or otherwise obtained by Contractor independent of this Contract. Contractor is and shall remain the owner of all rights, title and interest in and to the Proprietary Tools, including all copyright, patent, trademark, trade secret and all other proprietary rights thereto arising under Federal and State law, and no license or other right to the Proprietary Tools is granted or otherwise implied. Any right that DOM may have with respect to the Proprietary Tools shall arise only pursuant to a separate written agreement between the parties.

#### **4.7.3 Public Information**

Offerors shall provide an electronic, single document version of proposals redacting those provisions of the proposal which contain trade secrets or other proprietary data. However, Offerors should be aware that their unredacted proposals are considered public record and are subject to release by DOM pursuant to and in accordance with Section 25-61-1, *et seq.* of the Mississippi Code Annotated of 1972, absent a court-issued protective order or agreement by the requesting party to receive a redacted version.

#### **4.7.3 Right of Inspection**

DOM, the Mississippi Department of Audit, DHHS, CMS, OIG, the General Accounting Office (GAO), or any other auditing agency prior-approved by DOM, or their authorized representative shall, at all reasonable times, have the right to enter onto the Contractor's premises, or such other places where duties under this contract are being performed, to inspect, monitor, or otherwise evaluate (including periodic systems testing) the work being performed. The Contractor shall provide access to all facilities and assistance for DOM and Mississippi Audit Department representatives. All inspections and evaluations shall be performed in such a manner as will not unduly delay work. Refusal by the Contractor to allow access to all documents, papers, letters or other materials, shall constitute a breach of contract. All audits performed by persons other than DOM staff will be coordinated through DOM and its staff.

#### **4.7.4 Licenses, Patents and Royalties**

DOM does not tolerate the possession or use of unlicensed copies of proprietary software. The Contractor shall be responsible for any penalties or fines imposed as a result of unlicensed or otherwise defectively titled software.

The Contractor, without exception, shall indemnify, save, and hold harmless DOM and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or non-patented invention, process, or article manufactured by the Contractor. DOM will provide prompt written notification of a claim of copyright or patent infringement.

Further, if such a claim is made or is pending, the Contractor may, at its option and expense, procure for DOM the right to continue use of, replace or modify the article to render it non-infringing. If none of the alternatives are reasonably available, the Contractor agrees to take back the article and refund the total amount DOM has paid the Contractor under this contract for use of the article.

If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the proposed prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

#### **4.7.5 Records Retention Requirements**

The Contractor shall maintain detailed records evidencing all expenses incurred pursuant to the Contract, the provision of services under the Contract, and complaints, for the purpose of audit and evaluation by DOM and other Federal or State personnel. All records, including training records, pertaining to the contract must be readily retrievable within three (3) workdays for review at the request of DOM and its authorized representatives. All records shall be maintained and available for review by authorized Federal and State personnel during the entire term of the contract and for a period of six (6) years thereafter, unless an audit is in progress or there is pending litigation. When an audit or pending litigation has not been completed at the end of the six (6) year period, records shall be retained until all issues are finally resolved.

#### **4.8 REPRESENTATION REGARDING CONTINGENT FEES**

The Contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the Contractor's bid or proposal.

#### **4.9 INTERPRETATIONS/CHANGES/DISPUTES**

The RFP in its entirety is a part of the Contract. In the event of a dispute or conflict among any of the components of the contract, the contract shall govern. After the Contract, the order of priority is: Att. D, Bidder Questions and Answers; Att. C or E, the Business Proposal or BAFO; Att. B, the Technical Proposal; and Att. A, the RFP. All the documents shall be read and construed as far as possible to be one harmonious whole; however, in the event of a conflict or dispute, the above list is the list of priority.

DOM reserves the right to clarify any contractual relationship in writing and such clarification will govern in case of conflict with the requirements of the RFP. Any ambiguity in the RFP shall be construed in favor of DOM.

The contract represents the entire agreement between the Contractor and DOM and it supersedes all prior negotiations, representations, or agreements, either written or oral between the parties hereto relating to the subject matter hereof.

##### **4.9.1 Conformance with Federal and State Regulations**

The Contractor shall be required to conform to all Federal and State laws, regulations, and policies as they exist or as amended.

In the event that the Contractor requests that the Executive Director of DOM or his/her designee issue policy determinations or operating guidelines required for proper performance of the contract, DOM shall do so in a timely manner. The Contractor shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines unless the Contractor acts negligently, maliciously, fraudulently, or in bad faith.

The Contractor expressly agrees to all of the provisions and requirements as set forth in the State Plan for Medical Assistance approved by the State of Mississippi and by the Secretary of the United States

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

Department of Health and Human Services, pursuant to Title XIX of the Social Security Act, and understands those provisions and requirements are also incumbent on the Contractor.

#### **4.9.2 Waiver**

No assent, expressed or implied, by the parties hereto to the breach of the provisions or conditions of this contract shall be deemed or taken to be a waiver of any succeeding breach of the same or any other provision or condition and shall not be construed to be a modification of the terms of this Contract.

Moreover, no delay or omission by either party to this contract in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this contract shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this contract will void, waive, or change any other term or condition. No waiver by one party to this contract of a default by the other party will imply, be construed as or require waiver of future or other defaults.

#### **4.9.3 Severability**

If any part, term or provision of the contract (including items incorporated by reference) is held by the courts or other judicial body to be illegal or in conflict with any law of the State of Mississippi or any Federal law, the validity of the remaining portions or provisions shall not be affected and the obligations of the parties shall be construed in full force as if the contract did not contain that particular part, term or provision held to be invalid.

#### **4.9.4 Change Orders and/or Amendments**

The Executive Director of DOM or designated representative may, at any time, by written order delivered to the Contractor at least thirty (30) days prior to the commencement date of such change, make administrative changes within the general scope of the contract. If any such change causes an increase or decrease in the cost of the performance of any part of the work under the contract an adjustment commensurate with the costs of performance under this contract shall be made in the contract price or delivery schedule or both. Any claim by the Contractor for equitable adjustment under this clause must be asserted in writing to DOM within thirty (30) days from the date of receipt by the Contractor of the notification of change. Failure to agree to any adjustment shall be a dispute within the meaning of the Disputes Clause of this Contract. Nothing in this clause, however, shall in any manner excuse the Contractor from proceeding diligently with the contract as changed.

If the parties are unable to reach an agreement within thirty (30) days of DOM receipt of the Contractor's cost estimate, the Executive Director of DOM shall make a determination of the revised price, and the Contractor shall proceed with the work according to a schedule approved by DOM subject to the Contractor's right to appeal the Executive Director's determination of the price pursuant to the Disputes clause.

The rate of payment for changes or amendments completed per contract year shall be at the rates specified by the Contractor's proposal.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

At any time during the term of this contract, DOM may increase the quantity of goods or services purchased under this contract by sending the Contractor a written amendment or modification to that effect which references this contract and is signed by the Executive Director of DOM. The purchase price shall be the lower of the unit cost identified in the Contractor's proposal or the Contractor's then-current, published price. The foregoing shall not apply to services provided to DOM at no charge. The delivery schedule for any items added by exercise of this option shall be set by mutual agreement.

#### **4.9.5 Disputes**

Any dispute concerning the contract which is not disposed of by agreement shall be decided by the Executive Director of DOM who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Executive Director shall be final and conclusive. Nothing in this paragraph shall be construed to relieve the Contractor of full and diligent performance of the contract.

#### **4.9.6 Cost of Litigation**

In the event that DOM deems it necessary to take legal action to enforce any provision of the contract, the Contractor shall bear the cost of such litigation, as assessed by the court, in which DOM prevails. Neither the State of Mississippi nor DOM shall bear any of the Contractor's cost of litigation for any legal actions initiated by the Contractor against DOM regarding the provisions of the contract. Legal action shall include administrative proceedings.

#### **4.9.7 Attorney Fees**

The Contractor agrees to pay reasonable attorney fees incurred by the State and DOM in enforcing this contract or otherwise reasonably related thereto.

#### **4.10 INDEMNIFICATION**

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and Contractors from any and all claims and losses accruing or resulting to any and all the Contractor employees, agents, subcontractors, laborers, and any other person, association, partnership, entity, or corporation furnishing or supplying work, services, materials, or supplies in connection with performance of this contract, and from any and all claims and losses accruing or resulting to any such person, association, partnership, entity, or corporation who may be injured, damaged, or suffer any loss by the Contractor in the performance of the contract.

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and Contractors against any and all liability, loss, damage, costs or expenses which DOM may sustain, incur or be required to pay: 1.) by reason of any person suffering personal injury, death or property loss or damage of any kind either while participating with or receiving services from the Contractor under this contract, or while on premises owned, leased, or operated by the Contractor or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for or in the control of the Contractor or any officer, agent, or employee thereof; or 2.) by reason of the Contractor or its employee, agent, or person within its scope of authority of this contract causing injury to, or damage to the person or property of a person including but not limited to DOM or the Contractor, their employees or agents, during any time when the



Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

Contractor or any officer, agent, employee thereof has undertaken or is furnishing the services called for under this contract.

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and Contractors against any and all liability, loss, damages, costs or expenses which DOM or the State may incur, sustain or be required to pay by reason of the Contractor, its employees, agents or assigns: 1.) failing to honor copyright, patent or licensing rights to software, programs or technology of any kind in providing services to DOM, or 2.) breaching in any manner the confidentiality required pursuant to Federal and State law and regulations.

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and Contractors from all claims, demands, liabilities, and suits of any nature whatsoever arising out of the contract because of any breach of the contract by the Contractor, its agents or employees, including but not limited to any occurrence of omission or commission or negligence of the Contractor, its agents or employees.

If in the reasonable judgment of DOM a default by the Contractor is not so substantial as to require termination and reasonable efforts to induce the Contractor to cure the default are unsuccessful and the default is capable of being cured by DOM or by another resource without unduly interfering with the continued performance of the Contractor, DOM may provide or procure such services as are reasonably necessary to correct the default. In such event, the Contractor shall reimburse DOM for the entire cost of those services. DOM may deduct the cost of those services from the Contractor's monthly administrative invoices. The Contractor shall cooperate with DOM or those procured resources in allowing access to facilities, equipment, data or any other Contractor resources to which access is required to correct the default. The Contractor shall remain liable for ensuring that all operational performance standards remain satisfied.

#### **4.10.1 No Limitation of Liability**

Nothing in this contract shall be interpreted as excluding or limiting any liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor, or for damages incurred in the negligent performance of duties by the Contractor, or for the delivery by the Contractor of products that are defective, or for breach of contract or any other duty by the Contractor. Nothing in the contract shall be interpreted as waiving the liability of the Contractor for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense related to the Contractor's conduct or performance under this contract.

#### **4.10.2 Third Party Action Notification**

Contractor shall give DOM prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Contract.

## **4.11 STATUS OF THE CONTRACTOR**

### **4.11.1 Independent Contractor**

It is expressly agreed that the Contractor is an Independent Contractor performing professional services for DOM and is not an officer or employee of the State of Mississippi or DOM. It is further expressly agreed that the contract shall not be construed as a partnership or joint venture between the Contractor and DOM.

The Contractor shall be solely responsible for all applicable taxes, insurance, licensing and other costs of doing business. Should the Contractor default on these or other responsibilities jeopardizing the Contractor's ability to perform services effectively, DOM, in its sole discretion, may terminate this contract.

The Contractor shall not purport to bind DOM, its officers or employees nor the State of Mississippi to any obligation not expressly authorized herein unless DOM has expressly given the Contractor the authority to do so in writing.

The Contractor shall give DOM immediate notice in writing of any action or suit filed, or of any claim made by any party which might reasonably be expected to result in litigation related in any manner to this contract or which may impact the Contractor's ability to perform.

No other agreements of any kind may be made by the Contractor with any other party for furnishing any information or data accumulated by the Contractor under this contract or used in the operation of this program without the written approval of DOM. Specifically, DOM reserves the right to review any data released from reports, histories, or data files created pursuant to this Contract.

In no way shall the Contractor represent itself directly or by inference as a representative of the State of Mississippi or DOM except within the confines of its role as an Independent Contractor for DOM. DOM's approval must be received in all instances in which the Contractor distributes publications, presents seminars or workshops, or performs any other outreach.

The Contractor shall not use DOM's name or refer to the contract and the services provided therein directly or indirectly in any advertisement, news release, professional trade or business presentation without prior written approval from DOM.

### **4.11.2 Employment of DOM Employees**

The Contractor shall not knowingly engage on a full-time, part-time, or other basis during the period of the contract, any professional or technical personnel who are or have been at any time during the period of the contract in the employ of DOM, without the written consent of DOM. Further, the Contractor shall not knowingly engage in this project, on a full-time, part-time, or other basis during the period of the contract, any former employee of DOM who has not been separated from DOM for at least one year, without the written consent of DOM.

The Contractor shall give priority consideration to hiring interested and qualified adversely affected State employees at such times as requested by DOM to the extent permitted by this contract or State law.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

#### **4.11.3 Conflict of Interest**

No official or employee of DOM and no other public official of the State of Mississippi or the Federal Government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the contract or proposed contract. A violation of this provision shall constitute grounds for termination of this contract. In addition, such violation will be reported to the State Ethics Commission, Attorney General, and appropriate Federal law enforcement officers for review.

The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that in the performance of the contract no person having any such known interests shall be employed including subsidiaries or entities that could be misconstrued as having a joint relationship, and no immediate family members of Medicaid providers shall be employed by the Contractor.

#### **4.11.4 Personnel Practices**

All employees of the Contractor involved in the Medicaid function will be paid as any other employee of the Contractor who works in another area of their organization in a similar position. The Contractor shall develop any and all methods to encourage longevity in Contractor's staff assigned to this contract.

Employees of the Contractor shall receive all benefits afforded to other similarly situated employees of the Contractor.

The Contractor shall sign the Drug Free Workplace Certificate (Exhibit 1).

#### **4.11.5 No Property Rights**

No property rights inure to the Contractor except for compensation for work that has already been performed.

### **4.12 EMPLOYMENT PRACTICES**

The Contractor understands that DOM is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, religion, sex, age, national origin, physical handicap, disability, genetic information, political affiliation, ancestry, limited English proficiency, or any other consideration made unlawful by Federal, State, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the contract that the Contractor shall strictly adhere to this policy in its employment practices and provision of services, including, but not limited to, hiring, termination/discharge, promotion/demotion, or other terms and conditions of employment. The Contractor shall comply with, and all activities under this contract shall be subject to, all applicable Federal, State of Mississippi, and local laws and regulations related to unlawful discrimination, as now existing and as may be amended or modified.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices setting forth the provisions of this clause.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, age, national origin, physical handicap, disability, genetic information, political affiliation, ancestry, limited English proficiency, or any other consideration made unlawful by Federal, State, or local laws, except where it relates to a bona fide occupational qualification or requirement.

The Contractor shall comply with the non-discrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor and with Title 41, Code of Federal Regulations, Chapter 60. The Contractor shall comply with related State laws and regulations, if any.

The Contractor shall comply with the Civil Rights Act of 1964, and any amendments thereto, and the rules and regulations thereunder, and Section 504 of Title V of the Rehabilitation Act of 1973, as amended, and related State laws and regulations, if any.

If DOM finds that the Contractor is not in compliance with any of these requirements at any time during the term of this contract, DOM reserves the right to terminate this contract or take such other steps as it deems appropriate, in its sole discretion, considering the interests and welfare of the State.

## **4.13 OWNERSHIP AND FINANCIAL INFORMATION**

### **4.13.1 Information to Be Disclosed**

In accordance with 42 C.F.R. § 455.104(b), the Contractor shall disclose the following:

1. The name and address of any individual or corporation with an ownership or control interest in the disclosing entity, DOM's fiscal agent, or managed care entity. The address for corporate entities shall include as applicable primary business, every business location, and P.O. Box address;
2. Date of birth and Social Security Number (in the case of an individual);
3. Other tax identification number (in the case of a corporation) with an ownership or control interest in the disclosing entity (or DOM's fiscal agent or managed care entity) or in any subcontractor in which the disclosing entity (or DOM's fiscal agent or managed care entity) has a five percent (5%) or more interest;
4. Whether the individual or corporation with an ownership or control interest in the disclosing entity (or DOM's fiscal agent or managed care entity) is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling; or whether the individual or corporation with an ownership or control interest in any subcontractor in which the disclosing entity (or DOM's fiscal agent or managed care entity) has a five percent (5%) or more interest is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling;
5. The name of any other disclosing entity (or DOM's fiscal agent or managed care entity) in which an owner of the disclosing entity (or DOM's fiscal agent or managed care entity) has an ownership or control interest; and,
6. The name, address, date of birth, and Social Security Number of any managing employee of the disclosing entity (or DOM's fiscal agent or managed care entity).

#### **4.13.2 When Information Will Be Disclosed**

In accordance with 42 C.F.R. § 455.104(c), disclosures from the Contractor are due at any of the following times:

1. Upon the Contractor submitting a proposal in accordance with the State's procurement process;
2. Annually, including upon the execution, renewal, and extension of the contract with the State; and,
3. Within thirty-five (35) days after any change in ownership of the Contractor.

#### **4.13.3 To Whom Information Will Be Disclosed**

In accordance with 42 C.F.R. § 455.104(d), all disclosures shall be provided to DOM, the State's designated Medicaid agency.

#### **4.13.4 Federal Financial Participation**

In accordance with 42 C.F.R. § 455.104(e), Federal financial participation (FFP) is not available in payments made to a disclosing entity that fails to disclose ownership or control information as required by said section.

#### **4.13.5 Information Related to Business Transactions**

In accordance with 42 C.F.R. § 455.105, the Contractor shall fully disclose all information related to business transactions. The Contractor shall submit, within thirty-five (35) days of the date on a request by the Secretary or DOM, full and complete information about:

1. The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than twenty-five thousand dollars and zero cents (\$25,000.00) during the 12-month period ending on the date of the request; and,
2. Any significant business transactions between the Contractor and any wholly owned supplier, or between the Contractor and any subcontractor, during the 5-year period ending on the date of the request.

#### **4.13.6 Disclosure of Identity of Any Person Convicted of a Criminal Offense**

In accordance with 42 C.F.R. § 455.106(a), the Contractor shall disclose to DOM the identity of any person who:

1. Has ownership or control interest in the Contractor, or is an agent or managing employee of the Contractor; and,
2. Has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the Title XX services program since the inception of those programs.

#### **4.13.7 Disclosure to the Inspector General**

In accordance with 42 C.F.R. § 455.106(b), DOM must notify the Inspector General of the Department of any disclosures under § 455.106(a) within twenty (20) working days from the date it receives the information. DOM must also promptly notify the Inspector General of the Department of any action it takes on the Contractor's agreement and participation in the program.

#### **4.13.8 DOM's Right of Refusal**

In accordance with 42 C.F.R. § 455.106(c), DOM may refuse to enter into or renew an agreement with a Contractor if any person who has an ownership or control interest in the Contractor, or who is an agent or managing employee of the Contractor, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid, or the Title XX Services Program. Further, DOM may refuse to enter into or may terminate a Contractor agreement if it determines that the Contractor did not fully and accurately make any disclosure required under 42 C.F.R. § 455.106(a).

#### **4.13.9 Additional Requirements of DOM and Contractors**

In accordance with 42 C.F.R. § 455.436, the State Medicaid agency and all Medicaid Contractors shall do the following:

1. Confirm the identity and determine the exclusion status of Contractors/subcontractors and any person with an ownership or control interest or who is an agent or managing employee of the Contractor/subcontractor through routine checks of Federal databases; and,
2. Consult appropriate databases to confirm identity of the above-mentioned persons and entities by searching the List of Excluded Individuals/Entities (LEIE) and the System for Award Management (SAM) upon enrollment, re-enrollment, credentialing, or re-credentialing, and no less frequently than monthly thereafter, to ensure that the State does not pay Federal funds to excluded persons or entities.

### **4.14 RISK MANAGEMENT**

The Contractor may insure any portion of the risk under the provision of the contract based upon the Contractor's ability (size and financial reserves included) to survive a series of adverse experiences, including withholding of payment by DOM, or imposition of penalties by DOM.

On or before beginning performance under this Contract, the Contractor shall obtain from an insurance company, duly authorized to do business and doing business in Mississippi, insurance as follows:

#### **4.14.1 Workers' Compensation**

The Contractor shall take out and maintain, during the life of this contract, workers' compensation insurance for all employees employed under the contract in Mississippi. Such insurance shall fully comply with the Mississippi Workers' Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Workers' Compensation Statute, the Contractor shall provide adequate insurance satisfactory for protection of his or her employees not otherwise protected.

#### **4.14.2 Liability**

The Contractor shall ensure that professional staff and other decision making staff shall be required to carry professional liability insurance in an amount commensurate with the professional responsibilities and liabilities under the terms of this RFP and other supplemental contractual documents.

The Contractor shall obtain, pay for and keep in force during the contract period general liability insurance against bodily injury or death in an amount commensurate with the responsibilities and liabilities under the terms of this RFP; and insurance against property damage and fire insurance including contents coverage for all records maintained pursuant to this contract in an amount commensurate with the responsibilities and liabilities under the terms of this RFP. On an annual basis, the Contractor shall furnish to DOM certificates evidencing such insurance is in effect on the first working day following contract signing.

### **4.15 CONFIDENTIALITY OF INFORMATION**

#### **4.15.1 Confidentiality of Beneficiary Information**

All information as to personal facts and circumstances concerning Medicaid beneficiaries obtained by the Contractor shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of DOM and the written consent of the enrolled beneficiary, his attorney, or his responsible parent or guardian, except as may be required by DOM.

The use or disclosure of information concerning beneficiaries shall be limited to purposes directly connected with the administration of the contract.

All of the Contractor officers and employees performing any work for or on the contract shall be instructed in writing of this confidentiality requirement and required to sign such a document upon employment and annually thereafter.

The Contractor shall immediately notify DOM of any unauthorized possession, use, knowledge or attempt thereof, of DOM's data files or other confidential information. The Contractor shall immediately furnish DOM full details of the attempted unauthorized possession, use or knowledge, and assist in investigating or preventing the recurrence thereof.

This requirement of confidentiality survives the term of the contract between DOM and Contractor.

#### **4.15.2 Release of Public Information**

Offerors must provide an electronic, single document version of proposals redacting those provisions of the proposal which contain trade secrets or other proprietary data which they believe may remain confidential in accordance with Miss. Code Ann. § 25-61-9 (1972, as amended) and other applicable state and federal laws, if any. Offerors should be aware that the un-redacted version of their proposals is considered public record and is subject to release by DOM pursuant to and in accordance with Miss. Code Ann. § 25-61-1, *et seq.* (1972, as amended).

In the event that either party to the executed Contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by State law. This provision shall survive termination or completion of the executed Contract. The parties agree that this provision is subject to and superseded by Miss. Code Ann. §25-61-1, *et seq.* (1972, as amended) regarding Public Access to Public Records.

#### **4.15.3 Transparency**

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.*, (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151 *et seq.* (1972, as amended).

Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Prior to posting the contract to the website, information identified by the Contractor as information which is required confidential by State or Federal law or outside the applicable freedom of information statutes shall be redacted by the Offeror.

#### **4.16 THE CONTRACTOR COMPLIANCE ISSUES**

The Contractor agrees that all work performed as part of this contract shall comply fully with administrative and other requirements established by Federal and State laws, regulations and guidelines, and assumes responsibility for full compliance with all such laws, regulations and guidelines, and agrees to fully reimburse DOM for any loss of funds, resources, overpayments, duplicate payments or incorrect payments resulting from noncompliance by the Contractor, its staff, or agents, as revealed in any audit. In addition the Contractor agrees that all work performed shall comply with all CMS guidelines necessary to maintain the enhanced funding provided by CMS for eligibility and enrollment systems development.

##### **4.16.1 Federal, State, and Local Taxes**

Unless otherwise provided herein, the contract price shall include all applicable Federal, State, and local taxes.

The Contractor shall pay all taxes lawfully imposed upon it with respect to this contract or any product delivered in accordance herewith. DOM makes no representation whatsoever as to exemption from liability to any tax imposed by any governmental entity on the Contractor.

##### **4.16.2 License Requirements**

The Contractor shall have, or obtain, any license/permits that are required prior to and during the performance of work under this contract.



### **4.16.3 Privacy/Security Compliance**

The Contractor shall execute DOM's Business Associate Agreement (BAA) and Data Use Agreement (DUA) before contract execution. The BAA and DUA can be found on the Procurement Website at <http://www.medicaid.ms.gov/resources/procurement/>. Moreover, all activities under this contract shall be performed in accordance with all applicable Federal and/or State laws, rules and/or regulations including the Administrative Simplification provisions of HIPAA, as amended by the Genetic Information Nondiscrimination Act (GINA) of 2008 and the Health Information Technology for Economic and Clinical Health Act (HITECH Act), Title XIII of Division A, and Title IV of Division B of the American Recovery and Reinvestment Act (ARRA) of 2009, and their implementing regulations at 45 C.F.R. Parts 160, 162, and 164, involving electronic data interchange, code sets, identifiers, and the security and privacy of protected health information (PHI), as may be applicable to the services under this Contract. Each party to this contract shall treat all data and information to which it has access under this contract as confidential information to the extent that confidential treatment of same is required under Federal and State law and shall not disclose same to a third party without specific written consent of the other party. In the event that either party receives notice that a third party requested divulgence of the confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of the confidential or otherwise protected information, the party shall promptly inform the other party and thereafter respond in conformity with such subpoena as required by applicable State and/or Federal law, rules, and regulations. The provision herein shall survive the termination of the contract for any reason and shall continue in full force and effect and shall be binding upon both parties and their agents, employees, successors, assigns, subcontractors, or any party claiming an interest in the contract on behalf of, or under, the rights of the parties following termination.

### **4.16.4 Site Rules and Regulations**

The Contractor shall use its best efforts to ensure that its employees and agents, while on DOM premises, shall comply with site rules and regulations.

### **4.16.5 Environmental Protection**

The Contractor shall be in compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. § 7606), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and applicable United States Environmental Protection Agency (EPA) regulation which prohibit the use under non-exempt Federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. The Contractor shall report violations to the applicable grantor Federal agency and the U. S. EPA Assistant Administrator for Enforcement.

### **4.16.6 Lobbying**

The Contractor certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance is placed when entering into this contract. Submission of this certification is a prerequisite for making or entering into this contract imposed under Section 1352 of Title 31, United States Code. Failure to file the required certification shall be subject to civil penalties for such failure.

The Contractor shall abide by lobbying laws of the State of Mississippi.

#### **4.16.7 Bribes, Gratuities, and Kickbacks Prohibited**

The receipt or solicitation of bribes, gratuities and kickbacks is strictly prohibited.

No elected or appointed officer or other employee of the Federal Government or of the State of Mississippi shall benefit financially or materially from this contract. No individual employed by the State of Mississippi shall be permitted any share or part of this contract or any benefit that might arise there from.

The Offeror or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

#### **4.16.8 Small and Minority Businesses**

DOM encourages the employment of small business and minority business enterprises. Therefore, the Contractor shall report, separately, the involvement in this contract of small businesses and businesses owned by minorities and women. Such information shall be reported on an invoice annually on the contract anniversary and shall specify the actual dollars contracted to-date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted for with such businesses on this contract.

#### **4.16.9 Suspension and Debarment**

The Contractor certifies that it is not suspended or debarred under Federal law and regulations or any other state's laws and regulations.

#### **4.16.10 E-Payment**

The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. DOM agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305 (1972, as amended).

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

**4.16.11 Paymode**

Payments by state agencies using the State’s accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor’s choice. The State may, at its sole discretion, require the Contractor to electronically submit invoices and supporting documentation at any time during the term of this Contract. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

**4.16.12 E-VERIFICATION**

The Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1 *et seq.* (1972, as amended). The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, the Contractor agrees to provide a copy of each such verification. The Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this provision may subject the Contractor to the following:

Termination of this contract and ineligibility for any State or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public; the loss of any license, permit, certification, or other document granted to Contractor by an agency, department, or governmental entity for the right to do business in Mississippi for up to one (1) year; or both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit to do business with the State.

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## **5. TECHNICAL PROPOSAL**

### **5.1 INTRODUCTION**

All proposals shall be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) with tabs delineating each section. One copy of the proposal shall be submitted on CD in a single searchable document in Microsoft Word or Adobe Acrobat (PDF) format.

The Technical Proposal must include the following sections:

1. Transmittal Letter;
2. Executive Summary;
3. Corporate Background and Experience (including audited financials);
4. Ownership and Financial Disclosure Information (Section 4.13 of the RFP);
5. Project Organization and Staffing;
6. Methodology;
7. Project Management and Control; and,
8. Work Plan and Schedule.

Items to be included under each of these headings are identified in the paragraphs below. Each section within the Technical Proposal should include all items listed in the paragraphs below. The evaluation of proposals will be done on a section-by-section basis. A format that easily follows the requirements and order of the RFP should be used.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

### **5.2 TRANSMITTAL LETTER**

The Transmittal Letter shall be in the form of a standard business letter on letterhead of the Offeror and shall be signed by an individual authorized to legally bind the Offeror. The transmittal letter should identify all material and enclosures being submitted in response to the RFP. Failure to include the statements or items listed below may result in rejection of the proposal. The transmittal letter shall include the following:

1. A statement indicating that the Offeror is a corporation or other legal entity;
2. A statement confirming that the Offeror is registered to do business and in “Good Standing” with the State of Mississippi and providing their corporate charter number to work in Mississippi, if applicable;
3. A statement identifying the Offeror’s Federal tax identification number;
4. A statement that, if the Offeror is awarded the contract, the Contractor agrees that any lost or reduced Federal matching money resulting from unacceptable performance of a Contractor task or responsibility, as defined in this RFP, shall be accompanied by reductions in State payments to

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

the Contractor;

5. A statement identifying any prior project where the Offeror was terminated before the final solution was operational;
6. A statement that no attempt has been made or will be made by the Offeror to induce any other person or firm to submit or not to submit a proposal;
7. A statement that the Contractor has or has not (*use applicable word*) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract;
8. A statement that the Offeror has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 of the *Mississippi Personal Service Contract Review Board Rules and Regulations*;
9. A statement of Affirmative Action, that the Offeror does not discriminate in its employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, disability or genetic information;
10. A statement that the Offeror agrees to the language of DOM's BAA and DUA, or has negotiated changes acceptable to DOM;
11. A statement that no cost or pricing information has been included in this letter or any other part of the technical proposal;
12. A statement identifying by number and date all amendments to this RFP issued by DOM which have been received by the Offeror. If no amendments have been received, a statement to that effect should be included;
13. A statement that the Offeror has read, understands and agrees to all provisions of this RFP without reservation;
14. Certification that the Offeror's proposal will be firm and binding for one hundred eighty (180) days from the proposal due date;
15. A statement naming any outside firms responsible for writing the proposal;
16. A statement that the Contractor has included the signed Drug Free Workplace Certificate (Exhibit 1) (Contractor and all subcontractors);
17. A statement that the Offeror has included the signed DHHS Certification Regarding Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions (Exhibit 2) with the Transmittal letter;
18. All proposals submitted by corporations must contain certifications by the secretary, or other appropriate corporate official other than the corporate official signing the corporate proposal, that the corporate official signing the corporate proposal has the full authority to obligate and bind the corporation to the terms, conditions, and provisions of the proposal;
19. All proposals submitted must include a statement that the Offeror presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this contract, and it shall not employ, in the performance of this contract, any person having such interest; and,
20. If the proposal deviates from the detailed specifications and requirements of the RFP, the transmittal letter shall identify and explain these deviations. DOM reserves the right to reject any proposal containing such deviations or to require modifications before acceptance.

### **5.3 EXECUTIVE SUMMARY**

The Executive Summary shall condense and highlight the contents of the Technical Proposal in such a way as to provide a broad understanding of the entire proposal. The Executive Summary shall include a summary of the proposed technical approach, the staffing structure, and the task schedule, including a brief overview of:

1. Proposed work plan;
2. Staff organizational structure;
3. Key personnel; and,
4. A brief discussion of the Offeror's understanding of the objectives and expectations of this RFP.

The Executive Summary should be no more than five (5) single-spaced typed pages in length.

### **5.4 CORPORATE BACKGROUND AND EXPERIENCE**

The Corporate Background and Experience Section shall include for the Offeror details of the background of the company, its size and resources, details of corporate experience relevant to the proposed contract, audited financial statements, and a list of all current or recent Medicaid or related projects. The time frame to be covered should begin, at a minimum, in January 2007 through present date.

#### **5.4.1 Corporate Background**

The details of the background of the corporation, its size, and resources, shall cover:

1. Date established;
2. Location of the principal place of business;
3. Location of the place of performance of the proposed Contract;
4. Ownership (e.g.: public company, partnership, subsidiary);
5. Total number of employees;
6. Number of personnel currently engaged in project operations;
7. Computer resources;
8. Performance history and reputation;
9. Current products and services; and
10. Professional accreditations pertinent to the services provided by this RFP.

#### **5.4.2 Audited Financial Statements**

Audited financial statements for the contracting entity shall be provided for each of the last five (5) years, including, at a minimum:

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

1. Statement of income;
2. Balance sheet;
3. Statement of changes in financial position during the last five (5) years;
4. Statement of cash flow;
5. Auditors' reports;
6. Notes to financial statements; and,
7. Summary of significant accounting policies.

The State reserves the right to request any additional information to assure itself of an Offeror's financial status.

### **5.4.3 Corporate Experience**

The Corporate Experience Section must present the details of the Offeror's experience with the type of service to be provided by this RFP and Medicaid experience. A minimum of three (3) corporate references are required for this type of experience. DOM will check references during the evaluation process at its option. Each reference shall include the client's name and address and the current telephone number of the client's responsible project administrator or of a senior official of the client who is familiar with the Offeror's performance and who may be contacted by DOM during the evaluation process. DOM reserves the right to contact officials of the client other than those indicated by the Offeror. Overlapping responsibilities on the same client's contract should be depicted so that they are easily recognized.

The Offeror shall provide for each experience:

1. The client's name;
2. Client references (including phone numbers);
3. Description of the work performed;
4. Time period of contract;
5. Total number of staff hours expended during time period of contract;
6. Personnel requirements;
7. Publicly funded contract cost; and,
8. Any contractual termination within the past five (5) years.
9. Direct Contact for client (see Appendix C)

Offeror may submit as many references as desired by submitting as many additional copies of Attachment C, References, as deemed necessary. References will be contacted in order listed until three (3) references have been interviewed and Reference Score Sheets completed for each of the three (3) references. No further references will be contacted; however, Offerors are encouraged to submit additional references to ensure that at least three (3) references are available for interview. DOM staff must be able to contact three (3) references within three (3) business days of proposal due date for scoring purposes.

## **5.5 PROJECT ORGANIZATION AND STAFFING**

The Project Organization and Staffing Section shall include project team organization, charts of proposed personnel and positions, estimates of the staff-hours by major task(s) to be provided by proposed positions, and résumés of all management and key professional personnel as required in this RFP.

The Offeror shall:

1. Provide experience and qualifications of each staff person proposed to work on this project;
2. Describe how the Offeror will train, educate, and supervise staff regarding this project;
3. Describe how the Offeror will ensure inter-rater reliability among its staff for this project; and,
4. Discuss the Offeror's relationship with any proposed subcontractors, including how it will monitor these subcontractors; and its experience working with any proposed subcontractors. The Offeror shall provide references and qualifications of proposed subcontractors, and biographies of any subcontractor staff proposed to work on this project.

### **5.5.1 Organization**

The organization charts shall show:

1. Organization and staffing during each phase as described in the RFP; and
2. Full-time, part-time, and temporary status of all employees.

### **5.5.2 Résumés**

Offerors shall submit résumés of all proposed key staff persons - Project Manager, and other key management staff. Experience narratives shall be attached to the résumés describing specific experience with the type service to be provided by this RFP, a Medicaid program, and professional credentials, including any degrees, licenses, and recent and relevant continuing education.

The résumés of proposed personnel shall include:

1. Duration and experience as an employee with the Offeror;
2. All experience in working with Medicaid programs;
3. Experience in the type of services to be provided by this RFP;
4. Relevant education and training, including college degrees, dates of completion, and institution name and address; and,
5. Names, positions, current address, and current phone numbers of a minimum of three (3) persons who can give information on the individual's experience and competence. Current DOM staff shall not be submitted for any reference for the above requirements.

The résumés of proposed managers shall also include:

1. Experience in managing large-scale contractual services projects;
2. Other management experience; and,



Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

3. Supervisory experience including details and number of people supervised.

If project management responsibilities will be assigned to more than one individual during the project (i.e., management may be changed following implementation), résumés shall be provided for all persons concerned.

Each project referenced in a résumé should include the client name, the time period of the project, and the time period the person performed, as well as a brief description of the project and the person's responsibilities.

### **5.5.3 Responsibilities**

This Section should discuss the anticipated roles of personnel during all phases of the contract. All proposed key technical team leaders, including definitions of their responsibilities during each phase of the contract, should be included.

### **5.5.4 Backup Personnel Plan**

If additional staff is required to perform the functions of the contract, the Offeror should outline specifically its plans and resources for adapting to these situations. The Offeror should also address plans to ensure the longevity of staff in order to allow for effective DOM support.

## **5.6 METHODOLOGY**

The Methodology Section should describe the Offeror's approach to providing the services described in the Scope of Work, Section 1, of the RFP. This Section should contain a comprehensive description of the proposed work plan and specify how it will improve clinical quality, promote beneficiary and provider satisfaction, and achieve savings for the State. The narrative descriptions within this Section must include the following:

1. The description shall encompass the requirements of this RFP as outlined in Scope of Work.
2. The section must describe the methodology to be followed in accomplishing each requirement outlined in the Scope of Work in sufficient detail to demonstrate the Offeror's direction and understanding of this RFP.
3. The section must include a high-level project plan for the project. This project plan must be at the level of major tasks and milestones and be submitted in Microsoft Project.
4. The section must summarize how DOM staff will be used as resources in this project. It is DOM's preference that DOM staff be included in all aspects of the engagement.
5. The section should include information about past performance results and a plan for evaluating the proposed project.

## **5.7 PROJECT MANAGEMENT AND CONTROL**

The Project Management and Control Section shall include details of the methodology to be used in management and control of the project, project activities, and progress reports. This Section will also

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

provide processes for identification and correction of problems. Specific explanation must be provided if solutions vary from one phase to another. This Section covers:

1. Project management approach;
2. Project control approach;
3. Manpower and time estimating methods;
4. Sign-off procedures for completion of all deliverables and major activities;
5. Management of performance standards, milestones, and/or deliverables;
6. Assessment of project risks and approach to managing them;
7. Anticipated problem areas and the approach to management of these areas, including loss of key personnel and loss of technical personnel;
8. Internal quality control monitoring;
9. Approach to problem identification and resolution;
10. Project status reporting, including examples of types of reports; and
11. Approach to DOM's interaction with contract management staff.

## **5.8 WORK PLAN AND SCHEDULE**

The Work Plan and Schedule must include a detailed work plan broken down by tasks and subtasks and a schedule for the performance of each task included in each phase of the contract. The schedule should allow fifteen (15) working days for DOM approval of each submission or re-submission of each individual deliverable, unless another timeframe has been specified for a particular deliverable in other sections of this RFP. The work plan to be proposed should include all responsibilities, milestones, and deliverables outlined previously in this RFP. This Section shall cover:

1. Any assumptions or constraints identified by the Offeror, both in developing the work plan and in completing the work plan.
2. Person-weeks of effort for each task or subtask, showing the Offeror's personnel and DOM personnel efforts separately.
3. A network diagram, showing the planned start and end dates for all tasks and subtasks, indicating the interrelationships of all tasks and subtasks, and identifying the critical path.
4. A Gantt chart, showing the planned start and end dates of all tasks and subtasks.
5. A discussion of how the work plan provides for handling of potential and actual problems.
6. A schedule for all deliverables. A minimum of fifteen (15) business days review time by DOM.

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## **6. BUSINESS/COST PROPOSAL**

### **6.1 GENERAL**

All Offerors must certify in the transmittal letter that their offer shall be binding upon the Offeror for a period of one hundred eighty (180) calendar days following the proposal due date. Pricing will be considered as a separate criteria of the overall bid package.

Offerors shall propose a firm fixed price for each of the requirements contained on the pricing schedule (Appendix A).

### **6.2 BID MODIFICATION IN THE EVENT OF A FEDERAL AND/OR STATE LAW, REGULATION OR POLICY**

In the event any change occurs in Federal or State law, regulations, policies, or Medicaid plan coverage, and DOM determines that these changes impact materially on proposal pricing, DOM reserves the right to require the Offerors to amend their proposals. The failure of an Offeror to negotiate these required changes will exclude such Offeror from further consideration for contract award. All proposals shall be based upon the provisions of Federal and State laws and regulations and DOM's approved Medicaid State Plan coverage in effect on the issuance date of this RFP, unless this RFP is amended in writing to include changes prior to the closing date for receipt of proposals.

### **6.3 PROPOSAL CONTENT**

The Business Proposal shall include only the following:

1. Appendix A – Budget Summary - A detailed worksheet by line item of all costs as it pertains to the Contractor Responsibilities and Deliverables as found in Section 1.0 of the RFP.
2. Additional pricing schedules to adequately explain method of cost determination including all assumptions (i.e. service or enrollment volume assumptions).
3. Each pricing schedule must be signed and dated by an authorized corporate official.
4. All proposals submitted by corporations shall contain certification by the secretary or other appropriate corporate official, other than the signer of the corporate proposal, that the corporate official signing the corporate proposal has the authority to obligate and bind the corporation to the terms, conditions and provisions of the proposal.

Proposals received that do not include the above items may be rejected at the discretion of DOM. Proposals that contain any material other than the above may be rejected at the discretion of DOM.

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## **7. PROPOSAL EVALUATION**

### **7.1 GENERAL**

An Evaluation Committee comprised of DOM staff will be established to evaluate the merits of eligible proposals. The committee will be appointed by the Executive Director of the DOM and will include members who have relevant experience in the Medicaid program. The Committee will be responsible for the evaluation of the technical and business proposals.

### **7.2 EVALUATION OF PROPOSALS**

A standard evaluation form will be utilized by the Evaluation Committee to ensure consistency in evaluation criteria. However, DOM retains the right to deviate from the standard form, if necessary to maintain the integrity of the procurement; and to ensure selection of the best qualified Contractor.

A maximum of 100 points will be available for each proposal which shall be comprised of a technical and a business proposal. The points awarded per phase by the evaluation committee will be totaled to determine the points awarded per proposal.

Evaluation of eligible proposals will be conducted in five (5) phases. The Procurement Officer will complete Phase One. The Technical Proposal Evaluation Committee will complete Phase Two. The Business Proposal Evaluation Committee will complete Phase Three. In Phase Four, the Procurement Officer will compile the results of the technical and business evaluations and make a recommendation to the Executive Director of DOM based on the results of the evaluation. In Phase Five the award decision will be made by the Executive Director.

At its option, the State may request an interview from Offerors in a competitive range in the evaluation. Offerors must be prepared to meet with DOM staff within five (5) calendar days of notification. All costs associated with the interview will be the responsibility of the Offeror.

#### **7.2.1 Phase 1 - Evaluation of Offerors' Response to RFP**

In this phase, the Procurement Officer reviews each proposal to determine if each proposal is responsive. Each proposal will be evaluated to determine if it is complete and whether it complies with the instructions to Offerors in the RFP. Each proposal that is incomplete will be declared non-responsive and may be rejected with no further evaluation.

The Procurement Officer will determine if an incomplete proposal is sufficiently responsive to continue to Phase Two. If necessary, the Procurement Officer may request clarifications from the Offeror(s) so they may advance to Phase 2.

#### **7.2.2 Phase 2 - Evaluation of Technical Proposal**

Only those proposals which meet the requirements in Phase One will be considered in Phase Two.

Any Technical Proposal that is incomplete or in which there are significant inconsistencies or inaccuracies may be rejected by DOM. DOM reserves the right to waive minor variances or reject any or all proposals. In addition, DOM reserves the right to request clarifications or enter into discussions with all Offerors.

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

The Evaluation Committee will review each Offeror’s Technical Proposal in order to determine if the Offeror sufficiently addresses all of the RFP requirements and that the Offeror has developed a specific approach to meeting each requirement.

TECHNICAL PROPOSAL SECTION	MAXIMUM SCORE
Executive Summary/Understanding of Project	2
Corporate Background and Experience	11
Organization and Staffing	11
Methodology	28
Project Management	10
Work Plan and Schedule	8
<b>TOTAL</b>	<b>70</b>

Proposals must score a minimum of 42 points of the total score in order to proceed to the Business/Cost phase of the evaluation. Proposals receiving less than 42 points will not be considered for the Business/Cost evaluation or contract award. DOM has the discretion to waive any threshold requirement should it become prohibitively exclusive, and such waiver is in the best interest of the State of Mississippi.

**7.2.2.1 Executive Summary**

The Evaluation Committee will review the Executive Summary to determine if it provides all information required in Section 5.3 of this RFP and is five (5) pages or less in length.

**7.2.2.2 Corporate Background and Experience**

The Evaluation Committee will evaluate the experience, performance on similar contracts, resources, and qualifications of the Offeror to provide the services required by the RFP. The evaluation criteria will address:

1. Experience of Offeror in providing the requested services.
2. Corporate experience providing similar services.
3. Amount and level of resources proposed by the Offeror.
4. Specific qualifications that evidence the Offeror’s ability to provide the services requested.
5. Current financial position and cash flow of the Offeror and evidence that the Offeror has a history of financial solvency.
6. Any contract terminations or non-renewals within the past five (5) years.
7. Relevant experience that indicates your organizational qualifications for the performance of the potential contract.

### **7.2.2.3 Methodology**

The Evaluation Committee will evaluate the approach and process offered to provide services as required by this RFP. In addition to the information required in Section 1.0 of this RFP, the evaluation criteria will address at a minimum the following (if applicable):

1. Processes and requirements for completion of the project.
2. Data management plan, including hardware, software, communications links, and data needs and proposed coordination plan.
3. Processes for maintaining confidentiality of PHI.
4. Processes for development and submission of required deliverables.
5. Scope of services provided through partnerships or subcontractors.
6. Quality Assurance processes.

### **7.2.2.4 Organization and Staffing**

The Evaluation Committee will review this Section of the Offeror's proposal to determine if the proposed organizational structure and staffing level are sufficient to accomplish the requirements of the RFP. The committee will review the organizational chart(s), time lines, the job descriptions including job qualifications, the resumes of staff and their qualifications for the positions they will hold, and the relationship of their past experience to their proposed responsibilities under this contract. The committee will evaluate the explanation of the Offeror regarding the relationship between the Offeror and the Project Manager to determine if they will have sufficient autonomy to make management decisions to improve the Offeror's delivery of services to DOM.

### **7.2.2.5 Project Management and Control**

The Evaluation Committee will evaluate the Offeror's proposal to determine if all of the elements required by Section 5.7 of the RFP are addressed. Specifically, the committee will evaluate:

1. Offeror's approach to the management of the project and ability to keep the project on target and to ensure that the requested services are provided;
2. Offeror's control of the project to ensure that all requests are being met and that the Offeror is able to identify and resolve problems which occur;
3. Offeror's methods for estimating and documenting personnel hours spent by staff on project activities to be sure they are sound and fair;
4. Offeror's plans to comply with the reporting requirements of the contract, including the provision of status reports to DOM, and whether the reports are appropriate and sufficient to keep DOM informed of all aspects of the implementation and operation of the project; and
5. Offeror's understanding of the importance of interacting with DOM management staff and presenting a plan to do so appropriately.

### **7.2.2.6 Work Plan and Schedule**

The Evaluation Committee will review and evaluate the work plan and schedule to determine if all tasks are included and if, for each task, a timeline and an identification of staff responsible for the task's

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

accomplishment are indicated. The work plan must provide a logical sequence of tasks and a sufficient amount of time for their accomplishment.

**7.2.3 Phase 3 - Evaluation of Business/Cost Proposal**

Only those proposals that satisfactorily completed Phase 2 will be considered for Phase 3. DOM reserves the right to waive minor variances or reject any or all proposals.

Any bid price determined by DOM to be unrealistically or unreasonably low may not be considered acceptable, as such a proposal has a high probability of not being accomplished for the cost proposed. The Offeror may be required to produce additional documentation to authenticate the proposal price.

The maximum 30 points will be assigned to the lowest and best acceptable proposal. All other proposals will be assigned points based on the following formula:

$$\frac{X}{Y} * 30 = Z$$

X = lowest bid price  
Y = Offeror's bid price  
Z = assigned points

**7.3 Phase 4 and 5 - Selection**

After the evaluation committee has completed the evaluation of the proposals, a summary report including all evaluations will be submitted to the Executive Director of DOM. The Executive Director will make the final decision regarding the winning proposal.

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Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

**Appendix A - Budget Summary**

Section 6.0 addresses submission of the Budget Summary. Failure to follow the submittal instructions will immediately disqualify the Offeror. Operation Cost should not include any Implementation Cost.

Budget Summary Pharmacy Rate Setting RFP #20160219				
<b>Name of Offeror:</b>				
<b>Implementation Cost:</b>				
Service	Contract Term 6/1/2016 – 5/31/2019	Renewal Year 1 6/1/2019 – 5/31/2020	Renewal Year 2 6/1/2020 – 5/31/2021	Total
Operation Cost				
Total Contract Cost				
<p>1. Offerors must provide, as an attachment to the Budget Summary, a detailed worksheet by line item of all cost as it pertains to the Contractor responsibilities outlined in Section 1.0 of the RFP.</p>				
<b>I certify that I am legally obligating the above named Offeror to the conditions of this contract.</b>				
<b>Signature:</b>		<b>Date:</b>		
<b>Printed Name:</b>		<b>Title:</b>		

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Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

Appendix B is located on the DOM Procurement Website:  
<http://www.medicaid.ms.gov/resources/procurement/>

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

**Appendix C References**

REFERENCE 1

Name of Company: \_\_\_\_\_  
Dates of Service: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Cell Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Alternative Contact Person (optional): \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Cell Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_

REFERENCE 2

Name of Company: \_\_\_\_\_  
Dates of Service: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Cell Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Alternative Contact Person (optional): \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Cell Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_

REFERENCE 3

Name of Company: \_\_\_\_\_  
Dates of Service: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Cell Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Alternative Contact Person (optional): \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Cell Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Offeror may submit as many references as desired by submitting as many additional copies of Attachment C, References, as deemed necessary. References will be contacted in order listed until three references have been interviewed and Reference Score Sheets completed for each of the three references. No further references will be contacted; however, Offerors are encouraged to submit additional references to ensure that at least three references are available for interview. DOM staff must be able to contact three references within three business days of proposal due date to be considered**

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

**EXHIBIT 1**

DHHS CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS:

GRANTEES OTHER THAN INDIVIDUALS

Instructions for Certification

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

1) This certification is required by regulations implementing the Drug-Free Act of 1988, 45 C.F.R. Part 76, Subpart F. The regulations, published in the May 25, 1990, Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

2) Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

3) Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

4) If the workplace identified to DOM changes during the performance of the grant, the grantee shall inform DOM of the change(s), if it previously identified the workplaces in question (see above).

5) Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 C.F.R. § 1308.11 through § 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) all direct charge employees; (ii) all indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by

a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b) Establishing an ongoing drug-free awareness program to inform employees about

1) The dangers of drug abuse in the workplace; 2) the grantee's policy of maintaining a drug-free workplace; 3) any available drug counseling, rehabilitation, and employee assistance programs; and 4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will

1) Abide by the terms of the statement; and 2) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e) Notifying DOM in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:

1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or 2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments if needed):

Place of Performance (street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

---->NOTE: Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For HHS, the central receipt point is Division of Grants Management and Oversight, Office of Management and Acquisition, HHS, Room 517-D, 200 Independence Ave, S.W., Washington, D.C. 20201

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization

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Pharmacy Rate Setting  
RFP# 20160219  
Office of the Governor-Division of Medicaid

**EXHIBIT 2**

DHHS Certification Regarding Debarment, Suspension, and Other Responsibility Matters  
Primary Covered Transactions  
45 CFR Part 76,

(1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- d. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization