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Deputy Secretary

QUESTIONS AND RESPONSES # 2
Project No. F10B0400006
Pharmacy Benefits Plan Management Services and Pharmacy Purchasing Pool
Management
February 1, 2010

Ladies/Gentlemen:

This List of Questions and Responses #2, questions #39 through #83, is being issued to clarify certain information contained in the above named RFP. The statements and interpretations of contract requirements, which are stated in the following questions from potential Offerors, are not binding on the State, unless the State expressly amends the RFP. Nothing in the State's responses to these questions is to be construed as agreement to or acceptance by the State of any statement or interpretation on the part of the vendor asking the question as to what the contract does or does not require.

25. The Response to Question # 25 in Q&A #1 is amended below. New language has been double underlined and marked in bold (ex. **new language**) and language deleted has been marked with a strikethrough (ex. ~~language deleted~~):

Will changes requested by Contractor of the contract terms and conditions be cause for disqualification of bidder?

RESPONSE: Several of the Contract terms are required by Maryland procurement law and cannot be changed (e.g. RFP Attachment A, Contract, §§8-27). Offerors not meeting the minimum requirements outlined in Attachment J-1: Minimum Requirements will be disqualified from the procurement process.

The evaluation committee will consider each proposed deviation described in response to Attachment J-4: Administrative Requirements or Attachment K-2: Financial Requirements and make a determination whether the deviation is acceptable or not. ~~Please note that the vast majority of the RFP terms are considered non negotiable by the State and deviations will result in the rejection of an Offeror. In all cases, deviations from the RFP terms will result in a lower evaluation and ranking of a proposal.~~ **The Evaluation Committee will review any deviation proposed by an Offeror, and may request further clarification through the evaluation process, including oral discussions, "cure" letters to offerors, and Best and Final Offer (BAFO) requests. If a proposed deviation is unacceptable**

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to the State, the Offeror will be notified and requested to remove the deviation from its proposal. If a proposed deviation is unacceptable to the State, and the Offeror is unwilling to remove the deviation from its proposal, that Offeror's proposal will be rejected or will be ranked lower as a result of the unacceptable deviation.

NEW: Questions and Responses #39 - #83

39. *For MBE participation, will the state accept the "allocated" spend by a MD certified supplier that supplies our entire company? For example, if MD is 2% of our book of business, can we state 2% of our Office Supply vendor who is an MD certified supplier?*

RESPONSE: The State will accept the “allocated” spend by a Maryland certified MBE supplier that supplies an Offeror, but only that percentage which is applicable to this specific PBM contract may be counted. In the example provided, if the “2%” would be fully attributable to this PBM contract, then that amount may be reported on the MBE Participation Schedule (D-2). If an Offeror has other contracts with the State of Maryland, then the MBE participation amounts for those contracts may not be reported for purposes of meeting the MBE goal on this contract.

40. *The questionnaire (J-5a) asks bidders to list a wide variety of services that the State may or may not be interested in implementing. For example, J-5a, Question 105 asks about integrating medical and prescription drug claims. We offer this service but there is an additional charge which we don't want to build into the fees we charge the State unless the State is sure it wants the service. We have the same concern for Question 108, which asks about DUR programs we offer.*

May we note in the response to the question that there is an additional charge for this service without stating any specific cost information? If not, should we describe the service in Attachment K-9 and note in the response to the question to see K-9? Or is there some other way the State would like us to address these services which the State wants to know about but which it may not want to implement at this time?

RESPONSE: In Q-105, select either “Yes” or “No” from the drop down menu to indicate whether or not your organization has the capability of integrating medical and prescription drug data. If “Yes”, please describe the program(s) in Attachment J-13 and provide the additional cost for the program(s), if any, in Attachment K-9.

For Q-108, describe up to four DUR programs that your organization currently offers by responding to each question appropriately without providing any reference to additional charge(s). For the programs listed in Q-108 and any additional DUR programs that your organization may have, describe the program(s) in Attachment J-13 and provide the additional cost for the program(s), if any, in Attachment K-9.

In addition, please refer to Response #26 (in Questions and Responses #1, issued January 8, 2010).

41. *Please provide, if possible, further details around the Quantity Limits or Managed Drug Limitations for the PPI, Nasal Inhaler and Sedative/Hypnotic class of drugs.*

RESPONSE: The State is using the standard protocols outlined by the current PBM.

42. *Is the Zero Copay for Generics Program in place for the life of the prescription or is it only for a specified period of time when a participant converts from a brand to generic drug?*

RESPONSE: The Zero Copay for Generics Program is in place for the life of the prescription.

43. *Performance Guarantee-4: Performance Indicator says "Average Speed of Answer" yet neither the reporting measurement nor Standard/Goal mention average in the calculation. Please confirm whether The State is requesting an Average Speed of Answer or a Telephone Service Factor measurement.*

RESPONSE: The State has amended Performance Guarantee PG-4 to be "Call Answer Rate" and the reporting measurements will remain as originally described. Please refer to Amendment # 3 and "Attachment J: Technical Proposal (revised - Amendment #3)."

44. *Regarding Performance Guarantee PG-9: Is the Automated Claim System Availability Rate of 99.9% including or excluding scheduled downtime?*

RESPONSE: The Automated Claim System Availability Rate in Performance Guarantee PG-9 includes scheduled downtime. The Department should be notified of scheduled downtime.

45. *Regarding Performance Guarantee PG-11: Will the State be sending full eligibility files or add/change files for eligibility processing within 2 business days?*

RESPONSE: The State will provide the Contractor with a full eligibility file following Open Enrollment for each July 1st. Weekly add/change/delete files are issued during the plan year.

46. *Regarding Performance Guarantee PG-14: Will the State be providing a detailed census file to enable The Contractor to analyze Network Access Rate?*

RESPONSE: The State will provide the Contractor with an eligibility file following Open Enrollment for each July 1st, which will be followed by weekly add/change/delete files; these files include those individuals currently enrolled. Our records only include individuals who have had coverage at some point since the inception of the enrollment database (1999). The Contractor will be expected to maintain a detailed census file in order to perform the network analysis required in PG-14 annually, based on either January 1 or June 30 as the starting date. The relevant date will be determined during contract implementation.

47. *In section 1.12 – Minority Business Enterprises it states "Credit will only be given to the Contractor for MBE participation that is directly attributable (i.e. directly related) to the services provided under the State Contract)." Will the State of Maryland accept a MBE*

supplier that provides services to us through a non-diverse supplier that is directly related to the Contract? This would be labeled as Tier II.

RESPONSE: No. MBE subcontractors that are proposed by an Offeror to meet the MBE subcontracting goal are to be subcontractors of the actual Offeror (i.e. the “Prime Contractor” if awarded the contract), and not subcontractors of another subcontractor/supplier of the Offeror. See COMAR 21.11.03.09C. See also Response to Question # 39.

48. *The information in the RFP speaks to the inclusion of MBEs; however on Attachment D-2 at the bottom of the page they list the following:*

- *Woman-Owned MBE Participation, and*
- *African American-Owned MBE participation*

However MBEs include many minorities (African Americans, Asian/Asian Pacific Island & Asian Subcontinent Americans, Hispanic Americans, and Native & Alaskan Americans).

Are these requirements only for African Americans women and men? If so then, is there a targeted percentage for African American woman and African American men that they expect us to meet or is the target a combined target of 8%? If not, will the State accept the inclusion of suppliers from the other groups mentioned above?

RESPONSE: The MBE goal for this procurement is 8%, including all types of certified MBE subcontractors. The fields at the bottom of Attachment D-2 (“Total Woman-Owned MBE Participation” and “Total African American-Owned MBE Participation”) are for procurements in which subgoals have been set for these two particular MBE subgroups. No subgoals have been set for this procurement, and Offerors are instructed to ignore these fields when completing the D-2 MBE Participation Schedule.

49. *With Regard to Administrative Requirement AR-42, would the State of Maryland be accepting of: “The Contractor is capable of communicating delays beyond 3 days but suggests, based on our experience, that such communications may create further disruption with Members and provides such communications between 4-5 day delays. Accordingly, Contractor suggests this requirement is explored prior to implementation.”*

RESPONSE: If the Offeror cannot accommodate this requirement, then select “Disagree – See Section J-14: Deviations Page” for the requirement and describe the Offeror’s proposed deviations and reasoning in Attachment J-14.

50. *With regard to Administrative Requirement AR-49, the request for 6-months notice of any planned systems upgrade. The requested notice period is extremely long and burdensome. The Contractor requests the notice period be reduced to 30-days to allow the most flexibility and allow the State to be included in all system updates that apply to Contractor’s book of business.*

RESPONSE: If the Offeror cannot accommodate this requirement, then select “Disagree – See Section J-14: Deviations Page” for the requirement and describe the Offeror’s proposed deviations and reasoning in Attachment J-14.

51. *With regard to Administrative Requirement AR-79, the ability for Contractor to perform to certain guarantees may be conditioned on the State implementing certain programs or complying with specific conditions. Please confirm whether the State will include in the Contract provisions to adjust pricing in the event changes to the plan design contradict specific conditions on which the pricing is based.*

RESPONSE: AR-79 is expressly related to plan design and copayment changes and does not impact the performance guarantees outlined in Attachment J-12. To the extent that the pricing guarantees (Att. K) cannot be accomplished or the Contractor incurs additional costs as a result of a change in copayment(s) or plan design, the Contractor may elect to exercise its rights pursuant to the Contract, §2.3. The purpose of this administrative requirement is to ensure that plan design changes can occur without a modification of the Contract.

52. *With regard to Administrative Requirement, AR-88, and “The broadest MAC list,” please clarify the requirement applies to the pricing offer at the time of the RFP is submitted and is limited to the Contractor’s MAC list.*

RESPONSE: Yes, this administrative requirement applies to the pricing supplied in the Contractor’s proposal. Per AR-88(a), the Contractor will create and control the MAC list used at both retail and at mail.

53. *For Administrative Requirement, AR-89(b) – Due to the sensitive nature of such agreements, please confirm the State’s designated representative shall be required to execute a confidentiality agreement with Contractor.*

RESPONSE: Yes, an appropriate and reasonable non-disclosure agreement (NDA) will be executed between the Contractor and the State and/or the State’s designated representative.

54. *For Administrative Requirement, AR-95, please confirm this provision is specific to Contractor’s actions and does not assume Contractor be required to defend the State.*

RESPONSE: Please see Contract, Section 28 (Indemnification). In addition, to the extent that the plan or the Contractor’s decisions in connection with administering the plan are the subject of litigation, the Contractor may be required to defend such litigation.

55. *For Administrative Requirement, AR-98, please clarify the requirement is specific to obligations imposed on Contractor and does not include obligations typically applicable to the State for administering its Plan on behalf of the members. Contractor agrees to provide assistance or information to assist the State in fulfilling its obligations and requests clarification relating to the scope of this requirement.*

RESPONSE: The intent of this administrative requirement is to describe the requirements incumbent on the Contractor; for example, the reports and filings necessary to support the State's Part D retiree drug subsidy administration are among the obligations required to be performed. In addition, obligations that are imposed on the plan sponsor or employer are not covered by AR-98.

56. *For Administrative Requirement 102, will the State agree to the following modifications:*

The Contractor shall develop, adopt, and implement standards, which are, at a minimum, compliant with the HIPAA statute and the HIPAA privacy and security rules in 45 Code of Federal Regulations Part 164, to safeguard the privacy and confidentiality of all PHI about members. For example, the Contractor shall ensure that it does not have completed forms with PHI sitting in public view, left in unsecure boxes or files, or left unattended in any off-site location (e.g., in an automobile, etc.). The Contractor's procedures shall include but not be limited to safeguarding the identity of members as plan members and preventing the unauthorized disclosure of PHI. The Contractor will comply with the HIPAA amendments in the American Recovery and Reinvestment Act, Public Law 111-5 as of their respective compliance dates, and any implementing regulations when they become effective and compliance is required.

The Contractor shall not use or further disclose PHI other than as permitted or required by HIPAA and the Business Associate Agreement; or as required by law. Use of PHI for payment, treatment, or health care operations may include disclosure only as permitted by HIPAA, including when such information is strictly necessary to resolve the issue or concern under discussion and the person has adequate permission or legal authority to review such information. In the absence of exigent circumstances or as otherwise permitted in the Business Associate Agreement, the Contractor shall not disclose any member's PHI to another business associate for pecuniary gain unless the State specifically authorizes such disclosures in advance and in writing.

RESPONSE: The State will not agree to the proposed modifications. Please refer to Responses 9 and 10 of Q#A set #1, issued January 8, 2010. These provisions of the RFP will become part of the Contract and are the business associate agreement provisions that will control for this Contract. If the Offeror cannot accommodate these requirements, then select "Disagree – See Section J-14: Deviations Page" for the requirement and describe the Offeror's proposed deviations.

57. *Attachment A - Contract: For most clients, the Contractor is permitted to sell aggregated blinded data, which is not identifiable on a client of member basis, to a number of nationally recognized data integration firms in order to support appropriate administration of Contractor's drug management programs. These benchmarking data enable us to compare against other drug-spending population sets and gauge the effectiveness of Contractor's clinical programs on a national and a regional basis. Will the State agree to the following alternative language? "Contractor may use, disclose, reproduce, adapt or sell to third parties for their business purposes information obtained in connection with this Contract, including Claims, as well as eligibility information, which is not identifiable on a State or Member basis. Contractor shall maintain the confidentiality of this information as required by applicable law, and may not use the information in any way prohibited by applicable law."*

RESPONSE: See Att. J-4, AR-48 regarding the sale of State data: “The Contractor will ensure that the State data will not be sold or shared with another organization without the prior written authorization of the State and unless compliant with HIPAA as an action by the Plan.” The Contractor (or Offeror in the event that the Offeror conditions its proposal on this provision) must identify and explain how the sale of such data is compliant with HIPAA and the HI-TECH Act if done by the plan/covered entity or a business associate in addition to securing the State’s approval. The State is not required to approve such exchanges. In addition, in the event that the State approves the sale of de-identified or aggregated data, to the extent that the State Plan (membership, utilization, claims, or other data) is the basis for revenue received by the Contractor, the provisions of RFP §3.4.1.1 (pass through of revenue) apply. The Offeror should note its proposed exception to the language of the Contract (Attachment A, §6) and Att. J-4, AR-48 in its proposal. See RFP §4.4.3.

58. *Attachment A - Contract: The instructions identify the Contract is not required at the time the proposal is submitted but is to be completed upon notification of award. Please confirm the State’s intention to modify the Contract to reflect the Contractor’s accepted proposal.*

RESPONSE: Please refer to §2.1 of the Contract (RFP Attachment A), which explicitly provides that the Contractor’s technical and financial proposals are incorporated into the Contract by reference. Note that the Contract’s provisions control over those incorporated documents. To the extent that an Offeror has an exception to the Contract terms, the Offeror should note its exception to the language of the Contract (Attachment A) in its proposal. See RFP §4.4.3.

59. *Attachment A - Contract: Section 4.3 – Please identify the process whereby the Contractor may appeal or dispute the Procurement Officer’s decision if the Contractor believes such decision to refuse payment is arbitrary and capricious?*

RESPONSE: Please refer to Section 9 “Disputes” of the Contract (RFP Attachment A), and the provisions and procedures detailed therein.

60. *Attachment A - Contract: Section 5 - Please confirm that the State shall agree to protect, as confidential and proprietary, portions of a Contractor’s proposal, which portions are expressly identified by Contractor as Trade Secrets, protected under the Maryland Trade Secrets Act and to refrain from disclosure of any such portions of the proposal to any third party.*

RESPONSE: Please refer to Maryland Annotated Code, State Government Article §10-617(d), prohibiting the disclosure of confidential commercial information held by the State or contained in public documents. Pursuant to State Government Article §10-627, it is a misdemeanor crime to willfully or knowingly violate that prohibition. In addition, please see Section 6 of the Contract (RFP Attachment A).

61. *Attachment A - Contract: Section 5 – Would the State include the following in Section 5 of the Contract: The parties acknowledge and agree the foregoing does not apply to any intellectual property that is designed, manufactured, created, prepared and/or generated*

by Contractor if Contractor has provided such to other clients prior to the Effective Date or if Contractor provides such intellectual property to other clients for similar purposes and such is not created exclusively for Department. Department acknowledges and agrees that Contractor owns and shall retain all rights, title, interest and ownership in and to said intellectual property.

RESPONSE: Please refer to Section 5.1 of the Contract (RFP Attachment A), which provides, *inter alia*, “Nothing in this Article 5 shall abrogate or transfer any intellectual property rights of the Contractor in its proprietary information related to methodologies, ideas, know-how, methods, techniques or skills possessed prior to this Contract.” The provision adequately protects the Contractor’s rights in its intellectual property.

62. *Attachment A - Contract: Section 14 – Termination for Cause. Please confirm the State will include a provision whereby the Contractor may terminate the Contract for cause.*

RESPONSE: The State will not include such a provision. Section 14 of the Contract is required by law. COMAR 21.07.01.12.

63. *Attachment A - Contract: Section 22 – Compliance with Laws. Please confirm the State will include the following provision in the Contract:*

Each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) (“Anti-Kickback Statute”), or the federal “Stark Law,” set forth at 42 U.S.C. § 1395nn (“Stark Law”), with respect to the performance of its obligations under this Agreement. Further, Contractor shall ensure that individuals meeting the definition of “Covered Persons” (as such term is defined in the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and Contractor) shall comply with Contractor’s Compliance Program, including training related to the Anti-Kickback Statute and the Stark Law. Contractor’s Code of Conduct and policies and procedures on the Anti-Kickback Statute and Stark Law may be accessed at [_____](#).

RESPONSE: The State will not include such a provision. Section 22 of the Contract is required by law. COMAR 21.07.01.22.

64. *Attachment A - Contract: Subcontracting – Section 26. Please confirm whether the State agrees to limit the application of the subcontracting requirement to a subcontractor of the core PBM services. Further, please confirm the State will grant Contractor the ability to delegate certain functions to affiliate companies of Contractor.*

RESPONSE: The State will not agree to such a limitation of the subcontracting requirement. As it relates to assignment of the Contract, the provision is a summary of applicable law. See COMAR 21.05.02.24. The RFP requires the Offeror to identify subcontractors that will perform services on this Contract. RFP, Attachments J-6a-f. To the extent that an “affiliate” will act in a subcontracting role or perform services on this contract, it should be identified in the proposal. In accordance with its common law contractual obligation to act in good faith, approval of the change in

subcontractors, or assign work to a responsible entity will not be unreasonably withheld by the State.

65. *Attachment A - Contract: Section 28 – Indemnification. Please confirm whether the State agrees to indemnify Contractor, to the extent permitted by State law. Further, please confirm the State agrees to revise Section 28.2 [sic] to be a mutual obligation for both parties.*

RESPONSE: The State will not agree to such an indemnification provision or mutual obligation. There are constitutional and statutory limitations on a State unit's ability to provide indemnification. Please see Sections 2.1 and 9 of the Contract, which provide a dispute resolution process and the means by which a contractor may seek damages from the State in the event of a breach of contract by the State.

66. *Definitions: Would the State include the following supplements to the definitions proposed:*

“AWP” means the “average wholesale price” for a standard package size of a prescription drug from the most current pricing information provided to Contractor by First DataBank®, Medi-Span Prescription Pricing Guide (with supplements), or following notice to Client, any other nationally available reporting service of pharmaceutical prices as utilized by Contractor as a pricing source for prescription drug pricing. The standard package size applicable to a mail service pharmacy shall mean one hundred (100) units (i.e., pills, tablets, capsules, etc.), unless only a smaller package size is available from the manufacturer, or the actual package size dispensed for liquids and topical treatments. The standard package size applicable to a Participating Pharmacy shall be the actual package size dispensed from a Participating Pharmacy as reported by such Participating Pharmacy to [Contractor].

“Maximum Allowable Cost” or “MAC” means the unit price that has been established by [Contractor] for a multi-source drug (i.e., a drug with more than two sources) included on the MAC drug list applicable to Client, which list may be amended from time to time by [Contractor] in maintaining its generic pricing program. Client acknowledges that the MAC list applicable to Client is not the same as the MAC list published by the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration, or “HCFA MAC”). A copy of such MAC drug list shall be provided to Client prior to execution of this Agreement and thereafter upon Client’s reasonable request.

“Specialty Drugs” means certain pharmaceuticals, biotech or biological drugs, as offered by [Contractor], that are used in the management of chronic or genetic disease, including but not limited to, injectible, infused, or oral medications, or products that otherwise require special handling, including without limitation those listed in the financial proposal, which may be amended by Contractor from time to time.

RESPONSE: The State will not include the proposed supplements to the definitions. To the extent that an Offeror has an exception to the terms and conditions of the RFP, the Offeror should note its exception to the terms and conditions in its proposal. See RFP

§4.4.3. These additional limitations on the definitions provided by the RFP do not appear necessary.

67. *Attachment A - Contract: Please identify whether the parties may include additional general provisions to the Contract that:*

- (a) *Identifies Contractor does not make representations or warranties, including without limitation, warranties of merchantability or fitness for a particular purpose.*
- (c) *Identifies Contractor does not establish AWP or other available industry pricing benchmark methodologies (e.g., “Wholesale Acquisition Costs” or “WAC”),*
- (d) *Identifies the Contract may not be amended except in a writing signed by both parties.*
- (e) *The Contract is entered into solely for the benefit of the Department and Contractor and is not intended to create any legal, equitable, or beneficial interest in any third party or to vest in any third party any interest as to enforcement or performance, including but not limited to, Participating Pharmacies or Plan Participants.*
- (f) *Identifies Contractor is an independent contractor and the Contract does not create a relationship of employer and employee, principal and agent, or joint venture of the parties.*

RESPONSE: To the extent that an Offeror has an exception to the Contract terms, including proposed alternative or additional language, the Offeror should note its exception or proposed addition or alternative to the language of the Contract (Attachment A) in its proposal so that exceptions may be discussed in more detail. See RFP §4.4.3. Regarding any changes to the scope of work, including contract modifications, please refer to Contract (Attachment A), Section 2.3. The limitation requested as to third party beneficiaries misstates the rights provided to Purchasing Pool Participants (i.e. plans). Further, to the extent that the Offeror wishes to include statements of fact in the Contract, that appears unnecessary.

68. *The RFP requires the contractor to accept monthly payments of PEPM administration fees however, outlined in K-1 Instructions Item C12 and Attachment K-4 Item 1, the cost proposal asks for a PMPM administration fee. Can the state confirm that they would like the admin fee presented as a PEPM?*

RESPONSE: Per Section 1.2.1(ii), the State defines a “Member” as an employee, former employee, or retiree (including Satellite and Direct Pay), excluding dependents. Therefore, for the purposes of this RFP, the terms “member” and “PMPM” refer to State employees and retirees as described. The admin fee is to be presented as a PMPM.

Please refer to Amendment # 3 which amends Attachment K-1, Instruction C.12. and Attachment J-4, AR-91. “PMPM” is now the sole acronym used, meaning Per Member Per Month. Revised versions of Attachment J – Technical Proposal and Attachment K – Financial Proposal are included as part of Amendment # 3.

69. *What are the estimated current vendor costs for providing the Purchasing Pool administration and marketing services?*

RESPONSE: Please refer to Question and Response # 32, found in Q&A #1. Currently there are no other member organizations in the Purchasing Pool. The State expects an offeror to use its own past experience in administering similar projects to forecast its costs associated with administration and marketing services in order to adequately prepare a financial proposal on the terms and conditions required by the RFP, particularly Attachment K.

70. *We seem to be having an issue entering information in some of the cells for the subcontractor questionnaire (J-6 of Attachment J – Technical Proposal). We were able to enter a subcontractor’s information on the first tab (J-6a) but all the other tabs do not allow us to enter our responses to the questions. It gives us an error message that values we have entered are invalid. Could you please provide us with guidance as to how best to work around this situation?*

RESPONSE: Attachments J-6a-f have been corrected to allow data to be entered in the cells. Please refer to Amendment # 3 for an updated version of Attachment J – Technical Proposal, which includes these corrections.

71. *The confidential data provided was summary data at the drug spend level, with no claim counts. There is no retail / mail breakout or brand / generic detail, and no Mail utilization or Generic Dispensing Rates by Mail and Retail channel. Was this information provided?*

RESPONSE: The Attachment N (“Confidential Data”) Excel file has 5 “tabs” at the bottom: “Experience,” “Enrollment History,” “Attachment J-9 Data,” “Attachment J-10 Data,” and “Attachment J-11 Data.” This Excel file and the Access database containing the census file represent all of the confidential data that is being distributed.

72. *Regarding the decision to require a Contractor to have “administered at least \$1 billion in annual costs in the calendar year 2008” (Section 2: Offeror Minimum Qualifications).*

We respectfully request the 1 billion dollar requirement be removed from this project for several reasons. Such a requirement eliminates nearly all pure competition and protects eligible contractors who are very large and generally supportive of traditional model prescription benefit management pricing. Newer organizations such as [our company] were pioneered on the sole basis of providing transparent model pricing and full disclosure requirements to its contracts with its existing public and private clients. As a result of this model, which went against the traditional industry standards, transparency and full disclosure has recently prevailed and other states are now making this a requirement to participate in the RFP process, however, they do not or have not had the financial limitation the State of Maryland requires. It would be our recommendation that the 1 billion dollar requirement be waived if the Contractor is an existing Contractor with other programs similar or identical to the State of Maryland as defined in Project No. F10B040006.

[Our company] is close to meeting the State of Maryland financial requirement and provides prescription benefits for millions of individuals and has a very strong balance and income statement. It is an innovative and forward thinking prescription benefit manager who led the way on transparency and full disclosure and has been instrumental in defining those metrics. I fear that if the State of Maryland does not waive this requirement, they will end up with few applicants offering a benefit that is “more of the same” and deny those, such as [our company] who are true transparency and full disclosure prescription benefit managers.

I look forward to reconsideration of this requirement and hope that Maryland opens up this option to the suggestion made above.

RESPONSE: The State has reviewed Section 2: Offeror Minimum Qualifications in light of feedback from the vendor community and has amended the Offeror Minimum Qualifications as part of RFP Amendment # 2. Please refer to Amendment # 2 for the specific revisions.

73. *We are requesting additional claim detail to conduct analysis for the State of Maryland. The required elements would contain NDC #11/GPI# 14 (14 digits), NDC Label Name/Drug Name, Quantity Dispensed, Days Supply, Fill Date, Mail/Retail Indicator, Member ID, Pharmacy ID, DOB, DEA Number and Formulary Indicator.*

If this information was provided in the submission of Attachment N: Confidential Documents, my apologies for overlooking the requested data.

RESPONSE: Please refer to Question and Response # 71. Attachment N and the Access database contain all of the confidential data that is being distributed. See also Responses #79 and #83.

74. *We are encountering a few issues in responding to the RFP in the format provided, and we wanted to bring these to your attention.*

Regarding Attachment J-5a Questionnaire, the following cells will not allow us to enter responses to the questions asked:

- *Q-26, rows 90-93 will not accept numbers or letters (question asks for distribution of employer clients by number of members)*
- *Q-108, rows 431, 438, and 445 will only accept numbers (questions ask for references)*

Additionally, we are unable to provide accurate responses to the following question numbers, as the cells only allow us to enter numbers but our responses require text:

- *Q-29c, Q-29e, Q-29f, rows 126, 128, and 129*
- *Q-34, rows 167-170*
- *Q-52, rows 236 and 237*

- *Q-108, rows 436 and 443*

How would you prefer we approach these questions? Is it possible to receive a less-restricted worksheet, or would you prefer that we simply respond to these items in the space provided in tab J-5b?

RESPONSE: Attachment J-5 has been corrected to allow for appropriate data to be entered into Q-26, Q-29c and Q-108. Please refer to Amendment # 3 for an updated version of Attachment J – Technical Proposal which includes these corrections.

For Q-29e, Q-29f, Q-34, and Q-52, please provide the answers to the questions asked in numeric form. If an additional response is still required, include the additional response in Attachment J-5b.

75. *With regard to Administrative Requirement AR-42, would the State of Maryland be willing to accept communication to the member regarding mail prescription delay after 5 days instead of three days?*

RESPONSE: If the Offeror cannot accommodate this requirement, then select “Disagree – See Section J-14: Deviations Page” for the requirement and describe the Offeror’s proposed deviations and reasoning in Attachment J-14.

76. *With regard to Administrative Requirement AR-49, would the State be willing to accept 2 month notice on any planned system upgrades or changes, including but not limited to claims, customer service, eligibility and corporate operating systems?*

RESPONSE: If the Offeror cannot accommodate this requirement, then select “Disagree – See Section J-14: Deviations Page” for the requirement and describe the Offeror’s proposed deviations in Attachment J-14.

77. *The State of Maryland provided summary level claims data. Will the State be providing 6 months of detailed claims data including NDCs?*

RESPONSE: Please refer to Question and Response # 71. Attachment N and the Access database contain all of the confidential data that is being distributed.

78. *Will a census file be provided? The NDC file for the formulary disruption was included in Attachment N, but the census was not included in that file.*

RESPONSE: Please refer to Question and Response # 71. Attachment N and the Access database contain all of the confidential data that is being distributed. Please note that the Department’s enrollment database does not include information on the entire eligible population, but only on the enrolled population. If you are seeking a census of all eligible individuals, such data does not exist.

79. *We have a few additional pricing/data related clarifying questions to help us position our response to the State with the most competitive pricing possible. While we would expect the incumbent to have detailed claim data including answers to the 3 questions*

below, the same information would be very beneficial to all PBMs creating even greater competitiveness in the market for the State.

- a. What % of retail scripts are under 35 days supply?*
- b. What % of mail scripts are under 84 days supply?*
- c. What % of retail scripts are between 35 and 84 days supply?*

RESPONSE: The metrics below are based on Fiscal/Plan Year 2009 (7/1/08 – 6/30/09) data.

- a) % of retail scripts under 35 days: 66.3%
- b) % of mail scripts under 84 days: 6.73%
- c) % of retail scripts between 35 and 84 days: 6.05%

80. *If further claim/pricing data will be forthcoming, will the State consider extending the deadline on the proposal to allow PBMs to analyze the new information and build it into our pricing models?*

RESPONSE: Attachment N and the Access database contain all of the confidential data that is being distributed. The State has extended the deadline for proposals to February 26, 2010. Please refer to Amendment # 2.

81. *Would it be possible to request a full Claim detail file with a minimum of 6 months of claim data, including data elements such as formulary indicators, mail/retail indicators, and generic drugs?*

RESPONSE: Attachment N and the Access database contain all of the confidential data that is being distributed.

82. *Please advise whether the Maryland State Employee and Retiree Health and Welfare Benefits Program is an ERISA plan.*

RESPONSE: The Maryland State Employee and Retiree Health and Welfare Benefits Program is not an ERISA plan. It is a plan established by a State government primarily for the purpose of providing health and welfare fringe benefits to State employees. 29 USC §1003 (b)(1). See Md. Ann. Code, State Personnel & Pensions Article, §2-502.

83. *What is the time frame of the claims volume and claims costs in the financial proposal worksheet (e.g., K-4 shows 1,179,500 retail brand prescriptions with \$336,189,700 ingredient cost)? That is, are these based on a past plan year, and if so, what year or other time frame? Or are they estimated volumes trended forward from a previous period, and if so what period are they based on before trending, and what cost and volume trend factors were used?*

RESPONSE: The assumptions provided in Attachment K-4 are based on Fiscal Year 2009 data. No trending has been applied to estimate future plan metrics. Please note that Attachment K-4 is an evaluation model.

Please remember that proposals are now due on February 26, 2010, no later than 2:00 p.m. (per Amendment # 2). If there are additional questions concerning this solicitation, please contact me via e-mail at ggnall@dbm.state.md.us or by phone at (410) 260-7338 as soon as possible.

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By: Gabriel Gnall
Procurement Officer