



STATE OF TENNESSEE
DEPARTMENT OF FINANCE & ADMINISTRATION, BENEFITS ADMINISTRATION

**REQUEST FOR PROPOSALS #31786-00174
AMENDMENT #THREE
FOR PHARMACY BENEFITS MANAGEMENT**

DATE: December 1, 2023

RFP #31786-0074 IS AMENDED AS FOLLOWS:

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

EVENT	TIME (central time zone)	DATE
1. RFP Issued		September 28, 2023
2. Disability Accommodation Request Deadline	2:00 p.m.	October 3, 2023
3. Pre-response Conference	1:00 p.m.	October 4, 2023
4. Notice of Intent to Respond Deadline	2:00 p.m.	October 5, 2023
5. Written "Questions & Comments" Round 1 Deadline	2:00 p.m.	October 16, 2023
6. State Response to Written "Questions & Comments" Round 1		November 7, 2023
7. Written "Questions & Comments" Round 2 Deadline	2:00 p.m.	November 14, 2023
8. State Response to Written "Questions & Comments" Round 2 *NOTE: Vendors may submit no more than ten (10) questions to the State in the 2nd round of Written Questions and Comments.		December 1, 2023
9. Response Deadline	2:00 p.m.	December 14, 2023
10. State Opening of Cost Proposals		December 21, 2023
11. Cost Proposal Analysis		December 21, 2023 – February 5, 2024
12. State Completion of Technical Response Evaluations		January 26, 2024
13. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	1:00 p.m.	February 22, 2024
14. End of Open File Period		February 29, 2024
15. State sends contract to Contractor for signature		March 1, 2024
16. Contractor Signature Deadline	2:00 p.m.	March 8, 2024

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

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

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
	1.	Is it permissible to exclude Low Volume Pharmacy claims from the applicable AWP Discount and Dispensing Fee guarantee reconciliations, as the ingredient cost and dispensing fee are being determined by a source other than the PBM's contract with the provider?	Yes. This is clarified in the Cost Proposal on tab #5-Cost Spreadsheet in footnotes #7 and #8.
RFP Section B.16	2.	<p>Section B.16 says, in part, "Provide up to five (5) customer references from individuals who are not current or former State employees for projects similar to the goods or services sought under this RFP and which represent."</p> <p>Does the State intend to prohibit the use of all State of Tennessee references including those that may not be related to the State Employee Benefit?</p>	Yes. The individual serving as the reference may not be a current or former State employee.
Pro Forma Contract A.2.oo	3.	<p>Bidder contracts with a Group Purchasing Organization on a book-of-business basis and pursuant to an extant contract. Consequently, Bidder can neither represent nor warrant that the terms of said agreement contain or will contain the State's proposed obligations or provisions in this Pro Forma contract, or that of any other client contract.</p> <p>Please consider revising this definition to the following:</p> <p><i>Group Purchasing Organization or GPO - an entity that aggregates the purchasing power of a group of businesses to obtain Discounts or Rebates from Pharmaceutical Manufacturers. These services may include contracting with manufacturers for Manufacturer Payments or any similar service conducted on behalf of the PBM. Any entity who provides the same or similar services as the PBM on behalf of the PBM under this Agreement shall also be considered a GPO. For purposes of this Agreement, rebate aggregators or any similar/competing entity shall also be a GPO.</i></p>	The State agrees to amend the definition of GPO as requested. See Amendment item #4 below.
Pro Forma Contract, A.2.jjj	4.	<p>We request that the State make the indicated revision to Section A.2.jjj (Maximum Allowable Cost ("MAC")) in the Pro Forma Contract:</p> <p>"Maximum Allowable Cost ("MAC") – the price that has been established by PBM for a Brand Drug or Generic</p>	The state does not agree to this revision.

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		<p>Drug included on its MAC drug list, which may be amended from time to time by PBM. A copy of such MAC drug list shall be provided to the State, prior to execution and upon the State's reasonable request, and shall be updated by PBM in its sole discretion. The same MAC list will be used for a Retail Pharmacy, a Mail Order Pharmacy, and a Specialty Pharmacy (i.e., same number of drugs, same drugs). The Mail Order Pharmacy and Specialty Pharmacy <u>(only with respect to any Specialty Pharmacy owned by or affiliated with Contractor)</u> MAC list price points for individual drugs/generic class numbers shall be equal to or less (i.e., more deeply Discounted) than the Retail Pharmacy MAC price points for the same drugs/generic class numbers."</p>	
<p>Pro Forma Contract A.2.dddd</p>	<p>5.</p>	<p>This definition would contractually involve affiliated entities of Bidder that are not party to this agreement and do not provide PBM services as requested by this RFP and Pro Forma Contract, including those that may even be licensed to do so. Please revise the term to: <i>PBM Affiliates - an entity performing Services under this Agreement:</i></p> <p>(1) <i>which is directly or indirectly, through one or more intermediaries, controlling such party;</i> (2) <i>which is under the same direct or indirect ownership or control as such party; or</i> (3) <i>which is directly or indirectly, through one or more intermediaries, owned or controlled by such party.</i></p> <p><i>For purposes of this definition and the Agreement, "control" (including the terms controlling, controlled by or under common control with) means (a) the possession, direct or indirect, (b) the power to direct or cause the direction of the management or policies of an entity, or (c) the ability to direct an entity's affairs or to control the composition of its</i></p>	<p>The State elects to keep the definition of PBM Affiliates as-is and declines to make the edit requested.</p> <p>However, please note that it is neither the intention of this definition nor of the State to hold affiliates responsible who do not support the State under this Agreement.</p>

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		<p><i>board of directors or equivalent body, whether through (i) 50% of more of voting securities, (ii) partnership or membership interests, (iii) by contract or (iii) any other means. Further, a Group Purchasing Organization shall also be considered a PBM Affiliate to the extent the GPO meets the above definition.</i></p>	
Pro Forma Contract A.8.h	6.	<p>Would the State agree that the requirement will be met if the language were changed to “shall guarantee equal to or more favorable” rather than “shall guarantee more favorable”?</p>	<p>The state does not agree to this revision.</p>
Pro Forma Contract, A.11	7.	<p>The State of Florida recently passed a law imposing requirements on PBMs that will apply to Plan members who reside in Florida, and requiring that PBM contracts taking effect after the law’s passage “must include, in substantial form, terms that ensure compliance with all of the [] requirements [of the law] and that, except to the extent not allowed by law, shall supersede any contractual terms to the contrary.” See Florida Statutes §626.8825. In light of this requirement, we request that the State add the following new subsection to Section A.11 (Compliance)</p> <p><u>“The parties agree that the full text of Florida Statutes §626.8825 is incorporated by reference into the Contract.” If compliance with the terms and conditions stated elsewhere in the Contract with respect to the services, claims, or members governed by Section 8825 would comply with the applicable requirements of Section 8825, the terms and conditions stated elsewhere in the Agreement shall prevail. If compliance with the terms and conditions stated elsewhere in the Contract with respect to the services, claims or members governed by Section 8825 would not comply with the applicable requirements of Section 8825, the terms and conditions of Section 8825 shall apply to the extent required by applicable law.”</u></p>	<p>The State will not specifically incorporate the full text of Florida Statute §626.8825 by reference into the Contract. The Contract “shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules.” See Pro Forma Contract, § D.26. Additionally, the State of Tennessee shall require that the Contractor comply with “all State and federal laws and regulations applicable to Contractor” in the Contractor’s performance of this Contract. See Pro Forma Contract, § D.25.</p>

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Pro Forma Contract, A.11	8.	<p>Regarding subsection (c) of Section A.11 of the pro forma contract, Contractor does not provide gag clause attestations on behalf of clients, but can provide an annual written attestation of its compliance with gag clause prohibitions. Accordingly, we request that the State revise this subsection as follows:</p> <p>The Contractor shall provide the State with file a Gag Clause Prohibition Compliance Attestation on behalf of the State Group Insurance Program annually by the federal deadline with the Centers for Medicare and Medicaid Services (CMS) via the required HIOS upload to comply with the Consolidated Appropriations Act of 2021.</p>	The State agrees to this change. See Amendment item #6 below.
Pro Forma Contract A.15.e	9.	Can you please clarify where you want Specialty Retail Brands to be reconciled? Is it in the "All Brand Specialty Pharmacy Claims"? Does this include LD that the Contractor's Specialty Pharmacy <i>does not</i> have access to?	As stated in the Cost Proposal, "All Brand Drugs on the PBM's Specialty Drug worksheet will be included in the specialty financial guarantees. Brand Drugs not on the PBM's Specialty Drug list will be included in non-specialty guarantees, and the channel of distribution dictates the pricing guarantees for any Brand Drugs not on the PBM's Specialty Drug list. Any Generic Specialty Pharmacy Claims will fall into the Retail-30 Generic category."
Pro Forma Contract, Section A.19	10.	<p>RFP Attachment 6.6 Pro Forma Contract, Section: A.19 Data and Information Technology d. Decision Support System (1) layouts, and data dictionaries in a timely manner and in the formats, layouts and specifications, including GPI and or GCN for all prescription drug Claims, as specified by the DSS contractor and approved by the State. Unless otherwise directed by the State, all Claims data provided to the DSS contractor shall include the individual social security number along with all other agreed upon data.</p> <p>Will the State please accept the above requested change?</p>	The state does not agree to this revision.

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Pro Forma Contract Section A.19	11.	<p>RFP Attachment 6.6 Pro Forma Contract, Section: A.19 Data and Information Technology</p> <p>d. Decision Support System</p> <p>(f) The Contractor shall load all current PAs, overrides, and that exist for current Members from all existing PBMs no later than thirty (30) days prior to the go-live date. Open refills shall be loaded prior to go-live.</p> <p>Will the State please accept the above requested changes? We do not load open refills 30 days prior to the go-live date. Open refills are loaded on the go-live dates.</p>	<p>The State does not accept the proposed revision, but does agree to change the language in pro forma contract section A.19.f to read as follows:</p> <p>The Contractor shall load all current PAs and overrides, (Mail Order, specialty and retail) that exist for current Members from all existing PBMs no later than thirty (30) calendar days prior to the go-live date. Open refills shall be loaded 12 calendar days prior to the go-live date.</p> <p>Please see Amendment item #9 below.</p>
Pro Forma Contract, Section A.21	12.	<p>RFP Attachment 6.6 Pro Forma Contract, Section: A.21. Appeals</p> <p>c. The Contractor shall decide Pre-Service Appeals within fifteen (15) calendar days and Post- Service Appeals within thirty (30) calendar days. Ninety-nine percent (99%) of Pre-Service Appeals shall be decided within fifteen (15) calendar days and ninety-nine percent (99%) of Post-Service Appeals within thirty (30) calendar days from receipt of appeal. The Contractor shall offer an expedited appeals process. If a denial of coverage or authorization can reasonably be expected to prevent a covered individual from obtaining urgently needed medications, then a request for an expedited consideration may be submitted by the Member, their duly authorized representative or treating physician. The Contractor shall respond to one hundred percent (100%) ninety-nine percent (99%) of expedited (urgent) appeals within seventy-two (72) hours. An appeal may come in the form of a PA request from the prescriber in which case the Contractor will render an approval and PA number and length of time the authorization is approved or a denial on the PA request. All costs and charges associated with appeals at all levels shall be included in the monthly Administrative Fees that the State will self-bill and pay to the Contractor each month. The State shall not be invoiced for any appeals-related charges.</p>	<p>The State does not agree to this revision, but the State has revised the language. See Amendment item #10 below.</p>

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		Will the State please accept the above requested change?	
Pro Forma Contract, A.21.c	13.	<p>In Pro Forma Contract Section A.21.c, we would like to request the revised language below.</p> <p>The Contractor shall decide Pre-Service Appeals within fifteen (15) calendar days and Post- Service Appeals within thirty (30) calendar days. Ninety-nine percent (99%) of Pre-Service Appeals shall be decided within fifteen (15) calendar days and ninety-nine percent (99%) of Post-Service Appeals within thirty (30) calendar days from receipt of appeal. The Contractor shall offer an expedited appeals process. If a denial of coverage or authorization can reasonably be expected to prevent a covered individual from obtaining urgently needed medications, then a request for an expedited consideration may be submitted by the Member, their duly authorized representative or treating physician. The Contractor shall respond to ninety-eight one hundred percent (98.100%) of expedited (urgent) appeals within seventy-two (72) hours. An appeal may come in the form of a PA request from the prescriber in which case the Contractor will render an approval and PA number and length of time the authorization is approved or a denial on the PA request. All costs and charges associated with appeals at all levels shall be included in the monthly Administrative Fees that the State will self-bill and pay to the Contractor each month. The State shall not be invoiced for any appeals-related charges.</p>	The State will agree to this revision. See Amendment item #10 below.
Pro Forma Contract A.25	14.	Bidder understands what is being requested in A.25.a with the exception of this one sentence – <i>The Contractor shall not pass on postage or mailing fees for your Mail Order Pharmacy and your preferred Specialty Pharmacy to the State during the term of the Contract.</i> Can the State provide clarification of this sentence, as being under the heading of Communications Mailings is confusing?	The sentence “ <i>The Contractor shall not pass on postage or mailing fees for your Mail Order Pharmacy and your preferred Specialty Pharmacy to the State during the term of the Contract</i> ” is included here as an additional point of reference for the Contractor that it is not permissible to pass back to the State any costs for mailing or communicating with members related to mail order or specialty pharmacy

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			claims that are filled at the Contractor's own such pharmacies.
Pro Forma Contract, A.26.B and Attachment D, Table A, KPI #13	15.	<p>In Pro Forma Contract Section A.26.B and Attachment D, Table A, KPI #13, we would like to request the language be updated to clarify four (4) business days.</p> <p>Ninety-eight percent (98%) of ongoing welcome packets and ID cards shall be produced and mailed within four (4) business days of receipt of complete and accurate eligibility information, as required in Contract Section A.26.</p>	The correct reference is A.26.d. The state agrees to this language change in A.26.d and Table A, KPI #13. See Amendment item #11 and 14 below.
Pro Forma Contract A.31	16.	<p>Pro Forma Contract A.31.a and b., please see Bidder's standard audit protocol attached.</p> <p>Pro Forma Contract A.31.m provides that "the State may ... (b) audit all aspects of such contract." Certain portions of Bidder's manufacturer Rebate contracts, including those with third party GPOs, include information that is inapplicable to the services provided to Bidder or the State and/or confidential."</p> <p>Please confirm Bidder can redact information concerning other clients and information that is not required to confirm compliance with the terms of the agreement and applicable law.</p>	Confirmed. Bidder may redact information concerning other clients and information that is not required by the State's auditors or contracted audit partners to confirm compliance with the terms of the agreement. Upon request, the Contractor shall explain (without divulging other client information) why each redacted section was a necessary redaction so the State or its audit partners can be comfortable that the redacted information was not relevant to confirm compliance with the terms of the agreement and applicable law.
Pro Forma Contract A.31.d	17.	Please confirm the State will be specifically looking to determine if previous confirmed errors have been corrected if the State were to audit claims that were already a part of previous audits.	Confirmed. This is what we would be looking for in any follow up audit that we or our contracted partner(s) may do on our behalf.
Pro Forma Contract, A.31.j	18.	<p>Would the State consider a modification to Attachment 6.6 Pro Forma Contract, Section: A.31 Audit Authority (j.) to restate as follows:</p> <p>If the outcome of the audit results in an amount due to the State, the Contractor shall pay the full amount due within (30) thirty calendar days of final audit report notification from the State. Any amount due the State which is not paid</p>	The state does not agree to this revision.

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		<p>within (30) thirty calendar days of the final audit report will be deducted from the total amount due from the fees due to the Contractor pursuant to C.3 until the full amount due is paid, unless. If the Contractor disagrees with a finding resulting in a payment to the State, in which case the parties will cooperate in good faith to mutually agree upon audit findings. the State will review the Contractor's comments, but if the State retains the original audit findings the Contractor will be responsible for any payment to the State.</p>	
<p>Pro Forma Contract, A.31</p>	<p>19.</p>	<p>Will the State consider restating the second sentence of Attachment 6.6 Pro Forma Contract, Section: A.31.m as follows:</p> <p>To the extent that the Contractor contracts with a separate group purchasing organization (GPO) in connection with Rebates or Manufacturer Payments to be paid to for the State in accordance with this Contract, the State may (a) directly confirm the existence of contract(s) between the Contractor and such third-party GPO (I.e., view the contract introduction, recitals, and signature block) and (b) audit all aspects of such contract, consistent with the limitations set forth in subsection (a).</p>	<p>The State can agree to the following revision to allow for confidentiality agreements to be executed as needed:</p> <p>Within A.31.m:</p> <p>"...To the extent that the Contractor contracts with a separate group purchasing organization (GPO) in connection with Rebates or Manufacturer Payments for the State, the State may (a) directly confirm the existence of contract(s) between the Contractor and such third-party GPO (i.e., view the contract introduction, recitals, and signature block) and (b) audit all aspects of such contract, with the establishment of applicable third-party confidentiality agreement(s), if any, as reasonably required by the GPO."</p> <p>See Amendment item #12 below.</p>
<p>Pro Forma Contract, C.3</p>	<p>20.</p>	<p>In light of the recent passage of House Bill 2661 (Public Chapter No. 1070, codified in T.C.A. § 56-7-3206), we request that the State add the following new subsection to Section C.3 (Payment Methodology) of the Pro Forma Contract:</p> <p><u>"Contractor may invoice the State for additional amounts paid by Contractor as a result of any</u></p>	<p>The state does not agree to this revision. These possible fees should be factored into your proposed PMPM administrative fee. Additional language has been added to the definition of "Administrative fee" in A.2.d and in A.11.d as well. See Amendment items #3 and #7.</p>

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		<p><u>pharmacy appeal pursuant to T. C. A. § 56-7-3206, including any additional reimbursement(s) made to the appealing pharmacy, and/or any “similarly situated” pharmacy required under that section to be reimbursed in connection with the appeal.”</u></p>	
Pro Forma Contract, C.3	21.	<p>Several other states have recently passed legislation requiring that certain claims processed in those states must be reimbursed pursuant to a specified reimbursement methodology (e.g., NADAC), and/or paid with a specified dispensing fee that may be considerably larger than the dispensing fee that would otherwise apply under the Contract. Accordingly, we request that the State add the following new subsection to Section C.3 (Payment Methodology) of the Pro Forma Contract:</p> <p><u>“Contractor may exclude from all discount and dispensing fee guarantees any Claims that are processed pursuant to a reimbursement methodology (e.g., NADAC) required under state law, and/or that require a specified dispensing fee.”</u></p>	<p>The State does not agree to this revision. For reference, the percentage of prescriptions filled by state in 2021 and 2022 are included in new Appendix 7.26. See Amendment item #15 below. Respondents are encouraged to take this information into account when developing their respective cost proposals.</p>
Pro Forma Contract, Section C.3	22.	<p>In the first round of vendor questions, the state replied to question 115 to indicate that instances in which cost neutrality is not possible that a contract amendment process would be initiated. As a PBM may have awareness of anticipated market launches for products, it is not possible to fully anticipate market pricing that a pharmaceutical manufacturer may choose to implement. Further, legislation changes - such as the Inflation Reduction Act - may create market events in which cost neutrality based on existing guarantees is not achievable. In order to allow a bidder to propose its most aggressive financial offer for the State and also help the State avoid costly and time consuming amendment processes during the agreement, would the State add the following language to contract section C.3.</p>	<p>The State does not agree to this revision.</p>

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	<p><u>When remitting and reconciling minimum Rebate guarantees, Contractor may add "Rebate Credit" value to the total Rebates remitted to Client for each respective Rebate component. "Rebate Credits" shall consist of (i) the differential between the Wholesale Acquisition Cost (WAC) of a lower net cost Brand Covered Product, including but not limited to a Biosimilar ("Low Cost Brand"), Claim processed and the WAC of the reference Brand Drug, subject to the below cap; and/or (ii) the value of price reductions for rebateable products that have experienced a WAC decrease, measured as the differential between the Baseline WAC of the product and the WAC of the product when the Claim is processed, subject to the below cap. The "Baseline WAC" will be the WAC of the product prior to a reduction in WAC or, as applicable, for Low Cost Brands, the Baseline WAC will be the WAC of the reference Brand Drug at the time of Claim processing.</u></p> <p><u>In no way will the Rebate Credit exceed the Baseline Rebate less the earned Rebates on either the Low Cost Brand or the rebateable product that has experienced a WAC decrease. "Baseline Rebate" is calculated as follows: in the year the price reduction occurred, Baseline Rebate will be the Rebate available for coverage of the product prior to the WAC reduction or, as applicable, for Low Cost Brands the Baseline Rebate will be the Rebate available for coverage of the reference Brand Drug on the date of claim processing. For a product experiencing a WAC reduction, in subsequent years the Baseline Rebate will increase over the prior year Baseline Rebate at the WAC inflation rate of the GPI subclass (GPI-6) of the applicable product. Contractor will notify Client of any applicable Covered Product that qualifies for Rebate Credits. Contractor shall provide reporting upon Client request demonstrating the net-cost impact in the therapeutic category.</u></p>	

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Pro Forma Contract, C.3.v	23.	<p>PBMs typically receive rebate payments from manufacturers after the close of the period in which the rebates are earned, and many times more than 180 days after the close of the period. Please confirm that the State would be amenable to the following change which would allow a bidder to payout all rebates collected within the stated time period but also have the opportunity to payout rebates that may be unknown but collected after the 180 calendar day period closes.</p> <p>v. <u>The Contractor shall be responsible for the payment of Rebates on all claims incurred prior to termination or cancellation.</u> The Contractor shall pay out to the State all Manufacturer Payments earned by the State regardless of termination of this contract with final reconciliation and payment made to the State 180 calendar days post termination <u>for rebates collected during that period, with any additional rebates collected after the termination to be paid out consistent with the terms of the agreement</u></p>	The state does not agree to this revision.
Pro Forma Contract C.14	24.	<p>Section C.14 is not consistent with the requirements of the Consolidated Appropriations Act. The Consolidated Appropriations Act does not bestow upon the State the power to approve all indirect or transactional arrangements of publicly traded corporations, and their affiliates, including those that may not even be party to the agreement. This provision violates the rights and obligations of Bidder's board of directors and laws applicable to publicly traded companies and corporations organized under Delaware law.</p> <p>Bidder cannot agree to include this term in a contract.</p> <p>Bidder can agree to disclose its principal sources of revenue in accordance with its parent company's SEC filings and SEC regulations.</p>	The State does not agree. Section C.14 is consistent with the requirements of the federal Consolidated Appropriation Act (CAA).

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Pro Forma Contract E.7	25.	<p>RFP Attachment 6.6 Pro Forma Contract, Section: E.7 Contractor Hosted Services Confidential Data, Audit, and Other Requirements</p> <p>C. Comptroller Audit Requirements</p> <p>Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all related Subcontractors used by the Contractor. Contractor will maintain and cause its related Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and related Subcontractor(s) personnel for the purpose of performing the information technology control audit.</p> <p>Will the State please accept the suggested changes?</p>	<p>The intent behind the request is unclear. Per RFP Section 5.3.6, the State may, at its sole discretion, entertain limited terms and conditions or pricing negotiations prior to Contract signing that are found to be in the States best interest with no material changes to the contract. There is no guarantee this will occur. The State may, at its sole discretion, entertain limited negotiations with the best-evaluated respondent. See RFP Attachment 6.1 STATEMENT OF CERTIFICATIONS AND ASSURANCES.</p>
Pro Forma, E.7.a.3	26.	<p>In Pro Forma Contract Section E.7.a.3, we would like to request the revised language below.</p> <p>The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. Contractor</p>	<p>The State does not agree with this revision, but the State has revised the language in E.7.a.3. See Amendment item #13 below.</p>

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		<p>shall allow use a mutually agreed upon third party to perform the <u>application</u> penetration testing and <u>either a third party or internal resources to perform network penetration testing and</u> vulnerability assessments in accordance with NIST 800-115.</p>	

3. Delete *Pro Forma Contract Sections A.2.c* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

c. **Administrative Fee** – The fee for Pharmacy benefit management services paid by the State to the Contractor. It is the only compensation due the Contractor under the contract, unless the Contractor also bid a Clinical Fee. The Contractor’s monthly compensation is a function of the contractor’s Administrative Fee multiplied by the number of participating Members per month (“PMPM”). Clinical Fees are not included in the Administrative Fee. The Administrative Fee shall constitute all payments due to the Contractor not included in the Clinical Fee and shall include, but not be limited to, all costs incurred by the Contractor to comply with all state and federal laws including, but not limited to, appeals by pharmacies to the Tennessee Department of Commerce & Insurance associated with PBM claim reimbursement related to Tennessee Public Chapter 1070.

4. Delete *Pro Forma Contract Sections A.2.nn* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

nn. **Group Purchasing Organization or GPO** - an entity that aggregates the purchasing power of a group of businesses to obtain Discounts or Rebates from Pharmaceutical Manufacturers. These services may include contracting with manufacturers for Manufacturer Payments or any similar service conducted on behalf of the PBM. Any entity who provides the same or similar services as the PBM on behalf of the PBM under this Agreement shall also be considered a GPO. For purposes of this Agreement, rebate aggregators or any similar/competing entity shall also be a GPO.

PBM represents and warrants that PBM’s agreements with a Group Purchasing Organization shall contain (and will continue to contain through the term of this Agreement) provisions or obligations that are substantially similar to any provision or obligation contained in this Agreement which directly or indirectly relates to any service under this Agreement that is or may be performed by a GPO as defined herein.

5. Delete *Pro Forma Contract Sections A.2.bbbb* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

bbbb. **Pass-Through Transparent Pricing** – a pricing structure comprised of fixed guaranteed Discounts at PBM’s Mail Order Pharmacy and Specialty Pharmacy and a full pass through (100%) of PBM’s contracted rates with Participating Pharmacies and Pharmaceutical Manufacturers. In this arrangement, PBM retains the difference between Mail Order and Specialty Pharmacy acquisition costs and the amounts guaranteed to the State. PBM passes through (1) its contracted rates with Participating Pharmacies and (2) all Manufacturer Payments it receives from Pharmaceutical Manufacturers in excess of the State’s guaranteed Manufacturer Payments. The amount billed to the State at Retail Pharmacies will be equal to the amount paid by PBM to the Retail Pharmacies. The PBM’s only profits are the Administrative Fee, Other Pharmaceutical Manufacturer Revenue not directly attributable to the State’s Claims and/or utilization, and any clinical program fees. The PBM is also allowed to retain the difference between Mail Order and Specialty Pharmacy acquisition costs and the amounts guaranteed to the State, as described in this Contract. All financial negotiated Retail Pharmacy contracts and Rebate contracts are fully disclosed to and auditable by the State or its authorized agent. The State is protected in this model by requiring guaranteed Discounts, fees, and Manufacturer Payments from the PBM and any PBM Affiliates. Discounts and Manufacturer Payments achieved on the State’s behalf that exceed the financial guarantees are payable to the State. Dispensing Fees that are paid lower than the guaranteed are also passed through to the State. Hence, the financial guarantees are the minimum Discounts and Manufacturer Payments the State will achieve and the maximum Dispensing Fees and Administrative Fees the State will pay.

6. Delete *Pro Forma Contract Sections A.11.c* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

c. The Contractor shall provide the State with a Gag Clause Prohibition Compliance Attestation annually by the federal deadline with the Centers for Medicare and Medicaid Services (CMS) to comply with the Consolidated Appropriations Act of 2021.

7. Delete *Pro Forma Contract Sections A.11.d* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

d. The Contractor shall ensure that the Plan benefits are delivered in compliance with all state and federal rules and regulations including, but not limited to, Tennessee Public Acts Chapter 1070 as passed during the 112th General Assembly, Tennessee Public Acts Chapter 405 as passed during the 112th General Assembly, and Tennessee Public Acts Chapter 569 as passed during the 112th General Assembly. The Contractor will be responsible for all related costs for complying with these laws including, but not limited to, appeals by pharmacies to the Tennessee Department of Commerce & Insurance associated with PBM claim reimbursement related to Tennessee Public Chapter 1070.

8. Add *Pro Forma Contract section A.12.p* in its entirety and renumber any subsequent sections as necessary.

p. The Contractor agrees that the State, at the State's sole discretion, may utilize third party services for Prior Authorization and utilization management for Specialty Drugs and/or non-Specialty Drugs without objection, charge, or penalty if the State chooses to exercise this right. The Contractor will also, at no charge and as directed by the State, provide support needed by such third party or parties to perform its services including, but not limited to, exchanging needed claims, accumulator, and eligibility data; redirecting prescriber, member, drug manufacturer, and/or pharmacy inquiries related to such services to the applicable entity; and providing needed access to PBM Claims and/or Prior Authorization override systems allowing such third party or parties to enter Prior Authorization and other claims reject overrides and quantity limits, run test claims, confirm member eligibility in real-time, look up claims history in real-time, and look up state-specific drug coverage status in real-time.

9. Delete *Pro Forma Contract Sections A.19.f* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

f. The Contractor shall load all current PAs and overrides (Mail Order, specialty and retail) that exist for current Members from all existing PBMs no later than thirty (30) calendar days prior to the go-live date. Open refills shall be loaded 12 calendar days prior to the go-live date.

10. Delete *Pro Forma Contract Sections A.21.c* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

c. The Contractor shall decide Pre-Service Appeals within fifteen (15) calendar days and Post-Service Appeals within thirty (30) calendar days. Ninety-nine percent (99%) of Pre-Service

Appeals shall be decided within fifteen (15) calendar days and ninety-nine percent (99%) of Post-Service Appeals within thirty (30) calendar days from receipt of appeal. The Contractor shall offer an expedited appeals process. If a denial of coverage or authorization can reasonably be expected to prevent a covered individual from obtaining urgently needed medications, then a request for an expedited consideration may be submitted by the Member, their duly authorized representative or treating physician. The Contractor shall respond to **ninety-eight percent (98%)** of expedited (urgent) appeals within seventy-two (72) hours. An appeal may come in the form of a PA request from the prescriber in which case the Contractor will render an approval and PA number and length of time the authorization is approved or a denial on the PA request. All costs and charges associated with appeals at all levels shall be included in the monthly Administrative Fees that the State will self-bill and pay to the Contractor each month. The State shall not be invoiced for any appeals-related charges.

11. Delete *Pro Forma* Contract Sections A.26.d in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

- d. Ninety-eight percent (98%) of ongoing welcome packets and ID cards shall be produced and mailed within four (4) **business** days of receipt of complete and accurate enrollment information.

12. Delete *Pro Forma* Contract Sections A.31.m in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

- m. Pharmacy Rebate audits can include, but are not limited to, review and examination of manufacturer Rebate contracts, Rebate payments, special Discounts, fee reductions, incentive programs or the like with Pharmacy Manufacturers, and Program financial records as necessary to perform an accurate and complete audit of Rebates received by the State. To the extent that the Contractor contracts with a separate group purchasing organization (GPO) in connection with Rebates or Manufacturer Payments for the State, the State may (a) directly confirm the existence of contract(s) between the Contractor and such third-party GPO (i.e., view the contract introduction, recitals, and signature block) and (b) audit all aspects of such contract **with the establishment of applicable third-party confidentiality agreement(s), if any, as reasonably required by the GPO.** Upon request by the State, or its designated authorized independent auditor, the Contractor shall provide full disclosure of Rebates and Manufacturer Payments received by the Contractor, its Affiliates, subsidiaries, or subcontractors on behalf of the State. This disclosure shall include line-item detail by NDC or NDC-11 and line-item detail by pharmaceutical manufacturer showing Actual Cost remitted and other related Claim and financial information as needed to satisfy the scope of the audit. One hundred percent (100%) of all drugs dispensed and paid for from the go-live date on January 1, 2025 until the termination of Benefits shall be included in any kind of Pharmacy audit, regardless of tier level (Generic Drug, preferred brand, or non-preferred brand or absence of a tier assignment), and without regard to enrollment plan type, number of Members enrolled in said Plan, Copayment/Coinsurance assigned by the State (or lack thereof), Spread or differential between drug tier Copayments/Coinsurance, or any kind of utilization.

13. Delete **Pro Forma Contract Sections E.7.a.3** in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

3. The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. Contractor shall provide a letter of attestation that the penetration testing and vulnerability assessments in accordance with NIST 800-115 have been performed annually and any material weaknesses have been remediated.

14. Delete **Pro Forma Contract Attachment D KPI #13** in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

1.	Distribution of Ongoing Member ID Cards/Welc me Packets	Ninety-eight percent (98%) of ongoing welcome packets and ID cards shall be produced and mailed within four (4) business days of receipt of complete and accurate eligibility information, as required in Contract Section A.26.	98%	98% or greater	6	
				96.0-97.9%	4	
				91.0-95.9%	2	
				Less than 91%	0	

15. Add the following as RFP Attachments and Appendices and renumber any subsequent sections as necessary:

Appendix 7.26 Percentage of prescriptions filled by state

16. Delete RFP Attachment 6.2 Section C.13 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

C.13	<p align="center"><u>Formulary Disruption</u></p> <p>The State currently has an open formulary (see Appendix 7.24) with a few exclusions specifically listed in Appendix 7.23. Regarding the Respondent's Formulary management policies, procedures, and processes describe or provide:</p> <p>(a) A copy of the Formulary and the name of the Formulary you intend the State to use for its current benefit plans if selected as the best evaluated Respondent. This MUST be an open formulary with exclusions (only as listed in Appendix 7.23) and utilization management such as Step Therapy, quantity limits and/or PA requirements that aligns with the current plan design in Appendices 7.17 and 7.18. See RFP Appendices 7.17, 7.18, 7.23, and 7.24 for a summary of the State's current Formulary management edits and exclusions.</p> <p>(b) A disruption analysis related to a switch from the current Formulary to the new Formulary. Complete the tables in RFP Appendix 7.3. for this analysis.</p>				8
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17. Delete Question #27 from Amendment One in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

General	27.	Is the State's intent to use the Bidder's Open formulary where drug coverage is managed by the bidder and the State will manage benefit design for exclusion for specific categories for example infertility, weight loss, OTC's.	Correct. We will work through those questions with the Contractor during the implementation phase after the contract is signed. As a note, please provide one bid that aligns with the requirements in RFP question C.13.
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18. Delete Question #42 from Amendment One in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

RFP Section C.13	42.	<p>C.13 states, "The State currently has an open formulary (see Appendix 7.24) with a few exclusions specifically listed in our Plan Document. Regarding the Respondent's Formulary management policies, procedures, and processes describe or provide: (a) A copy of the Formulary and the name of the Formulary you intend the State to use for its current benefit plans if selected as the best evaluated Respondent. This MUST be an open formulary with no exclusions or limitations such as Step Therapy, quantity limits and/or PA requirements. If the State is interested in those programs the State will discuss those during contract implementation and during the term of the contract. See RFP Appendices 7.17, 7.18, and 7.23 for a summary of the State's current Formulary management edits and exclusions.</p> <p>Please confirm Vendor may submit a closed formulary quotation as the RFP also states, "The State is open to the acceptance of utilization management edits, but such edits must be prior approved by the State.</p>	Bidders should NOT provide a bid for a closed formulary. Please provide one bid that aligns with the requirements in RFP Question C.13.
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19. Delete Question #98 from Amendment One in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

Pro Forma Contract A.9.g	98.	Pro Forma Contract A.9.g, You have noted that final decisions for both inclusion and exclusion from the formulary shall be at the sole discretion of the State- Is the state's intention to utilize the bidder's open formulary with the state making one-off formulary exclusion changes or does the state plan to offer a custom formulary managed by the state and does the state have their own P&T?	The intention is to use the bidder's open formulary. The State does not have our own P&T committee. We will work with the winning bidder during the implementation phase and throughout the term of the Agreement to make inclusion/exclusion decisions as well as other formulary management and/or utilization management decisions. As a note, please refer to RFP
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			question C.13 and provide one bid that aligns with the requirements in RFP question C.13.
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20. Delete RFP #31786-00174 in its entirety, and replace with RFP #31786-00174, Release #2.
Revisions of the original RFP document are emphasized within the new release. Any sentence or paragraph containing revised or new text is highlighted.

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