Department of Public Safety and Correctional Services

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QUESTIONS AND RESPONSES # 3
Project No. DPSCS Q0012015
INMATE PHARMACY SERVICES
Originally Published: August 25, 2011
Revised Response to Question # 152: September 1, 2011

Ladies/Gentlemen**:**

This list of Questions and Responses #3, questions #129 through #177, 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. This Questions and Responses #3, in addition to all RFP Amendments issued, supersedes any related responses issued in Questions and Responses #1 and #2.

129. *Concerning the State's response in Q&A # 2 to Question 8a & 8b, where the State said, "..... Additional computer equipment must be purchased by the Contractor..." and "…computers currently used for the NextGen EMR system can also be used for accessing the EMAR system if the equipment is compatible…" In order for an Offeror to determine additional computer equipment requirements and if the equipment is compatible, the Offeror needs to have the details on existing hardware, networks and the technical properties of the existing NextGen EMR. Will the State provide a list of all hardware now hosting the EMR system, the hardware specs, and the locations and information about the network upon which the EMR is operating?*

RESPONSE: The EMAR-related requirements in the RFP have been deleted. Please refer to RFP Amendment # 11, published June 9, 2011. As these provisions have been removed, the pharmacy contractor is no longer responsible for providing the EMAR system.

130. *Concerning the State's response in Q&A # 2 to Question 8c, the State's answer ("…electronic interface vs. stand alone") appears to contradict the requirement of RFP section 3.30.4 which states, "The EMAR . . . , and must interface with the NextGen medical record system." Can the State clarify how a standalone system would be interfaced? The answer given is not clear to us.*

RESPONSE: See Response to Question # 129: The EMAR-related requirements in the RFP have been deleted. Please refer to RFP Amendment # 11, published June 9, 2011.

131. *Concerning the State's response in Q&A # 2 to Question 9, the State's response is, "A full spectrum of the electronic format potential is expected. However, MS-Access is not an accepted format and cannot be used." Will the State amend the RFP 3.18.3 to provide clarity to this requirement since "full spectrum" is vague and unclear as to the State's requirement? Additionally, the prohibition against using MS-Access, represents a new requirement. Can the State amend the RFP accordingly?*

RESPONSE: RFP Section 3.18.3 has been amended to clarify the requirements, and MS-Access is now an acceptable format. Please refer to RFP Amendment #15, published August 25, 2011.

132. *Concerning the State's response in Q&A # 2 to Question 10, the State's RFP Section 3.30.4 and its response do not recognize that the current NextGen EMR system has no ability to generate refills meaning the response is technically incorrect. Will the State correct its response and amend the RFP accordingly? Because an interface between EMR and EMAR is required we feel the State should obtain permissions from its existing EMR provider to allow an interface. Will the State advise if NextGen will allow any application other than its own application to interface to the EMR? If so, please provide documentation of how third party applications must interface and thus not void the State's license with NextGen.*

RESPONSE: See Response to Question # 129: The EMAR-related requirements in the RFP have been deleted. Please refer to RFP Amendment # 11, published June 9, 2011.

133. *Concerning the State's response in Q&A # 2 to Questions 11 and 12, the State's response declares a preference for MS-Excel and prohibits use of MS-Access. Since the response represents new RFP requirements, will the State amend the RFP accordingly?*

RESPONSE: RFP Sections 3.31.2 and 3.31.3 have been amended to clarify the requirements, and MS-Access is now an acceptable format. Please refer to RFP Amendment #15, published August 25, 2011.

134. *Concerning the State's response in Q&A # 2 to Question 19, the State's response, while understood, makes the contract type appear to be a "cost-minus-a-percentage-of-cost" contract. This would be the reverse of the "cost-plus-a-percentage-of-cost" prohibition in Maryland law. By allowing this type of contract, just as in a cost-plus-percentage-of-cost contract, the selected offeror is incentivized to chase rebates and alter prescribing towards products that offer the pharmacy vendor the best discounts as opposed to what is best for the patient or the State. Will the State consider amending the financial proposal to prohibit this kind of price arrangement or to establish another method such as fixed reimbursement for pharmaceuticals based on an auditable number formula such as AWP minus%, WAC plus %, or Medicaid?*

RESPONSE: As stated in RFP Section 3.33.1.3, "The rationale for requiring these discounts is to allow the Contractor to pass through the savings it receives from manufacturer/supplier rebates for the pharmaceuticals the Contractor purchases." The pricing method does not alter a physician's or nurse practitioner's prescribing practices. Of course, the physicians and nurse practitioners doing the prescribing work for the inmate medical services contractor, not the inmate pharmacy services contractor. There is no incentive for these prescribers to seek to maximize rebate income for the pharmacy contractor.

Moreover, representatives of the medical services contractor, as well as State staff, participate with staff of the pharmacy contractor in developing the drug formulary that will be the primary reference for prescribers when deciding what drug to prescribe for a given inmate condition. It is very doubtful that: #1. Doctors of Pharmacy (Pharm Ds) would overtly participate in a scheme to deliberately inflate rebates by unnecessarily adding brand name drugs to the Department's formulary in lieu of equally effective and lower cost generic drugs, or brand name drugs from other manufacturers that are lower in cost; #2. That even if a Pharm. D would seek to manipulate the Department's formulary to maximize rebates to the pharmacy contractor, that the representatives of the medical services contractor and the Department participating in the formulary approval process would be ignorant of, or go along with, such manipulation. This is particularly true since the Department has access to both the Medicaid formulary and the formulary for State employees and can question why a proposed drug for the Department formulary would differ from ones approved for use by Medicaid recipients or State employees.

The Department also has access through the Department of Budget and Management (DBM) to the medical benefits consulting services of the Consulting and Actuarial Services contractor retained by DBM. Included within the services provided under this contract are Pharmacy Directorate services. The Pharmacy Directorate specifically examines all aspects of the State's expenditure of about $300 million per year of drug spend by employees as part of their State benefits package. As needed, the consulting services contractor could essentially audit the Department formulary for improper drug inclusions.

But, it is also recognized that there will be times when it is appropriate for prescribers to order brand name, or single source generic drugs over generics, or multiple-source generics. In these instances, typically some sort of rebate is issued by the manufacturer of the brand name or possibly single source generic drug. The allowance for offerors to quote a fixed percentage discount to be subtracted from the acquisition costs merely allows for the Department to benefit from such rebates, without the need for a flat requirement for all rebates to be 100% remitted to the Department.

Based upon the factors described above, it is believed that sufficient safeguards are in place to prevent the manipulation anticipated by the question. Accordingly, the Department will not amend the financial proposal format (pricing based on actual acquisition cost, with an allowance for the pass-through of discounts in order to take into consideration any rebates that the Contractor receives), at this time.

135. *Concerning the State's response in Q&A # 2 to Question 26b, the State's response establishes new requirements regarding pharmacy audits and trending data analysis. Will the State amend the RFP to formalize the new requirements?*

RESPONSE: RFP Section 3.18.4 has been amended to clarify the requirements. Please refer to RFP Amendment #15, published August 25, 2011.

136. *Concerning the State's response in Q&A # 2 to Question 31, the State's response is that the DPSCS network is a secured network. The RFP does not address the pharmacy contractor's ability to use the DPSCS network to host EMAR. Will the State amend the RFP to provide additional detail on the DPSCS network to allow offerors to propose a calculated price based on the operating environment? Is it correct to say that because of security concerns, only the DPSCS network is allowable to host EMAR? Please provide details and publish any amendments that provide new requirements.*

RESPONSE: See Response to Question # 129: The EMAR-related requirements in the RFP have been deleted. Please refer to RFP Amendment # 11, published June 9, 2011.

137. *Concerning the State's response in Q&A # 2 to Question 33, the State's response indicates that the EMAR cost is to be included in the overhead and profit portion of the financial proposal. The RFP has no such statement. Will the State amend the RFP accordingly?*

RESPONSE: See Response to Question # 129: The EMAR-related requirements in the RFP have been deleted. Please refer to RFP Amendment # 11, published June 9, 2011.

138. *Concerning the State's response in Q&A # 2 to Question 34, the State's response indicates that NextGen EMAR "would appear" to meet the requirements. Since NextGen is the State's contractor, it should know whether the NextGen EMAR is satisfactory or not or be in a position to find out. Will the State provide clarification as to whether it does or does not meet the requirements?*

RESPONSE: See Response to Question # 129: The EMAR-related requirements in the RFP have been deleted. Please refer to RFP Amendment # 11, published June 9, 2011.

139. *Concerning the State's response in Q&A # 2 to Question 38 (RFP 3.30.4), the State's response places a new requirement on offerors. Will the State amend the RFP to reflect the training requirements and may the EMAR training be billed to others in the multi-contractor environment?*

RESPONSE: See Response to Question # 129: The EMAR-related requirements in the RFP have been deleted. Please refer to RFP Amendment # 11, published June 9, 2011.

140. *Concerning the State's response in Q&A # 2 to Question 39, the State's response indicates that the contractor will be responsible for all costs. However, the State has only provided an extremely limited amount of information as to design and nothing on quantities necessary to implement. Will the State amend the RFP to provide additional IT documentation so each offeror has an opportunity to assess and provide an adequate proposal?*

RESPONSE: See Response to Question # 129: The EMAR-related requirements in the RFP have been deleted. Please refer to RFP Amendment # 11, published June 9, 2011.

141. *Concerning the State's response in Q&A # 2 to Question 40, the State's response pushes the responsibility to determine the variables to the contractor. Without any technical details on EMR or EMAR, no offeror can provide a reasonable assessment of the environment and provide a reasonable price for providing a turnkey system. Will the State amend the RFP to provide adequate IT technical detail for offerors?*

RESPONSE: See Response to Question # 129: The EMAR-related requirements in the RFP have been deleted. Please refer to RFP Amendment # 11, published June 9, 2011.

142. *Concerning the State's response in Q&A # 2 to Question 42, the State's response establishes a new requirement for the EMAR system (data transfer, workflow diagrams, field specifications, security requirements, HL7 compliant, no State staff involvement to initiate data transfer), but it is not in any amendment. Will the State amend the RFP to reflect these new requirements?*

RESPONSE: See Response to Question # 129: The EMAR-related requirements in the RFP have been deleted. Please refer to RFP Amendment # 11, published June 9, 2011.

143. *Concerning the State's response in Q&A # 2 to Question 43, the State's response state EMAR hardware and software become the property of the State. It is unreasonable to require the contractor to transfer ownership of software obtained from a third party to which it does not have title or ownership. Software licenses are handled in other ways*

in State IT contracts. Will the State amend the RFP to address the IT aspects of licensing and how it expects licenses for software to be transferred?

RESPONSE: See Response to Question # 129: The EMAR-related requirements in the RFP have been deleted. Please refer to RFP Amendment # 11, published June 9, 2011.

144. *Concerning the State's response in Q&A # 2 to Question 46, the State's response provides that the ADP is published on the 10th of each month; however, this deadline conflicts with the contractor's requirement to provide its reports by the fifth of the month. Will the State amend the RFP to correct compatible dates including processing lead time so the contractor will be able to comply?*

RESPONSE: The Contractor is to use the preceding month's ADP to complete reports. RFP Section 3.31.4.1 has been amended to reflect this requirement. Please refer to RFP Amendment # 15, published August 25, 2011.

145. *Concerning the State's response in Q&A # 2 to Question 47, the State's response states that a pre-approved schedule will be provided. Will the State clarify what is meant by "pre-approved"? Can the State please address how conflicts in meeting times will be resolved?*

RESPONSE: A schedule, pre-approved by the Department, will be provided at the start of the contract. The Department will attempt to ensure that meetings are not scheduled at the same times or in a manner that prevents participation from all inmate health care contractors. In addition, RFP Section 4.4, Tab D has been amended, requiring offerors to propose backup personnel that will attend meetings if the contractor's clinical pharmacists are unavailable to attend. Please refer to RFP Amendment # 15, published August 25, 2011.

146. *Concerning the State's response in Q&A # 2 to Question 58a, the State's response indicates an allowance for 30 days after contract start date. However, RFP Section 3.1.6 has not been changed to allow this 30 day period. Will the State amend the RFP to allow for this transition period so payments will not be interrupted?*

RESPONSE: RFP Section 3.1.6 has been amended to reflect this requirement. Please refer to RFP Amendment # 15, published August 25, 2011.

147. *Concerning the State's response in Q&A # 2 to Question 59b, the State's responses refer to 59a (see the price form) and the response to question 59c says financial proposal evaluation is described in the RFP Sec 5. However, the response does not give any insight into "sufficiency" and "reasonableness." Can the State provide offerors additional information on what constitutes "sufficiency" and "reasonableness?"*

RESPONSE: The "sufficiency" and "reasonableness" of offeror's proposal responses will be judged by the evaluation committee and procurement officer. These proposal qualities will be judged on the basis of each offeror's proposal submission, as augmented through the discussion/cure process and oral presentations. The Department will not attempt to preemptively say before proposals have been submitted what will constitute sufficient or reasonable proposals. Rather the Department will rely upon the flexibility inherent in the Competitive Sealed Proposals procurement process to arrive at an award selection that is most advantageous to the State.

Offerors should make their best efforts to provide the information requested in Section 4 of the RFP, and as requested during the discussion/cure process. The Department will inform an offeror of any substantive aspect of an offeror's proposal that, to that point in time, is judged not to be sufficient or reasonable.

148. *Concerning the State's response in Q&A # 2 to Question 65b(v) and (vi), the State establishes new consequences for failure to deliver methadone that are not in the RFP and substantially different than the liquidated damages provisions reflected in the RFP Attachment V. Accordingly, there are now dual consequences for the same failure. Will the State amend the RFP to correct the ambiguity?*

RESPONSE: The Responses to Question 65b (v) and (vi) are in reference to possible direct damages (ex. the cost of an Emergency Room trip or inpatient stay). These are not liquidated damages, and the provisions for direct damages are detailed in the RFP Contract (Attachment A). In addition, RFP Section 3.32 has been amended to allow for exceptions to damages when certain delays or failures are out of the contractor's control. Please refer to RFP Amendment # 15, published August 25, 2011.

149. *Concerning the State's response in Q&A # 2 to Question 66a about an offeror being required to define the statutory basis to provide non-patient specific medications and the quantities allowed for an offeror's own state as well as Maryland, the State response declared both states' statutes must be met and defined in its proposal. However, there is no requirement to provide such proof or documentation in the RFP Sec 4 and the RFP Sec 3.16.4 requirement to comply with local, state and federal laws only requires acknowledgement of the requirement and no submission of proof. Our concern is that some offerors without the requisite knowledge of regulatory compliance would not be required to prove their knowledge. In order to ensure a level playing field, will the State amend the RFP to require evidence that an offeror is able to comply with regulation and law with respect to providing medications?*

RESPONSE: The State expects the Contractor to meet the RFP requirements as detailed in RFP Section 3.16.4, as amended: "Prescriptions shall be dispensed in complete compliance with local, state, and federal laws regulating delivery of pharmaceutical services. For prescriptions dispensed in Maryland, the Contractor

must meet all applicable Maryland and federal laws. The Contractor must possess all necessary licenses and certifications by time of notice of award recommendation." Please refer to RFP Amendment # 15, published August 25, 2011. Per RFP Section 4.4, Tab D, "The Offeror must address each criterion in the technical proposal and describe how the proposed services will meet the requirements as described in Section 3 of the RFP," including RFP Section 3.16.4.

150. *Concerning the State's response in Q&A # 2 to Question 67b, the State said, "The use of emergency or stat medications will be reviewed and a determination regarding the indications should be submitted for review conducted by the Department and the contractor to decide who is responsible." This response is a change in requirements as it is not currently in the RFP. Will the State amend the RFP be accordingly?*

RESPONSE: RFP Section 3.17.3 has been amended to reflect the changes in requirements. In addition, the Instructions for Completing the Price Form and the Price Form (Attachment F) have been amended to include a line item allowing offerors to propose a surcharge for each emergency or stat order received by the Contractor. Please refer to RFP Amendment # 15, published August 25, 2011.

151. *Concerning the State's response in Q&A # 2 to Question 67b(i), the State said, "The department has not determined if the vendor will have a separate report for ER/Stat medications with monthly reviews or weekly TBD." A separate report would be a new requirement not now present in the RFP. All new requirements represent cost to the contractor. Will the State amend the RFP to include any new reporting requirements?*

RESPONSE: RFP Section 3.17.3 has been amended to reflect the changes in requirements. Please refer to RFP Amendment # 15, published August 25, 2011. Regarding reports, RFP Section 3.31.4 states that "The Contractor shall produce reports addressing the work being performed under the Contract." Describing information and utilization reports, RFP Section 3.31.4.1 states "Such reports shall address, *but are not limited to*: . . .(9). *Other reports as deemed necessary by the Agency."*

152. *Concerning the State's response in Q&A # 2 to Question 67b(ii), the State said in part, "The increased costs for stat and emergency orders are the responsibility of the contractor, and should be included as part of the offeror's proposed pricing. The agency will not have a different or increased compensation rate when a local pharmacy is used to fill a stat or emergency order." There are two issues here. First, the basis for medication cost rests in the contract type (in this case cost reimbursement with cost being defined as an acquisition cost). Second, the need for a stat/emergency order will likely not be the fault of the contractor. Therefore, why are the increased costs for stat/emergency costs the responsibility of the contractor and not reimbursed on something close to a cost basis? Can the State amend the RFP to address the unfairness of the contractor absorbing a higher cost for an event beyond its control? The same problem exists with the State responses to Questions 67c, 67c(i), 67d, and*

67d(i). Can the State amend the RFP to address these same fairness issues with respect to cost burdens for acts beyond the Contractor's control?

RESPONSE: RFP Section 3.17.3 has been amended to reflect the changes in requirements. The Instructions for Completing the Price Form and the Price Form (Attachment F) have been amended to include a line item allowing offerors to propose a surcharge for each emergency or stat order received by the Contractor. Please refer to RFP Amendment # 15, published August 25, 2011.

153. *Concerning the State's response in Q&A # 2 to Question 90 asking if monthly medication room inspections and summary of findings are RFP requirements, the State said, "DPSCS medication room inspections and a summary of the findings will continue." These inspections/summaries of findings are not part of the RFP. Does the State intend to amend the RFP accordingly?*

RESPONSE: RFP Section 1.2 has been amended to define "Medication Room," and RFP Section 3.26.2 has been amended to reflect the changes in scope of work requirements regarding medication room inspections. Please refer to RFP Amendment # 15 published August 25, 2011.

154. *Concerning the State's response in Q&A # 2 to Question 127 regarding electronic data tracking and data mining and the requirement to include gathering/mining/customizing data are not currently RFP requirements. Can the State confirm via amendment what its requirements are?*

RESPONSE: See the Response to Question #151. RFP Section 3.31.4 states that "The Contractor shall produce reports addressing the work being performed under the Contract." Describing information and utilization reports, RFP Section 3.31.4.1 states "Such reports shall address, *but are not limited to*: . . .(9). *Other reports as deemed necessary by the Agency."*

155. *Concerning the State's response in Q&A # 2 to Question 128 regarding the fee for services if the contract period is more than 12 months is confusing. We don't know if you mean the price quoted for 12 months would apply for longer (or shorter periods) or if the annual price would be prorated (for example, a 13 month period would be paid the annual fee plus 1/12 of the annual fee). Can the State amend the RFP so that the answer is mathematically clear and concise?*

RESPONSE: RFP Sections 1.4 and 3.33.1 have been amended to clarify payments to the Contractor for the Contract Duration. Please refer to Amendment #15 published August 25, 2011.

156. *RFP Section 3.6.1 requires the contractor to retain sufficient staff, and not shrink the staff of 5 during the contract performance (RFP 4.4). It is possible that 5 Pharm. D's (Amendment #6) may not be sufficient given the potential for population growth within*

the State's prison facilities. Will the State define "a material change" (or a trigger point expressed in terms of drugs dispensed or prison population) and describe how the contractor will be allowed to recover the additional cost of sufficient staff?

RESPONSE: RFP Section 3.6 has been amended to require five Pharm. D's under the term of the Contract. In addition, the Instructions for Completing the Price Form and the Price Form (Attachment F) have been amended to allow for offerors to propose a price per Pharm D. Please refer to RFP Amendment # 15 published August 25, 2011. The State reserves the right to increase or decrease the number of Pharm D's as needed, and pricing for any additional Pharm. D's will be the Contractor's price per Pharm. D detailed in the Contractor's Price Form. The State has not experienced significant changes in the inmate population over the last five years and does not anticipate any such significant changes in the near future. The State will define what constitutes a material change, if and when such a change occurs, and if necessary, a modification to the contract will be made.

157. *Liquidated damages thresholds in the RFP Attachment V are at 100% except for the one related to clinical staffing (RFP Sec 3.6) which is at 96%. These standards assume perfection and do not recognize that satisfactory performance does not equal perfection or error free work in any contract. We think the thresholds are artificially high. Accordingly, will the State change the thresholds to a more reasonable 95%, meaning that more than one out of 20 occurrences would trigger assignment of damages and only one instance in 20 would not trigger damages? In the case of clinical staffing, a full time person requires vacation days and will occasionally be sick and unable to perform his/her duties. Accordingly, a standard of 90% of the hours is fairer allowing up to 4 hours per week or two days/month. Since five pharmacists will normally be on duty, they can arrange to cover one another for absences. Can the State revise the threshold and performance standard accordingly?*

RESPONSE: RFP Attachment V has been amended, and the threshold for clinical staffing has been lowered to 90%. In addition, RFP Section 4.4, Tab D has been amended, requiring offerors to propose backup personnel when clinical staffing are unavailable due to circumstances such as vacation and sick leave. Please refer to RFP Amendment # 15, published August 25, 2011.

158. *Throughout the RFP, the term "on-site" is often used. We believe in some cases, "on-site" means a facility and in other cases, "on-site" means inside the facility at a specific delivery location. Because the difference is significant, particularly for delivery, can the State define "on-site" for each use of the word, or by RFP amendment, use more specific terminology so there is no doubt as to the intended meaning?*

RESPONSE: RFP Section 1.2 has been amended to define "on-site." "On-site" means physically on the premises of a Department facility. Please refer to RFP Amendment # 15, published August 25, 2011. Specific delivery locations are identified in Attachment X (see also RFP Section 3.16, Delivery of Pharmacy Services).

159. *The RFP (Section 4) requires copies of current invoices. For us, this equates to about 1.5" of paper. I just want to make sure in today's green environment that you indeed want 1 original and 8 copies of this information, in addition to the electronic copy?*

RESPONSE: Please refer to Amendment # 10, published May 5, 2011. The proposal requirement is now for only electronic copies of invoices. In addition, for hard copies of the technical and financial proposals, only five (5) copies are now required (in addition to one original). Please refer to RFP Amendment # 15, published August 25, 2011.

160. *What can an Offeror expect from the DPSCS in terms of assistance with NextGen to cooperate and actively pursue an interface with an Offeror?*

RESPONSE: See Responses to Questions # 129, 132, and 146. The EMAR-related requirements in the RFP have been deleted. Please refer to RFP Amendment # 11, published June 9, 2011. See also RFP Amendment # 15, published August 25, 2011, specifically changes to RFP Section 3.1.6 regarding an offeror's relationship with NextGen.

a. If NextGen is not actively/willingly pursuing an interface with a prospective Offeror on behalf of DPSCS, will DPSCS consider NextGen in breach of current contract with DPSCS by preventing moving forward with an interface?

RESPONSE: See Response to Question # 160. To our knowledge, NextGen is open to contracting. If NextGen refuses to cooperate, the DPSCS will intercede or contact NextGen to reach a solution.

b. Can DPSCS provide a solid contact at NextGen that is willing to work with a prospective Offeror to establish an interface in anticipation of an award? Will DPSCS require NextGen to contact Offerors that are interested in pursuing an interface BEFORE the bid is due; as NextGen doesn't appear to answer interfacing questions to companies which aren't current customers?

RESPONSE: See Response to Question # 160. See also RFP Amendment # 15, published August 25, 2011. An established software relationship with NextGen is only required at time of contract award.

161. *Can the DPSCS define exactly the role the Pharmacy Offeror is to play in regard to the in house methadone clinics specific to the points below?*

RESPONSE: RFP Section 3.16 has been amended to define the Pharmacy Contractor's role regarding in-house methadone clinics. Please refer to RFP Amendment # 15, published August 25, 2011. In general, the Pharmacy Contractor has been a facilitator with the Medical Contractor, specifically making sure any

licensing component of the certification for this program that may impact the pharmacy license or activity under the contract is covered. The Pharmacy Contractor has attended meetings for policy development and with the DEA, as well as participated in the certification survey to help answer questions. The clinical pharmacists have participated with the addiction specialists in looking at the community issues surrounding suboxone usage, and they have been called upon to help and alert the Department to any concerns related to the methadone detox and maintenance.

a. *Can the DPSCS please provide the role the current vendor is playing?*

RESPONSE: See Response to Question # 161a.

b. *Is the current vendor supplying methadone to the clinics?*

RESPONSE: The current contractor does supply methadone, and validates licensing prior to supplying meds for dispensing.

c. *Is the current vendor responsible for the licensing of these clinics?*

RESPONSE: The medical contractor is responsible for licensing applications, but the current pharmacy contractor does work with the medical contractor and validates licensing prior to supplying meds for dispensing.

d. *Is the current vendor mandating the use of DEA 222 forms to provide methadone to clinics, if being provided as stock?*

RESPONSE: Along with the medical contractor, the current pharmacy contractor requires all necessary documentation in order to be in compliance with Federal mandates. Please refer to RFP Section 3.16.4, as amended: "Prescriptions shall be dispensed in complete compliance with local, state, and federal laws regulating delivery of pharmaceutical services. For prescriptions dispensed in Maryland, the Contractor must meet all applicable Maryland and federal laws. The Contractor must possess all necessary licenses and certifications by time of notice of award recommendation." Please refer to RFP Amendment # 15, published August 25, 2011.

162. *Since manufacturer's pricing increases and decreases on a daily basis and most pharmacy provider's computer systems update pricing as soon as the price changes occur, we want to confirm that it is permitted to invoice the wholesalers and manufacturers Acquisition Cost based on the actual prescription dispense dates.*

RESPONSE: Acquisition cost invoicing is to be based on the terms of the RFP. Per the definition of "Acquisition Cost" in RFP Section 1.2.1:

If the Contractor makes more than one purchase of a legend or non-legend drug or medical supply item during a month, the acquisition cost shall be construed to be the amount invoiced to the Contractor closest to the end of the month in which the drug is provided to the Department.

If the Contractor does not purchase a legend or non-legend drug or medical supply item during the same month that such drug or item is provided to the Department under this Contract, the acquisition cost shall be construed to be the amount invoiced to the Contractor for its most recent purchase of that drug or item. For example, if a medication is purchased in March, April, and May, and dispensed to other clients regularly but not provided to the Department until August, the Contractor shall use the price of the medication in May as the acquisition price for the Department.

However, if the Contractor makes purchases of overstock or soon to be outdated drugs or items at discounted prices, the acquisition cost shall be construed to be the Contractor's lowest invoiced discounted price paid for the item, regardless of when during the month the item was purchased by the Contractor or the quantities purchased.

163. *Can it be clarified that orders are to be delivered within 24 hours of a proposed order cut time, seven (7) days a week including holidays?*

RESPONSE: RFP Section 3.16.3, as amended, details the requirements for time for delivery of medications ordered from the Contractor. These requirements are effective seven (7) days a week, including holidays. There is no order cut time. Please refer to RFP Amendment # 15, published August 25, 2011.

164. *With correctional facility pharmacy services it is typical for agencies to pay the local emergency back up pharmacy invoice as a pass-through of the actual charges as opposed to the Contractor's acquisition cost, thus the reason for the following few questions. Will the DPSCS hold the Pharmacy Contractor responsible and will damage be assessed for a backup pharmacy request that cannot be delivered to a facility due to manufacturer national backorder, obscure items such as hematologicals, biologicals, other items not typically stocked by most pharmacies, or if the prescriber does not deem the medication as an emergency?*

RESPONSE: It is the Contractor's decision whether to use a backup Pharmacy, not the State's. See Response to Question # 150 regarding the addition of a line item to the Price Form, allowing offerors to propose a surcharge for emergency and stat orders. In addition, RFP Section 3.32 has been amended to allow for exceptions to damages when certain delays or failures are out of the contractor's control. Please refer to RFP Amendment # 15, published August 25, 2011.

a. Can the Pharmacy Contractor intervene to decide whether an item would be considered an emergency backup need?

RESPONSE: The Pharmacy Contractor may consult with the treating clinician to determine whether there exists an emergency/stat med need. Please refer to Amendment # 15, published August 25, 2011, which amends RFP Section 3.17.3 accordingly.

b. If an emergency medication is ordered multiple times, will the Pharmacy Contractor have the right to mandate this item be stocked at the facility in order to decrease future emergencies and subsequent cost to DPSCS?

RESPONSE: If an emergency medication is ordered multiple times, the Pharmacy Contractor may request that the particular medication be stocked at the facility in order to decrease future emergencies. The Department's Medical Director will make the final determination of any such request. Please refer to Amendment # 15, published August 25, 2011, which amends RFP Section 3.17.3 accordingly.

c. What remedies would the Pharmacy Contractor have in regard to refusing a non-emergency medication a facility requests from the local backup pharmacy?

RESPONSE: Orders for medication will be made directly to the Pharmacy Contractor. The Pharmacy Contractor is expected to resolve any issues or disputes related to any backup pharmacy sub-contractor.

1) Can the Pharmacy Contractor invoice the DPSCS for its invoiced amount and delivery charge from the backup pharmacy if an item is not deemed to be an emergency?

RESPONSE: See Response to Question # 150 regarding the addition of a line item to the Price Form, allowing offerors to propose a surcharge for emergency and stat orders. Please refer to RFP Amendment # 15, published August 25, 2011. See also Response to Question #164c.

2) What obligation will a prescriber have to determine if an order is considered an emergency? Would the DPSCS consider making the charges and any damages the responsibility of the medical, dental, and/or mental health provider, as they would be the source for any medication requested from a backup?

RESPONSE: See Response to Question # 164c(1).

3) What limitations and guidance does the DPSCS have in place to prevent excessive use of the local backup pharmacy, especially for nurses not

reordering medications when they are due, as the actions of the other vendors could have a negative impact on the pharmacy contractor as it is only permitted to invoice the DPSCS at the contractors Acquisition Cost, whereas the local backup pharmacy charges would be at a higher rate?

RESPONSE: See Response to Question # 164c(1). The Pharmacy Contractor is free to raise as topics to be addressed any such potential issues at the P&T committee meetings.

d. Can the cost of the local backup medications be billed as a pass-through, especially for expensive medications such as HIV medications?

RESPONSE: See Response to Question # 164c(1).

e. Amendment 5 requires the cost of delivery for backup services to be calculated on Attachment F of financial proposal. Can the DPSCS provide the current monthly number of prescriptions filled from a backup source along with the number of additional emergency runs conducted by the current vendor for medications deemed an emergency? If current use is unknown or not tracked, please project a usage, as this figure will be critical to providing an accurate delivery cost for Schedule F on the RFP. If actual usage exceeds DPSCS projected usage as documented by the contractor, will DPSCS allow for an increase in this rate to be payable to the contractor?

RESPONSE: The requested information is not available. See Response to Question # 164c(1).

165. *Will DPSCS require stock medications to be dispensed in blister cards as opposed to stock bottles, which are larger packages at a higher cost, unsanitary and could place the nurse's license in jeopardy?*

RESPONSE: The Department requires unit dose blister and/or cellophane packs. See RFP Section 3.16.1.1, as amended. Please refer to Amendment # 15, published August 25, 2011.

a. Will DPSCS reject the submission of an offeror who does not have experience in being able to legally provide, at the time of proposal submission, stock medication in blister packs, which is required by the Prescription Drug Marketing Act of 1987 ("PDMA")?

RESPONSE: Offeror proposals will be evaluated as detailed in RFP Section 5. See RFP Section 3.16.1.1, as amended, regarding blister packs. See also RFP Section 3.16.4, as amended: "Prescriptions shall be dispensed in complete compliance with local, state, and federal laws regulating delivery of pharmaceutical services. For

prescriptions dispensed in Maryland, the Contractor must meet all applicable Maryland and federal laws. The Contractor must possess all necessary licenses and certifications by time of notice of award recommendation." Please refer to RFP Amendment # 15, published August 25, 2011.

b. Will DPSCS require at time of proposal submission that a pharmacy, or one of it's wholly owned subsidiaries, be registered as a FDA Certified Repacker that permits agencies to repackage stock medications into properly labeled stock cards as opposed to distributing large bulk manufacturer's bottles, which is required by the Prescription Drug Marketing Act of 1987 ("PDMA")?

RESPONSE: Offeror Minimum Qualifications (to be met at the time of the proposal due date) are detailed in RFP Section 2, and there is no such minimum requirement in the RFP to reject a proposal at time of submission. See also RFP Section 3.16.4, as amended: ""Prescriptions shall be dispensed in complete compliance with local, state, and federal laws regulating delivery of pharmaceutical services. For prescriptions dispensed in Maryland, the Contractor must meet all applicable Maryland and federal laws. The Contractor must possess all necessary licenses and certifications by time of notice of award recommendation." Please refer to RFP Amendment # 15, published August 25, 2011. A proposal that does not meet the requirements in Section 3 at time of proposal submission will not be rejected immediately, but rather the offeror will be instructed to "cure" any issues of non-compliance during the evaluation.

c. Will an Offeror need to provide its company's proof of certification in order to submit a proposal?

RESPONSE: See Response to Question # 165b. Offeror Minimum Qualifications (to be met at the time of the proposal due date) are detailed in RFP Section 2, and there is no such minimum requirement.

166. *Will DPSCS require the Offeror to provide the FDA-mandated Pedigree Papers when a stock medication is provided?*

RESPONSE: Please refer to RFP Section 3.16.4, as amended: "Prescriptions shall be dispensed in complete compliance with local, state, and federal laws regulating delivery of pharmaceutical services. For prescriptions dispensed in Maryland, the Contractor must meet all applicable Maryland and federal laws. The Contractor must possess all necessary licenses and certifications by time of notice of award recommendation." Please refer to RFP Amendment # 15, published August 25, 2011.

a. Will failure of an Offeror to provide e-pedigree papers in its proposal deem its proposal as insufficient and will it be rejected?

RESPONSE: Offeror proposals will be evaluated as detailed in RFP Section 5. Offeror Minimum Qualifications (to be met at the time of the proposal due date) are detailed in RFP Section 2, and there is no such minimum requirement. See also Response to Question #166.

b. Will proof be required by DPSCS for proposal submission that this practice is currently provided by an Offeror for all facilities serviced by the Offeror?

RESPONSE: See Response to Question #165b.

c. Will the inability to provide such documentation be grounds to deem an offeror's entire proposal as insufficient and therefore be rejected?

RESPONSE: See Response to Question #166a.

167. *Would it be a requirement of the DPSCS, as it is legally required, that any bidder provide proof of being a Distributor in their home state as well as Maryland before being allowed to dispense stock?*

RESPONSE: See Response to Question #165b.

a. Would it be required to be a Verified-Accredited Wholesale Distributor (VAWD) to provide stock to DPSCS facilities, which is now a requirement for any new Maryland Distributors?

RESPONSE: See Response to Question #165b.

1) Would failure of an offeror to provide its VAWD proof of accreditation with its proposal deem its proposal as insufficient and therefore be rejected?

RESPONSE: See Response to Question #166a.

2) Would the DPSCS have an obligation, by statute, regulation or otherwise, to choose a VAWD over a non VAWD, since Maryland has recently enacted legislation mandating VAWD on any new distributor or upon a renewal of a current license that is non VAWD?

RESPONSE: See Response to Question #166a. The State will not select a vendor that is not able to meet all applicable local, state, and federal regulations.

b. If DPSCS would award the bid to a non-VAWD, and upon re-licensure the awardee does not become VAWD, would the DPSCS be obligated to find that

vendor in breech of contract and have to award the contract to the next responsive Offeror that is VAWD?

RESPONSE: See Responses to Questions #166a and #167a.2). If a vendor violates any law, the vendor must take steps to become compliant with the law. If not, a vendor may be found to be in breach of contract, possibly resulting in a new procurement being conducted on an emergency basis.

168. *Will DPSCS provide in writing its intent to assess a liquidated damage and allow an offeror to submit a plan of correction in lieu of a damage being assessed?*

RESPONSE: Please refer to Section 4.3.1.2 of the State Contract (RFP Attachment A). The Contractor shall be notified in writing of any deficiency, and the Contractor is to then provide its written explanation for the deficiency. The Agency may determine whether or not to assess the liquidated damages. In addition, RFP Section 3.32 has been amended to allow for exceptions to damages when certain delays or failures are out of the contractor's control. Please refer to RFP Amendment # 15, published August 25, 2011.

169. *Is an appeal process available to an offeror to challenge any proposed damage assessment?*

RESPONSE: The Contractor must first contact the State's designated Contract Manager. Then, an issue may be elevated to the Procurement Officer. Please refer to Sections 4.3.1.4.2.2 and 11 of the State Contract, RFP Attachment A.

a. If so, to whom should the appeal be submitted?

RESPONSE: See Response to Question # 169.

b. If so, what timeframe does offeror have to submit an appeal?

RESPONSE: See Response to Question # 169.

c. If so, will DPSCS be prohibited from withholding payment until the appeal is reviewed?

RESPONSE: See Response to Question # 169. DPSCS will not be prohibited from withholding payment while an appeal is being reviewed.

d. Has DPSCS assessed damages to any current vendor under contract within the past 5 years? If so, in what amount and for what reasons?

RESPONSE: Such information may be protected, and would require the filing of a request under the Maryland Public Information Act (PIA).

170. *When submitting responses to the amendments recently posted for this RFP, if we have already submitted the necessary number of copies of the proposal, and are submitting responses only to the amendments, how many "copies" are we to send (signed copies, copies of invoice data on CD, etc.)? Does it remain 8 of each unless otherwise specified?*

RESPONSE: For proposal responses, including amended responses, one original and five copies are to be provided, per RFP Section 4.2, as amended. Please refer to RFP Amendment #15, published August 25, 2011. Electronic versions of each proposal (Technical and Financial), including electronic invoice data (see RFP Section 4.5.7), are to be provided on separate CDs: one CD for the Technical Proposal, and one CD for the Financial Proposal (two separate CDs, each included with their appropriate volume).

171. *We request clarification of language in Section 3.34.1 of Solicitation Number: DPSCS Q0010022.*

The fourth section of this clause requires $7,000,000 General Aggregate Limit (including without limitation Druggist Coverage, etc).

The third section of this clause requires Errors & Omissions liability coverage in the minimum amount of $1,000,000.

Our insurance provider feels that the Errors & Omissions (third section) and the Druggist Coverage (fourth section) are possibly one and the same, and that the $7,000,000 limit in the fourth section might therefore supersede and satisfy the requirement in the third section. They advise us that our insurance includes Druggist Coverage.

Please advise if a Certificate of Insurance showing a $7,000,000 General Aggregate Limit (including Druggist Coverage) satisfies the coverage requirements of this RFP.

If this is not acceptable, please explain what the third section Errors & Omissions liability coverage would cover.

RESPONSE: Errors and Omissions insurance (E&O insurance), also called professional liability insurance, protects businesses if sued for negligence. Druggist liability coverage is a professional liability coverage. However, typically general liability policies exclude professionally liability. If your Certificate of Insurance, showing a $7,000,000 General Aggregate Limit, includes druggist liability coverage that meets the $1,000,000 minimum Errors & Omissions liability coverage, then that Certificate would

be acceptable. RFP Section 3.34.1 has been amended accordingly. Please refer to RFP Amendment #15, published August 25, 2011.

172. *What is the total drug cost (acquisition) for the most recent financial year broken down between legend prescription items and OTC?*

RESPONSE: If by "financial year" you mean "fiscal year," the total drug payment to the vendor for the most recent fiscal year is roughly 97% legend prescription items, and 3% OTC prescription items.

173. *What is the total number of prescriptions filled for the most recent financial year?*

RESPONSE: If by "financial year" you mean "fiscal year," there is an average of 71,000 prescription orders filed per month which equates to roughly 852,000 prescription orders filed for the most recent financial year.

174. *The pharmacy equipment inventory for fiscal year 2010 indicates a number of fax machines supplied by CorrectRx pharmacy. Will these items remain in the permanent equipment inventory if another pharmacy vendor is chosen or will they need to be purchased new? If new purchases are required will the purchases be covered by the category of equipment to be reimbursed by the state or will they be required to be submitted as part of the overhead charge?*

RESPONSE: The fax machines will remain in the current locations and will not need to be replaced at the time the contract starts. However replacement through the duration of the contract, if necessary, is covered under RFP Section 3.15, as amended.

175. *Does the current vendor supply the 5 full-time on-site pharmacists?*

RESPONSE: The current RFP requirements may differ in some areas from the current contract's requirements. Offerors are to address the current RFP's requirements in their proposal response.

176. *The RFP requires staffing of 5 FTE Pharmacists. What does the State envision their daily duties to be requiring their full-time on-site presence?*

RESPONSE: Each Pharmacist will be covering a specific region, consulting with doctors and patients as needed regarding the best pharmacy intervention available, the most cost-effective treatment (education on generic, clinically equivalent, and less costly medications), involvement with difficult-to-manage medical and mental health cases, and disease management.

177. *The following medications have become available as generics since January 31, 2011: Xalatan Eyedrips; Lovenox syringes 100/80mg. Will the State update Attachment F to include the current pricing?*

RESPONSE: RFP Attachment F has been amended to reflect the availability as generics for Xalatan Eyedrips and Lovenox syringes 100/80mg. Please refer to RFP Amendment #15, published August 25, 2011.

Please remember that proposals are now due on Tuesday, September 20, 2011, no later than 2:00 PM (per Amendment # 15). 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.

Date Issued: 08/25/2011

By: Gabriel Gnall
Procurement Officer