



MARTIN O'MALLEY  
Governor

ANTHONY BROWN  
Lieutenant Governor

T. ELOISE FOSTER  
Secretary

DAVID C. ROMANS  
Deputy Secretary

**QUESTIONS AND RESPONSES # 1**  
**Project No. F10B0400006**  
**Pharmacy Benefits Plan Management Services and Pharmacy Purchasing Pool**  
**Management**  
**January 8, 2010**

Ladies/Gentlemen:

This List of Questions and Responses #1, questions #1 through #38, 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.

1. *The MBE calculation, for the participation goal of 8% of contract value, is the contract value referring to the administrative fee value that would be charged or is it referring to the total drug spend per year?*

**RESPONSE:** See RFP §1.12: "The MBE subcontractor participation goal is 8% of all the administrative fees paid to the Contractor by the State."

2. *F-6 in the Financial Proposal refers to the Offeror providing underwriting and actuarial services. Is this service for the Medicare Part D piece of the business or for the total business? Can you please supply some additional detail around what specifically the State would be looking for with this service?*

**RESPONSE:** Underwriting and actuarial services shall be provided for the total business of the State plan, which includes but is not limited to Medicare Part D options, plan design change analysis, annual rate setting, and claims projections. See also RFP Att. J-4, AR-66 (quarter reporting requirements (c) and annual reporting requirements (d)), AR-68, and AR-70.

3. *The RFP requires the contractor to accept monthly payments of PEPM administration fees based on the State's deduction report data (calculated by the State). Would you please provide a definition or explanation of "the State's deduction report data"?*

~Effective Resource Management~

45 Calvert Street • Annapolis, MD 21401-1907

Tel: (410) 260-7041 • Fax: (410) 974-3274 • Toll Free: 1 (800) 705-3493 • TTY Users: call via Maryland Relay

<http://www.dbm.maryland.gov>

**RESPONSE:** The State will calculate the administrative fee payments based on the deductions taken for Active Employees, Retirees, Satellite Employees and Direct Pay enrollees:

- The number of active employees will be based on the number of bi-weekly deductions taken for prescription coverage as reported by Central Payroll Bureau;
- The number of retirees will be based on the number of monthly deductions as reported by the Maryland State Retirement System for prescription coverage;
- The number of Satellite employees will be based on the monthly billing report generated by the Employee Benefits Division;
- The number of Direct Pay enrollees will be based on monthly billings generated by the Employee Benefits Division.

The State’s records also reflect retiree enrollment (i.e. those whom a Part D fee – Att. K-4, line 2 is paid). The Contractor will submit a monthly invoice for administrative fees and other fees if appropriate (for example, a monthly invoice might be submitted for Medicare Part D administration fees or for paper claims) for each group based on the Contractor’s records; refer to Attachment J-4, AR-92 for invoicing instructions. A monthly invoice should be submitted that lists the administrative fees listed in Att. K-4, lines 1-5, along with the information necessary to support the invoice (e.g. number of enrolled Members, number of paper claims, etc.). The State will verify the invoiced amount against the State actual deduction reports as described above and make adjustments where appropriate. The State will communicate with the Contractor to reconcile any differences.

4. *Throughout the RFP, several questions state "per plan". What is "per plan" referring to? Is it the individual pool participant groups, subgroups (Active, Retiree, Direct Pay, Satellite Account) or something else?*

*Specifically, we are referring to these statements from Attachment J-4:*

AR-10	The Contractor will share in the expenses for printing and mailing the State of Maryland Open Enrollment materials, including but not limited to the benefits guide and universal enrollment forms, the cost for which will be shared equally among all benefit plans, including medical, dental, prescription drug, mental health and substance abuse, life insurance, personal accident and dismemberment and long-term care insurance. For 2009 Open Enrollment, each State vendor's share was approximately \$17,000 <b>per plan</b> .
AR-11	The Contractor will share in the cost of an annual State-conducted Participant satisfaction survey on its employee benefit plans. Approximate cost is \$4,500 per year <b>per plan</b> .

**RESPONSE:** For those specific items (Att. J-4, AR-10 – 11), the reference to “per plan” is to those other plan options offered to State employees and retirees through the State Employee and Retiree Health and Welfare Benefits Program. Currently, the State offers 2 PPO plan options, 3 POS plan options, 3 EPO plan options, 1 mental health option, 1 prescription benefits plan option, 1 life insurance plan, 1 ADD plan, 2 dental plans and 1 long term care insurance plan.

The Contractor for this prescription benefits plan will be charged once (i.e. as one plan) for the open enrollment costs and once for the satisfaction survey.

5. *AR-78: The Contractor shall agree that the State will determine whether to accept or decline any changes to the Preferred Drug List and the implementation date of such changes. Where can we find a copy of the State's Preferred Drug List?*

**RESPONSE:** A copy of the State's 2009 Preferred Drug List may be found at the following weblink:  
[http://www.dbm.maryland.gov/employees/healthben/Documents/PrescriptionDrug/2009\\_catalyst\\_preferred\\_drug\\_list.pdf](http://www.dbm.maryland.gov/employees/healthben/Documents/PrescriptionDrug/2009_catalyst_preferred_drug_list.pdf)

6. *AR-52: File transfers between the Contractor and the State shall be exchanged using a point to point VPN connection or another method approved by the State of Maryland, Department of Budget and Management, Office of Information Technology. Will the State agree to allow Contractor and the State to exchange files electronically using some other mutually agreed upon method, such as an FTP site?*

**RESPONSE:** Files are currently transferred using a VPN connection. All file transfers must be made in a secure and encrypted fashion; the VPN provides that and is the current required and preferred method of electronic transfer. AR-52 permits the Department of Information Technology to make changes to the State's file transfer method. If the Offeror cannot accommodate a point to point VPN connection, then select "Disagree – See Section J-14: Deviations Page" for the requirement and describe the Offeror's proposed deviations. Only secure and encrypted transfers are permissible so any deviation that does not provide for at least the same level of protection for the exchanged data provided by the VPN will not be acceptable. Also, please note that Amendment # 1 updates the language in AR-52, notifying offerors that the Department of Information Technology (DOIT) is the correct Department responsible for establishing State file transfer methods.

7. *AR-86: If the State and/or Purchasing Pool Participant chooses to pursue COB (pay and chase) for any participant, the Contractor will administer COB on prescription drug claims for these participants in accordance with the NAIC-120-1 Model COB Contract Provisions (see Attachment H) and applicable Medicare Secondary Payor laws, statutes and regulations. Does the State anticipate requesting COB services?*

**RESPONSE:** Yes, the State does anticipate requesting COB services.

8. *AR-100: The Contractor will absorb the cost of programming any benefit design changes.*

*What types of plan design changes is the State asking Contractor to absorb? Is the State willing to describe that design changes that will be offered at no charge, but that complex plan design changes may result in additional charge to be mutually agreed upon by the parties at the time the plan design change is requested?*

**RESPONSE:** The State is not asking the Contractor to absorb the plan design changes, but rather the costs associated with programming the proposed plan design changes. While specific future plan design changes are not known at this time, some examples of benefits design changes implemented during the current contract include the creation of a \$0 co-pay tier for specific drugs, and the addition of new PA or QL drugs. If the Offeror cannot accommodate this requirement, then select “Disagree – See Section J-14: Deviations Page” for the requirement and describe the Offeror’s proposed deviations. Further, please note that the Contract §2 (RFP, Att. A) outlines the process for a Contractor to follow to request an equitable adjustment in its compensation under the Contract.

9. *AR-101(e): The Contractor agrees to report to the State within 10 days any security incident of which the Contractor becomes aware during the term of the Contract and any mitigation or remedial plans to address such security incidents.*

*Will the State be willing to revise this language to be consistent with the regulations that state security incidents shall be reported “without unreasonable delay”?*

**RESPONSE:** No, the State wishes to engage more stringent reporting requirements in the protection of participant personal information. If the Offeror cannot accommodate this requirement, then select “Disagree – See Section J-14: Deviations Page” for the requirement and describe the Offeror’s proposed deviations.

10. *AR-102(c): The Contractor shall report to the State any Use or Disclosure of PHI that is not permitted within 10 days of when the Contractor becomes aware of such Use and Disclosure.*

*Will the State be willing to revise this language to be consistent with the regulations that state security incidents shall be reported “without unreasonable delay”?*

**RESPONSE:** No; see Response to Question # 9. The State wishes to engage more stringent reporting requirements in the protection of participant personal information. If the Offeror cannot accommodate this requirement, then select “Disagree – See Section J-14: Deviations Page” for the requirement and describe the Offeror’s proposed deviations.

11. *AR102(g): The Contractor shall provide a Notice of Privacy Practices to all individuals enrolled in the health plan in compliance with 45 CFR §164.520 as if the Contractor were the Covered Entity with regard to the health plan. (2) A copy of this Notice of Privacy Practices shall be provided to the State with certification that the notice has been provided to the Members.*

*Please clarify if the State is asking Contractor to attest that it has provided such notices to the health plan members. Will the State be providing Contractor with an approved format for such attestation?*

**RESPONSE:** Yes, the State is asking the Contractor to attest that it has provided such notices to the plan members and to provide a copy of the Notice of Privacy Practices to the State. No, the State will not be providing a format for the attestation.

12. *AR102(o): The Contractor shall provide a certification to the State that the Contractor's HIPAA Privacy Standards obligations have been met, to occur no more frequently than quarterly, upon the State's request for certification.*

*Please clarify if the State is asking Contractor to attest that it has met its obligations under the HIPAA Privacy Standards. Will the State be providing Contractor with an approved format for such attestation?*

**RESPONSE:** Yes, the State is asking the Contractor to attest that it has met its obligations under the HIPAA Privacy Standards and under the Contract (*see* Attachment J-4, AR-101 through AR-110). No, the State will not be providing a format for the attestation.

13. *RFP § 1.1.2 Maryland Rx Program - Pursuant to State Personnel and Pensions Article, §2-502.1, the Department has established the Maryland Rx Program, a purchasing pool for pharmacy benefits for the State Employee and Retiree Health and Welfare Benefits Program, eligible local government entities, and qualifying not-for-profit organizations in Maryland.*

*How much flexibility will the additional entities have with regard to benefit designs, formularies, and clinical programs?*

**RESPONSE:** Each Purchasing Pool Participant will have its own plan design and clinical programs, subject to any limitations outlined in the Purchasing Pool regulations, *See* COMAR 17.04.15.04B. Please refer to Section 3.4.2 of the RFP for information regarding the Maryland Rx Purchasing Pool, and the applicable regulations which may be found at the following weblink:  
[http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=17.04.15.\\*](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=17.04.15.*)

14. *RFP § 1.16 Proposals submitted in response to this RFP are irrevocable for 180 days following the later of the closing date of proposals or the Best and Final Offers (BAFOs), if requested. Will the State allow for validation of membership and plan design prior to contract signature?*

**RESPONSE:** No. Procurement regulations prohibit discussions and changes to proposals after a Best and Final Offer (which would precede notice of recommendation of award to a particular offeror). Further, please note that administrative fees must be guaranteed regardless of actual enrollment or enrollment fluctuations. *See* RFP, Att. K-1, Instruction C.2 and Att. K-2, items F-7 and F-8. Please note that the State will provide the most current census and plan design to the Contractor as part of the implementation process. Please see RFP §3.1 and the confidential data attachments for the most recent enrollment/census information and Att. J-3 for the plan design required for the Contract upon award.

15. *Attachment J-1 Minimum Requirements: 5. Qualified Offerors must provide proof of registration and/or certification as required by the following State laws:*  
a) *Certification as a private review agent under Md. Ann. Code, Insurance Art., Title 15, subtitle 10B;*

*Contractor is not currently required to be certified as a private review agent under Md. Ann. Code, Insurance Art., Title 15, subtitle 10B. Is it the State's intention that Contractor will be providing utilization review services for the State? What utilization services will the State require Contractor to perform? Given that the Contractor is not currently required to have such certification, will the Contractor be required to be certified at the time of proposal submission, or will the State allow Contractor additional time to become certified prior to the plan start date?*

**RESPONSE:** The certification is required as of the submission of the proposal. RFP §2. Maryland Insurance Articles, Sections 15-10B-10 et seq. apply to PBM/PBAs that conduct utilization review and require the PBM/PBA to hold certain certifications as a private review agent. The prior authorization and step therapy reviews and determinations required as part of the administration services for this RFP fall within the statutory definition of utilization review. *See* RFP Att. J-3 (plan design incorporating various PA and QL programs). Please note that the State relies upon the Contractor to develop and implement these programs, subject to approval. Certain aspects of the current program are to be duplicated.

Utilization review is a term that relates to instances where a system is in place to review "the appropriate and efficient allocation of health care resources and services given or proposed to be given to a patient or group of patients." § 15-10B-01(m). The term "health care services" includes filling prescriptions. In order to comply with Maryland law relating to utilization review, a private review agent must have a certificate from the MIA and must utilize the experts outlined in §§ 15-10B-07 and 15-10B-09.1. Further, the subtitle outlines certain timing restrictions on utilization review determinations and requires the development and submission of a utilization review plan.

Further, please note that the State may delegate first level appeals to the Contractor during the Contract term. *See* Att. K-4, line 5 (requesting per appeal unit pricing).

16. *Attachment J-1 Minimum Requirements: 2. Qualified Offerors must provide proof of having at least one million (1,000,000) covered lives (excluding discount card programs) across the Offeror's pharmacy benefit management book of business as of the proposal submission date.*

*What type of proof is required for having at least one million (1,000,000) covered lives?*

**RESPONSE:** In the absence of a corporate document showing such data (i.e. annual statement or annual shareholder's report), an attestation signed by an appropriate corporate officer will be sufficient proof for this requirement. The basis for the 1,000,000 number is to show that the Offeror has appropriate capacity and breadth of experience to properly administer the State's plan and the Maryland Rx Purchasing Pool. It is in the best interest of the State to contract with a PBM that already has the experience and capability of handling an account of this size. An Offeror which meets this requirement is likely to have sufficient business/service models and human resources in place such that the addition of the State's account would not put the

Contractor in a position of rapid growth in a short time frame which could be detrimental to the State and the Members

17. *The current stand-alone prescription drug plan serves approximately 100,000 Members living in Maryland and across the United States as well as foreign countries. Please describe those services that the State will be providing to members located in foreign countries.*

**RESPONSE:** Employees and eligible dependents located in foreign countries are eligible for the same benefits as those located in the United States. The Offeror should describe any differences with regard to benefit availability, claim submission and payment that the Offeror anticipates as a result of a member residing in a foreign country. The needs of members in foreign countries is focused on early refill/extended days supply override support as well as paper claim support. Currently, members who are located outside of the United States may frequently submit paper claims in the absence of a network pharmacy in their area. The evaluation model in Attachment K-4 includes 14,300 paper claims, a portion of which would come from members in foreign countries. If members are on a limited-time assignment, they sometimes will request advance filling of maintenance medications; approval is granted subject to the written approval of the Contract Manager (i.e. the Employee Benefits Division Director) or the EBD Director of Operations. Approval authority of this type will be addressed during implementation.

18. *Will the State be providing the plan design for the State of Maryland as well as for each purchasing pool member?*

**RESPONSE:** The current plan design for the State plan can be found in Attachment J-3 (Plan Design). There are no other Purchasing Pool Members other than the State plan at this time. Please see Q&A #13 regarding the plan design parameters of Purchasing Pool Members.

19. *Will the State be providing claims data for the State of Maryland as well as for each purchasing pool member?*

**RESPONSE:** Claims data for the State plan is confidential data and can be obtained by submitting a non-disclosure agreement as described in §1.32 of the RFP. There are no other Purchasing Pool participants other than the State plan at this time. Note that the non-disclosure agreement described in §1.32 of the RFP has been revised as part of Amendment # 1 to the RFP. Please submit the revised version of the non-disclosure agreement that is included with Amendment # 1.

20. *Will the State be providing a census with membership counts for the State of Maryland as well as for each purchasing pool member?*

**RESPONSE:** See Response to Question 19. Census data for the State plan can be obtained by submitting a non-disclosure agreement as described in §1.32 of the RFP. There are no other Purchasing Pool participants other than the State plan at this time. Note that the non-disclosure agreement described in §1.32 of the RFP has been

revised as part of Amendment # 1 to the RFP. Please submit the revised version of the non-disclosure agreement that is included with Amendment # 1.

21. *Will the State be utilizing its own pharmacy network?*

**RESPONSE:** No, the State will not be utilizing its own pharmacy network. The RFP and the Contract require the Contractor to provide and properly manage an appropriate and adequate pharmacy network. *See e.g.* RFP §3.4.1.2(a)(iv); RFP Att. J-4, AR-34 through AR-40; and RFP Att. J-12, PG-15.

22. *Single-source generics will be included in the generic pricing guarantee measures during the period of exclusivity. Will the State allow Contractor to carve out single-source generics from the generic pricing guarantee?*

**RESPONSE:** No, the State will not allow the Contractor to carve out single-source generics from the generic pricing guarantee. *See* RFP Att. K-1, Instruction C.6 and D.5; and RFP Att. K-2, item F-2.

23. *Will the State allow Contractor to provide pricing options for any services not listed on Attachment K-6? In what format would Contractor provide such additional pricing options? Will such pricing options be required to be included in the overall administrative fee?*

**RESPONSE:** All services required by the RFP and its attachments must be included in the quoted administrative fees provided on Att. K-4, lines 1 – 5; Part 1 of Att. K-6 illustrates these required services. The monthly Administrative Fee PMPM (Att. K-4, line 1) must cover all administrative services that are required by the RFP and not specifically exempted by virtue of Att. K-4 lines 2 through 5. Any services not specifically listed in Part 1 of Attachment K-6: Administrative Fee Breakdown should be included in line Item “II. Other” if the cost for the service is included in the administrative fee quoted. The Offeror shall itemize these additional services in Attachment K-3: Explanations, as instructed.

Any additional services or programs being offered as optional to the State (i.e. services not required by the RFP and not included in the quoted Administrative Fees) shall be described in Attachment J-13: Alternative Cost Management Programs. The cost and any applicable savings guarantee of these programs shall be identified in Attachment K-9: Alternative Cost Management Programs.

24. *Will the State allow for contract changes following bid award to conform to the services agreed upon by the parties?*

**RESPONSE:** To the extent that after contract award the State agrees to purchase additional services from the Contractor that are in addition to those services outlined in the Contract, the Contract will be amended accordingly. Please see Contract §2, which provides for changes in the scope of work and the process for securing an equitable adjustment in the event that a contract modification is not executed. See also Response to Question # 14.



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

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

The evaluation committee will consider each proposed deviation described in response to Attachment J-4: Administrative Requirements or Attachment K-2: Financial Requirements and make a determination whether the deviation is acceptable or not. Please note that the vast majority of the RFP terms are considered non-negotiable by the State and deviations will result in the rejection of an Offeror. In all cases, deviations from the RFP terms will result in a lower evaluation and ranking of a proposal.

26. *Attachment J3: Plan Design – Does the State have a Specialty pharmacy or are specialty pharmaceuticals fulfilled in the retail network? Are all Specialty drugs filled at 30 days or just the drugs outlined within the Specialty Drug Management Program described in the plan design?*

**RESPONSE:** Currently, the State utilizes the current contractor's network, including available specialty pharmacies. Prescriptions for specialty drugs can be filled at a retail pharmacy. Prescriptions for the specialty drugs in the Specialty Drug Management Program are specified in Attachment J-3: Plan Design; those drugs are filled at a maximum 30 days' supply. Other specialty drugs are filled with the same quantity requirements as other drugs filled at a retail pharmacy.

27. *Attachment J-5a – Q-11: How is the current Maryland Rx Purchasing Pool Program marketed? Can you please explain the billing, fiduciary and contractual arrangements with each participant group in the Pool? How many groups are currently participating in the Pool?*

**RESPONSE:** Currently, the State is the only Purchasing Pool Participant of the Maryland Rx Purchasing Pool. Please refer to Section 3.4.2 of the RFP for information regarding the Maryland Rx Purchasing Pool, and the weblinks below:  
[http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=17.04.15.\\*](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=17.04.15.*)  
<https://www.catalystrx.com/www/public/maryLandRxProgramPublic.jsp>

28. *Attachment J-5a – Q-11: Please describe how you will assist the State in marketing the Maryland Rx Purchasing Pool program to potential Purchasing Pool participants. What is the potential for additional clients and what is the expectation to support. Are they any other entities participating in this program? Are these to be handled individually or to be aggregated?*

**RESPONSE:** There are no participants at this time other than the State of Maryland. Please refer to Section 3.4.2 of the RFP for information regarding the Maryland Rx Purchasing Pool, which includes a link to the applicable regulations. The RFP (and COMAR 17.04.15.05) set forth the services to be provided to Maryland Rx.

Purchasing Pool Members. Each Offeror may include in its proposal the support and participation it envisions from the State. At this time, the current contractor handles all marketing obligations in connection with the Rx Purchasing Pool and we expect that to continue. The State must approve all materials and the Rx Purchasing Pool Program must be operated in accordance with the regulations and other applicable law.

29. *Attachment J-5a – Q-101: Medicare Part D Options requests associated costs with each approach for questions (a) – (d); please confirm pricing should be included in the Technical Proposal.*

**RESPONSE:** The costs associated with each of the Medicare Part D Options (a) – (d) should not be included in the Technical Proposal. The cost for option (a) RDS Subsidy Approach should be included as a PMPM fee in line item 2 of Attachment K-4: Financial Proposal. Please include the costs for each additional option as response attachments included in the Financial Proposal and label as follows:

Response Attachment K-6: Medicare Part D – Direct Contract Approach  
Response Attachment K-6: Medicare Part D – Indirect Contract Approach  
Response Attachment K-6: Medicare Part D – Medicare Advantage Plan

Please refer to Amendment #1 for revised language in Q-101 (a) – (d) of Attachment J-5 which clarifies these instructions.

30. *RFP § 1.32 Confidentiality and Non-Disclosure Agreement - In order to get access to certain confidential data that is necessary to complete a proposal in response to this RFP, each Offeror must complete a Confidentiality and Non-Disclosure Agreement. The Non-Disclosure Agreement must be in the form provided as Attachment I to this RFP. Will the State agree to allow changes or suggestions to the Non-Disclosure Agreement?*

**RESPONSE:** The State has modified the Non-Disclosure Agreement (Attachment I), including removal of the provision for personal liability for individual employees or agents of the Offeror. Please refer to Amendment # 1 for a copy of the revised NDA. Prospective offerors who have already completed and submitted a copy of the original version of the NDA are asked to submit a new completed and signed NDA, using the format provided in Amendment # 1. The original copies of the NDA already submitted by those prospective offerors will be destroyed upon receipt of the signed and completed revised version.

31. *Please confirm individual employees shall not be responsible for any violations of the confidentiality agreement, and in the event of a violation, the company remains responsible for the actions of its employees or agents.*

**RESPONSE:** See Response to Question 30. Individual employees or agents of the Offeror will not be held personally liable.

32. *Attachment K-6: Administrative Fee Breakdown - The State is requesting the PBM to supply a breakdown of administrative fees, including profit margin. Would the State please submit a sample of the form supplied by the current vendor?*

**RESPONSE:** Such information and documentation is not part of the RFP. Pursuant to State Government Article, §10-617(d), the State is prohibited from disclosing confidential commercial information. If you wish to submit a written PIA request in connection with such documentation, you may do so.

33. *Attachment J-4, AR-22: The Contractor shall provide the State at least the following audit access, in addition to any other rights specified in the RFP, and any audit right specified in the RFP, the Technical Proposal, and the Financial Proposal: (truncated).*

*While we support the State to audit as outlined in the RFP, the issue of the auditor and confidentiality is of extreme importance to our responsibility to protect one of our company's most proprietary trade secrets, especially our rebate contracts with pharmaceutical manufacturers which provide significant value to our thousands of clients. We request the contract recognize that the auditor must be either the State's government employee auditor or a mutually agreed upon auditor absent a conflict of interest with our company. We also request the auditor(s) sign a confidentiality agreement. The State may choose any of the top 100 CPA accounting firms in the U.S., which firm has a separate, stand-alone auditing department that carries professional malpractice insurance of \$2 million. We will be glad to comply with the State's desire to audit any data necessary to ensure the contractor is complying with all contract terms. Is this acceptable to the State?*

**RESPONSE:** No. The State must abide by procurement law in selecting and contracting with an auditor to provide these services. Agreeing to use only the Contractor's selected auditor is not consistent with the procurement law and does not adequately protect the State's interests. Currently, the State's contract auditor for audits of the type described in the RFP is Healthcare Data Management. The contract auditor typically executes a non-disclosure and confidentiality agreement as part of its duties. Further, the State and its employees are prohibited from disclosing the confidential commercial information of other entities that is in its possession (State Gov't §10-617(d)). Violators of this prohibition are subject to civil and criminal penalties. See State Gov't §10-627.

34. *RFP § 1.33 - Living Wage: Since this vendor will perform most of its services from out of state locations, will the Maryland Living Wage statute apply only to those employees directly providing service to the State of Maryland account, such as account management, customer service, pharmacists, and pharmacy technicians? Or will the Living Wage also apply to individuals not working directly on the State contract?*

**RESPONSE:** The location where work is performed is irrelevant except to establish which tier applies. For an out-of-state Contractor, this is a Tier 1 contract for purposes of the Living Wage requirements. Contract (RFP Att. A), §24.2. Based on the projected value of the contract to be awarded, it is highly unlikely that the contract or the contractor will be exempt from the requirements of the Living Wage law. See State Finance and Procurement Article, Title 18. If the contract is covered under the Living Wage law, the minimum pay/wage requirements apply to any covered employees under the contract – i.e. an employee of an employer for the duration of a contract subject to the Living Wage title **if at least one-half of the**

**employee's time during any workweek relates to a State contract for services or a subcontract for services under a State contract, if the employee is 18 years old or older during the contract term, and if the employee will work at least 13 consecutive weeks on the contract.** State Fin. & Proc. §18-102. Provided that a subcontractor is not exempt (which is also unlikely), the requirements apply to the employees of subcontractors as well.

For more information, please review the Contract, §24 (RFP Att. A), RFP §1.33 and RFP Attachment L. See also the FAQs posted on the website of the Department of Labor, Licensing and Regulation:

<http://www.dlrr.state.md.us/labor/livingwagefaqs.shtml>. See in particular, FAQs 14 – 178.

35. *RFP § 1.2.1 Abbreviations and Definitions: dd. Manufacturer Payments*

*Manufacturer payments has the meaning provided in Md. Ann. Code, Insurance Art. § 15-1601 (f), as amended; Manufacturer payments include:*

- (v) fees under products and services agreements;*
- (vi) any fees received for the sale of utilization data to a pharmaceutical manufacturer; and*

*On occasion, this vendor receives fees from certain pharmaceutical manufacturers in payment for specific clinical services and monitoring it performs, typically for specialty pharmaceuticals. In addition, this vendor may be compensated for the required submission of utilization data to pharmaceutical manufacturers related to the use of specialty pharmaceuticals. These fees are not shared as they are compensation for costs related to the dispensing of the drugs.*

*We request the state allow these fees to be excluded from the definition of Manufacturer Payments.*

**RESPONSE:** The RFP requirements are not being amended or changed at this time.

Along with the definition for “Manufacturers Payments” in RFP §1.2.1, RFP §§ 3.4.1 – 3.4.2 discuss how Manufacturers Payments will be passed through to the State. Fees that are in payment for PBM programs associated with utilization or claims of specialty medications in the State’s plan must be passed through pursuant to the terms of the RFP. **If an Offeror takes exception to or wishes to deviate from these requirements, comply with RFP §4.4.3 in addition to noting that exception in response to Att. J-4, AR-91(d) and to Att. J-5a, Q-129 (responding to each requirement outlined in RFP §3.4, as instructed in Q-129).** An Offeror need not repeat the entire explanation so long as the exception or deviation is clearly noted and cross-references the full explanation.

We recognize that there are payment arrangements which a PBM believes are not attributable to a particular plan or legitimately should not be passed through to the State as plan sponsor. In such situations, an Offeror should describe the arrangements clearly and in detail and provide an explanation for how the arrangement may be reconciled with the RFP requirements. For example, describe how and why a fee is not directly or indirectly attributable to the State’s business under RFP §3.4.1.1.

In addition, if an Offeror has an exclusive distribution arrangement with a manufacturer concerning specialty medications that require the PBM to track utilization data and disclose it to the manufacturer in order for the manufacturer to maintain adequate distribution channels, the Offeror is invited to describe those kinds of fee arrangements in detail and the limits of the arrangement (ex. which drugs, how many, etc.) in its proposal. The Offeror should also suggest how to reconcile the need for such arrangements with the transparency and pass-through requirements of the RFP.

Further, an Offeror should identify if the State has the option to opt-out of specific programs (e.g. to exclude utilization or claims data generated in the State's plan from data aggregations that are sold to manufacturers) that generate/create revenue for the PBM; if revenue is not directly or indirectly related to the State plan (including membership, utilization, claims, formulary development/placement, PBM services to the State, etc), the transparency and pass-through requirements of the RFP do not apply. *See* RFP §3.4.1.1. In addition, an Offeror may receive fees or grants which are used solely to offset costs that would otherwise be passed onto the State, such as in connection with educational communications. In such cases, the Offeror should describe those arrangements in its proposal and suggest how the costs associated with the educational programs (printing, mailing, postage, etc) may be illustrated as set-off by the payments from manufacturers so that no revenue or profit exists to pass through to the State pursuant to RFP §3.4.1.1.

Maryland procurement law permits the amendment of an RFP after the closing date if discussions with offerors "indicate a need for substantive clarification of or change in" the RFP, provided that the amendment would not materially alter the competitive nature of the procurement. COMAR 21.05.03.03C(3). All Offerors are encouraged to submit competitive proposals that best meet the RFP requirements while fully and clearly outlining their exceptions to and deviations from RFP requirements. Should an amendment be necessary, one will be issued. In addition, please keep in mind the requirement to mark and identify confidential commercial information that is prohibited from disclosure by the State pursuant to State Gov't §10-617(d). *See* RFP § 1.17 and 4.4.2. Our goal is to achieve the most advantageous contract for the State available in this competitive field.

36. *Section 2 of the RFP states that all Qualified Offerors must have administered at least \$1 billion in annual costs in the calendar year 2008. Why would the State of Maryland place such a limitation, when the contract is for administrative services and where the organization has no insurance or claims risk? There are several PBMs which are under that threshold that have state employee experience in administering services identical to those requested in the State of Maryland's RFP; these PBMs will be excluded to the benefit of only a few PBMs. This appears discriminatory. If a PBM did not meet the \$1 billion threshold, is it automatically disqualified?*

**RESPONSE:** See Response to Question # 16. If an Offeror does not meet the minimum requirements as of the time of proposal submission, that Offeror's proposal will be rejected. The basis for the \$1 billion minimum requirement is to show that the Offeror has appropriate capacity and ability to properly manage and administer a

complex program with a large number of participants. It is in the best interest of the State to contract with a PBM that already has the experience and capability of handling an account of this size. An Offeror which meets this requirement is likely to have sufficient business/service models and human resources in place such that the addition of the State's account would not put the Contractor in a position of rapid growth in a short time frame which could be detrimental to the State and the Members.

37. *Section 2 – Offeror Minimum Requirements: Our organization currently holds a PBM registration in the State of Maryland. We believe a TPA registration would be superfluous in light of our PBM registration, since our business activities are limited to the practice of pharmacy benefits management. Are we automatically disqualified?*

**RESPONSE:** Please see Maryland Annotated Code, Insurance Article, Title 8, subtitle 3, Any entity that administers a non-ERISA benefits plan. The PBM will have authority related to the application of the plan design and payment of claims in the prescription benefits plan. The requirement is a mandatory one and Maryland law does not provide for an exemption for PBMs that are registered under Insurance Article Title 15, subtitle 16.

38. *With respect to the MBE sub-contracting requirement, our organization is a one stop shop PBM. All services are provided in-house – marketing, printing materials, formulary management, cost containment, customer service, drug therapy management programs, drug utilization review, etc. We don't generally sub-contract for any services. Our organization is not a Maryland MBE. There appears to be some language in the RFP which would allow for waiver of the 8% MBE sub-contracting requirements. Would our organization be automatically disqualified given our unique situation, or would Maryland consider waiver of the MBE requirements given our unique business model?*

**RESPONSE:** Please carefully review Attachment D. You may also wish to review the applicable law concerning the MBE program: State Finance and Procurement Article Title 14, subtitle 3 (online at: <http://www.michie.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp=mdcode> ) and COMAR 21.11.03 ([http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=21.11.03.\\*](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=21.11.03.*)), While a waiver of the MBE subcontract/participation goal may be granted under certain circumstances, the offeror must make a good faith effort to meet the MBE goal (attempting to subcontract to MBEs), regardless of whether the vendor typically does not sub-contract and provides all services “in-house.”

The Governor's Office for Minority Affairs also provides significant information about the State's MBE program: <http://www.oma.state.md.us/> .

**Please remember that offers are due on February 1, 2010, no later than 2:00 p.m.** If there are additional questions concerning this solicitation, please contact me via e-mail at [ggnall@dbm.state.md.us](mailto:ggnall@dbm.state.md.us) or by phone at (410) 260-7338 as soon as possible.

Date Issued: 01/08/2010

By: Gabriel Gnall  
Procurement Officer