



STATE OF TENNESSEE  
COMMERCE AND INSURANCE

**REQUEST FOR PROPOSALS # 33501-232001  
AMENDMENT # 3  
FOR EXTERNAL APPEAL PROCESS FOR  
PHARMACIES CHALLENGING PAYMENTS MADE BY  
PHARMACY BENEFITS MANAGERS**

DATE: JANUARY 20, 2023

RFP # 33501-232001 IS AMENDED AS FOLLOWS:

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

EVENT	TIME (central time zone)	DATE
1. RFP Issued		November 28, 2022
2. Disability Accommodation Request Deadline	2:00 p.m.	December 1, 2022
3. Pre-response Conference	9:00 a.m.	December 8, 2022
4. Notice of Intent to Respond Deadline	2:00 p.m.	December 12, 2022
5. Written "Questions & Comments" Deadline	2:00 p.m.	December 20, 2022
6. Amendment 1 – Update to Schedule of Events		January 6, 2023
7. Amendment 2 – Update to Schedule of Events		January 13, 2023
8. Amendment 3 - State Response to Written "Questions & Comments"		January 20, 2023
9. Written "Questions & Comments" Deadline - ROUND 2 <b>*NOTE: Vendors may submit no more than five (5) questions to the State in the 2nd round of Written Questions and Comments.</b>	2:00 p.m.	January 26, 2023
10. State Response to Written "Questions & Comments" – ROUND 2		February 7, 2023
11. Response Deadline	2:00 p.m.	February 17, 2023
12. State Completion of Technical Response Evaluations		March 6, 2023
13. State Opening & Scoring of Cost Proposals	2:00 p.m.	March 7, 2023
14. Negotiations	4:30 p.m.	March 8-10 2023

15. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	March 15, 2023
16. End of Open File Period		March 22, 2023
17. State sends contract to Contractor for signature		March 23, 2023
18. Contractor Signature Deadline	2:00 p.m.	March 27, 2023

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

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

RFP SECTION	PAGE #	QUESTION / COMMENT	STATE RESPONSE
RFP Section A.3.	19	1 Technical Response, Section A – A.3(d)(iv) states; “Technology Professional Liability (Errors & Omissions)/Cyber Liability with a limit of not less than ten million dollars (\$10,000,000) per claim.”  Question: Will the Department accept Cyber Liability insurance with a limit of eight million dollars (\$8,000,000)?	No.
RFP Section Attachment 6.4.	29	2 RFP Attachment 6.4 – Reference Questionnaire  Question: Does the Department require that our contract references be governmental entities?	No, only that they meet the requirements set out in Attachment 6.4. – Reference Questionnaire.
		3 What is the best way to answer these questions...would you like our responses right in the RFP document you sent or is there something else you would like?	Reference Section 3. Response Requirements and instructions on each RFP Attachment.
		4 Can you please provide the incumbent vendor and previous monetary amount awarded related to RFP 33501-232001 Insurance PBM Appeals (PC 1070)?	This is a new solicitation so there is no incumbent contractor and no previous monetary amount.
		5 Are there any examples that you can give of an initial appeal form or any PBM supplements that received temporary or final approval from the commission?	No. Initial Appeals are a review process that is internal to PBMs and are outside the scope of this RFP.
		6 Can we get a copy of the final language in the law that this RFP is based on?	The law that is the genesis of this RFP is 2022 Pub. Ch. 1070, which can be found <a href="#">here</a> . The rules further explaining the external review process have been set for a rulemaking hearing on Feb. 3, 2023, and the Notice of Rulemaking Hearing that contains the rules as they have been proposed can be found <a href="#">here</a> .

		7 Will the pharmacy be required to submit all PBM data that corresponds with the appeal?	The information required to be submitted by pharmacies will be set out in rule. Although not final as of this response, the Notice of Rulemaking Hearing that contains the rules as they have been proposed can be found <a href="#">here</a> . The information required to be collected by the contractor is set out in the contract.
RFP Attachment 6.6 Pro Forma Contract, A.14	Pro Forma Contract, pg. 3-4	8 Section A.14 of the pro forma contract included within the RFP indicates that the Contractor should evaluate whether a pharmacy was paid at least its actual cost (as defined in Tennessee Code Annotated § 56-7-3206(h)(1)). This section of the Tennessee Code defines "actual cost" as:  (A) Means the amount a pharmacy paid as evidenced by documentation that includes, but is not limited to, the invoice price minus discounts, price concessions, rebates, or other reductions; and (B) As used in subdivision (h)(1)(A), "discounts, price concessions, rebates, or other reductions" do not include a cash discount.  Based on our experience, most discounts, price concessions, rebates, etc. are determined retrospectively and may not be calculated individually for specific drugs. Since these discounts, price concessions, rebates, and other reductions may not be apparent at the time a pharmacy disputes a payment by a pharmacy benefit manager (PBM) and/or at the time of the appeal of that dispute, can the State please describe the expectations of the Contractor to determine discounts, price concessions, rebates, and other reductions within the appeal process?	How actual cost is calculated on appeal will be set out in rule. Although not final as of this response, the Notice of Rulemaking Hearing that contains the rules as they have been proposed can be found <a href="#">here</a> .
RFP Attachment 6.6 Pro Forma Contract, A.6	Pro Forma Contract, pg.22	9 Section A.6 of the pro forma contract included within the RFP indicates that the Contractor should provide a method for pharmacies to file appeals either individually or in bulk. Based on our experience, pharmacies (or their contracted pharmacy services administrative organizations) may submit appeals en masse, including potentially dozens or even hundreds of claims and individual drugs within a single submission. Since each of these submissions would require review and analysis individually, can the State please confirm the basis by which the Contractor should determine the "per appeal" proposed cost to be submitted in RFP Attachment 6.3, Cost Proposal & Scoring Guide?	Even though pharmacies may submit Appeals in bulk, each Appeal should be considered as a separate, individual Appeal for purposes of Attachment 6.3.

RFP Attachment 6.6 Pro Forma Contract, A.22 (h)	Pro Forma Contract, pg. 7	10	<p>Section A.22(h) of the pro forma contract indicates that the Contractor should bill each PBM for the costs associated with conducting each appeal; however, Section C of the pro forma contract references the State's maximum liability under the contract and a purchase order issued by the State.</p> <p>Can the State please provide a detailed description of the funding mechanism for the contract anticipated under this RFP and the process by which the Contractor will receive payment for appeals submitted and reviewed? For costs invoiced to the PBM, please clarify the role of the State to ensure that the Contractor receives payment.</p>	Pursuant to Section A.22.h. of the Pro Forma Contract, the costs of each Appeal Completed are to be initially assessed by the Contractor to each PBM. See Item 7. below for revisions to Pro Forma Contract Section A.22.h. to further explain this process.
RFP Attachment 6.2 , Section A.2	RFP, pg. 18	11	Can the State please clarify if a bidder who provides peer-review services as a contract service to a PBM has a conflict of interest which would prevent its consideration as the Appeals Contractor sought under the RFP?	RFP ATTACHMENT 6.2. — Section A.2. of the Technical Response requires disclosure of any possible conflict of interest.
RFP Attachment 6.2 , Section A.2	RFP, pg. 18	12	Can the State please clarify if a bidder who serves as a health benefits broker providing PBM referrals to a health plan has a conflict of interest which would prevent its consideration as the Appeals Contractor sought under the RFP?	RFP ATTACHMENT 6.2. — Section A.2. of the Technical Response requires disclosure of any possible conflict of interest.
RFP Attachment 6.2 , Section A.3	18	13	We are a small company and have all of the required insurance EXCEPT for Cyber liability which is 5 million per occurrence. The cost to move up to 10 million is an additional \$19,000 which we would have to reimburse the insurance company before they would provide a Certificate of Insurance. I am asking for a reasonable way to provide the 10,000,000 coverage when the award is made.	RFP ATTACHMENT 6.2. – Section A.3. of the Technical Response requires a certificate of insurance be provided no later than the Response Deadline that evidences cyber liability coverage of at least ten million dollars (\$10,000,000).
		14	Will contractor be contracted by the State, if so, will contractor submit invoices to the State or to the PBM?	Yes, the Contractor will be contracted by the State.  Please see response to question 10 above.
		15	If there are not enough dollars in the contract due to the volume of appeals, what happens to the remaining appeals for the year?	Section A.22.h. of the Pro Forma Contract states that the costs of each Appeal Completed are to be initially assessed by the Contractor to each PBM. The revised Section A.22.h. per Item 7. below further provides a mechanism for the Contractor to be reimbursed by the State if a PBM does not pay the Contractor in full within the given timeframe. Since PBMs will pay for the bulk of the costs generated from Appeals Completed, it is not anticipated that there will be inadequate funds or that the Contractor will not be reimbursed, either by the PBM or the State, for Appeals Completed.

In reference to RFP Attachment 6.3	27	16	<p>Could the State please provide an estimated annual volume of appeals?</p> <p>We understand the State does not have historical data, and volumes are not guaranteed.</p> <p>Our cost per appeal may slightly vary depending on volume.</p>	No, the State is unable to provide any estimate for annual volume of appeals.
In reference to section A. 18 of the Pro Forma Contract.	4	17	<p>Would the state please confirm that a reconsideration review is included in the initial appeal determination for billing purposes?</p> <p>I.e., the contractor may not bill for two completed appeals if a review requires reconsideration.</p>	Correct. Appeals that are denied pursuant to A.11.b. of the Pro Forma Contract and for which a pharmacy submits a petition for reconsideration are not a standalone Appeal. Contractor may not bill a PBM for a denied petition for reconsideration as Contractor is only compensated per Appeal Completed, and an Appeal is not considered complete unless it meets the criteria in A.18. of the Pro Forma Contract. Likewise, simply reviewing and approving a petition for reconsideration does not complete an Appeal and would not qualify the Contractor for reimbursement for that Appeal until it is complete.
RFP	2	18	How many PBMs are currently operating in TN?	To the State's best information, there were 55 as of 12-23-22.
RFP	2	19	How many pharmacies are currently operating in TN?	To the State's best information, there were 1,815 licensed pharmacies as of 12-22-22.
RFP	2	20	Please explain the process by which a pharmacy would make a written request for additional time to investigate, to file an appeal prior to receipt of an appeal by contractor?	The process will be left to the selected contractor. Please see Item 5 below for revisions to Section A.7. of the Pro Forma Contract for additional information.
RFP	2	21	Can the Department provide examples of what would be considered good cause for a pharmacy failing to meet the required timeline?	No.
RFP	2	22	May contractor communicate electronically with PBMs and pharmacies on appeal decisions, good cause decisions, etc.?	Yes.
RFP	2	23	Is there a template for communicating appeals decisions or will the contractor be expected to create one? - If there is a template can that be shared?	There is no template currently. The Contractor may create and utilize that template with the State's prior approval.
RFP	4	24	Is electronic communication permissible when it is necessary for the contractor to confirm payment with PBM and/or pharmacy?	Yes.
RFP	6	25	May a petition for reconsideration be conducted by the same level of professional reviewer that conducted the original appeal?	Yes, the same individual that reviews Appeals may also review petitions for reconsideration.

RFP	6	26	May a petition for reconsideration be conducted by the same professional reviewer that conducted the initial appeal?	Initial Appeals are a review process that is internal to PBMs and are outside the scope of this RFP.
RFP		27	Is contractor required to maintain an office, and if so, is there a requirement for where this office should be located?	No.
RFP		28	Can the work be completed remotely?	Yes.
RFP	7	29	Will the state provide hardware/ computer equipment?	No.
RFP		30	Is intent to contract with only 1 vendor?	Yes.
RFP		31	Do you have an estimate of number of appeals?	No.
RFP		32	What is the estimated budget for program?	The State cannot estimate the overall budget for this process. However, please see Item 3. Below for revisions to Section 1.1.2. of the RFP for further explanation of how the Contractor will be compensated.
RFP	2	33	Are there any specific qualifications for professional reviewer?	Not beyond what is listed in the Pro Forma Contract.

**3. Delete RFP section 1.1.2. in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):**

**1.1.2.** The Contractor will be compensated by the applicable PBM whose Initial Appeal decision was the subject of an Appeal. The Contractor will invoice the applicable PBM directly and receive payment from the PBM at no cost to the State. If the PBM fails to pay the Contractor's invoice within thirty (30) days as required by rule, the Contractor will notify the State of the nonpayment. If the PBM fails to pay the Contractor within ninety (90) days, the State will pay the Contractor as further outlined in the Pro Forma Contract and seek reimbursement from the PBM. The State's estimated maximum liability for the resulting contract is anticipated to be Five Million dollars (\$5,000,000.00), with Three Million dollars (\$3,000,000.00) allocated for the initial contract term of three (3) years, and One Million dollars (\$1,000,000.00) allocated for each of the two (2) optional renewal terms of up to twelve (12) months each. The estimated maximum liability is not an indication of the estimated volume of Appeals under this RFP.

**4. Delete RFP section RFP ATTACHMENT 6.6. – Pro Forma Contract, Section A.2. in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):**

- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:
- a. "Appeal" means an appeal made by a pharmacy to the State pursuant to Tenn. Code Ann. § 56-7-3206(g)(2).
  - b. "Appeal Completed" means an Appeal that is completed as set forth in section A.18. within the timeframe allowed under sections A.14. and A.22.
  - c. "Initial Appeal" means the process established by PBMs pursuant to Tenn. Code Ann. § 56-7-3206(c).

- d. "Overdue Payment Date" means the date ninety-one (91) calendar days after the date on which the Contractor sends a PBM an invoice assessing costs for an Appeal Completed pursuant to section A.22.h.
- e. "Pharmacy Benefits Manager (PBM)" means a pharmacy benefits manager as defined in Tenn. Code Ann. § 56-7-3102.
- f. "Pharmacy" means a pharmacy as defined in Tenn. Code Ann. § 56-7-3102 and includes an agent acting on behalf of a pharmacy.
- g. "Professional Reviewer" means the individual employed by Contractor to review Appeals.
- h. "Required Timeframe" means a period of thirty (30) days following a Pharmacy's receipt of a PBM's final determination resolving the Pharmacy's Initial Appeal filed with the PBM, or the extended timeframe granted pursuant to section A.7., whichever is longer.
5. **Delete RFP section RFP ATTACHMENT 6.6. – Pro Forma Contract, Section A.7. in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):**
- A.7. If, prior to receiving an Appeal, Contractor receives a written request from a Pharmacy for additional time to investigate and compile information needed to file an Appeal, Contractor may, for good cause shown by the Pharmacy, grant the Pharmacy an additional period of time to submit its Appeal. Contractor may not grant an extension of more than thirty (30) days without the prior written approval of the State. Contractor shall provide a clear method by which Pharmacies may request additional time and must monitor the method by which requests come in during business hours to ensure requests are timely received, reviewed, and either approved or denied, as determined by the State. Further, Contractor shall deny a Pharmacy's request if Contractor receives the request more than thirty (30) days after the Pharmacy's receipt of the PBM's final determination resolving the Pharmacy's Initial Appeal filed with the PBM.
6. **Delete RFP section RFP ATTACHMENT 6.6. – Pro Forma Contract, Section A.20. in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):**
- A.20. Contractor shall provide the State reports on a monthly basis, or on such other schedule as approved in writing by the State, in a format approved by the State containing at least the following information:
- a. Number of Appeals received by Contractor during the previous month, quarter, and year in aggregate, by PBM, and by Pharmacy;
  - b. Number of Appeals where a PBM was found to have failed to reimburse a Pharmacy its actual cost, and the amounts of such reimbursements ordered, during the previous month, quarter, and year in aggregate, by PBM, and by Pharmacy;
  - c. Information regarding any Appeal in which a PBM failed to timely reimburse a Pharmacy or provide Contractor with proof the PBM has made the payment as required by law or rule after issuance of a decision by Contractor, and the number of such instances by that PBM in the last month, quarter, and year;
  - d. A list of any suspected fraudulent or frivolous Appeals (as described in section A.21.) submitted during the past month, the name of the Pharmacy submitting each appeal,

and a brief description of why Contractor believes the appeal to be fraudulent or frivolous; and

- e. A list of all invoices sent pursuant to section A.22.h. showing, for each invoice, the amount of the invoice, date sent, days since the invoice was sent as of the report date, status of payment, and any other information the State may require regarding invoices.
- f. Any other information the State may, in writing, require in the report.

**7. Delete RFP section RFP ATTACHMENT 6.6. – Pro Forma Contract, Section A.22.h. in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):**

h. For each Appeal Completed, Contractor shall invoice the applicable PBM whose Initial Appeal decision was appealed the rate set in section C.3.b. Contractor shall not submit an invoice to the State for any Appeal Completed for which it receives payment from a PBM. Contractor shall notify the PBM that the invoice is due in full within thirty (30) days of receipt. Contractor shall notify the State in writing to the State’s contact set out in Section D.2. of any unpaid PBM invoices more than thirty (30) days past due. If a PBM has not paid Contractor for an invoice sent under this section before the Overdue Payment Date, Contractor may then submit an invoice, pursuant to section C.5., to the State for the amount of the unpaid invoice plus the additional fee outlined in section C.3.b.ii. Contractor may submit a single invoice to the State for multiple invoices outstanding as of their respective Overdue Payment Dates. The Overdue Payment Date shall be considered the date that goods or services have been provided for the purposes of section C.5. If Contractor subsequently receives payment from a PBM for an invoice for which it has received reimbursement from the State, Contractor shall, within thirty (30) calendar days of receiving that payment from the PBM, reimburse the State either through direct payment or through a credit on an invoice sent to the State pursuant to Section C.5.

**8. Delete RFP section RFP ATTACHMENT 6.6. – Pro Forma Contract, Section C.3. in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):**

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
  - b. The Contractor shall be compensated based upon the following payment methodology:
    - i. In consideration of the services provided hereunder by the Contractor, the Contractor shall invoice and collect from each PBM in accordance with Contract Section A.22.h and the following schedule, which shall remain in effect for the Term of the Contract and shall not be subject to adjustment or escalation for any reason.

Goods or Services Description	Amount (per compensable increment)
Appeal Completed within the timeframe allowed under the Scope.	\$ Number / per Appeal Completed



ii. If the Contractor has not been paid in full by a PBM for services performed for the State under this Contract within 90 days of the invoice, the State will pay the Contractor the unpaid balance of the invoice plus one and one-half percent (1.5%) of the unpaid invoice balance.

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