



# STATE OF ARKANSAS

## OFFICE OF STATE PROCUREMENT

1509 West 7th Street, Room 300  
Little Rock, Arkansas 72201-4222

## REQUEST FOR PROPOSAL BID SOLICITATION DOCUMENT

### SOLICITATION INFORMATION

Bid Number:	SP-18-0039	Solicitation Issued:	11/07/2017
Description:	Pharmacy Benefits Manager		
Agency:	Arkansas State Police		

### SUBMISSION DEADLINE FOR RESPONSE

Bid Opening Date:	December 6, 2017	Bid Opening Time:	2:00 p.m., Central Time
<p>Deliver proposal submissions for this Request for Proposal to the Office of State Procurement on or before the designated bid opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of Prospective Contractors to submit proposals at the designated location on or before the bid opening date and time. Proposals received after the designated bid opening date and time may be considered late and may be returned to the Prospective Contractor without further review. It is not necessary to return "no bids" to OSP.</p>			

### DELIVERY OF RESPONSE DOCUMENTS

Delivery Address:	<p>Office of State Procurement 1509 West 7<sup>th</sup> Street, Room 300 Little Rock, AR 72201-4222</p> <p>Delivery providers, USPS, UPS, and FedEx deliver mail to OSP's street address on a schedule determined by each individual provider. These providers will deliver to OSP based solely on the street address. <b>Prospective Contractors assume all risk for timely, properly submitted deliveries.</b></p>
Proposal's Outer Packaging:	<p>Seal outer packaging and properly mark with the following information. If outer packaging of proposal submission is not properly marked, the package may be opened for bid identification purposes.</p> <ul style="list-style-type: none"><li>• Bid number</li><li>• Date and time of bid opening</li><li>• Prospective Contractor's name and return address</li></ul>

### OFFICE OF STATE PROCUREMENT CONTACT INFORMATION

OSP Buyer:	Angela Allman	Buyer's Direct Phone Number:	501-371-6156
Email Address:	angela.allman@dfa.arkansas.gov	OSP's Main Number:	501-324-9316
OSP Website:	<a href="http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx">http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx</a>		

## **SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION**

- **Do not provide responses to items in this section unless specifically and expressly required.**

### **1.1 PURPOSE**

The Office of State Procurement (OSP), on the behalf of The Arkansas State Police (ASP) is seeking proposals and pricing for a Pharmacy Benefit Manager (PBM) for its self-funded Health Plan Program (Plan).

### **1.2 TYPE OF CONTRACT**

- A. As a result of this RFP, OSP intends to award a contract to a single Contractor.
- B. The anticipated starting date for any resulting contract is August 1, 2018, except that the actual contract start date may be adjusted forward unilaterally by the State for up to three calendar months. By submitting a signed proposal in response to the RFP, the Prospective Contractor represents and warrants that it will honor its proposal as being held open as irrevocable for this period.
- C. The initial term of a resulting contract will be for one (1) year. Upon mutual agreement by the Contractor and agency, the contract may be renewed by OSP for up to six (6) additional one-year terms or portions thereof, not to exceed a total aggregate contract term of seven (7) consecutive years.

### **1.3 ISSUING AGENCY**

OSP, as the issuing office, is the sole point of contact throughout this solicitation.

### **1.4 BID OPENING LOCATION**

Proposals will be opened at the following location:

Office of State Procurement  
1509 West Seventh Street, Room 300  
Little Rock, AR 72201-4222

### **1.5 ACCEPTANCE OF REQUIREMENTS**

- A. A Prospective Contractor **must** unconditionally accept all Requirements in the Requirements Section(s) of this RFP to be considered a responsive Prospective Contractor.
- B. A Prospective Contractor's proposal will be disqualified if a Prospective Contractor takes exceptions to any Requirements in the Requirements Section(s) of this RFP.

### **1.6 DEFINITION OF TERMS**

- A. The State Procurement Official has made every effort to use industry-accepted terminology in this *Bid Solicitation* and will attempt to further clarify any point of an item in question as indicated in *Clarification of Bid Solicitation*.
- B. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.
- C. "Administration Services Start Date" refers to the date immediately following the Implementation Period whereby the Contractor **must** begin providing all Pharmacy Benefit Management services required by this solicitation, anticipated to be November 1, 2018.
- D. "Brand Drug" means a drug where the multisource code field in Medi-Span contains an "M" (co-branded product), "O" (originator brand) or an "N" (single source brand). However, if the multisource code is "O" and there is a Dispensed as Written (DAW) code of 3, 4, 5, 6, or 9 the drug **shall** be considered a generic drug.
- E. "Contractor" means a person who sells or contracts to sell commodities and/or services.
- F. "Filled Prescription" means a prescription actually dispensed to a member. With respect to any claim, if the prescription is not dispensed, but is instead denied, rejected, or reversed, the claim does not constitute a Filled Prescription. If the claim is adjusted in any way, the original claim and the adjusted claim(s) will together

constitute only one Filled Prescription. If a claim is partially filled, and subsequently the remainder of the claim is filled, the fills will together constitute only one Filled Prescription.

- G. "Generic Drug" means a drug where the multisource code field in Medi-Span contains a "Y" (generic). An item **shall** also be considered a generic drug if the multisource code is "O" and there is a DAW code of 3, 4, 5, 6, or 9.
- H. "Implementation Period" refers to the period of time beginning on the starting date of the contract, anticipated to be August 1, 2018 during which the Contractor **shall** perform all the start-up and implementation activities required to achieve full implementation by the Administration Services Start Date.
- I. "Proposal Submission Requirement" means a task a Contractor **must** complete when submitting a proposal response. These requirements will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- J. "Prospective Contractor" means a person who submits a proposal in response to this solicitation.
- K. "Rebate Guarantee" means the minimum (not fixed) amount of Rebates per Filled Prescription the Contractor guarantees will be paid to ASP as specified on the Official Bid Price Sheet.
- L. "Rebate" means all revenue / financial remuneration and credits received by the Contractor from outside sources and third parties and attributed to, directly or indirectly, the utilization of the ASP Plan regardless of how such revenue / financial remuneration is characterized, classified, or labeled by Contractor, relevant third parties, and outside sources.
- M. The terms "Request for Proposal", "RFP," "Bid Solicitation," and "Solicitation" are used synonymously in this document
- N. "Requirement" means a specification that a Contractor's product and/or service **must** perform during the term of the contract. These specifications will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- O. "Responsive proposal" means a proposal submitted in response to this solicitation that conforms in all material respects to this RFP.
- P. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this solicitation, that obligation is limited to the State agency using such a contract.

## 1.7 **RESPONSE DOCUMENTS**

### A. Original Technical Proposal Packet

#### 1. Proposal Submission Requirements

- a. Prospective Contractor **shall** provide the following:
  - i. Original signed *Proposal Signature Page*. (See *Technical Proposal Packet*.)
  - ii. *One (1) original hard copy of the proposal response which includes:*
    - *Technical Proposal response to the Information for Evaluation section included in the Technical Proposal Packet.*
    - *Response to the Official Bid Price Sheet.*
    - *CD created by the Prospective Contractor containing the network repricing submission.*
- b. The *Official Bid Price Sheet*, including the hard copy and electronic copy, and the CD created by the Prospective Contractor containing the network repricing submission **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". A Prospective Contractor

**shall not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*.

- c. Proposal response **must** be in the English language.
  - d. Pricing **must** be proposed in U.S. dollars and cents.
2. The following items should be submitted in the original *Technical Proposal Packet*.
- a. EO 98-04 Disclosure Form. (See *Standard Terms and Conditions*, #27. *Disclosure*.)
  - b. Copy of Prospective Contractor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
  - c. *Voluntary Product Accessibility Template* (VPAT). (See *Technology Access*.)
  - d. Proposed Subcontractors Form. (See *Subcontractors*.)

**DO NOT** include any other documents or ancillary information, such as a cover letter or promotional/marketing information.

B. Additional Copies and Redacted Copy of the *Technical Proposal Packet*, *Official Bid Price Sheet*, and network repricing submission CD

In addition to the original *Technical Proposal Packet*, the *Official Bid Price Sheet*, and the CD created by the Prospective Contractor containing the network repricing submission, the following items should be submitted:

- 1. Additional Copies of the *Technical Proposal Packet*
  - a. Three (3) complete hard copies (marked "COPY") of the *Technical Proposal Packet*.
  - b. Four (4) electronic copies of the *Technical Proposal Packet*, preferably on flash drives. CDs will also be acceptable. Do not send electronic copies via email or fax.
  - c. All additional hard copies and electronic copies **must** be identical to the original hard copy. In case of a discrepancy, the original hard copy governs.
  - d. If OSP requests additional copies of the proposal, the copies **must** be delivered within the timeframe specified in the request.
- 2. Additional Copies of the Official Bid Price Sheet
  - a. Prospective Contractor should also submit one (1) electronic copy of the *Official Bid Price Sheet*, preferably on a flash drive. A CD will also be acceptable. Do not send electronic copies via email or fax.
    - i. *The Official Bid Price Sheet*, including the hard copy and electronic copy **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". Prospective Contractor **shall not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*.
- 3. Additional Copies of the Network Repricing Submission CD
  - a. Prospective Contractor should also submit one (1) copy of the CD created by the Prospective Contractor containing the network repricing submission.
    - i. The copy of the network repricing submission on CD **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". A Prospective Contractor **shall not** include any pricing in the hard copies or electronic copies of their *Technical Proposal Packet*.

4. Original network repricing CD received from OSP containing the network repricing spreadsheet.
  - a. If returned, the original network repricing CD received from OSP **must** be separately sealed from the Technical Proposal Packet and should be clearly marked as "Pricing". A Prospective Contractor **shall** not include any pricing in the hard copies or electronic copies of their Technical Proposal Packet.
5. One (1) redacted (marked "REDACTED") copy the original *Technical Proposal Packet*, preferably on a flash drive. A CD will also be acceptable. Do not send electronic copies via email or fax. (See *Proprietary Information*.)

#### 1.8 **ORGANIZATION OF RESPONSE DOCUMENTS**

- A. It is strongly recommended that Prospective Contractors adhere to the following format and suggestions when preparing their Technical Proposal response.
- B. The original *Technical Proposal Packet* and all copies should be arranged in the following order.
  - *Proposal Signature Page.*
  - *Proposed Subcontractors Form.*
  - Signed Addenda, if applicable.
  - E.O. 98-04 – *Contract Grant and Disclosure Form.*
  - *Equal Opportunity Policy.*
  - *Voluntary Product Accessibility Template (VPAT).*
  - Technical Proposal response to the *Information for Evaluation* section of the *Technical Proposal Packet*.

#### 1.9 **CLARIFICATION OF BID SOLICITATION**

- A. Submit any questions requesting clarification of information contained in this *Bid Solicitation* in writing via email by 4:00 p.m., Central Time on or before November 10, 2017 to the OSP buyer as shown on page one (1) of this *Bid Solicitation*.
  1. For each question submitted, Prospective Contractor should reference the specific solicitation item number to which the question refers.
  2. Prospective Contractors' written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OSP website by the close of business on November 17, 2017. If Prospective Contractor questions are unclear or non-substantive in nature, the State may request clarification of a question(s) or reserves the right not to respond to that question(s).
- B. The Prospective Contractor should notify the OSP buyer of any term, condition, etc., that precludes the Prospective Contractor from submitting a compliant, responsive proposal. Prospective Contractors should note that it is the responsibility of the Prospective Contractor to seek resolution of all such issues, including those relating to the terms and conditions of the contract, prior to the submission of a proposal.
- C. Prospective Contractors may contact the OSP buyer with non-substantive questions at any time prior to the bid opening.
- D. An oral statement by OSP will not be part of any contract resulting from this solicitation and may not reasonably be relied on by any Prospective Contractor as an aid to interpretation unless it is reduced to writing and expressly adopted by OSP.
- E. Prospective Contractors entering into a contract with the State **shall** comply with all the terms and conditions contained herein.

#### 1.10 **PROPOSAL SIGNATURE PAGE**

- A. An official authorized to bind the Prospective Contractor(s) to a resultant contract **must** sign the *Proposal Signature Page* included in the *Technical Proposal Packet*.
- B. Prospective Contractor's signature on this page signifies Prospective Contractor's agreement to and compliance with all Requirements of this RFP, and that any exception that conflicts with a Requirement or

Proposal Submission Requirement of this *Bid Solicitation* will cause the Prospective Contractor's proposal to be disqualified.

#### 1.11 **SUBCONTRACTORS**

- A. Prospective Contractor should complete, sign and submit the *Proposed Subcontractors Form* included in the *Technical Proposal Packet*.
- B. Additional subcontractor information may be required or requested in following sections of this *Bid Solicitation* or in the *Information for Evaluation* section provided in the *Technical Proposal Packet*. **Do not** attach any additional information to the *Proposed Subcontractors Form*.
- C. The utilization of any proposed subcontractor is subject to approval by the State agency.

#### 1.12 **PRICING**

- A. Prospective Contractor(s) **shall** include all pricing on the Official Bid Price Sheet(s) only. If any cost is not identified by the successful Contractor but is subsequently incurred in order to achieve successful operation, the Contractor **shall** bear this additional cost. The *Official Bid Price Sheet* is provided as a separate excel file posted with this *Bid Solicitation*.

**NOTE: The Official Bid Price Sheet contains two tabs.**

- B. To allow time to evaluate proposals, prices **must** be valid for 90 days following the bid opening.
- C. The *Official Bid Price Sheet*, including the hard copy and electronic copy **must** be separately sealed from the *Technical Proposal Packet* and should be clearly marked as "Pricing". DO NOT submit any ancillary information not related to actual pricing on the Official Bid Price sheet or in the sealed pricing package.
- D. The Prospective Contractor **shall** provide network repricing for a sampling of drug claims provided by ASP.
  - 1. The drug claims sampling for network repricing will be provided to the Prospective Contractor on CD. The CD will contain 12 months of claims history.
  - 2. The Prospective Contractor **shall** provide their network repricing for each drug claim by filling in the required fields in the specified spreadsheet format on another submission CD.
  - 3. The network repricing totals from the submission CD **must** be entered into Table C of the Official Price Sheet.
  - 4. The Prospective Contractor should include the original network repricing CD received from OSP in the pricing packet.
  - 5. The Prospective Contractor **shall** include the network repricing submission CD created by the Prospective Contractor in the pricing packet.
  - 6. The network repricing CD's, along with any copies **must** be separately sealed from the Technical Proposal Packet and should be clearly marked as "Pricing". DO NOT submit any ancillary information not related to the actual network repricing in the sealed pricing package.
- E. All network repricing submissions will be reviewed by an actuary and/or a managed care pharmacy expert chosen by ASP to ensure the viability of the network repricing costs.
  - 1. If the actuary and/or the pharmacy expert determine a Prospective Contractor's network repricing submission is not viable (for example, if pricing does not reflect market conditions and as a result, the overall numbers are manipulated to be falsely low) the Prospective Contractor's proposal may be disqualified.
- F. To obtain a copy of the network repricing CD containing the network claims data files spreadsheet for repricing submission, the Prospective Contractor **must** make a request in writing to Angela Allman at the State Procurement Office.

1. Email, fax, or hard copy deliveries of requests are acceptable. Upon receipt of the request and necessary shipping information, the Prospective Contractor will be notified by email that a copy of the CD will be shipped within one (1) business day.
2. Standard shipping will be through the U.S. Postal Service. If requested, shipment can also be made through UPS or FedEx. If the Prospective Contractor requests delivery via UPS or FedEx, the Prospective Contractor **must** provide a FedEx pre-paid account number or a UPS shipping label to cover costs for these deliveries.
3. To request the CD:
  - By mail: Office of State Procurement  
1509 West Seventh Street, Room 300  
Little Rock, AR 72201-4222  
Attn: Angela Allman
  - By email: [angela.allman@dfa.arkansas.gov](mailto:angela.allman@dfa.arkansas.gov)
  - By fax: 501-324-9311  
Attn: Angela Allman
4. In the request, the Prospective Contractor **must** provide:
  - Company name and address where CD is to be shipped.
  - Contact name, address, email, and phone number.
  - Desired method of shipment: USPS, FedEx, or UPS.
  - If FedEx or UPS:
    - State desired shipping time (standard, 2-day, overnight, etc.).
    - Provide pre-paid Fed-Ex account number or UPS shipping label to cover cost of shipping.
    - Provide physical shipping address (not a PO Box).

**NOTE: The Official Bid Price Sheet, the original Network Repricing CD containing the network repricing spreadsheet received from OSP (if returned), and the CD created by the Prospective Contractor for network repricing submission including any copies, must be sealed separately from the Technical Proposal Packet. Pricing information must not be included in the Prospective Contractor's response to the Technical Proposal Packet.**

- G. The Prospective Contractor **shall** indicate the total "Implementation Fee" charged by the Prospective Contractor for expenses incurred during the Implementation Period, as instructed on the Official Bid Price Sheet, Table B. The one time implementation fee will be payable beginning the month of the Administration Services Start Date, as specified in this RFP, after all implementation activities are completed and approved by ASP.
- H. The Contractor **shall not** receive any compensation from or on behalf of ASP for the services described in this RFP or any subsequent contract, except for quoted fees as listed on the Official Bid Price Sheet.
- I. The Prospective Contractor **shall** submit drug claims processing and administration fees on a per Filled Prescription basis on Table A on the Official Bid Price Sheet. The processing and administration per Filled Prescription fee entered on Table A of the Official Bid Price Sheet **shall** be inclusive of all RFP requirements except the costs for the one time implementation fee entered on Table B on the Official Bid Price Sheet.
- J. Tables A, B, C, and D of the Official Bid Price Sheet will be the basis for a portion of the Cost Score.

#### **1.13 NETWORK REPRICING INFORMATION AND REQUIREMENTS**

- A. The data for network repricing will be provided by OSP on an encrypted CD which contains 12 months of claims history. The data will be provided in three separate repricing file categories on the CD labeled as (1) Specialty, (2) Generic, and (3) Brand. These file categories are provided as both Excel and pipe delimited files.

- B. The files are provided strictly as a tool for the Prospective Contractor to assist with their network pricing determination.
- C. The Prospective Contractor **shall** calculate their network repricing on a separate CD which **must** use the specified format provided by the original CD, supplied by OSP, by completing the following three columns for each separate claim in each of the three excel files:
1. Column M: Approved Ingredient Cost
  2. Column N: Approved Dispensing Fee
  3. Column O: Calculated Approved Drug Cost
- D. Network repricing costs **must** reflect the following directives:
1. All costs **must** be before copay.
  2. The Prospective Contractor **shall** price each file separately using the contracted reimbursement rates of the pharmacy network being proposed.
  3. Cost discounts for pharmacies owned or associated with the PBM **must not** be different than in-network Arkansas pharmacies.
  4. All in-network Arkansas pharmacies **must** dispense specialty medications for ASP, where appropriate. Dispensing restrictions **must not** be placed on in-network Arkansas pharmacies.
  5. Costs **must not** take into account Usual & Customary (U&C), zero balance, full copay, or submitted pricing, as ASP has removed these fields and will use the data to compare Average Wholesale Price (AWP) discounts, dispensing fee, Maximum Allowable Cost (MAC), and specialty pricing in a manner which does not contain alternative assumptions by proposing PBMs.
  6. The Prospective Contractor **shall** provide the best pricing that can be obtained for a full pass-through, broad network, with no dispensing restrictions for in network pharmacies.
  7. The Prospective Contractor **shall** use proposed discounts, current MAC pricing where applicable, and AWP as published on January 1, 2016.
  8. The Prospective Contractor **shall not** factor Rebate dollars or negotiated discounts into the network repricing.
  9. The Prospective Contractor **shall not** use any ancillary assumptions and/or caveats in their cost analysis beyond any which are industry standard. The acceptability of what constitutes industry standard will be determined by the actuary and/or the managed care pharmacy expert during the review of the network repricing.
  10. If larger discounts can be obtained through an exclusive or alternate arrangement, this may be discussed during the Implementation Period or during negotiations but **must not** be reflected in the network repricing submission.
- E. Except for entering costs in columns M, N, and O, the Prospective Contractor **shall not** change, add, or delete data or formatting in any place on any of the electronic files. If any data or formatting is changed, added, or deleted on a Prospective Contractor's network repricing submission CD, either intentionally or inadvertently, the Prospective Contractor's proposal may be disqualified.
- F. The aggregated total from Column O: The Prospective Contractor **shall** determine the calculated approved drug cost for each separate Excel file provided on the CD and **shall** enter this total into Table C of the Official Bid Price Sheet, along with the grand total of network repricing.



- G. The network repricing submission CD with the Prospective Contractor's submitted network repricing entered, along with any additional copies of the network pricing submission CD, **must** be sealed in the pricing packet along with the Official Bid Price Sheet.

**1.14 PRIME CONTRACTOR RESPONSIBILITY**

- A. A single Prospective Contractor **must** be identified as the prime Contractor.
- B. The prime Contractor **shall** be responsible for the contract and jointly and severally liable with any of its subcontractors, affiliates, or agents to the State for the performance thereof.

**1.15 INDEPENDENT PRICE DETERMINATION**

- A. By submission of this proposal, the Prospective Contractor certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
  - The prices in the proposal have been arrived at independently, without collusion.
  - No prior information concerning these prices has been received from, or given to, a competitive company.
- B. Evidence of collusion warrants consideration of this proposal by the Office of the Attorney General. All Prospective Contractors **shall** understand that this paragraph may be used as a basis for litigation.

**1.16 PROPRIETARY INFORMATION**

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).
- B. In accordance with FOIA and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade secrets defined by FOIA and other information exempted from the Public Records Act pursuant to FOIA.
- C. Prospective Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by submitting a redacted copy of the response.
- D. By so redacting any information contained in the response, the Prospective Contractor warrants that it has formed a good faith opinion having received such necessary or proper review by counsel and other knowledgeable advisors that the portions redacted meet the requirements of the Rules and Statutes set forth above.
- E. Under no circumstances will pricing information (as submitted on the Official Bid Price Sheet) be designated as confidential.
- F. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Technical Proposal Packet*. A CD is also acceptable. Do not submit documents via email or fax.
- G. Except for the redacted information, the redacted copy **must** be identical to the original hard copy, reflecting the same pagination as the original and showing the space from which information was redacted.
- H. The Prospective Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- I. The redacted copy will be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the Prospective Contractor.
- J. If a redacted copy of the submission documents is not provided with Prospective Contractor's response packet, a copy of the non-redacted documents, with the exception of MAC Lists and financial data (other than pricing), will be released in response to any request made under the Arkansas Freedom of Information Act (FOIA).

- K. If the State deems redacted information to be subject to FOIA (excluding MAC Lists), the Prospective Contractor will be contacted prior to release of the documents.
- L. The State has no liability to a Prospective Contractor with respect to the disclosure of Prospective Contractor's confidential information ordered by a court of competent jurisdiction pursuant to FOIA or other applicable law.

#### **1.17 CAUTION TO PROSPECTIVE CONTRACTORS**

- A. Prior to any contract award, address all communication concerning this *Bid Solicitation* through the OSP buyer.
- B. Do not alter any language in any solicitation document provided by the State.
- C. Do not alter the Official Bid Price Sheet.
- D. All official documents and correspondence related to this solicitation become part of the resultant contract.
- E. The State has the right to award or not award a contract, if it is in the best interest of the State to do so.
- F. As requested, provide clarification regarding Prospective Contractor's proposal response to OSP.
- G. Qualifications and proposed services **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.
- H. Prospective Contractors may submit multiple proposals.

#### **1.18 REQUIREMENT OF ADDENDUM**

- A. Only an addendum written and authorized by OSP will modify this *Bid Solicitation*.
- B. An addendum posted within three (3) calendar days prior to the bid opening may extend the bid opening and may or may not include changes to the Bid Solicitation.
- C. The Prospective Contractor is expected to check the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php>, for any and all addenda up to bid opening.

#### **1.19 AWARD PROCESS**

##### **A. Successful Contractor Selection**

The Overall Total Score for each Prospective Contractor, which is the sum of the Technical Score and Cost Scores, will be used to determine the ranking of proposals. The State may move forward to negotiations with those responsible Prospective Contractors determined, based on the ranking of the proposals, to be reasonably susceptible of being selected for award.

##### **B. Negotiations**

1. If the State so chooses, negotiations may be conducted with the highest ranking Prospective Contractors. Negotiations are conducted at the sole discretion of the State.
2. If negotiations fail to result in a contract, the State may begin the negotiation process with the next highest ranking Prospective Contractor. The negotiation process may be repeated until the anticipated successful Contractor has been determined, or until such time the State decides not to move forward with an award.

##### **C. Anticipation to Award**

1. Once the anticipated successful Contractor has been determined, the anticipated award will be posted on the OSP website at [http://www.arkansas.gov/dfa/procurement/pro\\_intent.php](http://www.arkansas.gov/dfa/procurement/pro_intent.php).
2. The anticipated award will be posted for a period of fourteen (14) days prior to the issuance of a contract. Prospective Contractors and agencies are cautioned that these are preliminary results only, and a contract will not be issued prior to the end of the fourteen day posting period.

3. OSP may waive the policy of Anticipation to Award when it is in the best interest of the State.
4. It is the Prospective Contractor's responsibility to check the OSP website for the posting of an anticipated award.

**D. Issuance of Contract**

1. Any resultant contract of this *Bid Solicitation* is subject to State approval processes which may include Legislative review.
2. A State Procurement Official will be responsible for the solicitation and award of any resulting contract.

**1.20 MINORITY AND WOMEN-OWNED BUSINESS POLICY**

- A. A minority-owned business is defined by Arkansas Code Annotated § 15-4-303 as a business owned by a lawful permanent resident of this State who is:
  - African American
  - American Indian
  - Asian American
  - Hispanic American
  - Pacific Islander American
  - A Service Disabled Veteran as designated by the United States Department of Veteran Affairs
- B. A women-owned business is defined by Act 1080 of the 91<sup>st</sup> General Assembly Regular Session 2017 as a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this State.
- C. The Arkansas Economic Development Commission conducts a certification process for minority-owned and women-owned businesses. If certified, the Prospective Contractor's Certification Number should be included on the *Proposal Signature Page*.

**1.21 EQUAL OPPORTUNITY POLICY**

- A. In compliance with Arkansas Code Annotated § 19-11-104, OSP is required to have a copy of the anticipated Contractor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. *EO Policies* may be submitted in electronic format to the following email address: [eeopolicy.osp@dfa.arkansas.gov](mailto:eeopolicy.osp@dfa.arkansas.gov), but should also be included as a hardcopy accompanying the solicitation response.
- C. The submission of an *EO Policy* to OSP is a one-time Requirement. Contractors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute.
- D. Prospective Contractors who are not required by law to have an *EO Policy* **must** submit a written statement to that effect.

**1.22 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS**

- A. Pursuant to Arkansas Code Annotated § 19-11-105, Contractor(s) providing services **shall** certify with OSP that they do not employ or contract with illegal immigrants.
- B. By signing and submitting a response to this *Bid Solicitation*, a Prospective Contractor agrees and certifies that they do not employ or contract with illegal immigrants. If selected, the Prospective Contractor certifies that they will not employ or contract with illegal immigrants during the aggregate term of a contract.

**1.23 RESTRICTION OF BOYCOTT OF ISRAEL**

- A. Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.
- B. This prohibition does not apply to a company which offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business.

- C. By checking the designated box on the Proposal Signature Page of the response packet, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

#### **1.24 PAST PERFORMANCE**

In accordance with provisions of State Procurement Law, specifically OSP Rule R5:19-11-230(b)(1), a Prospective Contractor's past performance with the State may be used to determine if the Prospective Contractor is "responsible". Proposals submitted by Prospective Contractors determined to be non-responsible will be disqualified.

#### **1.25 TECHNOLOGY ACCESS**

- A. When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Prospective Contractor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that technology meets the statutory Requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.
- B. Accordingly, the Prospective Contractor expressly represents and warrants to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:
1. Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means.
  2. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use.
  3. After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.
  4. Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means.
  5. Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact.
  6. Integrating into networks used to share communications among employees, program participants, and the public.
  7. Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.
- C. State agencies cannot claim a product as a whole is not reasonably available because no product in the marketplace meets all the standards. Agencies must evaluate products to determine which product best meets the standards. If an agency purchases a product that does not best meet the standards, the agency must provide written documentation supporting the selection of a different product, including any required reasonable accommodations.
- D. For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display

appearance. As provided in Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired **shall** be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

- E. If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

#### **1.26 COMPLIANCE WITH THE STATE SHARED TECHNICAL ARCHITECTURE PROGRAM**

The Prospective Contractor's solution **must** comply with the State's shared Technical Architecture Program which is a set of policies and standards that can be viewed at:

<http://www.dis.arkansas.gov/policiesStandards/Pages/default.aspx>. Only those standards which are fully promulgated or have been approved by the Governor's Office apply to this solution.

#### **1.27 VISA ACCEPTANCE**

- A. Awarded Contractor should have the capability of accepting the State's authorized VISA Procurement Card (p-card) as a method of payment.
- B. Price changes or additional fee(s) **must not** be levied against the State when accepting the p-card as a form of payment.
- C. VISA is not the exclusive method of payment.

#### **1.28 PUBLICITY**

- A. Do not discuss the solicitation nor your proposal response, nor issue statements or comments, nor provide interviews to any public media during the solicitation and award process.
- B. Failure to comply with this Requirement may be cause for a Prospective Contractor's proposal to be disqualified.

#### **1.29 RESERVATION**

The State will not pay costs incurred in the preparation of a proposal.

## **SECTION 2 – REQUIREMENTS**

- **Do not provide responses to items in this section unless specifically and expressly required.**

### **2.1 INTRODUCTION**

The Office of State Procurement (OSP), on behalf of the Arkansas State Police (ASP) is seeking proposals and pricing for the following services to be provided by a Pharmacy Benefit Manager (PBM) for the ASP's self-funded Health Plan Program (Plan):

- Claims Processing
- Financial Reporting
- Data Collection and Storage
- Customer Service (Pharmacy/Provider and Member)
- Comprehensive Pharmacy Network Administration/Provider Relations
- Pharmacy Auditing Program
- Specialty Pharmacy Program
- Accumulator Coordination with Medical Carriers
- Online and interactive formulary information for participants
- Medicare RDS Services
- Benefit Administration
- Mail Order Program
- Evidence Based Reference Pricing
- Pharmacy Rebate Services

### **2.2 PROSPECTIVE CONTRACTOR QUALIFICATIONS**

- A. The Prospective Contractor **shall** currently be administering at least one self-funded pharmacy plan with membership totals in excess of 3,000.
- B. The Prospective Contractor **shall** have a minimum of five (5) years' experience providing the PBM services outlined in this solicitation including but not limited to the following:
  1. Development and implementation of claims administrations systems incorporating ANSI X12 HIPPA transactions which includes but is not limited to the 834 eligibility file.
  2. Coordinating the development, implementation, and management of an employer pharmacy benefit plan.
  3. Claims processing and claims payment.
  4. Network administration.
  5. Customer service.
- C. Prior to award, the Prospective Contractor **shall** be licensed and legally authorized to conduct business as a PBM in the State of Arkansas. The Prospective Contractor **shall** provide evidence of applicable licensing to ASP upon request.
- D. The Prospective Contractor **shall** be located within the continental United States and **shall** perform all services outlined in this solicitation from within the continental United States. The Contractor **shall** create, maintain, and store all data related to any resultant contract within the continental United States.

### **2.3 BACKGROUND AND CURRENT ENVIRONMENT**

- A. The objective of the ASP Plan is to provide high quality pharmaceutical services at the lowest possible cost in order to maintain Plan stability and ensure transparency with the PBM's program.
- B. Currently, ASP's Third Party Administrator is QualChoice. The Third Party Administrator may change during the life of any resultant contract from this RFP. The Contractor **shall** coordinate with any future ASP Third Party Administrator per the requirements of this RFP.

- C. ASP currently covers approximately 3,100 ASP employees, retirees, and their dependents under its self-funded Plan.
- D. The effective date for the ASP pharmacy Plan **shall** be January 1 of each year.
- E. The pharmacy Plan **must** share the goals mandated for the Arkansas State Police as defined in Arkansas Code 12-8-210 et seq:
1. Set and manage policies for the health insurance and life insurance programs.
  2. Work in a concerted effort toward a common goal of parity.
  3. Improve the quality of health care services under the program.
  4. Increase participants' understanding of program features.
  5. Slow the rate of growth in health care expenses under the programs.
- F. The required Plan design includes:
1. A three tier formulary for generic, brand formulary, brand non-formulary (\$15 / \$40 / \$65).
  2. Prior Authorization (PA) for some medications.
  3. Quantity Limits (QL).
  4. Daily Dose Edits that are intended to prevent waste, unnecessary costs, and inappropriate utilization.
  5. Reference Pricing (RP).
  6. Step-Therapy (ST), a method of encouraging the use of lower cost, but therapeutically effective alternatives to the newer and potentially more expensive drugs. The ASP Plan requires certain classes of Step Therapy.
  7. ASP **shall** have authority to control and administer the Plan under the policies established by the ASP Health Plan Administrator and the ASP Commission.
- G. The Plan has no incentive for mail order or for multiple month supply for maintenance medications and is not expected to change throughout the the life of the contract including any extensions.
- H. The current claims utilization depicted in the following tables is a high-level view of the utilization of the Plan for January 1, 2016 to December 31, 2016. The information below is provided for informational purposes only, presented in good faith, and based on reports generated by the current PBM. The utilization of any resultant contract may differ from the data depicted below. The Contractor **shall** administer the Plan as specified in this solicitation regardless of utilization.

<u>Claims Utilization for 2016</u>		
Pharmacy Claims	Total	Specialty
Paid	56,586	217

<b><u>Current Prescription / Utilization Summary</u></b>	
<b>Top 10 Therapeutic Classes by Plan Paid Amount for 2016</b>	
Antidiabetic Agents	\$660,611.55
Psychotherapeutic Agents	\$264,920.56
Antiasthmatics	\$204,065.91
Analgesics	\$307,246.03
Antihyperlipidemics	\$54,386.13
Ulcer Drugs	\$124,765.59
ADHD Agents	\$116,181.16
Anticonvulsants	\$46,329.57
Assorted Classes	\$170,592.39
Antihypertensives	\$24,662.03

1. Current Generic Dispensing Rate: 83.8%

## 2.4 **GENERAL REQUIREMENTS**

- A. All data and information created and/or maintained by the Contractor as a result of any contract **shall** be the property of ASP. The Contractor **shall not** use the data for any purpose other than payment and analysis unless authorized in writing by ASP in advance. When requested by ASP, the Contractor **shall** provide said data to ASP within three (3) business days of receipt of the request in a format approved by ASP.
- B. Although the regulations affecting this Plan under Patient Protection and Affordable Care Act (healthcare reform) are evolving, the Contractor **shall** operate in full compliance with all applicable State and federal laws.
- C. The Contractor **shall** provide ASP with a sixty (60) day advance written notice prior to any major conversion for or related to, the system used to deliver services to the Plan. This does not apply to any program fixes, modifications, and enhancements.
- D. The Contractor **shall** provide an Account Manager to be the primary point of contact and to be the person held accountable for all issues that arise with regard to the Plan. The Account Manager **shall** have the authority to escalate issues for immediate resolution and those instructions given to Contractor's staff from the Account Manager **shall** be taken as if directly given from ASP Health Plan Administrator.
- E. The Account Manager **shall** attend Health Plan review meetings at ASP Headquarters in Little Rock, Arkansas as requested by ASP.
  1. Typically, one (1) to two (2) Health Plan review meetings occur in any given year.
  2. ASP will provide the Contractor with specific dates and times no later than one week prior to the Health Plan review meeting being held.
- F. If requested by ASP, the Contractor **shall** immediately replace the assigned Account Manager. The act of replacing the Account Manager **must not** disrupt daily operations as it pertains to the services performed by the Contractor under any contract resulting from this RFP.
- G. The Contractor **shall not** make Plan coverage changes in their system without a written request from ASP management.
- H. Throughout the term of this contract including any extensions, and as requested by ASP or as required by law, the State reserves the right to add or remove any services offered by the Contractor under the scope of this contract. These services may be existing optional services as offered in the Contractor's proposal, or they may be newly created services based on improving technology or federal or State mandates which fall under the scope of work. Pricing for any of these services, which are not already submitted on the Official Bid Price Sheet, **must**:



1. Be negotiated if or when the services are added.
2. Be consistent with current contract pricing for similar services.
3. Be agreed upon in writing between ASP and Contractor prior to implementation of the service.
- I. The Contractor **shall** be financially liable for any costs incurred due to erroneous claims processing performed by the Contractor (e.g. incorrect quantity instructions). Neither ASP nor the members **shall** bear any financial liability incurred due to erroneous claims processing by the Contractor and **shall not** be exposed to billing from the provider.
- J. All travel related expenses including but not limited to travel fees, lodging, and meals **shall** be borne by the Contractor.

## 2.5 IMPLEMENTATION REQUIREMENTS

- A. During the Implementation Period the Contractor **shall** perform the start-up and implementation activities necessary to begin the successful performance of the services outlined in this RFP and to achieve full implementation by the Administration Services Start Date including but not limited to:
  1. Transfer and integration of member eligibility data from the current Contractor
  2. Creation and distribution of member ID Cards and communication pieces
  3. Member and provider customer service call center functionality
  4. Import/data entry of active prior authorizations and historical claims data from current Contractor's claim system
  5. Set-up and delivery of electronic claims data to ASP and designated third parties
  6. Provide access and training to the Contractor's subcontractors as requested by ASP and determined necessary during the Implementation Period such as to any subcontractors that may provide evidence based reference pricing.
    - a. At a minimum, the access and training provided to Contractor's subcontractor's **must** include the real time viewing of claim transactions and the ability to enter prior authorizations.
- B. The Contractor **shall not** receive any kind of "administration" fee during the Implementation Period for any reason. Applicable administration fees will be paid beginning the month of the Administration Services Start Date as specified in this RFP unless an alternate Administration Services Start Date is agreed upon between ASP and the Contractor during contract negotiations. ASP **shall** have final determination of the Administration Services Start Date.
- C. The Arkansas State Police Health Plan **shall not** accept any Implementation Bonus or Incentive, or other payment from the Contractor or other third party for or as a result of their selection from this RFP, and the Contractor **shall not** add any payment of this type to the Official Bid Price Sheet.
- D. ASP **shall** have the right to impose damages as described in the Performance Standards for any failure by the Contractor to meet established goals or milestones including but not limited to full implementation by the Administration Services Start Date.
- E. A significant amount of configuration will likely be needed to properly address established rules, exclusions, limitations, and other elements of current design that cannot be effectively provided within this RFP. The Contractor **shall** be responsible for these configurations.
- F. The Prospective Contractor **shall** submit the one time implementation fee in *Table B: Implementation* on the Official Bid Price Sheet. The one time implementation fee recorded in *Table B: Implementation* **shall** be included in the low cost determination.
- G. ASP reserves the right to approve final implementation timeline and details.

**2.6 PRIVACY AND SECURITY REQUIREMENTS**

- A. Prior to award, the Prospective Contractor **shall** complete and sign the Business Associate Agreement. A sample Business Associate Agreement is listed as Attachment B and posted with this RFP.
- B. The Contractor and the Contractor's subcontractor(s) data systems that the Contractor or the Contractor's subcontractor(s) intend to utilize while performing the services outlined in this RFP, including the transmission and warehousing of any member information **must** be SAS-70 Level II and/or SSAE-16 compliant.
- C. The Contractor **shall** remove or mask all but the last four (4) digits of a member's Social Security Number (SSN) from any printed report, letter, or other form of communication.
- D. The Contractor **shall not** use, sell, or otherwise disclose any employee or Plan information to an outside party unless specifically provided in order to comply with the requirements and operations of the Plan. Any use, selling, or disclosure of employee or Plan information provided in order to comply with the requirements and operations of the Plan **must** be approved in writing by the ASP, in advance.
- E. The Contractor **shall** comply with HIPAA and other federal and/or State mandates including privacy, security, and electronic data transfer requirements.
- F. Any current and future employees of the Contractor or any of the Contractor's subcontractor(s) that will be performing services on any contract resulting from this RFP **shall** have attended or **shall** attend HIPAA training prior to performing work on the ASP account or accessing Plan records. The Contractor **shall** provide documentation of such training to ASP upon request.
- G. The Contractor **shall** have an emergency operations/disaster recovery plan currently in place including redundant systems in order to avoid loss of data.

**2.7 SERVICE REQUIREMENTS**

- A. The Contractor **shall** provide daily pharmacy claims detail data via secure email. Pharmacy claims detail data **must** include but not be limited to the following:
  - 1. Claim transaction status including paid, reversed and rejected.
  - 2. Patient/member identification information.
  - 3. Prescriber NPI and Pharmacy NPI.
  - 4. Relevant prescription dates.
  - 5. Drug identifier ( NDC-11).
  - 6. Prescription number and/or refill number.
  - 7. Approved total patient paid amount, approved total plan paid amount, and deductible applied amount.
  - 8. Days' supply and quantity.
  - 9. Compound indicator, DAW indicator, formulary indicator, and/or specialty drug indicator.
  - 10. Prior authorization number as applicable.
- B. The Contractor or the Contractor's subcontractor **shall** provide evidence based reference pricing services including but not be limited to the following:
  - 1. Initiatives to move patients from high cost brand and generic drugs to lower cost alternatives to ensure compliance with best practices and national guidelines and to avoid Plan and member paying costs for drug products that do not have value over the other lower cost treatments.

2. Reviewing prescription claims for medical necessity, quantity, and pricing and providing approvals and/or denials as well as information and correspondence applicable to the review to members and physicians.
3. Creating and issuing letters to members and physicians on behalf of the Plan such as Adverse Determination Letters, Step Therapy Letters, and Formulary Change Letters, and/or other correspondence as determined necessary by ASP.
  - a. In the event the Contractor or the Contractor's subcontractor denies a prescription claim, the Contractor or the Contractor's subcontractor **shall** include information in the correspondence to the member that informs the member of an alternate option available to them under the Plan.
  - b. ASP should not be copied on this type of communication but the Contractor **shall** provide evidence of such correspondence to ASP if requested.
- C. Should the Contractor fulfill the requirement of providing evidence based risk management initiatives including reference pricing through the utilization of subcontractors, the Contractor **shall**:
  1. Create login IDs and necessary credentials in the awarded Contractor's claims system for any of the Contractor's subcontractors as required by ASP.
  2. Allow and provide access for utilized subcontractors to the awarded Contractor's claims system in order to perform prior authorization functions including the ability of real-time viewing of claims transactions, the ability to enter prior authorizations in the awarded Contractor's claims system, and the ability to add related notes when appropriate.
  4. Provide full integration and implementation of the subcontractor's business rules and initiatives if any, including information regarding specialty and traditional drug transactions into the awarded Contractor's claims system including but not limited to the following:
    - a. Prior authorizations.
    - b. Step Therapy.
    - c. Drug Exclusion.
    - d. Reference Pricing (where a patient pays the difference between a specified per unit price maximum and the approved per unit price of a specified target drug, etc.).
    - e. Applicable MediSpan GPI of Target Drug.
    - f. Multisource Indicator.
    - g. OTC Indicator.
    - h. Custom Response Message.
  5. ASP **shall** retain full control regarding the selection and implementation of any subcontractor's recommended initiatives.
- D. The Contractor **shall** incorporate a "lesser than" logic regarding the payment of prescription drugs and the pricing of claims to ensure the lowest price for the Plan and to protect the member from paying more than the negotiated retail price for prescriptions ( e.g., lowest amount of pharmacy submitted pricing, PBM contracted price, MAC price, etc.)
- E. The Contractor **shall** post a Preferred Drug List (PDL) to the online member portal in its services to the member. The Contractor **shall** remove drugs targeted for reference pricing or exclusions from the posted PDL.
  1. The drugs targeted for reference pricing will remain "formulary" drugs in the Contractor's claims system however, the Contractor **shall** remove the targeted drugs from the document used by members.

- F. The Contractor **shall** customize and send Prior Authorization Required notifications to pharmacies. These notifications **must** include the Contractor's/subcontractor's Prior Authorization call center phone number.
- G. The Contractor **shall** provide notification and consultation to ASP's Health Plan Administrator regarding potential changes required of the Plan based on new State or federal regulations and consultation regarding the services outlined in this RFP.
  - 1. The consultation provided should support the Plan and ASP's objectives. Such consultation is not to be considered legal advice and should be viewed as a standard service the Contractor offers and not a billable event.
  - 2. The Contractor **shall** include the cost of this service in Table A: Processing and Administration on the Official Bid Price Sheet.
- H. In order for ASP to stay informed on the general progress of the services being rendered by the Contractor and the satisfaction of the members, the Contractor **shall** meet with ASP as follows:
  - 1. For weekly conference calls during the Implementation Period or as requested by ASP.
  - 2. For quarterly conference calls after the Implementation Period or as requested by ASP.
- I. The Contractor **shall** handle both pharmacy customer service and member customer service.

## **2.8 ADMINISTRATIVE REQUIREMENTS**

- A. The Contractor **shall** provide transparent administration of the Plan including but not limited to full and open administrative practices involving all aspects of the contractual relationship between ASP and the Contractor. Any contradictory terminology either stated or otherwise implied by the language in this RFP is purely accidental and will be meant as requiring full transparency in the Contractor's operation.
- B. The Contractor **shall** utilize ASP's secure messaging and task service in all correspondence with ASP.
- C. The Contractor **shall** utilize secure file transfer protocol as defined by ASP.
- D. The Contractor **shall** send daily accumulator files to ASP's Third Party Administrator (QualChoice) within two (2) business days of processing a claim.
- E. The Contractor **shall** create and send mail outs to the ASP Plan members, pharmacies, and providers regarding formulary changes, generic therapeutic alternatives, mail order recalls, or other information as deemed necessary by ASP.
- F. The Contractor **shall** coordinate mail outs and all other external communications pertaining to the ASP Health Plan through the ASP Health Plan Administrator including but not limited to external communications to members, pharmacies, and providers. ASP **shall** reserve the right of final approval of all communication documents prior to distribution.

## **2.9 BENEFITS ADMINISTRATION REQUIREMENTS**

- A. The Contractor **shall** implement Plan changes as specified by ASP.
- B. Unless waived by ASP, the Contractor **shall** make Plan changes (e.g. member benefit changes) within five (5) business days from request by ASP and **shall** report documented and auditable quality control measures to ASP electronically.
- C. For numerous or complex changes that may take beyond five (5) business days (such as significant benefit structure changes), the Contractor **shall** coordinate with ASP's Third Party Administrator and mutually agree on a timeline for implementing such changes.

## **2.10 NETWORK DEVELOPMENT AND MANAGEMENT**

- A. The Contractor **shall** maintain and manage a compliant and comprehensive pharmacy network both in the State of Arkansas and across the country.

- B. The Contractor **shall** have an operating, Arkansas-based network with at least 95% of Arkansas pharmacy providers included and a functioning national network that includes at least 50,000 participating pharmacies.
- C. Network pharmacies **must** receive all of the ASP's payment for submitted adjudicated claims. The Contractor **shall not** retain any portion of payment received for submitted adjudicated claims even if such a clause is contained in the agreements or contracts between the Contractor and its network pharmacies.
- D. ASP reserves the right to remove any pharmacy from the ASP network. Upon request from ASP, the Contractor **shall** remove a pharmacy within five (5) business days of receipt of removal request from ASP. ASP **shall** have final determination regarding removal of a pharmacy within its network.
- E. The Contractor **shall** modify network reimbursement administration to implement differential reimbursements for enhanced clinical services such as increased dispensing fees for pharmacies engaging in medication therapy management, if requested by ASP.

## 2.11 MEMBER ELIGIBILITY

- A. Member eligibility is defined by applicable State law and the policies of the ASP Health Plan, and as such may change from time to time during the term of any resultant contract. Currently, eligible members are those employees and retirees along with their respective dependents as defined in the current Summary Plan Description (SPD) listed and posted as Attachment C to this solicitation. ASP will be the sole source in determining eligibility.
- B. Eligibility structure (Groups, Member ID's): Figure 1 below is an example of the eligibility structure required by ASP's Third Party Administrator. The Contractor **shall** manage the Plan using the structure required by ASP's Third Party Administrator and **shall** provide for any conversion to and from the structure required by ASP's Third Party Administrator including on submitted claims and payment files.

Figure 1: Eligibility Structure

Subgroup Number	Subgroup Name	Subgroup Class	Age
1000	Active	Trooper	
1001	Cobra	Trooper	
1002	Retiree	Trooper	Under 65
1003	Retiree	Trooper	Over 65
1004	Active	DL/Telecom	
1005	Cobra	DL/Telecom	
1006	Retirees	DL/Telecom	Under 65
1007	Retirees	DL/Telecom	Over 65

- C. Eligibility Periods
  - 1. Members will be allowed to enroll during an employee's initial period of eligibility following new employment.
  - 2. Open Enrollment will be the period announced by ASP to allow eligible subscribers to join the Plan, change coverage, or add/drop eligible dependents.
  - 3. Special Enrollment will be based on numerous events that occur throughout the Plan year including but not limited to marriage, birth / adoption, etc. as specified by the Plan.
- D. ASP's Third Party Administrator will provide a full eligibility file to the Contractor daily in an electronic HIPAA-compliant format.
  - 1. The following is a sample of the various eligibility transactions included in a typical eligibility file. Any of the following could have future or retroactive effective dates. The listing is provided for informational purposes and should not be considered an all-inclusive list of eligibility transactions. The Contractor **shall** accept the eligibility file, eligibility changes, and enrollment periods as defined by ASP.
    - a. New member/dependent enrollment.
    - b. Member/dependent termination.

- c. Member/dependent adding and/or dropping various benefits.
  - d. Member moves between participating employer groups.
  - e. Dependent moves from participating primary member to another primary member.
  - f. Member/dependent status changes from active to retiree or COBRA status.
  - g. Member/dependent becomes eligible for Medicare.
  - h. Member address changes.
2. The Contractor **shall** accept the transactions as sent by ASP's Third Party Administrator. The Contractor **shall** provide for any data conversion needed to meet the Contractor's system requirements. The Contractor **shall** report any conversion problems to ASP within 24 hours of discovery via ASP's email system.
  3. Upon receipt of the eligibility file and within three (3) calendar days of the creation date of the full file by ASP's Third Party Administrator, the Contractor **shall** process the file error free to correct the Contractor's eligibility record in the Contractor's system.
  4. The Contractor **shall** retroactively correct back to the originally submitted effective date, to the extent permissible under applicable law, any additions, changes, and deletions sent correctly by ASP's Third party Administrator but not processed correctly by the Contractor, even if the correction is to occur more than 60 days following the date of incorrect processing.
  5. The Contractor **shall** notify ASP within 24 hours of discovery of the incorrect processing of enrollment additions, changes, and/or deletions via ASP's email system and **shall** take aggressive steps for immediate correction. The Contractor **shall** provide this service at no charge to ASP.
  6. The Contractor **shall** report any incomplete, incorrect, or unreadable information sent to the Contractor from ASP's Third Party Administrator to ASP within 24 hours of discovery via ASP's secure email system.
  7. ASP will work with the Contractor by providing any appropriate information that may be needed to facilitate the correct processing of the full eligibility file.

## 2.12 **MEMBER IDENTIFICATION NUMBER**

- A. The Contractor **shall** utilize the unique member ID number as provided by the ASP's Third Party Administrator system. This is an eight-digit number assigned to every member (subscribers and dependents) who is a member of ASP's Health Plan. Please see Attachment D to this solicitation for a sample member ID card.

## 2.13 **CURRENT FORMULARY MANAGEMENT**

- A. The Contractor **shall** provide written notification to ASP regarding standard, upcoming formulary / PDL changes at least 60 days prior to the effective dates of those changes. In the notification, the Contractor **shall** include the drugs being added and the drugs being removed.
- B. The Contractor **shall not** add any new products or medications currently covered by the Plan in some other form until approved by ASP and the Contractor receives notification of approval from ASP.
- C. The Contractor **shall** place new Generic Drugs in the same tier as their equivalent Brand Drugs are placed until such time that the cost of the Generic Drugs becomes at least 80% less than its equivalent Brand Drug.
- D. The Contractor **shall** apply the Generic Drug's, tier 1 copayment plus the difference in the Plan's cost between the Generic Drug and the Brand Drug for all Brand Drugs that have an equivalent Generic Drug available.
- E. Once the Contractor has identified a drug as a Brand Drug for any reason, the Contractor **shall** consider the drug as a Brand Drug for all purposes including but not limited to:
  1. Claims adjudication

2. Pharmacy reimbursement
  3. Invoicing ASP
  4. Co-payment / Co-insurance determination
  5. Rebate Guarantee calculations
  6. Calculating Filled Prescription rates for Generic Drugs.
- F. Once the Contractor has identified a drug as a Generic Drug for any reason, the Contractor **shall** consider the drug as a Generic Drug for all purposes, including but not limited to:
1. Claims adjudication
  2. Pharmacy reimbursement
  3. Invoicing ASP
  4. Co-payment / Co-insurance determination
  5. Rebate Guarantee calculations
  6. Calculating Filled Prescription rates for Generic Drugs.
- G. ASP reserves the right to approve the formulary recommended by the Contractor for the ASP Plan.

#### 2.14 **REBATES**

- A. The Contractor **shall** pass through 100% of Rebates received by the Contractor from drug manufacturers or other third parties and **shall** provide ASP with a Rebate Guarantee applicable to each Filled Prescription.
- B. The Contractor **shall** provide the Rebate Guarantee for the life of the contract including any extensions or renewals.
- C. The Contractor **shall** provide the Rebate Guarantee on a minimum (i.e. not fixed) basis.
- D. The Contractor **shall** consider any fees negotiated with and/or received from drug manufacturers or other third parties, regardless of categorization, as revenue received for the purposes of passing through 100% of the Rebates received by the Contractor from ASP's utilization including but not limited to the following:
  1. Administrative fees
  2. Incentive fees
  3. Data management fees
  4. Rebate management fees
  5. Performance fees
  6. Formulary management fees
  7. Professional services fees
  8. Health management fees
- D. With each monthly invoice submitted to ASP, the Contractor **shall** provide a report detailing the following:
  1. Total Rebate payment due to ASP resulting from Filled Prescriptions

2. Minimum Rebate Guarantee amount included in the total Rebate payment
  3. The number of Brand Drug, Generic Drug, and specialty drug Filled Prescriptions
- E. The Contractor **shall** credit the invoice with the total Rebate amount due to ASP for that invoice.
1. Should the Rebate payment due to ASP exceed the amount due to the Contractor for administration fees per the submitted invoice, the Contractor **shall** submit the Rebate balance due payment with the accompanying invoice to ASP via check, wire transfer, or alternate method as requested by ASP.

## 2.15 **CLAIMS PAYMENT**

- A. In a method to be determined by ASP, the Contractor **shall** aggressively pursue the collection of overpayments to members and pharmacy providers as well as the collection of Plan payments issued that were the responsibility of other third party payers or insurers.
- B. The Contractor **shall** provide all notification letters to Plan members regarding issues such as adverse benefit determinations and cost changes. Any adverse benefit determinations sent to Plan members by the Contractor **must** be consistent with federal mandates. Notification letters **must** at a minimum contain the following:
1. Member Plan Identification Number.
  2. Name of the prescription.
  3. Reason for denial, such as Plan exclusion or Step Therapy, if applicable.
  4. Requested information from physician, if applicable.
  5. Reason for cost change, if applicable.
- C. The ASP Health Plan Administrator **shall** retain the authority to require pre-authorization or other restrictions for any medication exceeding \$1,000 per prescription.
- D. The Contractor **shall** make all claims payments in accordance with applicable State and/or federal laws including but not limited to laws governing the process and the timelines for making claims payments.
- E. The Contractor **shall** provide coordination and facilitation of claims payments with secondary filings for qualified medications under Medicare Part B.
- F. The Contractor **shall** identify the pricing source (Average Wholesale Price, Wholesale Acquisition Price, Maximum Allowable Cost, etc.) of approved prescription claims on each paid claim.
- G. Paid claims will be paid based on the PBM's submitted adjudicated claims after reconciliation and processing by ASP to determine validity. If claims are adjudicated for a member who is not eligible, ASP **shall not** reimburse for that claim.
- H. The Contractor **shall** manage recoupment of claims paid in error using a process and schedule to be defined by ASP during the Implementation Period.
- I. The Contractor **shall** adjudicate all of the State's claims based on its most recent and most favorable of the Contractor's participating pharmacy contracts.

## 2.16 **TRANSPARENCY AND PASS-THROUGH PRICING**

- A. The Contractor **shall** provide ASP with a fully transparent/pass-through financial pricing arrangement including net pharmacy discounts and dispensing fees. The Contractor **shall** apply the pass-through pricing to both in-state and out-of-state pharmacies.
- B. The Contractor **shall not** retain a differential between the amount reimbursed to the Contractor by ASP for a Filled Prescription claim and the payment made to the retail pharmacies by the Contractor.



- C. The Contractor **shall not** receive profits or remuneration from any source except those that may be included in the administration fees as submitted on the Official Bid Price Sheet Table A or the Implementation Fee as submitted on the Official Bid Price Sheet Table B and invoiced from the Contractor to the State.
- D. The Contractor **shall not** derive any profits or other remuneration from any source from the difference between amounts the Contractor invoices ASP and amounts incurred by the Contractor for any Filled Prescription from a retail pharmacy.
- E. The Contractor **shall** invoice ASP for every retail pharmacy Filled Prescription claim at the actual cost incurred by the Contractor for the ingredient cost and dispensing fee.
- F. The Contractor **shall** utilize a single, mutually agreed upon reference (as determined during the Implementation Period) for determining Average Wholesale Price (AWP) for pharmacy reimbursement for all claims processed. The Contractor **shall** apply the same AWP reference to ASP as applied to pharmacies.
- G. The Contractor **shall not** reimburse any retail pharmacy using one MAC rate, and invoice ASP using a different MAC rate for the same drug.
- H. The Contractor **shall** provide ASP with full, regular access to the MAC list applied to the ASP account. At a minimum, the Contractor **shall** provide ASP will full access to the MAC list applied to the ASP account within three (3) business days of MAC List being updated or request from ASP.
- I. At the appropriate place in the Technical Proposal Packet, the Prospective Contractor **shall** provide the most current MAC List to be applied to the ASP account in a full detailed, un-redacted version which at a minimum includes MAC List pricing, Generic Product Identifier (GPI), AWP, and standard dispensing fees. The Contractor may submit a redacted version in addition to the un-redacted version. However, should the Contractor fail to submit a full detailed, un-redacted version at the appropriate place in the Technical Proposal Packet, the Prospective Contractor's proposal may be disqualified.

## 2.17 AUDITS

### A. Audits Performed On The Contractor

- 1. The Contractor and the Contractor's subcontractor(s) if any **shall** allow ASP's chosen representatives and/or the Arkansas Division of Legislative Audit to conduct audits of all data and records relative to any contract resulting from this solicitation including but not limited to Contractor's actual acquisition cost data and contracted reimbursement rates with network pharmacies.
- 2. The Contractor **shall** provide data and information sufficient to assist ASP or the Arkansas Division of Legislative Audit to assess whether the Contractor has provided the pass through pricing arrangement required in this RFP and whether the Contractor has calculated the annual Rebate reconciliation report accurately. The Contractor **shall** provide all such data and information to ASP or the Arkansas Division of Legislative Audit as directed by ASP.

### B. Audits Performed By The Contractor

- 1. The Contractor **shall** audit all pharmacies against the same criteria, and pharmacy audits **shall not** use extrapolation to determine results.
- 2. The Contractor **shall** perform an IT audit on an annual basis and **shall** provide a copy of results to ASP within thirty (30) days of audit conclusion. The audit **shall** assess the integrity and functionality of systems related to claims payment, claims processing, and data security.
- 3. The Contractor **shall** perform all network pharmacy audits in compliance with applicable State and federal laws. Although the Contractor **shall** audit its network pharmacies on behalf of the Plan, ASP's representatives and/or Legislative Audit **shall** have the right to audit them as well.

## 2.18 REPORTING

- A. The Contractor **shall** provide the following reports to ASP within the timelines to be determined by ASP and in the formats approved by ASP:

1. A monthly accounting report of claims.
  2. A quarterly Performance Standards report detailing any Performance Standards outlined in this RFP not met by the Contractor for that quarter.
  3. A yearly, itemized summary report for all dates of service for the year categorized by each subgroup of the Plan.
  4. A year-end report at the Plan-year end that at a minimum includes the following information:
    - a. Top 25 Filled Prescriptions by Plan cost
    - b. Top 25 Filled Prescriptions
    - c. Specialty drug Filled Prescriptions by Plan cost
    - d. Summary of Plan activity
  5. Any additional requested reports or data needed by ASP for actuarial analysis.
- B. The Contractor **shall** negotiate pricing for ad hoc reports when/if requested by ASP.
- C. The Contractor **shall** provide a response to all requests for additional information within a 24-hours of receipt of request from ASP.
- D. The Contractor **shall** comply with the Unclaimed Property Act 18-28-201 on behalf of ASP and **shall** submit monies and report directly to the Auditor of State's Office.
- E. The Contractor **shall** provide a letter to ASP by November 15 of each year stating that the Unclaimed Property Act 18-28-201 has been complied with on behalf of ASP.
- F. Utilizing the full eligibility file provided by ASP's Third Party Administrator, the Contractor **shall** provide an enrollment mismatch report in electronic format to ASP daily.
- G. The Contractor **shall** provide ASP with a Rebate report listing detailed Rebate utilization and calculations no later than thirty (30) calendar days following the close of each calendar quarter.
- H. On the first business day in September beginning during the second year of the contract and each year thereafter, the Contractor **shall** provide ASP with a Rebate reconciliation report.
1. On the Rebate reconciliation report, the Contractor **shall** calculate the difference between the Rebate Guarantee amounts passed through to ASP during the previous contract term in the form of Rebate Guarantee payments/credits on monthly invoices and the actual Rebates collected by the Contractor from third parties.
  2. Should the Rebate Guarantee amounts credited or paid to ASP on monthly invoices be less than the Rebate amounts received by the Contractor, the Contractor **shall** pay ASP the difference at the time of the submission of the Rebate reconciliation report in a method approved by ASP.
  3. Should the Rebate Guarantee amounts credited or paid to ASP on monthly invoices be more than the Rebate amounts received by the Contractor, ASP **shall not** owe the Contractor the differential amount.
- I. ASP **shall** have the right to change the information/data currently required in any Contractor supplied report or require additional information/data in any Contractor supplied report. Should ASP exercise this right, the Contractor **shall** provide all reports that contain the information and data as specified by ASP.

## 2.19 RETIREE DRUG SUBSIDY (RDS) REPORTING AND SUPPORT

- A. The Contractor **shall** complete all reporting required by the Center for Medicaid and Medicare Services (CMS) and **shall** submit all required reports to CMS as required by ASP. This **shall** specifically apply to but **shall not** be limited to the Medicare RDS reporting. The reporting format will be determined by ASP after contract award..

- B. The Contractor **shall** provide full RDS support to ASP which **shall** include reporting for all claim payments and Rebates.

## 2.20 CALL CENTER

- A. The Contractor **shall** implement a call center for member and provider/pharmacy questions relating to the ASP formulary and prescription drug coverage, pricing issues, complaints, and other drug specific information.
- B. Currently, call volume from ASP's Plan members received by the current Contractor is approximately 100 calls weekly or 5,200 calls annually. Staffing consists of four (4) Customer Service Representatives who answer general formulary questions.
- C. The call center **must** be operational on or before the Administration Services Start Date.
- D. The call center **must** be operational Monday-Friday 8 a.m. until 6 p.m. CST.
- E. Under the direction of ASP, the Contractor's call center staff **must** have the ability to access the pharmacy system to perform various functions such as vacation overrides.
- F. Calls to the Contractor's call center **must** be answered by a live, English speaking representative.
- G. If requested by the ASP and needed for Spanish speaking members of the ASP Plan, the Contractor **shall** provide transfer to a Spanish speaking representative or use a translation service.
- H. The Contractor's call center **must** utilize a toll free 1-800 number. The Contractor **shall** provide the toll free number to ASP in the timeframe determined by ASP during the Implementation Period.
- I. When questions requiring research are received into the Contractor's call center, the Contractor **shall** return answers to these types of calls within 24 hours of receipt.

## 2.21 ELECTRONIC TRANSACTIONS

- A. The Contractor and/or any subcontractors utilized **shall** handle all electronic records and/or any other electronic transactions on behalf of ASP according to all State and Federal laws, the Standards for Electronic Transactions as defined by HIPAA/HITECH, as well as the SAS-70 Level II and/or SSAE-16 compliant statutes and regulations.
- B. The Contractor and/or its subcontractors **shall** have the ability to support e-prescribing: Sending accurate, error-free, and legible prescriptions to a pharmacy from point-of-care.
- C. The Contractor **shall** comply with all confidentiality and HIPAA requirements as they pertain to a member's confidentiality of their personal information.
- D. The Contractor **shall** provide to ASP the name, title, and contact information for the Contractor's Privacy Officer before or during the Implementation Period.

## 2.22 WEBSITE MANAGEMENT

- A. The Contractor **shall** have a secure website that provides ASP's Plan information via an online portal accessible to participating members.
- B. The Contractor's website **must** be available at least 90% of the time, including the time it is unavailable due to scheduled maintenance. Maintenance **must** occur between midnight and 7:00 am CST.
- C. The Contractor's website **must** reflect the actual and accurate formulary, in searchable form that has been approved and adopted by the ASP Health Plan Administrator so that a member can examine any potentially covered medication.
- D. The Contractor's website **must** be sensitive to the member's Health Plan specific election to indicate correct co-payment, deductible, or co- insurance amounts.
- E. It is preferable the Contractor's website offer a listing or search feature capable of providing information to members regarding drugs requiring prior authorization, step therapy, and quantity limits.

- F. ASP will test the Contractor's website structure and pages, and review content for usability as determined by ASP. The Contractor **shall** address and resolve usability concerns within two (2) business days of notification by ASP.
- G. The Contractor's website **must** comply with Arkansas laws for accessibility.

## **2.23 TRANSITION SERVICES**

- A. In the event the resulting contract is terminated, cancelled, or expired, the Contractor **shall** assist ASP and the new Contractor, to the extent as ASP determines necessary, to ensure an orderly transfer of responsibility and the continuity of those services required under the terms of the contract to another organization designated by ASP.
- B. All data, records, files, and all other relevant information relating to the Plan and produced under any resultant contract **shall** be the property of ASP.
- C. The Contractor **shall** provide at no charge to ASP, all records, including but not limited to documentation, reports, data, files, recommendations, all printing elements, data extract, and other relevant Plan information to ASP or to ASP's designee, within seven (7) business days of ASP's request, contract termination, contract cancellation, or contract expiration. The method of delivery will be determined by ASP prior to the time the transition to the new Contractor begins. This requirement does not refer to the Contractor's intellectual property.
- D. The Contractor **shall** provide all services needed in order to execute the successful transition of services. Except for as specifically agreed to by ASP, it is anticipated that ASP's main role will be supervisory in nature to ensure that all of ASP's needs are sufficiently and successfully met.

## **2.24 PERFORMANCE STANDARDS**

- A. State law requires that all contracts for services include Performance Standards for measuring the overall quality of services provided that a Contractor **must** meet in order to avoid assessment of damages.
- B. The State may be open to negotiations of Performance Standards prior to contract award, prior to the commencement of services, or at times throughout the contract duration. *Attachment A: Performance Standards* identifies expected deliverables, performance measures, or outcomes; and defines the acceptable standards.
- C. The State has the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards, and may include the input of the Contractor so as to establish standards that are reasonably achievable.
- D. All changes made to the Performance Standards will become an official part of the contract.
- E. Performance Standards will continue throughout the aggregate term of the contract.
- F. Failure to meet the minimum Performance Standards as specified will result in the assessment of damages.
- G. In the event a Performance Standard is not met, the Contractor will have the opportunity to defend or respond to the insufficiency. The State has the right to waive damages if it determines there were extenuating factors beyond the control of the Contractor that hindered the performance of services. In these instances, the State has final determination of the performance acceptability.
- H. Should any compensation be owed to the State agency due to the assessment of damages, Contractor **shall** follow the direction of the State agency regarding the required compensation process.

## **SECTION 3 – CRITERIA FOR SELECTION**

- **Do not provide responses to items in this section.**

### **3.1 TECHNICAL PROPOSAL SCORE**

- A. OSP will review each *Technical Proposal Packet* to verify submission Requirements have been met. *Technical Proposals Packets* that do not meet submission Requirements will be disqualified and will not be evaluated.
- B. An agency-appointed Evaluation Committee will evaluate and score qualifying Technical Proposals. Evaluation will be based on Prospective Contractor's response to the *Information for Evaluation* section included in the *Technical Proposal Packet*.
1. Members of the Evaluation Committee will individually review and evaluate proposals and complete an Individual Score Worksheet for each proposal. Individual scoring for each Evaluation Criteria will be based on the following Scoring Description.

Quality Rating	Quality of Response	Description	Confidence in Proposed Approach
5	Excellent	When considered in relation to the RFP evaluation factor, the proposal squarely meets the requirement and exhibits outstanding knowledge, creativity, ability or other exceptional characteristics. Extremely good.	Very High
4	Good	When considered in the relation to the RFP evaluation factor, the proposal squarely meets the requirement and is better than merely acceptable.	High
3	Acceptable	When considered in relation to the RFP evaluation factor, the proposal is of acceptable quality.	Moderate
2	Marginal	When considered in relation to the RFP evaluation factor, the proposal's acceptability is doubtful.	Low
1	Poor	When considered in relation to the RFP evaluation factor, the proposal is inferior.	Very Low
0	Unacceptable	When considered in relation to the RFP evaluation factor, the proposal clearly does not meet the requirement, either because it was left blank or because the proposal is unresponsive.	No Confidence

2. After initial individual evaluations are complete, the Evaluation Committee members will meet to discuss their individual ratings. At this consensus scoring meeting, each member will be afforded an opportunity to discuss his or her rating for each evaluation criteria.
3. After committee members have had an opportunity to discuss their individual scores with the committee, the individual committee members will be given the opportunity to change their initial individual scores, if they feel that is appropriate.
4. The final individual scores of the evaluators will be recorded on the Consensus Score Sheets and averaged to determine the group or consensus score for each proposal.
5. Other agencies, consultants, and experts may also examine documents at the discretion of the Agency.

C. The *Information for Evaluation* section has been divided into sub-sections.

1. In each sub-section, items/questions have each been assigned a maximum point value of five (5) points. The total point value for each sub-section is reflected in the table below as the Maximum Raw Score Possible.
2. The agency has assigned Weighted Percentages to each sub-section according to its significance.

Information for Evaluation Sub-Sections	Maximum Raw Points Possible	Sub-Section's Weighted Percentage	* Maximum Weighted Score Possible
E.1 Prospective Contractor Qualifications	5	5	35
E.2 Organizational Details	35	3	21
E.3 Implementation	25	10	70
E.4 Process Management	50	7	49
E.5 Pharmacy and Member Customer Service and Call Center	50	3	21
E.6 Pharmacy Audits	25	7	49
E.7 System Information	20	3	21
E.8 Reporting Capability	35	3	21
E.9 Privacy and Security	20	3	21
E.10 Online Capability	20	3	21
E.11 Disaster Recovery	20	3	21
E.12 Eligibility Processing	25	5	35
E.13 Network Management	30	7	49
E.14 Specialty Pharmacy Services	20	7	49
E.15 Mail Order Services	15	3	21
E.16 Pass Through Pricing and Transparency	45	11	77
E.17 Formulary Management	20	7	49
E.18 MAC List	15	10	70
<b>Technical Score Total</b>	<b>475</b>	<b>100.0%</b>	<b>700</b>

\*Sub-Section's Percentage Weight x Total Weighted Score = Maximum Weighted Score Possible for the sub-section.

D. The proposal's weighted score for each sub-section will be determined using the following formula:

$$(A/B) \times C = D$$

A = Actual Raw Points received for sub-section in evaluation  
 B = Maximum Raw Points possible for sub-section  
 C = Maximum Weighted Score possible for sub-section  
 D = Weighted Score received for sub-section

- E. The proposal's weighted scores for sub-sections will be added to determine the Total Technical Score for the Proposal.
- F. Technical Proposals that do not receive a minimum weighted score of 300 may not move forward in the solicitation process. The pricing for proposals which do not move forward will not be scored.

### 3.2 **OFFICIAL BID PRICE SHEET TABLES A and B COST SCORE**

- A. The State **shall** allocate the maximum amount of cost points (150) to the Prospective Contractor with the lowest One Year Estimated Grand Total of Tables A and B on the Official Bid Price Sheet.
- B. The State **shall** allocate the amount of cost points given to the remaining Prospective Contractors for Tables A and B on Official Price Sheet by using the following formula:

$$(A/B)*(C) =D$$

A = Lowest One Year Estimated Grand Total Cost  
 B = Second (third, fourth, etc.) Lowest One Year Estimated Grand Total Cost  
 C = Maximum Points for Lowest One Year Estimated Grand Total Cost (150)  
 D = Total Cost Points Received for the Official Price Sheet Tables A and B

### 3.3 **NETWORK REPRICING COST SCORE**

The State **shall** allocate the maximum amount of points for Network Repricing Cost (100) to the Prospective Contractor with the lowest Grand Total of Network Repriced Cost as indicated in Table C on the Official Bid Price Sheet. The State **shall** allocate the amount of points awarded to the remaining Prospective Contractors by using the following formula:

$$(A/B)*C=D$$

A = Lowest Grand Total of Network Repriced Cost  
 B = Second (third, fourth, etc.) Lowest Grand Total of Network Repriced Cost  
 C = Maximum points for Network Repricing Cost (100)  
 D = Number of Network Repricing Cost points scored for that particular proposal

### 3.4 **REBATE GUARATEE SCORE**

The State **shall** allocate the maximum amount of points for the Rebate Guarantee (50) to the Prospective Contractor with the highest Rebate Guarantee amount for each Filled Prescription as indicated in Table D on the Official Bid Price Sheet. The State **shall** allocate the amount of points awarded to the remaining Prospective Contractors by using the following formula:

$$(B/A)*C=D$$

A = Highest Rebate Guarantee amount per Filled Prescription  
 B = Second (third, fourth, etc.) Highest Rebate Guarantee amount per Filled Prescription  
 C = Maximum points for Rebate Guarantee (50)  
 D = Number of Rebate Guarantee Cost points scored for that particular proposal

### 3.5 **OVERALL TOTAL SCORE**

The Technical Score, Official Bid Price Sheet One Year Estimated Grand Total Cost Score for Tables A and B, the Network Repricing Score, and the Rebate Guarantee Score will be added together to determine the Overall Total Score for the Prospective Contractor. The Prospective Contractor with the highest Overall Total Score will be selected as the apparent successful Contractor. See *Award Process*.

	Maximum Points Possible
Technical Proposal	700
One Year Estimated Grand Total Costs from Tables A and B on the Official Bid Price Sheet	150
Network Repricing-Table C on the Official Bid Price Sheet	100
Highest Rebate Guarantee- Table D on the Official Bid Price Sheet	50
<b>Maximum Possible Overall Total Score</b>	<b>1,000</b>

**3.6 PROSPECTIVE CONTRACTOR ACCEPTANCE OF EVALUATION TECHNIQUE**

- A. Prospective Contractor **must** agree to all evaluation processes and procedures as defined in this solicitation.
- B. The submission of a *Technical Proposal Packet* signifies the Prospective Contractor's understanding and agreement that subjective judgments will be made during the evaluation and scoring of the Technical Proposals.



## **SECTION 4 – GENERAL CONTRACTUAL ITEMS**

- **Do not provide responses to items in this section.**

### **4.1 PAYMENT AND INVOICE PROVISIONS**

A. Forward invoices to:

Arkansas State Police  
Attn: Sherry Woods  
1 State Police Plaza Drive  
Little Rock, AR 72209

- B. Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance goods and services by the agency.
- C. Do not invoice the State in advance of delivery and acceptance of any goods or services.
- D. Payment will be made only after the Contractor has successfully satisfied the agency as to the reliability and effectiveness of the goods or services purchased as a whole.
- E. The Contractor should invoice the agency monthly by an itemized list of charges. The agency's Purchase Order Number and/or the Contract Number should be referenced on each invoice.
- F. Other sections of this *Bid Solicitation* may contain additional Requirements for invoicing.
- G. Selected Contractor **must** be registered to receive payment and future *Bid Solicitation* notifications. Prospective Contractors may register on-line at <https://www.ark.org/contractor/index.html>.
- H. The Contractor **shall** detail the charges and fees for services provided in the administration of the Plans and **shall** detail any credits and/or Rebates due to ASP on each invoice by line item.
- I. At a minimum, the Contractor **shall** include line items on each invoice for the following:
1. Administrative fees.
  2. Total Rebate payment due to ASP with the minimum Rebate Guarantee amount included in that total.
  3. Minimum Rebate Guarantee amount included in the total Rebate payment amount.
  4. Performance Standard damages, if applicable.
- J. The Contractor **shall** specifically distinguish between total Rebate payment amount and the minimum Rebate Guarantee amount on each invoice.
- J. The Contractor **shall** invoice ASP for Filled Prescription claims only.
- K. The Contractor **shall** submit each invoice as stated in Section 2.14 of this RFP.
- L. ASP reserves the right to require the Contractor to submit additional information/data and/or change the information/data that the Contractor is required to submit on any invoice.

### **4.2 GENERAL INFORMATION**

A. The State will not:

1. Lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a 30 day written notice to the Contractor/lessor in the event funds are not appropriated.
2. Contract with another party to indemnify and defend that party for any liability and damages.

3. Pay damages, legal expenses or other costs and expenses of any other party.
4. Continue a contract once any equipment has been repossessed.
5. Agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
6. Enter a contract which grants to another party any remedies other than the following:
  - a. The right to possession.
  - b. The right to accrued payments.
  - c. The right to expenses of deinstallation.
  - d. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
  - e. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
- B. Any litigation involving the State **must** take place in Pulaski County, Arkansas.
- C. The laws of the State of Arkansas govern this contract.
- D. A contract is not effective prior to award being made by a State Procurement Official.
- E. In a contract with another party, the State will accept the risk of loss of the equipment or software and pay for any destruction, loss, or damage of the equipment or software while the State has such risk, when:
  1. The extent of liability for such risk is based upon the purchase price of the equipment or software at the time of any loss, and
  2. The contract has required the State to carry insurance for such risk.

#### 4.3 **CONDITIONS OF CONTRACT**

- A. Observe and comply with federal and State of Arkansas laws, local laws, ordinances, orders, and regulations existing at the time of, or enacted subsequent to the execution of a resulting contract which in any manner affect the completion of the work.
- B. Indemnify and save harmless the agency and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the Contractor.

#### 4.4 **STATEMENT OF LIABILITY**

- A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of Contractor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The Contractor will retain total liability for equipment, software and technical and business or operations literature. The State will not at any time be responsible for or accept liability for any Contractor-owned items.
- B. The Contractor's liability for damages to the State will be limited to the value of the Contract or \$5,000,000, whichever is higher. The foregoing limitation of liability will not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract. The Contractor and the State will not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability will not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to

claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

- C. Language in these terms and conditions **must not** be construed or deemed as the State's waiver of its right of sovereign immunity. The Contractor agrees that any claims against the State, whether sounding in tort or in contract, will be brought before the Arkansas Claims Commission as provided by Arkansas law and governed accordingly.

#### 4.5 **RECORD RETENTION**

- A. Maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, grant access to State or Federal Government entities or any of their duly authorized representatives.
- B. Make financial and accounting records available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

#### 4.6 **PRICE ESCALATION**

- A. Price increases will be considered at the time of contract renewal.
- B. The Contractor **must** provide to OSP a written request for the price increase. The request **must** include supporting documentation demonstrating that the increase in contract price is based on an increase in market price. OSP has the right to require additional information pertaining to the requested increase.
- C. Increases will not be considered to increase profit or margins.
- D. OSP has the right to approve or deny the request.

#### 4.7 **CONFIDENTIALITY**

- A. The Contractor, Contractor's subsidiaries, and Contractor's employees will be bound to all laws and to all Requirements set forth in this *Bid Solicitation* concerning the confidentiality and secure handling of information of which they may become aware of during the course of providing services under a resulting contract.
- B. Consistent and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of a resulting contract, and the State has the right to cancel the contract on these grounds.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

#### 4.8 **CONTRACT INTERPRETATION**

Should the State and Contractor interpret specifications differently, either party may request clarification. However if an agreement cannot be reached, the determination of the State is final and controlling.

#### 4.9 **CANCELLATION**

- A. For Cause. The State may cancel any contract resulting from this solicitation for cause when the Contractor fails to perform its obligations under it by giving the Contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise the Contractor in writing of the reasons why the State is considering cancelling the contract and provide the Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. To the extent permitted by law and at the discretion of the parties, the parties may agree to **minor amendments** to the contract and avoid the cancellation for cause upon mutual agreement.
- B. For Convenience. The State may cancel any contract resulting from the solicitation by giving the Contractor written notice of such cancellation sixty (60) days prior to the date of cancellation.
- C. If upon cancellation the Contractor has provided commodities or services which the State of Arkansas has accepted, and there are no funds legally available to pay for the commodities or services, the Contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims.

**4.10 SEVERABILITY**

If any provision of the contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the agency and the Contractor will be relieved of all obligations arising under such provision. If the remainder of the contract is capable of performance, it will not be affected by such declaration or finding and **must** be fully performed.

## **SECTION 5 – STANDARD TERMS AND CONDITIONS**

- **Do not provide responses to items in this section.**

1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
3. **BID SUBMISSION:** Original Proposal Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Proposal Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Multiple proposals **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.
5. **QUANTITIES:** Quantities stated in a *Bid Solicitation* for term contracts are estimates only, and are not guaranteed. Contractor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual Requirements of the ordering agency.
6. **BRAND NAME REFERENCES:** Unless otherwise specified in the *Bid Solicitation*, any catalog brand name or manufacturer reference used in the *Bid Solicitation* is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid **must** show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The State **shall** have the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the State may require the Contractor to supply additional descriptive material. The Contractor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Contractors not bidding an alternate to the referenced brand name or manufacturer **shall** be required to furnish the product according to brand names, numbers, etc., as specified in the solicitation.
7. **GUARANTY:** All items bid **shall** be newly manufactured, in first-class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the *Bid Solicitation*. The Contractor hereby guarantees that everything furnished hereunder **shall** be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it **shall** conform thereto and **shall** serve the function for which it was furnished. The Contractor **shall** further guarantee that if the items furnished hereunder are to be installed by the Contractor, such items **shall** function properly when installed. The Contractor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The Contractor's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.
8. **SAMPLES:** Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with the Contractor's name and address, bid or contract number and item number. If requested, samples that are not destroyed during reasonable examination will be returned at Contractor's expense. After reasonable examination, all demonstrators will be returned at Contractor's expense.
9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and Requirements of the specifications, the cost of the sample used and the reasonable cost of the testing **shall** be borne by the Contractor.
10. **AMENDMENTS:** Contractor's proposals cannot be altered or amended after the bid opening except as permitted by regulation.
11. **TAXES AND TRADE DISCOUNTS:** Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
12. **AWARD:** Term Contract: A contract award will be issued to the successful Contractor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contract: A written State purchase order authorizing shipment will be furnished to the successful Contractor.
13. **DELIVERY ON FIRM CONTRACTS:** This solicitation shows the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the Contractor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement **shall** have the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost **shall** be borne by the Contractor.

14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.
15. **STORAGE:** The ordering agency is responsible for storage if the Contractor delivers within the time required and the agency cannot accept delivery.
16. **DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting Contractor. The Contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the Contractors list or suspension of eligibility for award.
17. **VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
18. **INVOICING:** The Contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
19. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the Contractor hereunder or in contemplation hereof or developed by the Contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the Contractor's expense to the F.O.B. point provided by the agency or by OSP. Contractor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** The Contractor **must** agree to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
21. **ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
22. **CLAIMS:** Any claims the Contractor may assert under this Agreement **shall** be brought before the Arkansas State Claims Commission ("Commission"), which **shall** have exclusive jurisdiction over any and all claims that the Contractor may have arising from or in connection with this Agreement. Unless the Contractor's obligations to perform are terminated by the State, the Contractor **shall** continue to provide the Services under this Agreement even in the event that the Contractor has a claim pending before the Commission.
23. **CANCELLATION:** In the event, the State no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), the State **shall** have the right to cancel the contract or purchase order by giving the Contractor written notice of such cancellation thirty (30) days prior to the date of cancellation.

Any delivered but unpaid for goods will be returned in normal condition to the Contractor by the State. If the State is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the Contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims. If upon cancellation the Contractor has provided services which the State has accepted, the Contractor may file a claim. **NOTHING IN THIS CONTRACT SHALL BE DEEMED A WAIVER OF THE STATE'S RIGHT TO SOVEREIGN IMMUNITY.**
24. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the Contractor agrees that: (a) the Contractor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the Contractor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the Contractor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the Contractor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the Contractor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or Contractor.
25. **CONTINGENT FEE:** The Contractor guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business.
26. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the Contractor named on the *Proposal Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.

**27. DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any Contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the agency.