



# Notice of Request for Proposal

SOLICITATION # YH19-0045

**DRUG REBATE PROGRAM SERVICES**

**Procurement Officer:**

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Issue Date: **MARCH 4, 2019**

**LOCATION:**        **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION (AHCCCS)**  
Procurement Office (First Floor)  
701 E. Jefferson, MD 5700  
Phoenix, AZ 85034

DESCRIPTION:

**DRUG REBATE PROGRAM SERVICES**

PROPOSAL DUE DATE:

**APRIL 15, 2019**

AT 3:00 P.M.  
ARIZONA TIME

Pre-Proposal Conference:        A Pre-Proposal Conference has **NOT** been scheduled.

QUESTIONS CONCERNING THIS SOLICITATION SHALL BE SUBMITTED TO THE PROCUREMENT OFFICER NAMED ABOVE, IN WRITING, VIA E-MAIL BY **MARCH 11, 2019 5:00 PM** ARIZONA TIME ON THE QUESTIONS AND ANSWERS FORM PROVIDED WITH THIS RFP. ANSWERS TO ALL QUESTIONS WILL BE POSTED IN THE AHCCCS WEBSITE IN THE FORM OF A SOLICITATION AMENDMENT FOR THE BENEFIT OF ALL POTENTIAL OFFERORS.

In accordance with A.R.S. § 36-2906, which is incorporated herein by reference, competitive sealed proposals will be received at the above specified location, until the time and date cited. Proposals received by the correct time and date will be opened and the name of each Offeror will be publicly read.

Proposals must be in the actual possession of AHCCCS on or prior to the time and date and at the location indicated above.

**Late proposals shall not be considered.**

Proposals must be submitted in a sealed envelope or package with the Solicitation Number and the Offeror's name and address clearly indicated on the envelope or package. All proposals must be typewritten. Additional instructions for preparing a proposal are included in this solicitation document.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the person named above. Requests should be made as early as possible to allow time to arrange the accommodation.

**OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.**

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**Exhibits A, B, C, and D are electronic files, which are provided separately:**

**Exhibit A: Quarterly 340B Drug Unit Price Report**

**Exhibit B: 340B Annual Report\_2 Tabs**

**Exhibit C: Quarterly AHCCCS PT Accepted Recommendations Report**

**Exhibit D: Weekly NDC File Reports\_4 Tabs**

**Attachment A, Rate and Itemization, is an electronic file, which is provided separately:**

**Attachment A: Pricing Schedule Excel Spreadsheet**

# OFFER AND ACCEPTANCE

## SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

### OFFER

The undersigned Offeror hereby agrees to provide all services in accordance with the terms and requirements stated herein, including all exhibits, amendments, and final proposal revisions (if any). Signature also certifies Small Business Status.

Arizona Transaction (Sales) Privilege Tax License No.:

For clarification of this offer, contact:

Federal Employer Identification No.:

E-Mail Address:

Name:

Title:

Phone:

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City

State

Zip

Title

### CERTIFICATION

By signature in the Offer section above, the Offeror certifies:

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-09 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror \_\_\_\_\_ is / \_\_\_\_\_ is **not** a small business with less than 100 employees or has gross revenues of \$4 million or less.
5. The Offeror is in compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
6. The Offeror certifies that it is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

### ACCEPTANCE OF OFFER (to be completed by AHCCCS)

Your offer, including all exhibits, amendments and final proposal revisions (if any), contained herein, is accepted. The Contractor is now bound to provide all services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by AHCCCS.

The Contractor is cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contact release document or written notice to proceed.

This contract shall henceforth be referred to as

Contract No. \_\_\_\_\_.

CONTRACT SERVICE START DATE: \_\_\_\_\_.

AWARD DATE: \_\_\_\_\_.

\_\_\_\_\_  
MEGGAN LaPORTE, CPPO, MSW, AHCCCS Chief Procurement Officer

# **SCOPE OF WORK**

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### **DRUG REBATE PROGRAM SERVICES**

#### **1. AHCCCS OVERVIEW**

AHCCCS is the single state Medicaid agency for the State of Arizona. In that capacity it is responsible for operating the Title XIX and Title XXI programs through the State's 1115 Research and Demonstration Waiver, which was granted by the Centers for Medicare and Medicaid Services (CMS), U.S. Department of Health and Human Services. As of May 1, 2018, AHCCCS provides coverage to approximately 1.85 million members in Arizona. Arizona's Medicaid program has been delivered primarily as a managed care program with a relatively small residual, fee-for-service (FFS) component. Additional information may be found on the AHCCCS website reporting page: <https://azahcccs.gov/Resources/Reports/population.html>.

Over 85% of the AHCCCS program's expenditures in SFY 2017 were through managed care programs. AHCCCS contracts with Managed Care Organizations (MCOs) that are responsible for providing Acute, Long Term Care, and Behavioral Health Services. A list of contracted plans can be found here: <https://azweb.statemedicaid.us/HealthPlanLinksNet/HPLinks.aspx>

The program has a total fund budget for SFY 2019 of approximately \$14.1 billion. AHCCCS has over 70,000 active providers in Arizona, such as individual medical and behavioral health practitioners, therapy disciplines, institutions, durable medical equipment companies and transportation entities. Additional information may be found on the AHCCCS website reporting page: <https://www.azahcccs.gov/Resources/Reports/federal.html>

#### **2. PROJECT OVERVIEW**

Managed Care Organizations (MCOs) are required to submit post-adjudicated medical and prescription encounters for all services provided to AHCCCS members. AHCCCS follows national industry standards and code sets as published by X12N, NCPDP, and other data standard setting organizations. Arizona maintains EDI environments to exchange encounters, and provider and member related information with MCOs. The environment consists of Foresight Suite, X12 and NCPDP Transactions. More information regarding encounters and data exchanges is available at the AHCCCS website, [www.azahcccs.gov](http://www.azahcccs.gov).

AHCCCS is required to procure the services of a specialized vendor capable of resolving all disputes as they relate to the MDRP and the AzSRP using the guidance provided by CMS in the Dispute Resolution Program Best Practices section regarding the Medicaid Drug Rebate Dispute Resolution Program, and it must be consistent with the procedures outlined by AHCCCS.

All manufacturer/labeler disputes must be timely researched, corrected, reconciled, resubmitted if required, and the dispute resolution completed for both the MDRP and the AzSRP. AHCCCS must be notified on all dispute resolution outcomes monthly. The Offeror shall have the capability and experience to aggressively pursue all outstanding balances, aged/expected receivables and resolve all disputes in order to ensure timely collection of rebates. The methodology for resolution should be described within the responses to the RFP.

The Contractor must be able to generate an invoice for each labeler/manufacturer in the required MDRP and the AzSRP format and at a minimum, stating the unit type, quantity of units used, and the expected total rebate amount for each National Drug Code (NDC) of the labeler/manufacturer for the billing quarter for drugs dispensed by providers to eligible AHCCCS / Medicaid members. The Contractor shall comply with all state and federal laws and regulations as well as AHCCCS policies, procedures, and contractual provisions. As

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manufacturers/labelers make payments to the State, the Contractor must be able to log, allocate and reconcile these payments on an NDC and individual encounter/claim basis, by health plan contractor and contract type ( if requested). The successful Contractor must provide an automated system that tracks the invoicing and collection of rebates from the pharmaceutical manufacturers/labelers by National Drug Code (NDC) and an individual encounter/claim level.

The qualified Contractor, for the AHCCCS Drug Rebate and Operations Program (ADROP), shall provide application software to be used strictly for the purposes of accounting for pharmaceutical rebates for the MDRP and the AzSRP. The software application shall allow AHCCCS to view the following functions performed by the Contractor:

- Invoices Generated
- Receipt of Payments Log
- Allocation of Payments to Invoices
- Reconciliation Payments to Invoices
- Linkage of Prior Period Adjustments (PPAs) to corresponding invoice number(s)
- Calculations of Outstanding Balances
- Refund Overpayments of Invoice
- Research Disputes with Manufacturer/labeler
- Call Tracking of Phone Conversations with Manufacturer/labeler
- Required Data sent to CMS

### **3. PURPOSE OF THE RFP**

The purpose of this Request for Proposal (RFP) is to solicit proposals and award a contract to a qualified and experienced Contractor to process, invoice, resolve disputes and account for all Medicaid Fee-for-Service and Managed Care Drug Rebates and Supplemental Rebates on a quarterly basis according to CMS guidelines and required timelines. The processes completed by the Contractor must be fully transparent to AHCCCS. Contractors must provide information for services relevant to a single state (stand-alone) supplemental rebate process which also includes robust preparation, facilitation and support of the AHCCCS Pharmacy & Therapeutics Committee. These Contractor's services must also include providing AHCCCS with sufficient summary and supporting documentation to file Form CMS-64.9R and CMS-64.21 and any other State and federal documents that may be required. The Arizona Health Care Cost Containment System (AHCCCS) is seeking proposals from qualified Offerors for a single-source contract to provide comprehensive services for all deliverables required to administer and obtain rebates under the CMS Medicaid Drug Rebate Program (MDRP) and the Supplemental Rebate Program (Asp) for the State of Arizona. The successful Contractor will be responsible for negotiating supplemental rebates on behalf of AHCCCS. The Contractor shall fully disclose all information to AHCCCS. The Contractor shall provide complete transparency of all transactions, negotiations and contracts between the Contractor, AHCCCS and each of the manufacturers/labelers; and the Contractor must perform all other requirements as further described in this RFP. AHCCCS shall make the final determination on the acceptance or refusal of each supplemental rebate contract.

### **4. LEGAL AUTHORITY**

This solicitation and any resultant contract is being entered into pursuant to A.R.S. § 36-2906, and any rules adopted thereunder.

### **5. CONTRACTOR RESPONSIBILITIES:** **The Contractor shall:**

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**5.1 General Services**

The general service requirements provided by the Contractor shall include, but are not be limited to, the following:

- 5.1.1 Collect and merge the utilization/encounter and claims data provided by AHCCCS with the Unit Rebate Amount (URA) provided by the Centers for Medicare and Medicaid Services (CMS).
- 5.1.2 Identify and adjust outlier data.
- 5.1.3 Audit claims/encounters and invoice data.
- 5.1.4 Create rebate invoices in accordance with the CMS required format for the MDRP and as required and/or defined by AHCCCS for the AzSRP.
- 5.1.5 Create cover letters for the appropriate billing period and rebate program.
- 5.1.6 Mail rebate invoices with cover letters to drug manufacturers/labelers in accordance with CMS guidelines.
- 5.1.7 Maintain copies of generated invoices by rebate program and by billing period.
- 5.1.8 Forward payments/deposits received on behalf of AHCCCS to the AHCCCS Division of Business and Finance Department.
- 5.1.9 Provide the invoice/reconciliation supporting documentation with each payment.
- 5.1.10 Research invoices and link prior quarter adjustment (PQA) payment(s) to the original invoice.
- 5.1.11 Reconcile deposits with accompanying documentation as required by CMS and/or AHCCCS.
- 5.1.12 Track postmarks for:
  - 5.1.12.1 Invoice Mailings.
  - 5.1.12.2 Rebate payments.
  - 5.1.12.3 Timeline adherence of payments received.
  - 5.1.12.4 Late payments and interest owed and received.
- 5.1.13 Use CMS authorized codes for all invoice adjustments and/or disputes by NDC.
- 5.1.14 Confirm the accuracy of interest payments.
- 5.1.15 Calculate the interest following CMS guidance/regulation due on late payments and send communication to the manufacturer /labeler detailing the number of days the rebate payment is late and the amount of interest due to AHCCCS.
- 5.1.16 Contact the manufacturer/labeler to clarify conflicting information and/or request additional information as necessary.
- 5.1.17 Compile quarterly and year-to-date reports for each rebate program and as requested by AHCCCS.
- 5.1.18 Track non-payments until payment is made and send notices of ongoing accrual interest due.
- 5.1.19 Resolve disputes with manufacturer/labeler for NDC-specific disputed amounts.
- 5.1.20 Attend CMS Drug Rebate Dispute Resolution Conferences.
- 5.1.21 Provide claims detail data as requested by manufacturer/labeler.
- 5.1.22 Upload current invoice data file into a payments database.
- 5.1.23 Enter the payment information for each paid invoice by NDC into the payment's database.

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- 5.1.24 Generate data files/reports as defined by CMS and/or AHCCCS.
- 5.1.25 Provide data/generate reports for claiming drug rebate collected by waivers per CMS requirements or other AHCCCS defined category for accurate calculation of federal share.
- 5.1.26 Generate the CMS 64.9R and 64.21 drug rebate reports in the requested format by AHCCCS.
- 5.1.27 Respond and manage all phone calls and other inquiries related to drug rebates.
- 5.1.28 Use the prior quarter Unit Rebate Amount (URA) provided by CMS with each quarterly manufacturers' pricing information tape.
- 5.1.29 Verify subsequent pricing adjustments provided by CMS and manufacturers/labelers for prior quarters.
- 5.1.30 Negotiate supplemental rebate and value based contracts with pharmaceutical manufacturers.
- 5.1.31 Facilitate and manage the AHCCCS P&T Committee.

**5.2 System Capability**

- 5.2.1 Maintain separate CMS and Supplemental rebate processes including separate invoicing and reconciliation processes as required by CMS and AHCCCS.
- 5.2.2 Provide online access to invoice status and reporting data.
- 5.2.3 Meet the requirements of any new or modified drug rebate legislation including federal and state and/or additional regulations that may be ratified during the term of this contract at no cost to AHCCCS. Contractor's responsibilities shall include and are not limited to modifying its Drug Rebate Operations and processes so that the Contractor conforms to legislation.
  - 5.2.3.1 Documentation of changes and results accomplished must be provided to AHCCCS within required timelines of legislative changes.
- 5.2.4 Utilize the most recent NCPDP Drug Rebate Standard including any versions recommended by CMS for use by state Medicaid programs.
- 5.2.5 Manage Drug Efficacy Standard Indicator (DESI) designations including DESI drugs excluded for coverage under Medicaid.
- 5.2.6 Convert the package size listed by drug in the CMS Drug Rebate File to the actual package size listed for the specific NDC as noted in the drug reference files MediSpan or First DataBank.
- 5.2.7 Develop and run reports as required by AHCCCS. Currently these include:
  - 5.2.7.1 Quarterly 340B Unit Price Report (see attached Attachment A)
  - 5.2.7.2 Annual 340B report ( see Attachment B)
- 5.2.8 The system should have the capability of providing the data and producing the reports in a reasonable amount of time.

**5.3 Invoice Processing and Functionality**

- 5.3.1 Contractor shall perform the following:
  - 5.3.1.1 Calculate and create federal and supplemental rebate invoices, on both paper and electronic media as requested by the manufacturers/labelers.
  - 5.3.1.2 Create invoices according to the CMS established format and NDC sequence as required for federal rebates and supplemental rebates.
  - 5.3.1.3 Exclude invoicing of NDCs from non-participating manufacturers/labelers.

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- 5.3.1.4 Exclude invoicing of 340B entities as defined by AHCCCS.
- 5.3.1.5 Include an approved cover letter with invoices that contain the manufacturer/labeler invoice Contact.
- 5.3.2 Contractor shall deliver rebate invoices to manufacturers/labelers for both federal and supplemental rebates according to CMS and State required timelines.
  - 5.3.2.1 Invoices and cover letters shall be delivered to the manufacturer/labeler within 60 calendar days from the end of the calendar quarter.
  - 5.3.2.2 AHCCCS shall be notified of the time and date invoices and cover letters were sent by the Contractor to the manufacturer/labeler to ensure timeliness requirements are met.
- 5.3.3 Contractor shall maintain original and corrected invoices at the NDC level electronically and in real-time.
- 5.3.4 Contractor shall have the ability to re-create previously issued invoices upon request in the event that replacement invoices are requested and necessary.
- 5.3.5 Contractor shall:
  - 5.3.5.1 Identify incorrect billing units for NDCs submitted based on the available package sizes and CMS specified units prior to invoicing the manufacturer/labeler.
  - 5.3.5.2 Convert the billed units (quantity) to the CMS rebateable units and invoice the manufacturer/labeler with corrections to accurately determine utilization.
  - 5.3.5.3 Calculate the accrued interest on disputes and unpaid balances, according to CMS specifications, beginning on the 38<sup>th</sup> day after the postmark date of the quarter's invoice, unless otherwise directed in writing by AHCCCS.
  - 5.3.5.4 Account for all calculations at both the OBRA and ACA level.
  - 5.3.5.5 Include a summary page of the invoices and the interest amount due to AHCCCS.
  - 5.3.5.6 Provide the methodology used to calculate, adjust and record prior period adjustment (PPA) payments reported on the CMS tape to the quarter billed.
  - 5.3.5.7 Exclude the prior period adjustment payments from the rebate invoice total amount due and report as informational data to be utilized by the manufacturer/labeler in the calculation of rebate amounts due to AHCCCS.
  - 5.3.5.8 Have a process for reviewing invoices prior to mailing which shall include searching for any NDCs billed with unusually
    - 5.3.5.8.1 Low and high dollar amounts.
    - 5.3.5.8.2 Zero filled NDCs.
    - 5.3.5.8.3 Claims billed with all 9s as the NDC.
    - 5.3.5.8.4 NDCs that have zero URAs.
  - 5.3.5.9 Process and invoice the paid claims data for any designated State Supplemental Rebates for NDCs of drug manufacturers/labelers for which the State has a signed agreement within 60 days from the end of the quarter, unless otherwise directed in writing by AHCCCS.
  - 5.3.5.10 Provide AHCCCS with access to on-line and real time CMS and State supplemental rebate invoices for each quarter.
  - 5.3.5.11 Provide AHCCCS with an on-line history of manufacturer/labeler detail level account information including invoices, payments, interest, adjustments and disputes.



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- 5.3.5.12 Maintain online: current manufacturer/labeler contact names, addresses for invoice mailing, telephone numbers, fax numbers and e-mail addresses.

**5.4 Rebate Activity Accounting**

- 5.4.1 Maintain accurate rebate accounting records using generally accepted accounting principles that reflect:
  - 5.4.1.1 Invoices billed.
  - 5.4.1.2 Payments received.
  - 5.4.1.3 Data from Reconciliation of State Invoices (ROSIs).
  - 5.4.1.4 Other adjustments.
  - 5.4.1.5 Updates from prior quarter adjustments.
  - 5.4.1.6 Disputes.
  - 5.4.1.7 Interest.
  - 5.4.1.8 Maintain account balances and payment history conversions when invoices are produced.
  - 5.4.1.9 Produce a monthly report of accounts receivable information by the manufacturer/labeler and invoice for both federal and supplemental rebate programs by the 5<sup>th</sup> business day of each month. Reports shall be accessible online by AHCCCS no later than the 5<sup>th</sup> business day of the month and include:
    - 5.4.1.9.1 All past due rebate amounts.
    - 5.4.1.9.2 Number of days rebate amounts are past due.
  - 5.4.1.10 Post quarterly invoices to the accounts receivable subsidiary ledger and update the ledgers with posting of payments, interest and adjustments. Entries are to be reported using the 11-digit NDC code by manufacturer/labeler per quarter and entered within five (5) calendar days of receipt.
  - 5.4.1.11 Have a process to review receivables to ensure that all invoiced amounts for the current quarter are paid regardless of outstanding credits to the account.
  - 5.4.1.12 Maintain records of receipt and acceptance of daily deposit entries or its designated agent and with reconciliation of any differences within five (5) business days.
  - 5.4.1.13 Prepare a check receipt/sent tracking report and reconcile all checks received by the Contractor on a daily basis with the AHCCCS staff.
  - 5.4.1.14 Maintain a record of receipts of manufacturer's/labeler's documentation regarding payments sent.
  - 5.4.1.15 Provide and make rate and/or unit adjustments.
  - 5.4.1.16 Use the envelope postmark or other electronic means acceptable to the manufacturer/labeler and AHCCCS to determine the timeliness of payments and the posting of all payments which are to be applied to the quarters billed at the manufacturer/labeler and NDC level within five (5) calendar days of receipt.
  - 5.4.1.17 Notify the manufacturer/labeler of interest due on late payments at the time the check is posted.
  - 5.4.1.18 Perform matching, without exception, to the information of the Prior Quarter Adjustment Statement (PQAS) forms to the PPA records on the CMS tape.

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- 5.4.1.19 Calculate the interest in accordance with CMS regulation by acquiring interest rates on a weekly basis based on the yield of the 13 week Treasury Bill auction rates; use these rates of the weekly auctions and the balance of the unpaid rebate to determine the daily amount of interest due.
- 5.4.1.20 Report interest separately from other payments and separate CMS OBRA and ACA amounts from the Supplemental interest.
- 5.4.1.21 Produce and provide online real-time monthly reports of all payments and interest received by CMS OBRA and ACA level and supplemental rebate programs by the 5<sup>th</sup> day of each month.
- 5.4.1.22 Provide the capability to view and retrieve all payments and interest posted in a specified time period to show, by manufacturer/labeler and quarter what amounts have been posted, adjusted, beginning and ending balance.
- 5.4.1.23 Obtain written approval from AHCCCS prior to writing off any unpaid balances.
- 5.4.1.24 Assist AHCCCS with all audits relevant to the rebate process and attend meetings as necessary for dispute resolution of all matters.
- 5.4.1.25 Maintain continuous and complete documentation of every contact with the manufacturer/labeler when clarification is required for collection of past due balances.

**5.5 Quality Assurance**

- 5.5.1 Perform quality assurance and monitoring on a quarterly basis to ensure accurate invoices are produced that includes:
  - 5.5.1.1 Validating the compilation of data.
  - 5.5.1.2 Auditing units that appear excessive.
  - 5.5.1.3 Precisely calculating amounts due.
  - 5.5.1.4 Electronically creating invoices for each manufacturer/labeler.
  - 5.5.1.5 Establishing controls to ensure duplicate invoices are issued only upon specific request.
  - 5.5.1.6 Monitor the remittance advice documentation to ensure the collection of the correct amount of interest.
  - 5.5.1.7 Monitor and require the manufacturer/labeler to use the standard ROSI and PQAS forms for adjustments to invoices and ensure that they follow CMS instructions.
  - 5.5.1.8 Retain and use postmarked envelopes or other electronic means as approved by CMS and AHCCCS as proof of dates of issuance to or receipt from the manufacturer/labeler and for interest calculations.

**5.6 Reporting**

- 5.6.1 Provide access to all reports and data via a web-based real-time portal.
- 5.6.2 Provide reports and/or data sufficient for the purposes of invoice status monitoring, cash receipts reconciliations and the federal reporting of the Drug Rebate collected for submission to CMS as required for the Medicaid Drug Rebate Program, including but not limited to:

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- 5.6.2.1 Cash Report Summary by program (Fee-for-Services National Agreement, Managed Care National Agreement, Fee-for-Services Supplemental, Managed Care Supplemental) with total cash collected for each quarter, rebate payments collected and the interest collected.
- 5.6.2.2 Detail Receipts Listing Report by program for each month with individual payments: each receipt number, each check number, deposit date, receipt status, Manufacturer Code, date received, date posted, receipt amount as a total for each payment and also split between invoice amount and interest (if any) .
- 5.6.2.3 Labeler Paid Amount versus Billed Amount Report by program, by quarters and by labeler which should include: rebate invoice billed amount, rebate invoice adjusted amount, rebate amount collected, the amount still due and interest accrued and paid.
- 5.6.2.4 Summary Report for all programs together with quarterly historical and current data which should include: Medicaid reimbursement amount, original invoice amount, adjusted invoice amount, outstanding balance, outstanding disputed amount, rebated collected and interest collected. The report should present a clear audit trail between the invoiced amount, the rebate collected and the outstanding amount.
- 5.6.2.5 Report for the Unit Rebate Offset amount for the current quarter based on current quarter adjustments to the rate and/or unit paid compared to the prior quarter.
- 5.6.2.6 Report for the Drugs Invoiced During the Quarter by program, by manufacturer and by specific drug which should include: t invoiced units, rebate amount claimed, number of scripts, Medicaid reimbursement amount.
- 5.6.2.7 Report for Invoice Totals for the Quarter by NDC which should include: drug name, DC, HIC3 codes, unit rebate rate, CMS units, invoiced units, rebate amount claimed, number of scripts, Medicaid reimbursement amount, Non-Medicaid reimbursement amount, total reimbursement amount
- 5.6.2.8 Reports of the Drug Rebate Collected by program (Fee-for-Services National Agreement, Managed Care National Agreement, Fee-for-Services Supplemental, Managed Care Supplemental) and by CMS-64 Waiver Categories which should include waiver groups as specified by AHCCCS. The report should include sufficient data as specified by AHCCCS to allow accurate calculation of federal share.
- 5.6.2.9 Provide completed quarterly Forms CMS 64.9R and 64.21 (if applicable) combined for all four programs and by program.
- 5.6.2.10 Provide online reports of receivables, aging's, list of disputes (including a brief narrative explaining the issue in dispute), check logs, NDC specific data, rebate summaries and payment summaries for specific manufacturer/labelers, and other customized reports.
- 5.6.2.11 Report CMS and supplemental rebate statistics for:
  - 5.6.2.11.1 The number and percentage of rebate dollars received, sorted by rebate type and manufacturer.
  - 5.6.2.11.2 The number and percentage of rebate dollars disputed. Report of variances from the usual amounts paid and quantities used based on benchmark and prior reporting

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- 5.6.2.11.3 Overdue Amounts Report by manufacturer/labeler for amounts greater than 12 months.
- 5.6.4 Provide all data necessary on a monthly and quarterly basis to meet the CMS-64 reporting requirements in an exportable format as defined by AHCCCS. Work with AHCCCS and implement changes as required to the waiver groups to ensure accurate CMS-64 reporting and accurate calculation of federal share.
- 5.6.5 Provide a list of disputed dollars by manufacturer/labeler on a quarterly basis.
- 5.6.6 Provide to AHCCCS as the business needs change any other required reports approved by the Agency for the purposes of clear audit trail, accurate reconciliations and accurate federal reporting to CMS.
- 5.6.7 Provide a comprehensive plan for the transition from the existing vendor to the new vendor. The plan needs to include all important aspects of accepting work over the aged invoices, cash collection, report consistency and other aspect as the required.
- 5.6.8 Provide information to AHCCCS that identifies potential fraud and/or abuse within one (1) day of identification.
- 5.6.9 Submit by May 15th of each year or other date as defined by AHCCCS, a Report of Controls Placed in Operation and Tests of Operating Effectiveness, meeting all standards and requirements of the AICPA's Statement on Standards for Attestation Engagements (SSAE) No. 16, for the Contractor's operations performed for AHCCCS.
- 5.6.10 Provide specialty reports as required by AHCCCS. Currently these include:
- 5.6.10.1 Quarterly 340B Unit Price Report to be delivered no later than 45 days after the close of the quarter, February 15<sup>th</sup>, May 15<sup>th</sup>, August 15<sup>th</sup> and November 15<sup>th</sup> – Exhibit A (see separate electronic exhibits).
- 5.6.10.2 Convert the package size listed by drug in the CMS Drug Rebate File to the actual package size listed for the specific NDC as noted in the drug reference files MediSpan or First DataBank
- 5.6.10.3 Annual 340B Report – Exhibit B (see separate electronic exhibits) to be delivered to AHCCCS no later than November 1<sup>st</sup> each year.
- 5.6.11 Provide AHCCCS with access to an online flexible query and ad hoc reporting tool that will provide information to accommodate the managerial requirements of AHCCCS.

**5.7 Review and Resolution Process**

- 5.7.1 Report quarterly to manufacturer/labeler that interest is due at the rate set by the CMS schedule published on the CMS website for the specific quarter referenced and that there are outstanding Prior Quarter Adjustment Statements (PQAS) that need to be reconciled.
- 5.7.2 Follow-up with the manufacturers/labelers who have not fulfilled their responsibilities relative to prior period adjustments.
- 5.7.3 Respond to all drug manufacturer/labeler inquiries regarding drug rebate billing within two (2) days of receipt.
- 5.7.4 Provide corrected invoices resulting from the dispute resolution process within one week of resolution.
- 5.7.5 Provide AHCCCS copies of the corrected invoices, documenting explanation of corrections, adjustments, modifications and any potential interest due.

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**5.8 Program Planning**

- 5.8.1 Meet with AHCCCS staff to finalize all user requirements and technical system requirements forty-five (45) calendar days after the Notice of Award.
- 5.8.2 Customize its system to meet the State of Arizona's processing and reporting requirements. AHCCCS staff will identify and provide information regarding the enhancements required for the drug rebate processing system. These requirements shall be in place sixty (60) calendar days prior to implementation.
- 5.8.3 Submit the overall architecture and network configuration as it relates to connectivity to AHCCCS.

**5.9 Additional Requirements for the AHCCCS Supplemental Rebate Program**

- 5.9.1 Solicit supplemental rebate contracts, quarterly or on an ad hoc basis, from pharmaceutical manufacturers for drugs/drug classes for preferred agent status consideration on the AHCCCS Drug List;
- 5.9.2 Solicit value-based contracts from pharmaceutical manufacturers;
- 5.9.3 Solicit rebate contracts for blood glucose monitors, strips/lancets and from manufacturers developing and producing continuous glucose monitors (CGM) and additional equipment needed to use with the CGM device;
- 5.9.4 Provide all of the same services for the AzSRP that are listed in this RFP for the MDRP as they pertain to the facilitation, management, support and reconciliation processes as noted all of Section 3;
- 5.9.5 Facilitate the Pharmacy and Therapeutics Committee Meeting:
  - 5.9.5.1 The clinical pharmacist and account manager shall be present on site for each P&T meeting.
  - 5.9.5.2 Prepare all clinical materials for P&T members to review.
  - 5.9.5.3 The materials shall be placed in a secure file on the Contractor's website for committee members to access the materials.
  - 5.9.5.4 The materials shall be available on the Contractor's website, in a secure file, 30 days in advance of the meeting.
  - 5.9.5.5 Place all clinical materials to be presented at the P&T Committee into a PowerPoint presentation.
  - 5.9.5.6 AHCCCS to provide the PowerPoint template to the awarded Contractor.
  - 5.9.5.7 The presentation is due to AHCCCS, at a minimum, 30 days prior to the P&T Committee meeting.
  - 5.9.5.8 Provide paper copies of the clinical presentation to the P&T members at the meeting as requested.
  - 5.9.5.9 Present, onsite, all P&T clinical and cost information for individual drugs, biosimilars and therapeutic drug classes (market baskets);
  - 5.9.5.10 Develop the cost sheets after the supplemental rebate proposed bids have been received;

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- 5.9.5.11 Provide the cost sheets to AHCCCS, at a minimum, 30 days in advance of the P&T meeting.
- 5.9.5.12 Prepare paper copies of cost sheets to be distributed to P&T Committee member for the executive session as defined by AHCCCS.
- 5.9.5.13 Prepare a Quarterly NDC file that includes all individual drugs, biosimilars, and therapeutic classes reviewed at the P&T meeting and the recommended decision for preferred agents in an excel file delivered no later than ten days after the P&T Committee Meeting. See Exhibit C (see separate electronic exhibits).
- 5.9.6 Facilitate and manage the Executive Session of the P&T meeting which includes:
  - 5.9.6.1 Responding to P&T member questions.
  - 5.9.6.2 Explaining the external cost sheets to members.
  - 5.9.6.3 Review all materials submitted by a pharmaceutical manufacturer to determine if the materials are valid and meet the AHCCCS P&T Operational Policy requirements for distribution to P&T Committee members.
  - 5.9.6.4 Provide the pharmaceutical manufacturer accepted materials for P&T members in a separate file on the Contractor's website, at a minimum 14 days in advance of the P&T meeting.
  - 5.9.6.5 Assign a clinical pharmacist to work with the AHCCCS Pharmacy Director. The clinical pharmacist shall be responsible for:
    - 5.9.6.5.1 Meeting weekly with the AHCCCS Pharmacy Director
    - 5.9.6.5.2. Developing Internal and External Cost sheets, as defined by AHCCCS, for individual drug and or drug classes that will be reviewed at the P&T Committee meeting. These cost sheets are due, at a minimum, 30 days prior to the P&T meeting.
    - 5.9.6.5.3 Provide the Weekly NDC Preferred Drug Files as required by AHCCCS. These files are provided weekly with the exception of the file after the P&T meeting. See Exhibit D (see separate electronic exhibits)
    - 5.9.6.5.4 A NDC Preferred Drug file defined by AHCCCS that shall be provided 7-10 days after the P&T Meeting which are the accepted P&T recommendations accepted by AHCCCS that will be implemented on the first day of the next quarter or a date defined by AHCCCS..
    - 5.9.6.5.5 Track all of the P&T Committee recommended decisions.
    - 5.9.6.5.6 Track all of the AHCCCS approved P&T recommendations and those not approved.
- 5.9.7 The following shall be posted on the Contractor's website:
  - 5.9.7.1 All solicitations for supplemental rebates, value-based contracting, and diabetic supplies.
  - 5.9.7.2 Listing of the specific drugs by NDC or products, or services that are being solicited.
  - 5.9.7.3 The Offer Form that manufacturers are to use when submitting a proposed supplemental rebate.
  - 5.9.7.4 The Line Item Extension Form that manufacturers are to use when requesting the addition of a new formulation or strength of a current product that is under a supplemental rebate contract.

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- 5.9.7.5 The P&T Public Testimony Form and when filled out is electronically sent to the AHCCCS Pharmacy Department.
- 5.9.7.6 The Conflict of Interest Form and when filled out is electronically sent to the AHCCCS Pharmacy Department.
- 5.9.7.7 Directions for pharmaceutical representatives to provide clinical information to the Contractor.
- 5.9.7.8 Conflict of interest form and when filled out is electronically sent to the AHCCCS Pharmacy Department.

**5.10 ISD Requirements**

- 5.10.1 Support the receipt of the drug claims extract(s) and drug encounters extract(s) from PMMIS. Formats to be agreed upon by both AHCCCS and the Contractor;
- 5.10.2 Convert Healthcare Common Procedure Coding System (HCPCS) codes and units used in claims for physician administered drugs.
- 5.10.3 Remove PHS/340B drug records from the rebate invoicing process.
- 5.10.4 Provide feedback to AHCCCS regarding any missing data elements from the extract and any aberrant billing practice patterns due to rebate analysis or other discovery processes.
- 5.10.5 Inform AHCCCS of all inappropriate unit billing issues/errors and any other data anomalies as a result of analysis or discovery.
- 5.10.6 Download CMS rates and integrate into a host environment on a quarterly basis within 24 hours of receipt.
- 5.10.7 Generate rebate invoices and cover letters in the media indicated by the manufacturer/labeler within CMS specified timeframes.
- 5.10.8 Provide variance analysis and comparisons.
- 5.10.9 Support online access to aggregated data with multi-level drill down capabilities to support summarized findings.
- 5.10.10 Operate in a fully hosted environment.
- 5.10.11 Store all data and reporting requirements.
- 5.10.12 Establish an interface to transfer data to CMS, manufacturer / labeler and AHCCCS.
- 5.10.13 Transition, at no cost, a complete, all inclusive, data transfer to AHCCCS or other specified vendor, in the event of a contract termination.
- 5.10.14 Annually, prior to January 1st, provide a list of scheduled office closings, and scheduled downtimes for the calendar year.

# DEFINITIONS

## SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1. **AAC:** Arizona Administrative Code.
2. **AHCCCS:** The Arizona Health Care Cost Containment System – a managed health care program which pertains to health care services provided pursuant to A.R.S. 36-2903 et seq., and is also the name of the State agency.
3. **ALTCS:** Arizona Long Term Care System, a program under AHCCCS that delivers long term, acute/ambulatory health, behavioral health and case management services to eligible members, authorized by A.R.S. § 36-2932.
4. **ATTACHMENT:** Any item the Solicitation requires an Offeror to submit as part of the Offer.
5. **BEST AND FINAL OFFER:** A revision to an Offer submitted after negotiations are completed that contains the Offeror's most favorable terms for price, service and products to be delivered. Sometimes referred to as a Final Proposal Revision.
6. **CLEAN CLAIMS:** As defined by ARS § 36-2904 (G)(1) is a claim that may be processed without obtaining additional information from the provider of service or from a third party but does not include claims under investigation for fraud or abuse or claims under review for medical necessity.
7. **CMS:** Centers for Medicare and Medicaid Services, an organization within the U.S. Department of Health and Human Services, which administers the Medicare and Medicaid programs and the State Children's Health Insurance Program.
8. **CONTRACT:** The combination of the Solicitation, including the Instructions to Offerors, Contract Terms and Conditions, and Scope of Work; the Offer; any Best and Final Offers; any Solicitation Amendments or Contract Amendments; and any terms applied by law.
9. **CONTRACT AMENDMENT:** A written document signed by the Procurement officer that is issued for the purpose of making changes in the contract.
10. **CONTRACTOR:** A person who has a contract with AHCCCS.
11. **DAYS:** Calendar days unless otherwise specified.
12. **EXHIBIT:** Any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
13. **FFP (FEDERAL FINANCIAL PARTICIPATION):** The Federal share of reimbursement for services provided in accordance with Federal requirements for school-based Medicaid services.



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14. **FMAP (FEDERAL MEDICAL ASSISTANCE PERCENTAGE):** Defined in CFR 42 §433.10 Rates of FFP for Program Services, is the Federal matching assistance percentage used to calculate payment to the states for part of their expenditures for services under an approved State Plan.
15. **GRATUITY:** A payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
16. **GRIEVANCE SYSTEM:** A system that includes a process for enrollee grievances, enrollee appeals, provider claim disputes, and access to the state fair hearing system.
17. **HEALTH PLAN:** An organization which contracts with the AHCCCS Administration to administer the provision of a comprehensive package of AHCCCS covered acute and behavioral health care services to AHCCCS members enrolled with the health plan.
18. **MATERIAL OMISSION:** A fact, data or other information excluded from a report, contract, etc. the absence of which could lead to erroneous conclusions following reasonable review of such report, contract, etc.
19. **MATERIALS:** All property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
20. **MAY:** Indicates something that is not mandatory but permissible.
21. **NATIONAL PROVIDER NUMBER:** This single, unique ID is used for billing purposes by the provider to all third party payers, including billing for reimbursement under the DSC Program. All typical health care providers shall have a 10-digit National Provider Identifier (NPI).
22. **OFFER:** A response to a solicitation.
23. **OFFEROR:** A vendor or person who responds to a Solicitation.
24. **PERSON:** Any corporation, business, individual, union, committee, club or other organization or group of individuals.
25. **PMMIS:** Prepaid Medicaid Management Information System, the management information system used by AHCCCS.
26. **PROCUREMENT OFFICER:** The person, or his or her designee, duly authorized by the State and AHCCCS to enter into and administer Contracts and made written determinations with respect to the Contract.
27. **PROGRAM CONTRACTOR:** An organization which contracts with the AHCCCS Administration to execute the provision of a comprehensive package of ALTCS covered acute care, behavioral health services and long term care services to ALTCS members enrolled with the program Contractor.

## DEFINITIONS

### SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

28. **RELATED PARTY:** A party that has, or may have, the ability to control or significantly influence a Contractor, or a party that is, or may be, controlled or significantly influenced by a Contractor. "Related parties" include, but are not limited to, agents, managing employees, persons with an ownership or controlling interest in the disclosing entity, and their immediate families, subcontractors, wholly-owned subsidiaries or suppliers, parent companies, sister companies, holding companies, and other entities controlled or managed by any such entities or persons.
29. **RFP:** Request For Proposal; document prepared by AHCCCS which describes the services required and which instructs a prospective Offeror how to prepare a response (proposal).
30. **SCOPE OF WORK:** Those provisions of this solicitation which specify the work and/or results to be achieved by the Contractor.
31. **SHALL, MUST:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.
32. **SHOULD:** Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the State may, at its sole option, ask the Offeror to provide the information or evaluate the proposal without the information.
33. **SOLICITATION:** An Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
34. **SOLICITATION AMENDMENT:** A written document that is authorized by the Procurement officer and issued for the purpose of making changes to the Solicitation.
35. **STATE:** The State of Arizona and Department or Agency of the State that executes the Contract.
36. **STATE FISCAL YEAR:** The period beginning with July 1 and ending June 30.
37. **SUBCONTRACT:** Any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
38. **TITLE XIX:** Title XIX of the Social Security Act means Medicaid as defined in 42 U.S.C. 7.19.

# UNIFORM INSTRUCTIONS TO OFFERORS

## SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

1 **Definitions** – all definitions listed in the definition of terms.

2 **Inquiries:**

- 2.1 **Duty to Examine:** It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting an Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time.
- 2.2 **Solicitation Contact Person:** Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Procurement Officer.
- 2.3 **Submission of Inquiries:** All inquiries related to the Solicitation are required to be submitted via email to the Procurement Officer listed on the front page of this solicitation and on the AHCCCS Q and A form. All responses to inquiries will be answered in the form of a solicitation amendment. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Offerors are prohibited from contacting any State employee other than the Procurement Officer concerning the procurement while the solicitation and evaluation are in process.
- 2.4 **Timeliness:** Any inquiry or exception to the Solicitation shall be submitted as soon as possible and should be submitted no later than the date and time indicated on the Notice of Request for Proposal (RFP front page) for review and determination by AHCCCS. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
- 2.5 **No Right to Rely on Verbal Responses:** Any inquiry that results in changes to the Solicitation shall be answered solely through a written Solicitation Amendment. An Offeror may not rely on verbal responses to its inquiries.
- 2.6 **Solicitation Amendments:** The Solicitation shall only be modified by a Solicitation Amendment.
- 2.7 **Pre-Offer Conference:** If a Pre-Offer Conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet. Offerors should raise any questions they may have about the Solicitation at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.
- 2.8 **Persons with Disabilities:** Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation Contact Person. Requests shall be made as early as possible to allow time to arrange the accommodation.

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### 3 Offer Preparation:

- 3.1 Electronic Documents: The Solicitation is provided in an electronic format. Offerors are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission. Any unidentified alteration or modification to any Solicitation, attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. Offeror's electronic files shall be submitted in a format acceptable to the State. Acceptable formats include .doc and .docx (Microsoft Word), .xls and .xlsx (Microsoft Excel), .ppt and .pptx (Microsoft PowerPoint) and .pdf (Adobe Acrobat). Offerors wishing to submit files in any other format shall submit an inquiry to the Procurement Officer.
- 3.2 Evidence of Intent to be Bound: The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, may result in rejection of the Offer.
- 3.3 Subcontracts: Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
- 3.4 Cost of Offer Preparation: AHCCCS will not reimburse any Offeror the cost of responding to a Solicitation.
- 3.5 Federal Excise Tax: The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
- 3.6 Provision of Tax Identification Numbers: Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number, if applicable, in the space provided on the Offer and Acceptance Form.
  - 3.6.1 Employee Identification: Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the Department under this contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared with only appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
- 3.7 Identification of Taxes in Offer. The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the solicitation. When applicable, the tax rate and amount shall be identified on the price sheet.
- 3.8 Disclosure: If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement

# UNIFORM INSTRUCTIONS TO OFFERORS

## SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

- 3.9 Delivery: Unless otherwise stated in the Contract, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination.
- 3.10 Federal Immigration and Nationality Act: By signing of the Offer, the Offeror warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulations (FINA) relating to the immigration status of their employees. The State may, at its sole discretion, require evidence of compliance during the evaluation process. Should the State request evidence of compliance, the Offeror shall have 5 days from receipt of the request to supply the adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the offer not being considered for contract award.
- 3.11 Offshore Performance of Work Prohibited: Any service that are described in the specifications or scope of work that directly serve the State of Arizona or its clients involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or “overhead” services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the Offer.

#### **4 Submission of Offer:**

- 4.1 Sealed Envelope or Package: Each Offer shall be submitted to the submittal location identified in this Solicitation. Offers should be submitted in a sealed envelope or container. The envelope or container should be clearly identified with name of the Offeror and Solicitation number. The State may open envelopes or containers to identify contents if the envelope or container is not clearly identified.
- 4.2 Offer and Acceptance: Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form may result in rejection of the Offer.

# UNIFORM INSTRUCTIONS TO OFFERORS

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- 4.3 Solicitation Amendments: Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a material Solicitation Amendment may result in rejection of the Offer.
- 4.4 Offer Amendment or Withdrawal: An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- 4.5 (reserved)
- 4.6 Public Record: All Offers submitted and opened are public records and must be retained by the State for six (6) years. Offers shall be open and available to public inspection after Contract award, except for such Offers deemed to be confidential by the State.
- 4.7 Non-collusion, Employment, and Services: By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:
- 4.7.1 The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
  - 4.7.2 The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state and local laws and executive orders regarding employment.

### 5 Evaluation:

- 5.1 Unit Price Prevails: Where applicable, in the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
- 5.2 Taxes: If the products and/or services specified require transaction privilege or use taxes, they shall be described and itemized separately on the offer. Arizona transaction privilege and use taxes shall not be considered for evaluation.
- 5.3 Late Offers: An Offer submitted after the exact Offer due date and time shall be rejected.
- 5.4 Disqualifications: An Offeror (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its offer rejected.
- 5.5 Offer Acceptance Period: An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred and twenty (120). If a Best and Final Offer is requested pursuant

# UNIFORM INSTRUCTIONS TO OFFERORS

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to a Request for Proposals, an Offeror shall hold its Offer open for one hundred and twenty (120) days from the Best and Final Offer due date.

- 5.6 Waiver and Rejection Rights: Notwithstanding any other provision of the Solicitation, AHCCCS reserves the right to:
- 5.6.1 Waive any minor informality;
  - 5.6.2 Reject any and all Offers or portions thereof; or
  - 5.6.3 Cancel the Solicitation.

### 6 Award:

- 6.1 Number or Types of Awards: AHCCCS reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is deemed most advantageous to AHCCCS and to the State.
- 6.2 Contract Inception: An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
- 6.3 Effective Date: The effective date of this Contract shall be the date that the Procurement officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

- 7 Protests: Any protest shall comply with and be resolved according to A.R.S. § 36-2906 and rules adopted thereunder. Protests shall be in writing and be filed with the AHCCCS Procurement officer. Any protest of a solicitation shall be filed at least fourteen (14) days before the due date of receipt of proposals. Any protest of an award shall be filed no later than ten (10) days after the procurement officer makes the procurement file available for public inspection. A protest shall include:

- 7.1 The name, email address and telephone number of the interested party;
- 7.2 The signature of the interested party or its representative;
- 7.3 Identification of the purchasing agency and the Solicitation or Contract number;
- 7.4 A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- 7.5 The form of relief requested.

# SPECIAL INSTRUCTIONS TO OFFERORS

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1. **Questions:** All questions concerning this solicitation shall be submitted **via email using the AHCCCS Q&A form found on the AHCCCS website** to the Procurement Officer identified on the first page of this solicitation document. Offerors may not contact other AHCCCS employees concerning this solicitation.
  
2. **Evaluation Criteria:** In accordance with the A.R.S. 36-2903 et seq., awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.
  - 2.1 Evaluation Criteria 1: Method of Approach
  - 2.2 Evaluation Criteria 2: Cost
  - 2.3 Evaluation Criteria 3: Experience and Expertise of the Firm and Key Personnel
  
3. **Proposal Information:** Offeror shall submit their proposal as **one (1) original and five (5) copies (total of 6 sets)** as well as **one (1) CD, thumb drive or electronic device** with the same information. The proposals should be clearly labeled **“ORIGINAL”** or **“COPY.”**

The proposal shall include the following:

3.1 **Proposed Method of Approach:**

3.1.1 Proposals will be evaluated based on the Offeror’s distinctive plan for providing these specialized services. The Offeror shall utilize a written narrative or any other printed technique to demonstrate the ability to satisfy the Scope of Work. When appropriate, the narrative should describe a logical progression of tasks and efforts starting with the initial steps or tasks to be accomplished and continuing until all proposed tasks are fully described.

3.1.2 Since the evaluators have already read the Scope of Work for the services described, it is not necessary for the Offeror to repeat the exact language, nor to present a paraphrased version, as an original idea for a technical approach. The language of the narrative should be straightforward and limited to facts, solutions to problems, and plans of proposed action. The usage of technical language should be minimized and used only to describe a technical process.

3.2 **Cost:**

3.2.1 The evaluation of the category of Cost shall be based on the prices, as indicated on the **Attachment A: Pricing Schedule (pages 52 and 53) and Attachment A: Excel Spreadsheet, which is provided separately, *must be submitted*** with the Offeror’s proposal.

3.3 **Experience and Expertise of the Firm and Key Personnel:**

3.3.1 Offeror shall submit information documenting successful and reliable experience in past performances as related to the services in this RFP. The Offeror’s



# SPECIAL INSTRUCTIONS TO OFFERORS

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experience and past performance will be evaluated on the extent of its success in managing and integrating work relevant to that defined in the Scope of Work.

3.3.2 The qualifications of the key personnel proposed by the offeror to perform the requirements of this solicitation will be considered in the evaluation. Therefore, the offeror should submit detailed information related to the experience, technical expertise and qualifications for each key personnel proposed. Offeror should provide the names, titles and a resume for all proposed key personnel; clerical staff is not considered key personnel.

3.3.3 The offeror may submit any other pertinent information which would substantiate each proposed key person possesses the experience, expertise and capability to provide the assigned services.

3.3.4 The offeror should provide an organizational chart which clearly shows the reporting and lines of authority; to include all proposed key personnel and any proposed subcontractors. The organizational chart should identify the prime point of contact between the offeror and the AHCCCS Project Manager.

3.4 **Intent to Provide Certificate of Insurance:** The Offeror shall provide a brief statement that, if notified of contract award, the Offeror will submit to AHCCCS for review and acceptance, the applicable certificate/s of insurance as required within this RFP document, within five (5) business days of such notification.

3.5 **Additional Information (OPTIONAL):** The Offeror may submit any other pertinent information which would substantiate the Offeror has the experience, expertise and capability to provide the required services.

#### 4. **Additional Instructions for Submittal of Proposal:**

4.1 The material should be arranged and submitted in the sequence dictated on the "Offeror's Checklist" for this solicitation. AHCCCS will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal.

4.2 When submitting your proposal, ensure your company name and AHCCCS solicitation number is clearly marked on the outside of the package. AHCCCS is not responsible for supplying boxes, envelopes, tape, etc. to Offerors at time of proposal delivery.

5. **Presentations and Demonstrations:** AHCCCS may request Offerors who are determined to be reasonably susceptible for award to give a presentation or show a demonstration of the product or service to the evaluation committee.

6. **Financial Stability** The Offeror must be financially stable and if requested shall be able to substantiate the financial stability of its company. Upon written request from AHCCCS, the

# SPECIAL INSTRUCTIONS TO OFFERORS

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Offeror shall submit an annual financial statement for itself, and parent company (if applicable) within five (5) business days of request. The State reserves the right to request additional documentation from the Offeror and to request reports on financial stability from independent financial rating services. The State reserves the right to reject any Offeror who does not demonstrate financial stability sufficient for the scope of this contract award.

7. **Clarification of Offers:** AHCCCS may request clarification of an offer any time after receipt. Clarifications may be requested orally or in writing. If clarifications are requested orally, the Offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the Offeror is susceptible for award.
8. **Negotiations:** Negotiations may be conducted orally or in writing at the discretion of AHCCCS. Negotiations may be conducted in order to improve offers in such areas of cost, price, specifications performance, or terms, to achieve best value for the State. Negotiations may include demonstrations (oral presentations). Award(s) may be made without negotiations; therefore, offers should be submitted on most favorable terms.
9. **Final Proposal Revisions / Best and Final Offers:** Written Final Proposal Revisions, or Best and Final Offers, will be requested from any Offeror with whom negotiations have been conducted, unless the Offeror has been determined not within the competitive range, not susceptible for award or non-responsible.
10. **Request for Confidential/Proprietary Determination:**
  - 10.1 If an Offeror believes that a specific portion of its bid, proposal, offer, specification, or protest contains information that should be withheld from public inspection due to confidentiality, the Offeror shall submit to the Procurement officer a detailed legal analysis, prepared by legal counsel, which sets forth the bases for the requested non-disclosure and the specific harm or prejudice which may arise if disclosed. The analysis shall be presented to the Procurement Officer at the same time as the bid, proposal, offer, specification or protest.
  - 10.2 An entire bid, proposal, offer, specification, or protest shall not be identified as confidential; only those very limited and distinct portions which are considered by the Offeror as confidential may be identified as such. **Pricing shall not be considered as confidential.**
  - 10.3 In the event that AHCCCS receives a request for disclosure of the information, AHCCCS shall disclose the information in accordance with law. Prior to disclosure, AHCCCS will inform the Offeror of such request and provide the Offeror a period of time to take action it deems appropriate to support non-disclosure. The Offeror shall be responsible for any and all costs associated with the nondisclosure of the information.

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- 10.4 In addition to the required detailed legal analysis, the Offeror shall summarize in their Submittal Letter the distinct portions, including exact page numbers, of their document is requested to be kept confidential.
- 10.5 If any pieces of your proposal are being requested to be kept confidential, and withheld from public viewing, please submit an additional redacted copy of the proposal **ON A SEPARATE CD, thumb drive or other electronic device** Our office does not require a hard copy of the redacted proposal, only an electronic copy. This will ensure that our office is crystal clear on which version of your proposal is acceptable for public viewing.

### 11. **Responsibility, Responsiveness and susceptibility**

In accordance with A.R.S. 41-2534(G), A.A.C. R2-7-C311, A.A.C. R2-7-C312, and A.A.C. R2-7-C316, the State shall consider, at a minimum the following criteria when determining and Offeror's responsibility, as well as the proposal's responsiveness and susceptibility for contract award.

- 11.1 Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;
- 11.2 Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints, and/or negative references;
- 11.3 Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including sub-contractors;
- 11.3.1 Legally qualified includes if the vendor or if key personnel have been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to being disapproved as a subcontractor of any public procurement unit or other governmental body.
- 11.4 Whether the Offeror promptly supplied all requested information concerning its responsibility;
- 11.5 Whether the Offer was sufficient to permit evaluation by the State, in accordance with the evaluation criteria identified in this Solicitation or other necessary offer components. Necessary offer components include: attachments, documents or forms to be submitted with the offer, an indication of the intent to be bound, reasonable or acceptable approach to perform the Scope of Work, acknowledged Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitation;
- 11.6 Whether the Offer was in conformance with the requirements contained in the Scope of Work, Terms and Conditions, and Instructions for the Solicitation including its Amendments and all documents incorporated by reference;
- 11.7 Whether the Offer limits the rights of the State;
- 11.8 Whether the Offer includes or is subject to unreasonable conditions, to include conditions upon the State necessary for successful Contract performance. The State shall be the sole determiner as to the reasonableness of a condition;

## **SPECIAL INSTRUCTIONS TO OFFERORS**

### **SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES**

- 11.9 Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions; and,
- 11.10 Whether the Offeror provides misleading or inaccurate information.

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1. **DEFINITIONS** - All definitions listed in the definition of terms.

### 2. **Contract Interpretation**

2.1 Arizona Law. The Arizona law applies to this Contract including, A.R.S. § 36-2906 and its implementing rules.

2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

- 2.3.1 Special Terms and Conditions;
- 2.3.2 Uniform Terms and Conditions;
- 2.3.3 Statement or Scope of Work;
- 2.3.4 Specifications;
- 2.3.5 Attachments;
- 2.3.6 Exhibits;
- 2.3.7 Documents referenced or included in the Solicitation.

2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### 3. **Contract Administration and Operation**

3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of

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the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

- 3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract.

The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of

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Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

- 3.9 Federal Immigration and Nationality Act. The Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the Contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of Contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the Contractor.
- 3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A.
- 3.11 Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

#### 4. Costs and Payments

- 4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes.
- 4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

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- 4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
- 4.5.1 Accept a decrease in price offered by the Contractor;
  - 4.5.2 Cancel the Contract; or
  - 4.5.3 Cancel the contract and re-solicit the requirements.

### 5. Contract Changes

- 5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's



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proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

- 5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

### 6. Risk and Liability

- 6.1 Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2 Indemnification.

6.2.1 Contractor/Vendor Indemnification The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the Contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

- 6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

- 6.4.2 Force Majeure shall not include the following occurrences:

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- 6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
  - 6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
  - 6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## 7. Warranties

- 7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1 Of a quality to pass without objection in the trade under the Contract description;
  - 7.2.2 Fit for the intended purposes for which the materials are used;
  - 7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
  - 7.2.4 Adequately contained, packaged and marked as the Contract may require; and
  - 7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

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- 7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.
- 7.6 Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.6.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.6.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

### 8. State's Contractual Remedies

- 8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 Stop Work Order.
- 8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall

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make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

- 8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

### 9. Contract Termination

- 9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract

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shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.

- 9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5 Termination for Default.
- 9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
- 9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

### 10. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

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1. **Assignment of Contract and Bankruptcy:** This contract is voidable and subject to immediate cancellation by the Procurement officer upon Contractor becoming insolvent or filing proceedings in bankruptcy or assigning rights or obligations under this contract without the prior written consent of the Procurement officer.
2. **Choice of Forum:** The parties agree that jurisdiction over any action arising out of or relating to this contract shall be brought or filed in a court of competent jurisdiction located in the State of Arizona.
3. **Conflict of Interest:** The Contractor shall not undertake any work that represents a potential conflict of interest, or which is not in the best interest of AHCCCS or the State without prior written approval by AHCCCS. The Contractor shall fully and completely disclose any situation that may present a conflict of interest. If the Contractor is now performing or elects to perform during the term of this contract any services for any AHCCCS health plan, provider or Contractor or an entity owning or controlling same, the Contractor shall disclose this relationship prior to accepting any assignment involving such party.
4. **Contract Cancellation (Immediate):** This contract is critical to AHCCCS and the agency reserves the right to immediately cancel the whole or any part of this contract due to failure of the Contractor to carry out any material obligation, term or condition of the contract. The Procurement officer shall issue a written notice of default effective at once and not deferred by any interval of time. Default shall be for acting or failing to act in any of the following:
  - 4.1 The Contractor provides material that does not meet the specifications of the contract;
  - 4.2 The Contractor fails to adequately perform the services set forth in the specifications of the contract;
  - 4.3 The Contractor fails to complete the work required or furnish the materials required within the time stipulated in the contract;
  - 4.4 The Contractor fails to make progress in the performance of the contract and/or gives the Procurement officer reason to believe that the Contractor will not or cannot perform to the requirements of the contract.
  - 4.5 The Procurement officer may resort to any single or combination of the following remedies:
    - 4.5.1 Cancel any contract;
    - 4.5.2 Reserve all rights or claims to damage for breach of any covenants of the contract;
    - 4.5.3 Perform any test or analysis on materials for compliance with the specifications of the contract. If the result of any test confirms a material non-compliance with the specifications, any reasonable expense of testing shall be borne by the Contractor.
    - 4.5.4 In case of default, the Procurement officer reserves the right to purchase materials or to complete the required work in accordance with the Arizona Procurement Code. The Procurement officer may recover reasonable excess costs from the Contractor by:
      - 4.5.4.1 Deduction from an unpaid balance;
      - 4.5.4.2 Collection against the bid and/or performance bond; or
      - 4.5.4.3 Any combinations of the above or any other remedies as provided by law.

# SPECIAL TERMS AND CONDITIONS

## SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

5. **Contract Cancellation (Minimum 10 Day)**: The Procurement officer reserves the right to cancel the whole or any part of this contract due to failure by the Contractor to carry out any material obligation, term or condition of the contract. The Procurement officer shall issue written notice to the Contractor for acting or failing to act as in any of the following
- 5.1 The Contractor provides material that does not meet the specifications of the contract;
  - 5.2 The Contractor fails to adequately perform the services set forth in the specifications of the contract;
  - 5.3 The Contractor fails to complete the work required or furnish the materials required within the time stipulated by the contract;
  - 5.4 The Contractor fails to make progress in the performance of the contract and/or gives the Procurement officer reason to believe that the Contractor will not or cannot perform to the requirements of the contract;
  - 5.5 Upon receipt of the written notice of concern, the Contractor shall have a minimum of ten (10) days (Procurement officer may determine a longer period) to provide a satisfactory response to the Procurement officer. Failure on the part of the Contractor to adequately address all issues of concern may result in the Procurement officer resorting to any single or combinations of the following remedies.
    - 5.5.1 Cancel any contract;
    - 5.5.2 Reserve all rights or claims to damage for breach of any covenant of the contract;
    - 5.5.3 Perform any test or analysis on materials for compliance with the specifications of the contract. If the result of any test confirms a material no-compliance with the specifications, any reasonable expense of testing shall be borne by the Contractor;
    - 5.5.4 In case of default, the Procurement officer reserves the right to purchase materials, or to complete the required work in accordance with the Arizona Procurement Code. The Procurement officer may recover reasonable excess costs from the Contractor by;
      - 5.5.4.1 Deduction from an unpaid balance;
      - 5.5.4.2 Collection against the bid and/or performance bond; or
      - 5.5.4.3 Any combination of the above or any other remedies as provided by law.
6. **Contract Disputes**: Contract claims and disputes shall be adjudicated in accordance with State Law, AHCCCS Rules and this contract. Except as provided by 9 A.A.C. Chapter 22, Article 6, the exclusive manner for the Contractor to assert any dispute against AHCCCS shall be in accordance with the process outlined in 9 A.A.C. Chapter 34 and A.R.S. §36-2932.
- 6.1 All disputes except as provided under 9 A.A.C. Chapter 22, Article 6 shall be filed in writing and be received by AHCCCS no later than 60 days from the date of the disputed notice. All disputes shall state the factual and legal basis for the dispute.
  - 6.2 Pending the final resolution of any disputes involving this contract, the Contractor shall proceed with performance of this contract in accordance with AHCCCS' instructions, unless AHCCCS specifically, in writing, requests termination or a temporary suspension of performance.

# SPECIAL TERMS AND CONDITIONS

## SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

7. **Cooperation with other Contractors:** AHCCCS may award other contracts for additional or related work and the Contractor shall fully cooperate with such other contractors and AHCCCS employees or designated agents, and carefully fit its own work to such other contractors' work. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by AHCCCS employees. AHCCCS shall equitably enforce this section to all contractors to prevent the imposition of unreasonable burdens on any contractor.
8. **Confidentiality of Records and Disclosure of Confidential Information:**
- 8.1 The Contractor shall not, without prior written approval from AHCCCS, either during or after the performance of the services required by this contract, use, other than for such performance, or disclose to any person other than AHCCCS personnel with a need to know, any information, data, material, or exhibits created, developed, produced, or otherwise obtained during the course of the work required by this contract. This nondisclosure requirement shall also pertain to any information contained in reports, documents, or other records furnished to the Contractor by AHCCCS.
- 8.2 The Contractor shall establish and maintain written policies procedures and controls, approved by AHCCCS, governing access to, duplication of, and dissemination of all such information for the purpose of assuring that no information contained in its records or obtained from AHCCCS or others carrying out its functions under the contract, is used or disclosed by it, its agents, officers or employees, except as required to efficiently perform duties under the contract. Persons requesting such information shall be referred to AHCCCS. The Contractor's data safeguard program shall further conform to the data confidentiality and security requirements of AHCCCS policy and procedures, and all-relevant state and federal requirements, including HIPAA standards.
- 8.3 The disclosure of information in summary, statistical, or other form that does not identify particular individuals is permitted only with prior AHCCCS approval. The use or disclosure of information concerning Members will be limited to purposes directly connected with the scope of this contract.
- 8.4 The Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. A signed confidentiality statement containing language approved by AHCCCS will be obtained from all employees, agents and subcontractors, if any, and maintained in the individual's personnel file with a copy sent to AHCCCS upon request.
9. **Covenant against Contingent Fees:** The Contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For violation of this warranty, the Procurement officer shall have the right to annul this contract without liability.
10. **Contract:**



# SPECIAL TERMS AND CONDITIONS

## SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

- 10.1 The contract between AHCCCS and the Contractor shall consist of (1) the Request for Proposal (RFP) including AHCCCS policies and procedures incorporated by reference as part of the RFP and (2) the proposal submitted by the Contractor in response to the RFP including any Best and Final Offers. In the event of a conflict in language between the proposal (including any Best and Final Offers) and the RFP (including AHCCCS policies and procedures incorporated by reference), the provisions and requirements set forth and/or referenced in the RFP (including AHCCCS policies and procedures incorporated by reference) shall govern.
- 10.2 The contract shall be construed according to the laws of the State of Arizona. The State of Arizona is not obligated for the expenditures under the contract until funds have been encumbered.

### **11. Fraud and Abuse:**

- 11.1 It shall be the responsibility of the Contractor to report all cases of suspected fraud and abuse by subcontractors, members or employees. The Contractor shall provide written notification of all such incidents to the Procurement officer.
- 11.2 As stated in A.R.S. § 13-2310, incorporated herein by reference, any person who knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions is guilty of a class 2 felony.
- 11.3 Contractors are required to research potential overpayments identified by a fraud and abuse investigation or audit conducted by AHCCCS. After conducting a cost benefit analysis to determine if such action is warranted, the Contractor should attempt to recover any overpayments identified due to erroneous, false or fraudulent billings.

- 12. Independent Contractor and Employees of Contractor:** The Contractor represents himself/herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of the State of Arizona and/or AHCCCS. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, etc. All employees of the Contractor employed or in performance of work under this Contract shall be employees of the Contractor at all times and not of AHCCCS. The Contractor shall comply with the Social Security Act, Workers' Compensation laws and unemployment laws of the State of Arizona as well as federal, state and local legislation relevant to the Contractor's business.

- 13. Licenses:** Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

- 14. Lobbying:** No funds paid to the Contractor by AHCCCS, or interest earned thereon, shall be used for the purpose of influencing or attempting to influence an officer or employee of any federal or State agency, a member of the United States Congress or State Legislature, an officer or employee of a member of the United States Congress or State Legislature in connection with awarding of any federal or State contract, the making of any federal or State grant, the making of any federal or State loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal or State contract, grant, loan, or cooperative agreement. The Contractor shall disclose if any funds other than those paid to the Contractor by AHCCCS have been used or will be

# SPECIAL TERMS AND CONDITIONS

## SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

used to influence the persons and entities indicated above and will assist AHCCCS in making such disclosures to CMS.

15. **No Guaranteed Quantities:** AHCCCS does not guarantee the Contractor any minimum or maximum quantity of services or goods to be provided under this contract.
16. **Non-exclusive Contract:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of AHCCCS. The state reserves the right to obtain like goods or services from another source when necessary.
17. **Ownership of Information and Data:**
  - 17.1 Any data or information system, including all software, documentation and manuals, developed by Contractor pursuant to this contract, shall be deemed to be owned by AHCCCS. The federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for federal government purposes, such data or information system, software, documentation and manuals. Proprietary software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership or licensing provisions of this section.
  - 17.2 Data, information and reports collected or prepared by Contractor in the course of performing its duties and obligations under this contract shall be deemed to be owned by AHCCCS. The ownership provision is in consideration of Contractor's use of public funds in collecting or preparing such data, information and reports. These items shall not be used by Contractor for any independent project of Contractor or publicized by Contractor without the prior written permission of the Procurement officer. Subject to applicable state and federal laws and regulations, AHCCCS shall have full and complete rights to reproduce, duplicate, disclose and otherwise use all such information. At the termination of the contract, Contractor shall make available all such data to the Procurement officer within thirty (30) days following termination of the contract or such longer period as approved by the Procurement officer. For purposes of this subsection, the term "data" shall not include member medical records.
  - 17.3 Except as otherwise provided in this section, if any copyrightable or patentable material is developed by Contractor in the course of performance of this contract, the federal government, AHCCCS and the State of Arizona shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for state or federal government purposes. Contractor shall additionally be subject to the applicable provisions of 45 CFR Part 74 and 45 CFR Parts 6 and 8.
18. **Records:**
  - 18.1 In addition to the requirements set forth in this contract under the Uniform Terms and Conditions, all books and records shall be maintained to the extent and in such detail as

# SPECIAL TERMS AND CONDITIONS

## SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

required by AHCCCS Rules and Policies. The AHCCCS records management guidelines are located at: <http://www.azahcccs.gov>. Records shall include, but not be limited to, financial statements, case files (both hard copy and stored data), and other records specified by AHCCCS.

- 18.2 The Contractor shall make available at its office at all reasonable times during the term of this contract and the period set forth in in this section, any of its records for inspection, audit or reproduction by any authorized representative of AHCCCS, State or Federal government.
- 18.3 The Contractor shall preserve and make available all records for a period of five (5) years from the date of final payment under this contract except as provided below:
  - 18.3.1 If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any such termination.
  - 18.3.2 Records that relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this contract, or costs and expenses of this contract to which exception has been taken by AHCCCS, shall be retained by the Contractor for a period of five years after the date of final disposition or resolution thereof.
  - 18.3.3 Completed case files shall be scheduled for archive shipment to AHCCCS, as defined by AHCCCS Policy and Procedures.

**19. Responsibility for Payments Indemnification:** The Contractor shall be responsible for issuing payment for services performed by the Contractor's employees and will indemnify and save AHCCCS harmless for all claims whatsoever growing out of the lawful demands of employees, subcontractors, suppliers or any other third party incurred in the furtherance of the performance of the contract. The Contractor shall, at AHCCCS' request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

**20. Term of Contract and Option to Renew:**

- 20.1 The initial term of this contract shall be for three (3) initial years with two (2) one-year options to extend, not to exceed a total contracting period of five (5) years. The terms and conditions of any such contract extension shall remain the same as the original contract, as amended. All contract extensions shall be through contract amendment, and shall be at the sole option of AHCCCS.
- 20.2 When the Procurement officer issues an amendment to extend the contract, the provisions of such extension will be deemed to have been accepted 60 days after the date of mailing by the Procurement officer, even if the extension amendment has not been signed by the Contractor, unless within that time the Contractor notifies the Procurement officer in writing that it refuses to sign the extension amendment. If the Contractor provides such notification, the Procurement officer will initiate contract termination proceedings.

## SPECIAL TERMS AND CONDITIONS

### SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

20.3 If the Contractor chooses not to renew this contract, the Contractor may be liable for certain costs associated with the transition of its members to a different Contractor. If the Contractor provides the Procurement officer written notice of its intent not to renew this contract at least 180 days before its expiration, this liability for transition costs may be waived by the Procurement officer.

**21. Warranty of Services:** The Contractor warrants that all services provided under this contract will conform to the requirements stated herein. AHCCCS' acceptance of services provided by the Contractor shall not relieve the Contractor from its obligations under this warranty. In addition to its other remedies, the Procurement officer may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all of the provisions of this contract in the manner and to the same extent as the services originally furnished.

# SPECIAL TERMS AND CONDITIONS

## INSURANCE REQUIREMENTS

SOLICITATION # YH19-0045

### DRUG REBATE PROGRAM SERVICES

Standard Service Contracts/Contractor Vehicles Limited to Commute

#### 1.1 Indemnification Clause

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### 1.2 Insurance Requirements

1.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

1.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

#### 1.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

1.3.1 Commercial General Liability (CGL) – Occurrence Form  
Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000
Each Occurrence	\$1,000,000

# SPECIAL TERMS AND CONDITIONS

## INSURANCE REQUIREMENTS

SOLICITATION # YH19-0045

### DRUG REBATE PROGRAM SERVICES

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

1.3.2	Workers' Compensation and Employers' Liability	
	Workers' Compensation	Statutory
	Employers' Liability	
	Each Accident	\$1,000,000
	Disease – Each Employee	\$1,000,000
	Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

#### 1.4 **Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 1.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 1.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

#### 1.5 **Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

#### 1.6 **Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State

# **SPECIAL TERMS AND CONDITIONS**

## **INSURANCE REQUIREMENTS**

**SOLICITATION # YH19-0045**

### **DRUG REBATE PROGRAM SERVICES**

of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

#### **1.7 Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- 1.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
- 1.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 1.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

#### **1.8 Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

#### **1.9 Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

#### **1.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

# HIPAA BUSINESS ASSOCIATES ADDENDUM

SOLICITATION # YH19-0045  
DRUG REBATE PROGRAM SERVICES

## BUSINESS ASSOCIATE ADDENDUM

Amended 2016

This Addendum is made part of this Contract between the Arizona Health Care Cost Containment System ("AHCCCS") and the Contractor, referred to as "Business Associate" in this Addendum.

AHCCCS and Business Associate agree that the underlying Contract shall comply with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as set forth in Title 45, Parts 160 and 164 of the Code of Federal Regulations (the "CFR"), as amended. In the event of conflicting terms or conditions, this Addendum shall supersede the underlying Contract.

### 1. DEFINITIONS

The following terms used in this Addendum shall have the same meaning as those terms in the HIPAA rules set forth in Title 45, Parts 160 and 164 of the CFR: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

### 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- 2.1. Not use or disclose protected health information ("PHI") other than as permitted or required by this Addendum or as required by law;
- 2.2. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of protected health information other than as provided for by this Addendum;
- 2.3. Report to AHCCCS any use or disclosure of PHI not provided for by this Addendum of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR §164.410, and any security incident of which it becomes aware in the following manner;
  - 2.3.1. Reporting. Business Associate shall report to AHCCCS any use or disclosure of PHI that is not authorized by the Contract, by law, or in writing by AHCCCS. Business Associate shall make an initial report to the AHCCCS Privacy Official not more than twenty-four (24) hours after Business Associate learns of such unauthorized use or disclosure. The initial report shall include all of the following information to the extent known to the Business Associate at the time of the initial report:
    - A. A description of the nature of the unauthorized use or disclosure, including the number of individuals affected by the unauthorized use or disclosure;
    - B. A description of the PHI used or disclosed;
    - C. The date(s) on which the unauthorized use or disclosure occurred;
    - D. The date(s) on which the unauthorized use or disclosure was discovered;
    - E. Identify the person(s) who used or disclosed the PHI in an unauthorized manner;
    - F. Identify the person(s) who received PHI disclosed in an unauthorized manner;



# HIPAA BUSINESS ASSOCIATES ADDENDUM

## SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

- G. A description of actions, efforts, or plans undertaken by the Business associate to mitigate the harm of the unauthorized disclosure;
- H. A description of corrective actions undertaken or planned to prevent future similar unauthorized use or disclosure;
- I. An assessment of whether a breach, as defined in 45 CFR 164.402, including, if necessary, an assessment of the probability of harm, and
- J. Such other information, as may be reasonably requested by the AHCCCS Privacy Official.

Business Associate shall provide AHCCCS with supplemental reports promptly as new information becomes available, as assessments and action plans are developed, and as action plans are implemented. In any event, Business Associate shall provide a comprehensive written report including all of the information listed above no later than twenty (20) days after discovery of the unauthorized use or disclosure.

- 2.3.2. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of the Contract.
- 2.3.3. Sanctions. Business Associate shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses AHCCCS PHI in violation of this Addendum or applicable law.
- 2.4. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such information;
- 2.5. Make available PHI in a designated record set to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.524;
- 2.6. Make any amendment(s) to PHI in a designated record set as directed or agreed to by AHCCCS pursuant to 45 CFR §164.526, or take other measures as necessary to satisfy AHCCCS' obligations under 45 CFR §164.526;
- 2.7. Maintain and make available the information required to provide an Accounting of Disclosures to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.528;
- 2.8. To the extent Business Associate is to carry out one or more of AHCCCS' obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to AHCCCS in the performance of such obligation(s); and
- 2.9. Make its internal practices, books and records available to AHCCCS and the Secretary for purposes of determining compliance with the HIPAA rules.

### 3. PERMITTED USES AND DISLOSURES BY BUSINESS ASSOCIATE

- 3.1. Business Associate may only use or disclosure PHI as necessary to perform the services and obligations set forth in the underlying Contract;

# HIPAA BUSINESS ASSOCIATES ADDENDUM

## SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

- 3.2. Business Associate may use or disclose protected health information as required by law;
- 3.3. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with AHCCCS' Minimum Necessary Policy, located at [www.azahcccs.gov](http://www.azahcccs.gov) ;
- 3.4. Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by AHCCCS, except for the specific uses and disclosures set forth below in (3.5 and 3.6);
- 3.5. Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and
- 3.6. Business Associate may provide data aggregation services relating to the health care operations of AHCCCS.

#### 4. PROVISIONS FOR AHCCCS TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS

- 4.1. AHCCCS shall notify Business Associate of any limitation(s) in the AHCCCS Notice of Privacy Practices (found at [www.azahcccs.gov](http://www.azahcccs.gov)) under 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI;
- 4.2. AHCCCS shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and
- 4.3. AHCCCS shall notify Business Associate of any restriction on the use or disclosure of PHI that AHCCCS has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

#### 5. TERM AND TERMINATION

- 5.1. Term: This Addendum is effective upon the effective date of the underlying Contract and shall terminate on the date AHCCCS terminates the contract for cause as authorized in paragraph (b) of this Section, or for any other reason permitted under the contract, whichever is sooner.
- 5.2. Termination for Cause: Business Associate authorizes termination of the Contract by AHCCCS if AHCCCS determines that Business Associate has breached a material term of this Addendum and Business Associate has not cured the breach or ended the violation within the time specified by AHCCCS.
- 5.3. Obligations of Business Associate Upon Termination: Upon termination, cancellation, expiration or other conclusion of the Contract, Business Associate, with respect to PHI received from AHCCCS, or created, maintained, or received by Business Associate on behalf of AHCCCS, shall:
  - 5.3.1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

# HIPAA BUSINESS ASSOCIATES ADDENDUM

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- 5.3.2. Destroy or return to AHCCCS all remaining PHI that the Business Associate still maintains in any form;
- 5.3.3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
- 5.3.4. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out in this Addendum that applied prior to termination; and
- 5.3.5. Destroy or return to AHCCCS the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal and contractual responsibilities.

- 5.4. Survival: The obligations of Business Associate under this Section shall survive the termination of the Contract.

### 6. INDEMNIFICATION AND MISCELLANEOUS

- 6.1. Indemnification: Business Associate shall indemnify, hold harmless and defend AHCCCS from and against any and all claims, losses, liabilities, costs, civil and criminal penalties, and other expenses resulting from, or relating to, the acts or omissions of Business Associate, its employees, agents, and sub-contractors in connection with the representations, duties and obligations of Business Associate under this Addendum. The parties' respective rights and obligations under this Section shall survive termination of the Contract.
- 6.2. Regulatory References: A reference in this Addendum to a section in the HIPAA rules means the section as in effect or as amended.
- 6.3. Amendment: The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA rules or any other applicable law.
- 6.4. Interpretation: Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA rules.

# ATTACHMENT A: PRICING SCHEDULE INCLUDING EXCEL PRICING SCHEDULE

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## 1. PRICING

- 1.1 Offeror is required to propose pricing for their proposed method of approach by rate. The rate shall be inclusive of all costs associated with the delivery of the service and includes staff time, mileage, insurance, and administrative cost. No additional fees will be paid by AHCCCS. (Use separate Excel Attachment A provided).
- 1.2 Proposals must contain a price breakdown separately for the MDRP and the AzSRP showing the annual and monthly price for all-inclusive services. (Use separate Excel Attachment A provided).
- 1.3 The cost proposal shall be presented in an excel spreadsheet listing a total contract amount for each of the three initial contract periods separately, including the optional two (2) one-year options to extend, not to exceed a total contracting period of five (5) years. (Use separate Excel Attachment A provided).
- 1.4 The awarded Offeror must price a comprehensive, all-inclusive line of services for the MDRP and the AzSRP, including but not limited to, calculating the rebate amounts, invoicing manufacturers/labelers, negotiating and resolving disputes with manufacturers/labelers, maintaining a database of rebate collections, negotiating supplemental rebate contracts, P&T management and interfacing with AHCCCS as defined by the Information Services Division (ISD) and Finance Departments. (See separate Excel Attachment A provided).

## 2. INVOICES

- 2.1 The Contractor shall submit a monthly invoice to the address listed below for fees associated with this contract.
- 2.2 Each invoice shall provide the following information, as applicable:
  - 2.2.1 AHCCCS' assigned contract number
  - 2.2.2 Description of services performed for each fee
  - 2.2.3 Name of AHCCCS contact person (or program person) for this contract
  - 2.2.4 Date(s) services were performed
  - 2.2.5 Signature and title of authorized representative
- 2.3 Each invoice shall have adequate supporting documentation attached.
- 2.4 Unless otherwise described in this contract, all invoices shall be submitted to:

AHCCCS  
Accounts Payable, MD 5400  
701 E. Jefferson Street  
Phoenix, AZ 85034  
[AHCCCSDBFAdminPayables@azahcccs.gov](mailto:AHCCCSDBFAdminPayables@azahcccs.gov)

## 3. RATE ADJUSTMENT:

- 3.1 Rate Increase: The original rate shall remain the same for the initial contract period. In the event AHCCCS exercises its sole option to renew the contract for additional periods, the AHCCCS procurement office may consider a request for rate increase. Rate increase requests shall be submitted to the procurement officer in writing no later than sixty (60) days prior to renewal or extension date. Any requested increase shall be based upon a documented cost increase to the Contractor. Failure to submit a request for rate increase within the stated timeframe and or failure to supply adequate information with the request may result in AHCCCS denying the request. Any approval of a rate increase will be at the sole option of AHCCCS and is

# **ATTACHMENT A: PRICING SCHEDULE INCLUDING EXCEL PRICING SCHEDULE**

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contingent upon funding availability. Upon approval, rate increase amount will be negotiated between AHCCCS and the Contractor. Any approval of a rate increase will be effective upon the effective date of the contract renewal or extension, and shall only be considered complete upon written contract amendment signed by both parties.

- 3.2 Rate Reduction: Rate reductions may be submitted to the AHCCCS procurement officer for consideration at any time during the contract period.

## **ATTACHMENT B: FIRM'S REFERENCES**

### **SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES**

List the other State Medicaid Agencies or a Medicaid service provider where your system is operational and functioning as intended. Attach additional pages as necessary. Include for each agency listed:

- 1.1 Name, address, email, and telephone number of Contracting Agency or Company;
- 1.2 Contact Person, including title, phone number, email address who may be contacted for verification of all information submitted;
- 1.3 Location of Services;
- 1.4 Name of all key personnel and sub-contractors used;
- 1.5 Start and completion date of work performed, and
- 1.6 Detailed written narrative of the specific services performed.

# ATTACHMENT C: OFFEROR'S CHECKLIST

## SOLICITATION # YH19-0045 DRUG REBATE PROGRAM SERVICES

**Note to Prospective Offerors:** This page is added to the RFP as a convenience to Offerors. It is believed to be a complete listing of all submission requirements pursuant to this RFP. However, if a requirement is stated anywhere in the RFP text, yet does not appear in the Offeror's Checklist, the text statement takes precedence over the omission of that requirement in the Offeror's Checklist. **Provide the page number where this item is located within your proposal, in the right hand column. All items must be included and in this order.**

	SUBMISSION REQUIREMENTS	OFFEROR'S PROPOSAL Page #
1	Six (6) Hard Copies of the proposal 1 marked ORIGINAL, 5 marked COPY, 1 Electronic Copy on a CD	na
2	Submittal Cover Letter	
3	Offeror's Checklist (this page)	
4	Completed and Signed Offer and Acceptance page	
5	Signed Solicitation Amendments, if any (signature page only)	
6	Exceptions to the terms, conditions or scope of work (If any) <i>NOTE: Any exceptions may negatively impact an Offeror's susceptibility for award. Exception to material requirements, or excessive exceptions, may (and most likely will) result in offer being rejected.</i>	
7	Method of Approach - Written narrative	
8	Experience and Expertise of the Firm and Key Personnel – Written Narrative (See pages 24 – 25) <ul style="list-style-type: none"> <li>• Successful and reliable experience in related past performance</li> <li>• Detailed related information and resumes of Key Personnel</li> <li>• Organizational Chart</li> </ul>	
9	Pricing Schedule (see Attachment A and Excel Attachment A provided separately)	
10	References - State Medicaid Agencies or a Medicaid Service Provider (see Amendment B)	
11	Statement of Intent to provide Certificate of Insurance	
12	Detailed Legal Analysis (If any portions are requested to be kept confidential or proprietary)  If any pieces of your proposal are <b>being requested to be kept confidential, and withheld from public viewing</b> , please submit an additional redacted copy of the proposal ON A SEPARATE CD. Our office does not require a hard copy of the redacted proposal, only an electronic copy. This will ensure that our office is crystal clear on which version of your proposal is acceptable for public viewing.	

**END OF SOLICITATION**

**Intentionally left blank.**