



STATE OF TENNESSEE
Department of Finance and Administration, Division of TennCare
REQUEST FOR PROPOSAL # 31865-00632
AMENDMENT 2 FOR PHARMACY REIMBURSEMENT SERVICES

DATE: July 29, 2022

RFP # 31865-00632 IS AMENDED AS FOLLOWS:

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

EVENT	TIME (central time zone)	DATE
1. RFP Issued		June 15, 2022
2. Disability Accommodation Request Deadline	2:00 p.m.	June 20, 2022
3. Pre-response Conference	2:00 p.m.	June 24, 2022
4. Notice of Intent to Respond Deadline	2:00 p.m.	June 27, 2022
5. Written "Questions & Comments" Deadline	2:00 p.m.	July 11, 2022
6. State Response to Written "Questions & Comments"		July 29, 2022
7. Response Deadline	2:00 p.m.	August 12, 2022
8. State Completion of Technical Response Evaluations		August 31, 2022
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	September 2, 2022
10. Cost Negotiations (Optional)		September 6, 2022 through September 8, 2022
11. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection		September 9, 2022
12. End of Open File Period		September 16, 2022
13. State sends contract to Contractor for signature		September 20, 2022
14. Contractor Signature Deadline	2:00 p.m.	September 30, 2022
15. Anticipated Contract Start Date		November 1, 2022

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

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

No.	RFP SECTION	PAGE #	QUESTION / COMMENT	STATE RESPONSE
1.	Attachment 6.2, Section C, C.11 Attachment 6.6, Section A.26.c	Document Page 26, PDF Page 27 <i>Pro Forma Contract</i> Page 14, PDF Page 50	The pro forma contract included in the RFP indicates that the contractor should “compile and calculate an estimated 340B ceiling price for both pharmacy and medical claims....” Additionally, references within the “Technical Response & Evaluation Guide” request the contractor’s experience and approach regarding application of an estimated 340B ceiling price file for both pharmacy medical claims and physician-administered drugs. Can TennCare clarify if an estimated 340B ceiling price file is currently applied to medical claims and/or physician-administered drugs within its program? Also, can TennCare clarify if vendors should submit proposals that include developing and maintaining an estimated 340B ceiling price file that is applicable for both pharmacy and medical claim types?	The estimated 340B ceiling price file is currently applied to pharmacy claims, and it is not currently applied to medical claims. We are hoping that the 340B ceiling price file can be applied by the MCOs to physician-administered drugs from 340B covered entity providers in the future. We expect that the estimated 340B ceiling price file that will be produced by the Contractor could be applied to pharmacy and physician-administered medical claims. Only one file will be required and will include all NDC’s that are available on CMS’ quarterly DDR file. TennCare will provide the NDC, AMP and URA data from the quarterly DDR file to the Contractor for calculating the estimated 340B ceiling price file.
2.	Attachment 6.3, Cost Proposal Template Attachment 6.63, Section C.3.b Attachment 6.6, Section A.26.c	Document Page 29, PDF Page 30 <i>Pro Forma Contract</i> Page 20, PDF Page 56 <i>Pro Forma Contract</i> page 14, PDF Page 50	The solicitation and the associated <i>pro forma</i> contract alternately reference the estimated 340B ceiling price file as being transmitted either monthly or quarterly. For example, the cost proposal and scoring guide templates (PDF Page 30) indicates monthly. Page 14 of the <i>pro forma</i> contract (page 50 of the PDF) references quarterly file transmission by the contractor. Please clarify whether TennCare requires transmission of the estimated 340B ceiling price file on a monthly or quarterly basis.	The DDR data is updated on a quarterly basis, so the estimated 340B ceiling price file would only be calculated quarterly. TennCare would not expect to see an entire file produced monthly, but in the event a change was needed due to a new product, or if an adjustment was necessary, we would ask that the Contractor provide an updated file for that particular month at no additional cost to the State. (See pro forma Section A.12) Please see items 6 ,7, and 8 below.
3.	Attachment 6.4	Page 30	Can TennCare clarify if vendors should include within the technical response the name and contact information for the references requested to complete the questionnaire? If so, where in the proposal response should that be included?	Item #2 in Attachment 6.4 on page 32 contains a table for the reference to include their contact information.
4.	Attachment 6.2, Section B	RFP, page 21	If there have been acquisitions in the past 10 years but none of those have resulted in any change in control of the respondent, do those acquisitions still need to be disclosed?	Yes. Item B.6. of the RFP requires Respondents to provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years.
5.	Payment Terms and Conditions, C.4	Contract Document, page 20	We understand clearly from the RFP that travel expenses are not to be billed. However, can the State please provide some indication of how much on-site	We anticipate 1-2 meetings per year on-site, and any additional meetings could be virtual via Microsoft Teams.

			presence is expected/desired? For example, 1–2 on-site meetings per year, or more like 5–6 or more?	
6.	Business Associate Agreement – 2.7	N/A	Would the State consider amending this to be a three-day notice period?	No. TennCare cannot extend the 48-hour notification period due to incident reporting requirements to CMS, state comptroller's office and state treasury department. However, only a preliminary incident notification is required within the first 48 hours for awareness so resources can be allocated accordingly.
7.	Business Associate Agreement – 2.8.1	N/A	Would the State consider changing "Immediately" to "Promptly" and agree to use a three-business day notification period?	No, the State will not consider the requested change. See response to # 6.
8.	Business Associate Agreement – 2.9 & 2.13	N/A	Would the State consider revising these sections to make Business Associate's obligation to provide access and accounting only to the Covered Entity rather than to an Individual plan participant? Contractors typically provide access and accounting disclosure info to the Covered Entity (the State) to assist Covered Entity to meet HIPAA requirements. Contractors would not normally assume a Covered Entity's obligation to administer HIPAA Individual rights.	Yes, the State would consider revising the Business Associate agreement so that the Business Associate forwards access and accounting of disclosure information to the State for release.
9.	Business Associate Agreement – 3.4	N/A	Would the State consider changing "Immediately" to "Promptly" or agree to use a three-business day notification period?	No, the State will not consider the requested change. See response to # 6.
10.	A.12/A.27	48/50	Can the State provide the annual number of ORRs and Ad Hoc Reports received in the past, with estimated hours spent on these reports? Can the State elaborate on the difference between ORRs and Ad Hoc Reports?	Only one (1) ORR or Ad Hoc Report has been issued/requested under the current contract. The State does not have information on how long the report(s) took to assemble, however, the time generally allowed for the completion of Ad Hoc reporting is five (5) business days. The Ad Hoc Report may be requested in the form of an ORR. Additionally, an ORR may require different content from that which is listed in Section A.12.
11.	A.7 and A.29	46 and 47	Will the State permit the Contractor to require that other State Contractors or Providers to which Contractor may have to disclose confidential information (not subject to public disclosure laws) in performance of the Services execute a non-disclosure agreement?	Yes.
12.	A.8	46	Will the State consider adding the following paragraph to clarify the State's necessary assistance and Contractor's use of information received in connection with the Services? "The State will provide all necessary and reasonably requested information, direction and cooperation to enable Contractor to provide the Services, and any direction (whether verbal or written) shall be effective if contained expressly in the applicable statement	No, the State will not consider the requested change.

			of work (or Contract) or if received (whether verbally or in writing) from a person known to Contractor or reasonably believed by Contractor to be authorized to act on the State's behalf. Contractor shall be permitted to use all information and data supplied by or on behalf of the State without having independently verified the accuracy or completeness of it except to the extent required by generally accepted professional standards and practices."	
13.	A.31	51	In order for the Contractor to have a reasonable period of time to properly assess a problem, will the State consider agreeing to a period of two business days for Contractor to report a problem to the State and a period of five business days to provide a corrective action plan?	No change to the timing for reporting/assessing of a problem; however, subsection a.in A.31 may be changed from three business days to five business days. Please see item 3 below.
14.	A.33	52	Given the Contractor's disaster recovery plans are confidential, will the State consider agreeing to Contractor providing only a Statement of Recoverability that details Contractor's level of readiness to respond and recover from disaster or crisis situations, which report will include a summary of the status of the Disaster Recovery and Business Resiliency/Continuity programs and testing activities, as they relate to the Services?	The vendor must provide a formal DR plan. Which should also include business continuity plans in the event of a disaster. This is standard data processing expectations.
15.	A.34.h	54	Will the State consider limiting the scope of any audit so that it is (i) limited to the books and records directly related to the Services, (ii) limited to during the term of the Contract and the 18-month period immediately following termination, (iii) conducted at the State's expense, and (iv) made only during normal business hours?	Yes, the State agrees to limiting the scope of any audit as requested in items: (i) and (iv), however, does not agree to limitations for items (ii) and (iii).
16.	A.34	54	Given the type of Services to be provided, will the State consider clarifying that the warranties shall be limited as follows? "Contractor warrants (i) it has the necessary skills, knowledge, training, experience and qualifications to perform Services, (ii) it will assign competent and experienced personnel to perform the Services, and (iii) it will perform the Services in a professional manner in accordance with the prevailing industry standards applicable to the Services as then in effect. Except as specifically stated in the Contract, Contractor does not make any representations or warranties, express or implied, regarding any matter, including the merchantability, suitability, originality, title, fitness for a particular purpose or results to be derived from the use of the Services."	No, the State will not consider the requested change to Section A.34. Please see item 4 below to correct Section numbering.

17.	C.6	57	Will the State consider adding language to clarify that Contractor's invoices shall be paid within 30 days after receipt by the State?	No, the State will not consider the requested change. In accordance with Tenn. Code § 12-4-703 an agency which acquires property or services pursuant to a contract with a business shall pay for each complete delivered item of property or service in accordance with the contract between the business and agency or, if no date or other provision for payment is specified by contract, within forty-five (45) days after receipt of the invoice covering the delivered items or services.
18.	C.8	57	Will the State consider deleting this provision and allow for amounts in dispute by either party to be addressed separately?	No, the State will not consider the requested change.
19.	D.6	58	Will the State consider having the right to terminate the Contract immediately be mutual and be limited to when there is a material breach by the other party which remains uncured after 30 days' notice from the non-breaching party?	The State cannot agree to mutual termination for this Section but can agree to include optional termination language applicable to Section D.6. to allow for 30-day breach condition cures. Please see item 5 below.
20.	D.18	60	Will the State consider modifying this provision so Contractor shall not be liable for (i) liquidated damages and (ii) any indirect, incidental, punitive, special or consequential damages arising in any manner from the Contract regardless of foreseeability thereof?	No, the State will not consider the requested change.
21.	D.19	61	Will the State consider tailoring the scope of the Contractor's indemnification as follows? "Contractor will indemnify the State, officers, directors and employees against any liability incurred by the State in connection with a third party claim only to the extent directly arising out of Contractor's negligent acts or omissions or bad faith conduct in connection with Contractor's performance of its obligations under the Contract or Contractor's breach of its representations and warranties under the Contract. Contractor shall have no responsibility for any losses, liabilities or damages to the extent they are attributable to the acts or omissions of an indemnified person or any third party other than Contractor's subcontractors."	No, the State will not consider the requested change.
22.	D.34	66	Will the State consider making the confidentiality obligations mutual to the extent permitted by applicable law?	Yes. Please see item 9 below.
23.	E.6	67	Will the State consider narrowing the scope of the work papers review to align with the other audit rights in the Contract?	No, the State will not consider the requested change.
24.	New Contract Term	N/A	Will the State consider adding the following new terms to the Contract?	No, the State will not consider the requested addition.

			<p>a. Neither the Contract nor the provision of the Services is intended to confer any right or benefit on any third party. The provision of Services under this Contract cannot reasonably be relied upon by any third party.</p>	
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3. Delete Pro Forma Section A.31. in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- A.31. Problem Notification. At the point at which the Contractor discovers or reasonably should have known of any problem that is reasonably likely to jeopardize the Contractor's ability to perform any function as specified in this Contract, the Contractor shall notify the State's contact person in Section D.2 of this Contract or other state personnel, as directed by the State, in person, via phone, or by email within one (1) hour if the problem is discovered within the business day and no later than 9:00 a.m. CT the following business day if the problem occurs after close of business.
- a. Corrective Action Plan. Unless otherwise directed by the State, the Contractor shall within **five (5)** business days of a problem's occurrence deliver comprehensive written documentation, including a Corrective Action Plan that describes how the Contractor shall determine the root cause of the issue, remedy the immediate operational challenges, and prevent this or similar problems from occurring again.

4. Delete Pro Forma Section A.34 (Warranty) and A.35. (Inspection and Acceptance) in their entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

A.35. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

A.36. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30)

days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

5. Delete Pro Forma Section D.6 (Termination for Cause) in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

D.6. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract (“Breach Condition”), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.

6. Delete RFP Attachment 6.3 (Cost Proposal and Scoring Guide) in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

ATTACHMENT 6.3

COST PROPOSAL & SCORING GUIDE

NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE— The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

NOTICE: The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract section C.1. (refer to RFP Attachment 6.6.), “The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.”

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual’s authority to legally bind the Respondent.

RESPONDENT SIGNATURE:	
PRINTED NAME & TITLE:	
DATE:	

RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
November 1, 2022 – October 31, 2025 (Initial 36-Month Term)			
Completion of Milestone #1 Pro Forma Section A.6.a.	\$ _____/EA	1	
Completion of Milestone #2 Pro Forma Section A.6.b.	\$ _____/EA	1	
Completion of Milestone #3 Pro Forma Section A.6.c.	\$ _____/EA	1	
Proprietary Average Actual Acquisition Cost for all possible covered National Drug Codes (NDCs), First Data Bank Clinical Formulation ID (GSNs), and MediSpan Generic Product ID (GPIs) for all Provider Types – Pro Forma Section A.10.	\$ _____/Month	36	
340B Help Desk Support – Pro Forma Section A.26.	\$ _____/Month	36	
340B Quarterly Ceiling Price File – Pro Forma Section A.26.	\$ _____/ Quarterly	12	
November 1, 2025 – October 31, 2027 (Pursuant to Contract Term Extension)			
Proprietary Average Actual Acquisition Cost for all possible covered National Drug Codes (NDCs), First Data Bank Clinical Formulation ID (GSNs), and MediSpan Generic Product ID (GPIs) for all Provider Types – Pro Forma Section A.10.	\$ _____/Month	24	
340B Help Desk Support – Pro Forma Section A.26.	\$ _____/Month	24	

RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
340B Quarterly Ceiling Price File – Pro Forma Section A.26.	\$ _____ / Quarterly	8	
EVALUATION COST AMOUNT (sum of evaluation costs above): The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
$\frac{\text{lowest evaluation cost amount from all proposals}}{\text{evaluation cost amount being evaluated}}$		$\times 30$ (maximum section score)	SCORE:
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

7. Delete Pro Forma Section A.12 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

A.12. The Contractor shall provide ad hoc, as needed, fiscal impact analyses and modeling to be conducted in response to proposed legislation, specialty drug reimbursement analyses, 340B claims research, etc. as directed by the State. The Contractor shall not invoice the State for any such reporting, and the State shall not be liable to the Contractor for payment of any such reporting services that are in addition to the **monthly** rates specified in Contract Section C.3.

8. Delete Pro Forma Section C.3 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

- a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
November 1, 2022 – October 31, 2025 (Initial 36-Month Term)	
Completion of Milestone #1 (Pro Forma Section A.6.a.)	\$ _____ /EA

Completion of Milestone #2 Pro Forma Section A.6.b.	\$ _____/EA
Completion of Milestone #3 Pro Forma Section A.6.c.	\$ _____/EA
Proprietary Average Actual Acquisition Cost for all possible covered National Drug Codes (NDCs), First Data Bank Clinical Formulation ID (GSNs), and MediSpan Generic Product ID (GPIs) for all Provider Types – Pro Forma Section A.10.	\$ _____/Month
340B Help Desk Support – Pro Forma Section A.26.	\$ _____/Month
340B Quarterly Ceiling Price File – Pro Forma Section A.26.	\$ _____/Quarterly
November 1, 2025 – October 31, 2027 (Pursuant to Contract Term Extension)	
Proprietary Average Actual Acquisition Cost for all possible covered National Drug Codes (NDCs), First Data Bank Clinical Formulation ID (GSNs), and MediSpan Generic Product ID (GPIs) for all Provider Types – Pro Forma Section A.10.	\$ _____/Month
340B Help Desk Support – Pro Forma Section A.26.	\$ _____/Month
340B Quarterly Ceiling Price File – Pro Forma Section A.26.	\$ _____/Quarterly

9. Delete Pro Forma Section D.34 in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. The Contractor shall only use Confidential Information for activities pursuant to and related to the performance of the Contract. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

Likewise, all material and information, regardless of form, medium or method of communication, provided to the State by the Contractor that is regarded as confidential by the Contractor shall be regarded as "Confidential Information." Nothing in this Section shall permit the State to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the State due to intentional or negligent actions or inactions of agents of the Contractor or third

parties, unless disclosure is required or permitted under state or federal law. The State shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

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