State of Nebraska (State Purchasing Bureau)

REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM

RETURN TO:
State Purchasing Bureau
301 Centennial Mall South, 1st Fl
Lincoln, Nebraska 68508
OR
P.O. Box 94847
Lincoln, Nebraska 68509-4847
Phone: 402-471-2401
Fax: 402-471-2089

SOLICITATION NUMBER	RELEASE DATE
RFP 4327Z1	**April 15, 2013**
OPENING DATE AND TIME	PROCUREMENT CONTACT
May 21, 2013 2:00 p.m. Central Time	**Mary Lanning/Michelle Musick**

This form is part of the specification package and must be signed and returned, along with proposal documents, by the opening date and time specified.

PLEASE READ CAREFULLY!

SCOPE OF SERVICE

The State of Nebraska, Administrative Services (AS), Materiel Division, Purchasing Bureau, is issuing this Request for Proposal, RFP Number 4327Z1 for the purpose of selecting a qualified contractor to provide services to support the Medicaid Pharmacy Program in maintaining a Preferred Drug List, participating in a multi-state purchasing pool, and obtaining supplemental drug rebates.

Written questions are due no later than April 25, 2013, and should be submitted via e-mail to matpurch.dasmat@nebraska.gov. Written questions may also be sent by facsimile to (402) 471-2089.

Bidder should submit one (1) original and five (5) copies of the entire proposal. In the event of any inconsistencies among the proposals, the language contained in the original proposal shall govern. Proposals must be submitted by the proposal due date and time.

PROPOSALS MUST MEET THE REQUIREMENTS OUTLINED IN THIS REQUEST FOR PROPOSAL TO BE CONSIDERED VALID. PROPOSALS WILL BE REJECTED IF NOT IN COMPLIANCE WITH THESE REQUIREMENTS.

1. Sealed proposals must be received in State Purchasing by the date and time of proposal opening indicated above. No late proposals will be accepted. No electronic, e-mail, fax, voice, or telephone proposals will be accepted.
2. This form "REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES" MUST be manually signed, in ink, and returned by the proposal opening date and time along with bidder's proposal and any other requirements as specified in the Request for Proposal in order to be considered for an award.
3. It is the responsibility of the bidder to check the website for all information relevant to this solicitation to include addenda and/or amendments issued prior to the opening date. Website address is as follows: http://www.das.state.ne.us/materiel/purchasing/
4. It is understood by the parties that in the State of Nebraska's opinion, any limitation on the contractor's liability is unconstitutional under the Nebraska State Constitution, Article XIII, Section 3, and that any limitation of liability shall not be binding on the State of Nebraska despite inclusion of such language in documents supplied with the contractor's bid or in the final contract.

BIDDER MUST COMPLETE THE FOLLOWING

By signing this Request For Proposal For Contractual Services form, the bidder guarantees compliance with the provisions stated in this Request for Proposal, agrees to the terms and conditions (see Section III) and certifies bidder maintains a drug free work place environment.

FIRM: _____

COMPLETE ADDRESS: _____

TELEPHONE NUMBER: _____ FAX NUMBER: _____

SIGNATURE: _____ DATE: _____

TYPED NAME & TITLE OF SIGNER: _____

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GLOSSARY OF TERMS

Acceptance Test Procedure: Benchmarks and other performance criteria, developed by the State of Nebraska or other sources of testing standards, for measuring the effectiveness of products or services and the means used for testing such performance.

Addendum: Something added or deleted.

Agency: Any state agency, board, or commission other than the University of Nebraska, the Nebraska State colleges, the courts, the Legislature, or any officer or agency established by the Constitution of Nebraska.

Agent: A person authorized by a superior or organization to act on their behalf.

Amend: To alter or change by adding, subtracting, or substituting. A contract can be amended only by the parties participating in the contract. A written contract can only be amended in writing.

Amendment: Written correction or alteration.

Appropriation: Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

Award: All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the Request for Proposal. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State.

Best and Final Offer (BAFO): A second-stage bid in a public procurement for services.

Bid: The executed document submitted by a bidder in response to a Request for Proposal.

Bid Bond: A bond given by a surety on behalf of the bidder to ensure that the bidder will enter into the contract as bid and is retained by the State from the date of the bid opening to the date of contract signing.

Bidder: Any person or entity submitting a competitive bid response to a solicitation.

Business: Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

Business Day: Any weekday, excepting public holidays.

Calendar Day: Every day shown on the calendar; Saturdays, Sundays and State/Federal holidays included. Not to be confused with "Work Day".

CMS: The federal Centers for Medicare and Medicaid Services.

Collusion: A secret agreement or cooperation between two or more persons or entities to accomplish a fraudulent, deceitful or unlawful purpose.

Competition: The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and/or service.

Confidential Information: Unless otherwise defined below, "Confidential Information" shall also mean proprietary trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Nebraska Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would provide.

Contract: An agreement between two or more persons to perform a specific act or acts.

Contract Administration: The Management of various facets of contracts to assure that the contractors total performance is in accordance with the contractual commitments and obligations to the purchaser are fulfilled.

Contract Management: Includes reviewing and approving of changes, executing renewals, handling disciplinary actions, adding additional users, and any other form of action that could change the contract.

Contractor: Any person or entity that supplies goods and/or services.

Conversion Period: A period of time not to exceed six (6) months, during which the State converts to a new Operating System under "Conversion" as per this RFP.

Copyright: A grant to a writer/artist that recognizes sole authorship/creation of a work and protects the creator's interest(s) therein.

CPU: Any computer or computer system that is used by the State to store, process, or retrieve data or perform other functions using Operating Systems and applications software.

Critical Program Error: Any Program Error, whether or not known to the State, which prohibits or significantly impairs use of the Licensed Software as set forth in the documentation and intended in the contract.

Default: The omission or failure to perform a contractual duty.

Department: Department of Health and Human Services (DHHS)

Deviation: Any proposed change(s) or alteration(s) to either the contractual language or deliverables within the scope of this Request for Proposal.

Documentation: The user manuals and any other materials in any form or medium customarily provided by the contractor to the users of the Licensed Software which will provide the State with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently.

Drug Use Review: Required under OBRA '90 for all Medicaid agencies in order to qualify for federal matching funds. Prospective Drug Use Review is provided by the dispensing pharmacy prior to dispensing the medication to the client. Retrospective Drug Use Review is performed by the DUR Board, under contract, by the Nebraska Pharmacists Association and occurs after medications are dispensed. The contract also requires the DUR Board to develop prior authorization criteria for drugs or classes of drugs as specified in Department regulations and as requested by the Department.

DUR: See Drug Use Review

DUR Board: The panel of pharmacists and physicians under contract by the Nebraska Pharmacists Association responsible for fulfilling the requirements for DUR and prior authorization of certain drugs or classes of drugs.

Evaluation Committee: A committee (or committees) appointed by the requesting agency that advises and assists the procuring office in the evaluation of proposals.

Evaluation of Proposal: The process of examining a proposal after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the proposal that relate to determination of the successful bidder.

Extension: A provision, or exercise of a provision, of a contract that allows a continuance of the contract (at the option of the State of Nebraska) for an additional time according to contract conditions. Not to be confused with "Renewals."

Federal Rebate: Any discount provided by a manufacturer pursuant to 42 U.S.C. #1396r-8.

F.O.B. Destination: Free on Board. The delivery charges have been included in the quoted price and prepaid by the vendor. Vendor is responsible for all claims associated with damages during delivery of product.

Foreign Corporation: A foreign corporation is a corporation that was formed (i.e. incorporated) in another state but transacting business in Nebraska pursuant to a certificate of authority issued by the Nebraska Secretary of State.

Installation Date: The date when the procedures described in "Installation by Contractor, and Installation by State", as found in the RFP, are completed.

Late Proposal: A proposal received at the place specified in the solicitation after the date and time designated for all proposals to be received.

Licensed Software: Any and all software and documentation by which the State acquires or is granted any rights under the contract.

Mandatory: Required, compulsory or obligatory.

May: Denotes discretion.

Module: A collection of routines and data structures that perform a specific function of the Licensed Software.

Must: Denotes the imperative, required, compulsory or obligatory.

OBRA '90: Omnibus Budget Reconciliation Act of 1990

Opening Date: Specified date and time for the public opening of received, labeled and sealed formal proposals. Not to be confused with "Release Date".

Operating System: The control program in a computer that provides the interface to the computer hardware and peripheral devices, and the usage and allocation of memory resources, processor resources, input/output resources, and security resources.

Outsourcing: Acquiring computing or related services from a source outside of the State of Nebraska which may include programming and/or executing the State's Licensed Software on the State's CPU's, programming, and/or executing the State's programs and Licensed Software on the contractor's CPU's or any mix thereof.

Outsourcing Company: A company that provides Outsourcing Services under contract to the State.

P & T Committee: See Pharmaceutical and Therapeutics Committee.

PDL: See Preferred Drug List

Performance Bond: A bond given by a surety on behalf of the contractor to ensure the timely and proper (in sole estimation of the State) performance of a contract.

Pharmaceutical and Therapeutics Committee: (P & T Committee) The committee formed in the Medicaid Pharmacy Program that meets the specifications of Nebraska Revised Statute 68-956 and functions to review therapeutic classes of drugs and recommend additions or deletions to the PDL.

Platform: A specific hardware and Operating System combination that is different from other hardware and Operating System combinations to the extent that a different version of the Licensed Software product is required to execute properly in the environment established by such hardware and Operating System combination.

Point of Sale (POS): The real time claims adjudication system for drugs being dispensed to Nebraska Medicaid clients.

Point of Sale Vendor: The contractor currently providing the Point of Sale service.

Preferred Drug List: The list of drugs as defined in Nebraska Revised Statute 68-956.

Pre-Proposal Conference: A meeting scheduled for the purpose of providing clarification regarding a Request for Proposal and related expectations.

Product: A module, a system, or any other software-related item provided by the contractor to the State.

Program Error: Code in Licensed Software which produces unintended results or actions, or which produces results or actions other than those described in the specifications. A program error includes, without limitation, any "Critical Program Error."

Program Set: The group of programs and products, including the Licensed Software specified in the RFP, plus any additional programs and products licensed by the State under the contract for use by the State.

Project: The total of all software, documentation, and services to be provided by the contractor under this contract.

Proposal: The executed document submitted by a bidder in response to a Request for Proposal.

Proprietary Information: Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

Protest: A complaint about a governmental action or decision related to a Request for Proposal or the resultant contract, brought by a prospective bidder, a bidder, a contractor, or other interested party to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

Public Proposal Opening: The process of opening proposals, conducted at the time and place specified in the Request for Proposal, and in the presence of anyone who wishes to attend.

Recommended Hardware Configuration: The data processing hardware (including all terminals, auxiliary storage, communication, and other peripheral devices) to the extent utilized by the State as recommended by the contractor.

Release Date: Date of release of the Request for Proposal to the public for submission of proposal responses. Not to be confused with "Opening Date".

Renewal: Continuance of a contract for an additional term after a formal signing by the parties.

Representative: Includes an agent, an officer of a corporation or association, a trustee, executor or administrator of an estate, or any other person legally empowered to act for another.

Request for Proposal (RFP): All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals.

Responsible Bidder: A bidder who has the capability in all respects to perform fully all requirements with integrity and reliability to assure good faith performance.

Responsive Bidder: A bidder who has submitted a bid which conforms in all respects to the solicitation document.

Shall: Denotes the imperative, required, compulsory or obligatory.

Should: Indicates an expectation.

Solicitation: The process of notifying prospective bidders or offerors that the State of Nebraska wishes to receive proposals for furnishing services. The process may consist of public advertising, posting notices, or mailing Request for Proposals and/or Request for Proposal announcement letter to prospective bidders, or all of these.

Solicitation Document: Request for Proposal.

Specifications: The information provided by or on behalf of the contractor that fully describes the capabilities and functionality of the Licensed Software as set forth in any material provided by the contractor, including the documentation and User's Manuals described herein.

State Plan: The State Plan is a contract between the State and the Federal Government describing how the State administers its Medicaid program. To make changes to the State Plan, the state sends a State Plan Amendment, otherwise referred to as a SPA, to the Centers for Medicare and Medicaid Services (CMS) for review and approval.

State Supplemental Drug Rebates: Rebates negotiated with manufacturers that are in addition to and separate from those required by OBRA '90.

System: Any collection or aggregation of two (2) or more Modules that is designed to function, or is represented by the contractor as functioning or being capable of functioning as an entity.

Termination: Occurs when either party pursuant to a power created by agreement or law puts an end to the contract. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

Trademark: A distinguishing sign, symbol, mark, word, or arrangement of words in the form of a label or other indication, that is adopted and used by a manufacturer or distributor to designate its particular goods and which no other person has the legal right to use.

Trade Secret: Information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that; (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (see Neb. Rev. Stat. §87-502(4)).

Upgrade: Any improvement or change in the Software that improves or alters its basic function.

Vendor: An actual or potential contractor; a contractor.

Will: Denotes the imperative, required, compulsory or obligatory.

I. SCOPE OF THE REQUEST FOR PROPOSAL

The State of Nebraska, Administrative Services (AS), Materiel Division, Purchasing Bureau (hereafter known as State Purchasing Bureau), is issuing this Request for Proposal, RFP Number 4327Z1 for the purpose of selecting a qualified contractor to provide services to support the Medicaid Pharmacy Program in maintaining a Preferred Drug List, participating in a multi-state purchasing pool, and obtaining supplemental drug rebates..

A contract resulting from this Request for Proposal will be issued for a period of three (3) years effective August 1, 2013 through December 31, 2016, with the option to renew for three (3) additional three (3) year periods as mutually agreed upon by all parties.

ALL INFORMATION PERTINENT TO THIS REQUEST FOR PROPOSAL CAN BE FOUND ON THE INTERNET AT: http://www.das.state.ne.us/materiel/purchasing/rfp.htm

A. SCHEDULE OF EVENTS

The State expects to adhere to the tentative procurement schedule shown below. It should be noted, however, that some dates are approximate and subject to change.

	ACTIVITY	DATE/TIME
1.	Release Request for Proposal	April 15, 2013
2.	Last day to submit written questions	April 25, 2013
3.	State responds to written questions through Request for Proposal "Addendum" and/or "Amendment" to be posted to the Internet at: http://www.das.state.ne.us/materiel/purchasing/rfp.htm	May 6, 2013
4.	Proposal opening Location: Nebraska State Office Building State Purchasing Bureau 301 Centennial Mall South, Mall Level Lincoln, NE 68508	May 21, 2013 2:00 PM Central Time
5.	Review for conformance of mandatory requirements	May 21, 2013
6.	Evaluation period	May 21, 2013 to June 7, 2013
7.	"Oral Interviews/Presentations and/or Demonstrations" (if required)	June 17, 2013 to June 20, 2013
8.	Post "Letter of Intent to Contract" to Internet at: http://www.das.state.ne.us/materiel/purchasing/rfp.htm	June 27, 2013
9.	Performance bond submission	July 12, 2013
10.	Contract award	August 1, 2013
11.	Contractor start date	August 1, 2013
12.	Operational date	January 1, 2014

II. PROCUREMENT PROCEDURES

A. PROCURING OFFICE AND CONTACT PERSON

Procurement responsibilities related to this Request for Proposal reside with the State Purchasing Bureau. The point of contact for the procurement is as follows:

Name: Mary Lanning/Michelle Musick
Agency: State Purchasing Bureau
Address: 301 Centennial Mall South, Mall Level
Lincoln, NE 68508

OR

Address: P.O. Box 94847
Lincoln, NE 68509
Telephone: 402-471-2401
Facsimile: 402-471-2089
E-Mail: matpurch.dasmat@nebraska.gov

B. GENERAL INFORMATION

The Request for Proposal is designed to solicit proposals from qualified vendors who will be responsible for providing services to support the Medicaid Pharmacy Program in maintaining a Preferred Drug List, participating in a multi-state purchasing pool, and obtaining supplemental drug rebates at a competitive and reasonable cost. Proposals that do not conform to the mandatory items as indicated in the Request for Proposal will not be considered.

Proposals shall conform to all instructions, conditions, and requirements included in the Request for Proposal. Prospective bidders are expected to carefully examine all documentation, schedules and requirements stipulated in this Request for Proposal, and respond to each requirement in the format prescribed.

A fixed-price contract will be awarded as a result of this proposal. In addition to the provisions of this Request for Proposal and the awarded proposal, which shall be incorporated by reference in the contract, any additional clauses or provisions required by the terms and conditions will be included as an amendment to the contract.

C. COMMUNICATION WITH STATE STAFF

From the date the Request for Proposal is issued until a determination is announced regarding the selection of the contractor, contact regarding this project between potential contractors and individuals employed by the State is restricted to only written communication with the staff designated above as the point of contact for this Request for Proposal.

Once a contractor is preliminarily selected, as documented in the intent to contract, that contractor is restricted from communicating with State staff until a contract is signed. Violation of this condition may be considered sufficient cause to reject a contractor's proposal and/or selection irrespective of any other condition.

The following exceptions to these restrictions are permitted:

1. written communication with the person(s) designated as the point(s) of contact for this Request for Proposal or procurement;
2. contacts made pursuant to any pre-existing contracts or obligations;
3. state-requested presentations, key personnel interviews, clarification sessions or discussions to finalize a contract.

Violations of these conditions may be considered sufficient cause to reject a bidder's proposal and/or selection irrespective of any other condition. No individual member of the State, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding this Request for Proposal. The buyer will issue any clarifications or opinions regarding this Request for Proposal in writing.

D. WRITTEN QUESTIONS AND ANSWERS

Any explanation desired by a bidder regarding the meaning or interpretation of any Request for Proposal provision must be submitted in writing to the State Purchasing Bureau and clearly marked "RFP Number 4327Z1; services to support the Medicaid Pharmacy Program in maintaining a Preferred Drug List, participating in a multi-state purchasing pool, and obtaining supplemental drug rebates Questions". It is preferred that questions be sent via e-mail to matpurch.dasmat@nebraska.gov. Questions may also be sent by facsimile to 402-471-2089, but must include a cover sheet clearly indicating that the transmission is to the attention of Mary Lanning/Michelle Musick, showing the total number of pages transmitted, and clearly marked "RFP Number 4327Z1; services to support the Medicaid Pharmacy Program in maintaining a Preferred Drug List, participating in a multi-state purchasing pool, and obtaining supplemental drug rebates Questions".

Written answers will be provided through an addendum to be posted on the Internet at http://www.das.state.ne.us/materiel/purchasing/rfp.htm on or before the date shown in the Schedule of Events.

E. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS

The Evaluation Committee(s) may conclude after the completion of the Technical and Cost Proposal evaluation that oral interviews/presentations and/or demonstrations are required in order to determine the successful bidder. All bidders may not have an opportunity to interview/present and/or give demonstrations; the State reserves the right to select only the top scoring bidders to present/give oral interviews in its sole discretion. The scores from the oral interviews/presentations and/or demonstrations will be added to the scores from the Technical and Cost Proposals. The presentation process will allow the bidders to demonstrate their proposal offering, explaining and/or clarifying any unusual or significant elements related to their proposals. Bidders' key personnel may be requested to participate in a structured interview to determine their understanding of the requirements of this proposal, their authority and reporting relationships within their firm, and their management style and philosophy. Bidders shall not be allowed to alter or amend their proposals. Only representatives of the State and the presenting bidders will be permitted to attend the oral interviews/presentations and/or demonstrations.

Once the oral interviews/presentations and/or demonstrations have been completed the State reserves the right to make a contract award without any further discussion with the bidders regarding the proposals received.

Detailed notes of oral interviews/presentations and/or demonstrations may be recorded and supplemental information (such as briefing charts, et cetera) may be accepted; however, such

supplemental information shall not be considered an amendment to a bidders' proposal. Additional written information gathered in this manner shall not constitute replacement of proposal contents.

Any cost incidental to the oral interviews/presentations and/or demonstrations shall be borne entirely by the bidder and will not be compensated by the State.

F. SUBMISSION OF PROPOSALS

The following describes the requirements related to proposal submission, proposal handling and review by the State.

To facilitate the proposal evaluation process, one (1) original, clearly identified as such, and five (5) copies of the entire proposal should be submitted. The copy marked “original” shall take precedence over any other copies, should there be a discrepancy. Proposals must be submitted by the proposal due date and time. A separate sheet must be provided that clearly states which sections have been submitted as proprietary or have copyrighted materials. All proprietary information the bidder wishes the State to withhold must be submitted in accordance with the instructions outlined in Section III, Proprietary Information. Proposal responses should include the completed Form A, Bidder Contact Sheet. Proposals must reference the request for proposal number and be sent to the specified address. Container(s) utilized for original documents should be clearly marked “ORIGINAL DOCUMENTS”. Please note that the address label should appear as specified in Section II part A on the face of each container or bidder’s bid response packet. Rejected late proposals will be returned to the bidder unopened, if requested, at bidder's expense. If a recipient phone number is required for delivery purposes, 402-471-2401 should be used. The request for proposal number must be included in all correspondence.

Emphasis should be concentrated on conformance to the Request for Proposal instructions, responsiveness to requirements, completeness and clarity of content. If the bidder’s proposal is presented in such a fashion that makes evaluation difficult or overly time consuming, it is likely that points will be lost in the evaluation process. Elaborate and lengthy proposals are neither necessary nor desired.

The Technical and Cost Proposals should be packaged separately (loose-leaf binders are preferred) on standard 8 ½” by 11” paper, except that charts, diagrams and the like may be on fold-outs which, when folded, fit into the 8 ½” by 11” format. Pages may be consecutively numbered for the entire proposal, or may be numbered consecutively within sections. Figures and tables must be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text. The Technical Proposal must not contain any reference to dollar amounts. However, information such as data concerning labor hours and categories, materials, subcontracts and so forth, shall be considered in the Technical Proposal so that the bidder’s understanding of the scope of work may be evaluated. The Technical Proposal shall disclose the bidder’s technical approach in as much detail as possible, including, but not limited to, the information required by the Technical Proposal instructions.

G. PROPOSAL OPENING

The sealed proposals will be publicly opened and the bidding entities announced on the date, time and location shown in the Schedule of Events. Proposals will be available for viewing by those present after the proposal opening. Vendors may also contact the State to schedule an appointment for viewing proposals after the opening date.

H. LATE PROPOSALS

Proposals received after the time and date of the proposal opening will be considered late proposals. Rejected late proposals will be returned to the bidder unopened, if requested, at bidder's expense. The State is not responsible for proposals that are late or lost due to mail service inadequacies, traffic or any other reason(s).

I. REJECTION OF PROPOSALS

The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal and do not improve the bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State.

J. EVALUATION OF PROPOSALS

All responses to this Request for Proposal which fulfill all mandatory requirements will be evaluated. Each category will have a maximum possible point potential. The State will conduct a fair, impartial and comprehensive evaluation of all proposals in accordance with the criteria set forth below. Areas that will be addressed and scored during the evaluation include:

1. Executive Summary;
2. Corporate Overview shall include but is not limited to;

- **a.** the ability, capacity and skill of the bidder to deliver and implement the system or project that meets the requirements of the Request for Proposal;
- **b.** the character, integrity, reputation, judgment, experience and efficiency of the bidder;
- **c.** whether the bidder can perform the contract within the specified time frame;
- **d.** the quality of bidder performance on prior contracts;
- **e.** such other information that may be secured and that has a bearing on the decision to award the contract;

3. Technical Approach; and
4. Cost Proposal.

Evaluation criteria will become public information at the time of the Request for Proposal opening. Evaluation criteria and a list of respondents will be posted to the State Purchasing Bureau website at http://www.das.state.ne.us/materiel/purchasing/rfp.htm Evaluation criteria will not be released prior to the proposal opening.

K. EVALUATION COMMITTEE

Proposals will be independently evaluated by members of the Evaluation Committee(s). The committee(s) will consist of staff with the appropriate expertise to conduct such proposal evaluations. Names of the members of the Evaluation Committee(s) will not become public information.

Prior to award, bidders are advised that only the point of contact indicated on the front cover of this Request For Proposal For Contractual Services Form can clarify issues or render any opinion regarding this Request for Proposal. No individual member of the State, employee of the State or member of the Evaluation Committee(s) is empowered to make binding statements regarding this Request for Proposal.

L. MANDATORY REQUIREMENTS

The proposals will first be examined to determine if all mandatory requirements listed below have been addressed to warrant further evaluation. Proposals not meeting mandatory requirements will be excluded from further evaluation. The mandatory requirement items are as follows:

1. signed Request For Proposal For Contractual Services form;
2. Executive Summary;
3. Corporate Overview;
4. Technical Approach; and
5. Cost Proposal.

M. REFERENCE CHECKS

The State reserves the right to check any reference(s), regardless of the source of the reference information, including but not limited to, those that are identified by the company in the proposal, those indicated through the explicitly specified contacts, those that are identified during the review of the proposal, or those that result from communication with other entities involved with similar projects.

Information to be requested and evaluated from references may include, but is not limited to, some or all of the following: project description and background, job performed, functional and technical abilities, communication skills and timeliness, cost and schedule estimates and accuracy, problems (poor quality deliverables, contract disputes, work stoppages, et cetera), overall performance, and whether or not the reference would rehire the firm or individual. Only top scoring bidders may receive reference checks and negative references may eliminate bidders from consideration for award.

N. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS

All bidders shall be authorized to transact business in the State of Nebraska. All bidders are expected to comply with all Nebraska Secretary of State registration requirements. It is the responsibility of the bidder to comply with any registration requirements pertaining to types of business entities (e.g. person, partnership, foreign or domestic limited liability company, association, or foreign or domestic corporation or other type of business entity). The Bidder who is the recipient of an Intent to Award will be required to certify that it has so complied and produce a true and exact copy of its current (within 90 days), valid Certificate of Good Standing or Letter of Good Standing; or in the case registration is not required, to provide, in writing, the reason as to why none is required. This must be accomplished prior to the award of the contract. Construction contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certificate of registration. Further, all bidders shall comply with any and all other applicable Nebraska statutes regarding transacting business in the State of Nebraska. Bidders should submit the above certification(s) with their bid.

O. VIOLATION OF TERMS AND CONDITIONS

Violation of the terms and conditions contained in this Request for Proposal or any resultant contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:

1. rejection of a bidder's proposal;
2. suspension of the bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

III. TERMS AND CONDITIONS

By signing the "Request For Proposal For Contractual Services" form, the bidder guarantees compliance with the provisions stated in this Request for Proposal, agrees to the terms and conditions and certifies bidder maintains a drug free work place environment.

Bidders are expected to closely read the Terms and Conditions and provide a binding signature of intent to comply with the Terms and Conditions; provided, however, a bidder may indicate any exceptions to the Terms and Conditions by (1) clearly identifying the term or condition by subsection, (2) including an explanation for the bidder's inability to comply with such term or condition which includes a statement recommending terms and conditions the bidder would find acceptable. Rejection in whole or in part of the Terms and Conditions may be cause for rejection of a bidder's proposal.

A. GENERAL

_____ Accept & Initial

The contract resulting from this Request for Proposal shall incorporate the following documents:

1. Amendment to Contract Award with the most recent dated amendment having the highest priority;
2. Contract Award and any attached Addenda;
3. The signed Request for Proposal form and the Contractor's Proposal;
4. Amendments to RFP and any Questions and Answers; and
5. The original RFP document and any Addenda.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to Contract Award with the most recent dated amendment having the highest priority, 2) Contract Award and any attached Addenda, 3) The signed Request for Proposal form and the Contractor's Proposal, 4) Amendments to RFP and any Questions and Answers, 5) The original RFP document and any addenda.

Any ambiguity in any provision of this contract which shall be discovered after its execution shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

Once proposals are opened they become the property of the State of Nebraska and will not be returned.

B. AWARD

_____ Accept & Initial

All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the Request for Proposal. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part, and at its discretion, may withdraw or amend the Request for Proposal at any time. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State. The Request for Proposal does not commit the State to award a contract. If, in the opinion of the State, revisions or amendments will require substantive changes in proposals, the due date may be extended.

By submitting a proposal in response to this Request for Proposal, the bidder grants to the State the right to contact or arrange a visit in person with any or all of the bidder's clients.

Once an intent to award decision has been determined, it will be posted to the Internet at: http://www.das.state.ne.us/materiel/purchasing/rfp.htm

Grievance and protest procedure is available on the Internet at: http://www.das.state.ne.us/materiel/purchasing/agencyservicesprocurementmanual/ProtestGrievanceProcedureForServices.doc

Any protests must be filed by a vendor within ten (10) calendar days after the intent to award decision is posted to the Internet.

C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION

_____ Accept & Initial

The contractor shall comply with all applicable local, State and Federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Request for Proposal.

D. PERMITS, REGULATIONS, LAWS

_____ Accept & Initial

The contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of the contract. The contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders and regulations.

E. OWNERSHIP OF INFORMATION AND DATA

_____ Accept & Initial

The State of Nebraska shall have the unlimited right to publish, duplicate, use and disclose all information and data developed or derived by the contractor pursuant to this contract.

The contractor must guarantee that it has the full legal right to the materials, supplies, equipment, and other rights or titles (e.g. rights to licenses transfer or assign deliverables) necessary to execute this contract. The contract price shall, without exception, include compensation for all royalties and costs arising from patents, trademarks and copyrights that are in any way involved in the contract. It shall be the responsibility of the contractor to pay for all royalties and costs, and the State must be held harmless from any such claims.

F. INSURANCE REQUIREMENTS

Accept & Initial

The contractor shall not commence work under this contract until he or she has obtained all the insurance required hereunder and such insurance has been approved by the State. If contractor will be utilizing any subcontractors, the contractor is responsible for obtaining the certificate(s) of insurance required herein under from any and all subcontractor(s). Contractor is also responsible for ensuring subcontractor(s) maintain the insurance required until completion of the contract requirements. The contractor shall not allow any subcontractor to commence work on his or her subcontract until all similar insurance required of the subcontractor has been obtained and approved by the contractor. Approval of the insurance by the State shall not limit, relieve or decrease the liability of the contractor hereunder.

If by the terms of any insurance a mandatory deductible is required, or if the contractor elects to increase the mandatory deductible amount, the contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

1. WORKERS' COMPENSATION INSURANCE

The contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contactors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. This policy shall include a waiver of subrogation in favor of the State. The amounts of such insurance shall not be less than the limits stated hereinafter.

2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

The contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect contractor and any subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverage. The policy shall include the State, and others as required by the Contract Documents, as an Additional Insured. This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered excess and non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

3. INSURANCE COVERAGE AMOUNTS REQUIRED

a. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

Coverage A	Statutory
Coverage B	
Bodily Injury by Accident	$100,000 each accident
Bodily Injury by Disease	$500,000 policy limit
Bodily Injury by Disease	$100,000 each employee

b. COMMERCIAL GENERAL LIABILITY

General Aggregate	$2,000,000
Products/Completed Operations Aggregate	$2,000,000
Personal/Advertising Injury	$1,000,000 any one person
Bodily Injury/Property Damage	$1,000,000 per occurrence
Fire Damage	$50,000 any one fire
Medical Payments	$5,000 any one person

c. COMMERCIAL AUTOMOBILE LIABILITY

Bodily Injury/Property Damage	$1,000,000 combined single limit

d. UMBRELLA/EXCESS LIABILITY

Over Primary Insurance	$1,000,000 per occurrence

Medical Malpractice	**Qualification Under NE Excess Fund**
Pharmacists Liability Insurance	$1,000,000 per occurrence
	$3,000,000 aggregate

4. EVIDENCE OF COVERAGE

The contractor should furnish the State, with their proposal response, a certificate of insurance coverage complying with the above requirements to the attention of the Buyer, Administrative Services, State Purchasing Bureau, 301 Centennial Mall S, 1st Fl, Lincoln, NE 68508 (facsimile 402-471-2089). These certificates or the cover sheet shall reference the RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration and amounts and types of coverage afforded. If the State is damaged by the failure of the contractor to maintain such insurance, then the contractor shall be responsible for all reasonable costs properly attributable thereto.

Notice of cancellation of any required insurance policy must be submitted to Administrative Services State Purchasing Bureau when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

G. COOPERATION WITH OTHER CONTRACTORS

_____ Accept & Initial

The State may already have in place or choose to award supplemental contracts for work related to this Request for Proposal, or any portion thereof.

1. The State reserves the right to award the contract jointly between two or more potential contractors, if such an arrangement is in the best interest of the State.

2. The contractor shall agree to cooperate with such other contractors, and shall not commit or permit any act which may interfere with the performance of work by any other contractor.

H. INDEPENDENT CONTRACTOR

Accept & Initial

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under the contract. The contractor's employees and other persons engaged in work or services required by the contractor under the contract shall have no contractual relationship with the State; they shall not be considered employees of the State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against the contractor, its officers or its agents) shall in no way be the responsibility of the State. The contractor will hold the State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits from the State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay or retirement benefits.

I. CONTRACTOR RESPONSIBILITY

Accept & Initial

The contractor is solely responsible for fulfilling the contract, with responsibility for all services offered and products to be delivered as stated in the Request for Proposal, the contractor's proposal, and the resulting contract. The contractor shall be the sole point of contact regarding all contractual matters.

If the contractor intends to utilize any subcontractors' services, the subcontractors' level of effort, tasks and time allocation must be clearly defined in the contractor's proposal. The contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal, in the performance of the contract, without the prior written authorization of the State. Following execution of the contract, the contractor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the contract.

J. CONTRACTOR PERSONNEL

Accept & Initial

The contractor warrants that all persons assigned to the project shall be employees of the contractor or specified subcontractors, and shall be fully qualified to perform the work required herein. Personnel employed by the contractor to fulfill the terms of the contract shall remain under the sole direction and control of the contractor. The contractor shall include a similar provision in any contract with any subcontractor selected to perform work on the project.

Personnel commitments made in the contractor's proposal shall not be changed without the prior written approval of the State. Replacement of key personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The State reserves the right to require the contractor to reassign or remove from the project any contractor or subcontractor employee.

In respect to its employees, the contractor agrees to be responsible for the following:

1. any and all employment taxes and/or other payroll withholding;
2. any and all vehicles used by the contractor's employees, including all insurance required by state law;
3. damages incurred by contractor's employees within the scope of their duties under the contract;
4. maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing State law; and

5. determining the hours to be worked and the duties to be performed by the contractor's employees.

Notice of cancellation of any required insurance policy must be submitted to the State when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

K. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION

_____ Accept & Initial

The contractor shall not, at any time, recruit or employ any State employee or agent who has worked on the Request for Proposal or project, or who had any influence on decisions affecting the Request for Proposal or project.

L. CONFLICT OF INTEREST

_____ Accept & Initial

By submitting a proposal, bidder certifies that there does not now exist any relationship between the bidder and any person or entity which is or gives the appearance of a conflict of interest related to this Request for Proposal or project.

The bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest.

The bidder certifies that it will not employ any individual known by bidder to have a conflict of interest.

M. PROPOSAL PREPARATION COSTS

_____ Accept & Initial

The State shall not incur any liability for any costs incurred by bidders in replying to this Request for Proposal, in the demonstrations, or oral presentations, or in any other activity related to bidding on this Request for Proposal.

N. ERRORS AND OMISSIONS

_____ Accept & Initial

The bidder shall not take advantage of any errors and/or omissions in this Request for Proposal or resulting contract. The bidder must promptly notify the State of any errors and/or omissions that are discovered.

O. BEGINNING OF WORK

_____ Accept & Initial

The bidder shall not commence any billable work until a valid contract has been fully executed by the State and the successful contractor. The contractor will be notified in writing when work may begin.

P. ASSIGNMENT BY THE STATE

_____ Accept & Initial

The State shall have the right to assign or transfer the contract or any of its interests herein to any agency, board, commission, or political subdivision of the State of Nebraska. There shall be no charge to the State for any assignment hereunder.

Q. ASSIGNMENT BY THE CONTRACTOR

_____ Accept & Initial

The contractor may not assign, voluntarily or involuntarily, the contract or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party, without the prior written consent of the State, which will not be unreasonably withheld.

R. DEVIATIONS FROM THE REQUEST FOR PROPOSAL

_____ Accept & Initial

The requirements contained in the Request for Proposal become a part of the terms and conditions of the contract resulting from this Request for Proposal. Any deviations from the Request for Proposal must be clearly defined by the bidder in its proposal and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the Request for Proposal or mandatory requirements. "Deviation", for the purposes of this RFP, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this RFP. The State discourages deviations and reserves the right to reject proposed deviations.

S. GOVERNING LAW

_____ Accept & Initial

The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this Request for Proposal or any resultant contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law. The contractor must be in compliance with all Nebraska statutory and regulatory law.

T. ATTORNEY'S FEES

_____ Accept & Initial

In the event of any litigation, appeal or other legal action to enforce any provision of the contract, the contractor agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the State is the prevailing party.

U. ADVERTISING

_____ Accept & Initial

The contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. News releases pertaining to the project shall not be issued without prior written approval from the State.

V. STATE PROPERTY

_____ Accept & Initial

The contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the contractor's use during the performance of the contract. The contractor shall reimburse the State for any loss or damage of such property, normal wear and tear is expected.

W. SITE RULES AND REGULATIONS

_____ Accept & Initial

The contractor shall use its best efforts to ensure that its employees, agents and subcontractors comply with site rules and regulations while on State premises. If the contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to between the State and the contractor.

X. NOTIFICATION

_____ Accept & Initial

During the bid process, all communication between the State and a bidder shall be between the bidder's representative clearly noted in its proposal and the buyer noted in Section II, A. Procuring Office and Contact Person of this RFP. After the award of the contract, all notices under the contract shall be deemed duly given upon delivery to the staff designated as the point of contact for this Request for Proposal, in person, or upon delivery by U.S. Mail, facsimile, or e-mail. Each bidder should provide in its proposal the name, title and complete address of its designee to receive notices.

1. Except as otherwise expressly specified herein, all notices, requests or other communications shall be in writing and shall be deemed to have been given if delivered

personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth above, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) days following deposit in the mail.

2. Whenever the contractor encounters any difficulty which is delaying or threatens to delay its timely performance under the contract, the contractor shall immediately give notice thereof in writing to the State reciting all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the State of any of its rights or remedies to which it is entitled by law or equity or pursuant to the provisions of the contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

For the duration of the contract, all communication between contractor and the State regarding the contract shall take place between the contractor and individuals specified by the State in writing. Communication about the contract between contractor and individuals not designated as points of contact by the State is strictly forbidden.

Y. EARLY TERMINATION

The contract may be terminated as follows:

_____ Accept & Initial

1. The State and the contractor, by mutual written agreement, may terminate the contract at any time.

2. The State, in its sole discretion, may terminate the contract for any reason upon 30 days written notice to the contractor. Such termination shall not relieve the contractor of warranty or other service obligations incurred under the terms of the contract. In the event of cancellation the contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

3. The State may terminate the contract immediately for the following reasons:

- **a.** if directed to do so by statute;
- **b.** contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
- **c.** a trustee or receiver of the contractor or of any substantial part of the contractor's assets has been appointed by a court;
- **d.** fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its contractor, its employees, officers, directors or shareholders;
- **e.** an involuntary proceeding has been commenced by any party against the contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) days; or (ii) the contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the contractor has been decreed or adjudged a debtor;
- **f.** a voluntary petition has been filed by the contractor under any of the chapters of Title 11 of the United States Code;
- **g.** contractor intentionally discloses confidential information;

h. contractor has or announces it will discontinue support of the deliverable;

i. second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau.

Z. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS

_____ Accept & Initial

The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the contractor written notice thirty (30) days prior to the effective date of any termination, and advise the contractor of the location (address and room number) of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. The contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the contractor be paid for a loss of anticipated profit.

AA. BREACH BY CONTRACTOR

_____ Accept & Initial

The State may terminate the contract, in whole or in part, if the contractor fails to perform its obligations under the contract in a timely and proper manner. The State may, by providing a written notice of default to the contractor, allow the contractor to cure a failure or breach of contract within a period of thirty (30) days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested or in person with proof of delivery. Allowing the contractor time to cure a failure or breach of contract does not waive the State's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the contractor, the State may contract the service from other sources and hold the contractor responsible for any excess cost occasioned thereby.

BB. ASSURANCES BEFORE BREACH

_____ Accept & Initial

If any document or deliverable required pursuant to the contract does not fulfill the requirements of the Request for Proposal/resulting contract, upon written notice from the State, the contractor shall deliver assurances in the form of additional contractor resources at no additional cost to the project in order to complete the deliverable, and to ensure that other project schedules will not be adversely affected.

CC. PENALTY

_____ Accept & Initial

In the event that the contractor fails to perform any substantial obligation under the contract, the State may withhold all monies due and payable to the contractor, without penalty, until such failure is cured or otherwise adjudicated. Failure to meet the dates stipulated in the contract for the deliverables may result in an assessment of penalty due the State of $500 dollars per day, until the deliverables are approved. Contractor will be notified in writing when penalty will commence.

DD. RETAINAGE

_____ Accept & Initial

The State may withhold ten percent (10%) of each payment due as retainage. The entire retainage amount will be payable upon successful completion of the project. Upon completion of the project, the contractor will invoice the State for any outstanding work and for the retainage. The State may reject the final invoice by identifying the specific reasons for such rejection in writing to the contractor within 45 calendar days of receipt of the final invoice. Otherwise, the project will be deemed accepted and the State will release the final payment and retainage in accordance with the contract payment terms.

EE. PERFORMANCE BOND

_____ Accept & Initial

The selected contractor will be required to supply a certified check or a bond executed by a corporation authorized to contract surety in the State of Nebraska, payable to the State of Nebraska, which shall be valid for the life of the contract to include any renewal and/or extension periods. The amount of the certified check or bond must be $400,000. The check or bond will guarantee that the selected contractor will faithfully perform all requirements, terms and conditions of the contract. Failure to comply shall be grounds for forfeiture of the check or bond as liquidated damages. Amount of forfeiture will be determined by the agency based on loss to the State. The bond or certified check will be returned when the service has been satisfactorily completed as solely determined by the State, after termination or expiration of the contract.

FF. FORCE MAJEURE

_____ Accept & Initial

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The State may grant relief from performance of the contract if the contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the contractor. To obtain release based on a Force Majeure Event, the contractor shall file a written request for such relief with the State Purchasing Bureau. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

GG. PROHIBITION AGAINST ADVANCE PAYMENT

_____ Accept & Initial

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

HH. PAYMENT

_____ Accept & Initial

State will render payment to contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the contractor as solely determined by the State. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). The State may require the contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the contractor prior to the Effective Date, and the contractor hereby waives any claim or cause of action for any such services.

II. INVOICES

_____ Accept & Initial

Invoices for payments must be submitted by the contractor to the agency requesting the services with sufficient detail to support payment. Invoices are to be submitted monthly. The terms and conditions included in the contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

JJ. AUDIT REQUIREMENTS

_____ Accept & Initial

All contractor books, records and documents relating to work performed or monies received under the contract shall be subject to audit at any reasonable time upon the provision of reasonable notice by the State. These records shall be maintained for a period of five (5) full years from the date of final payment, or until all issues related to an audit, litigation or other action are resolved, whichever is longer. All records shall be maintained in accordance with generally accepted accounting principles.

In addition to, and in no way in limitation of any obligation in the contract, the contractor shall agree that it will be held liable for any State audit exceptions, and shall return to the State all payments made under the contract for which an exception has been taken or which has been disallowed because of such an exception. The contractor agrees to correct immediately any material weakness or condition reported to the State in the course of an audit.

KK. TAXES

_____ Accept & Initial

The State is not required to pay taxes of any kind and assumes no such liability as a result of this solicitation. Any property tax payable on the contractor's equipment which may be installed in a state-owned facility is the responsibility of the contractor.

LL. INSPECTION AND APPROVAL

_____ Accept & Initial

Final inspection and approval of all work required under the contract shall be performed by the designated State officials. The State and/or its authorized representatives shall have the right to enter any premises where the contractor or subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

MM. CHANGES IN SCOPE/CHANGE ORDERS

_____ Accept & Initial

The State may, at any time with written notice to the contractor, make changes within the general scope of the contract. Changes in scope shall only be conducted with the written approval of the State's designee as so defined by the State from time to time. (The State retains the right to employ the services of a third party to perform any change order(s)).

The State may, at any time work is in progress, by written order, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the State may find necessary or desirable. The contractor shall not claim forfeiture of contract by reasons of such changes by the State. Changes in work and the amount of compensation to be paid to the contractor for any extra work so ordered shall be determined in accordance with the applicable unit prices of the contractor's proposal.

Corrections of any deliverable services or performance of work required pursuant to the contract shall not be deemed a modification requiring a change order.

NN. SEVERABILITY

_____ Accept & Initial

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

OO. CONFIDENTIALITY

_____ Accept & Initial

All materials and information provided by the State or acquired by the contractor on behalf of the State shall be regarded as confidential information. All materials and information provided by the State or acquired by the contractor on behalf of the State shall be handled in accordance with Federal and State Law, and ethical standards. The contractor must ensure the confidentiality of such materials or information. Should said confidentiality be breached by a contractor; contractor shall notify the State immediately of said breach and take immediate corrective action.

It is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

PP. PROPRIETARY INFORMATION

_____ Accept & Initial

Data contained in the proposal and all documentation provided therein, become the property of the State of Nebraska and the data becomes public information upon opening the proposal. If the bidder wishes to have any information withheld from the public, such information must fall within the definition of proprietary information contained within Nebraska's public record statutes. All proprietary information the bidder wishes the State to withhold must be submitted in a sealed package, which is separate from the remainder of the proposal. The separate package must be clearly marked PROPRIETARY on the outside of the package. Bidders may not mark their entire Request for Proposal as proprietary. Bidder's cost proposals may not be marked as proprietary information. Failure of the bidder to follow the instructions for submitting proprietary and copyrighted information may result in the information being viewed by other bidders and the public. Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, bidders submitting information as proprietary may be required to prove specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive. Although every effort will be made to withhold information that is properly submitted as proprietary and meets the State's definition of proprietary information, the State is under no obligation to maintain the confidentiality of proprietary information and accepts no liability for the release of such information.

QQ. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING

_____ Accept & Initial

By submission of this proposal, the bidder certifies, that he or she is the party making the foregoing proposal that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham proposal, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other bidder, or to secure any

advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and further that the bidder has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

RR. PRICES

_____ Accept & Initial

All prices, costs, terms and conditions outlined in the proposal shall remain fixed and valid commencing on the opening date of the proposal until an award is made (and for bidder receiving award prices shall remain as bid for the duration of the contract unless otherwise so stated in the contract) or the Request for Proposal is cancelled.

Contractor represents and warrants that all prices for services, now or subsequently specified are as low as and no higher than prices which the contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services.

Contractor also represents and warrants that all prices set forth in the contract and all prices in addition, which the contractor may charge under the terms of the contract, do not and will not violate any existing federal, state or municipal law or regulations concerning price discrimination and/or price fixing. Contractor agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by these specifications.

SS. BEST AND FINAL OFFER

_____ Accept & Initial

The State will compile the final scores for all parts of each proposal. The award may be granted to the highest scoring responsive and responsible bidder. Alternatively, the highest scoring bidder or bidders may be requested to submit best and final offers. If best and final offers are requested by the State and submitted by the bidder, they will be evaluated (using the stated criteria), scored and ranked by the Evaluation Committee. The award will then be granted to the highest scoring bidder. However, a bidder should provide its best offer in its original proposal. Bidders should not expect that the State will request a best and final offer.

TT. ETHICS IN PUBLIC CONTRACTING

_____ Accept & Initial

No bidder shall pay or offer to pay, either directly or indirectly, any fee, commission compensation, gift, gratuity, or anything of value to any State officer, legislator or employee based on the understanding that the receiving person's vote, actions or judgment will be influenced thereby. No bidder shall give any item of value to any employee of the State Purchasing Bureau.

Bidders shall be prohibited from utilizing the services of lobbyists, attorneys, political activists, or consultants to secure the contract. It is the intent of this provision to assure that the prohibition of state contact during the procurement process is not subverted through the use of lobbyists, attorneys, political activists, or consultants. It is the intent of the State that the process of evaluation of proposals and award of the contract be completed without external influence. It is not the intent of this section to prohibit bidders from seeking professional

advice, for example consulting legal counsel, regarding terms and conditions of this Request for Proposal or the format or content of their proposal.

If the bidder is found to be in non-compliance with this section of the Request for Proposal, they may forfeit the contract if awarded to them or be disqualified from the selection process.

UU. INDEMNIFICATION

_____
Accept
& Initial

1. GENERAL

The contractor agrees to defend, indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the contractor, its employees, subcontractors, consultants, representatives, and agents, except to the extent such contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

2. INTELLECTUAL PROPERTY

The contractor agrees it will at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the contractor or its employees, subcontractors, consultants, representatives, and agents; provided, however, the State gives the contractor prompt notice in writing of the claim. The contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the contractor has indemnified the State, the contractor shall at the contractor's sole cost and expense promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the contractor, and the State may receive the remedies provided under this RFP.

3. PERSONNEL

The contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the contractor.

VV. NEBRASKA TECHNOLOGY ACCESS STANDARDS

_____ Accept & Initial

Contractor shall review the Nebraska Technology Access Standards, found at http://www.nitc.nebraska.gov/standards/accessibility/accessibility_standards.pdf and ensure that products and/or services provided under the contract comply with the applicable standards. In the event such standards change during the contractor's performance, the State may create an amendment to the contract to request that contract comply with the changed standard at a cost mutually acceptable to the parties.

WW. ANTITRUST

_____ Accept & Initial

The contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

XX. DISASTER RECOVERY/BACK UP PLAN

_____ Accept & Initial

The contractor shall have a disaster recovery and back-up plan, of which a copy should be provided to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue services as specified under these specifications in the event of a disaster.

YY. TIME IS OF THE ESSENCE

_____ Accept & Initial

Time is of the essence in this contract. The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations on the part of the contractor remaining to be performed.

ZZ. RECYCLING

_____ Accept & Initial

Preference will be given to items which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use as per state statute (Neb. Rev. Stat. §81-15, 159).

AAA. DRUG POLICY

_____ Accept & Initial

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

BBB. NEW EMPLOYEE WORK ELIGIBILITY STATUS

_____ Accept & Initial

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

CCC. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY

_____
Accept
& Initial

The contractor, by signature to this RFP, certifies that the contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The contractor also agrees to include the above requirements in any and all subcontracts into which it enters. The contractor shall immediately notify the Department if, during the term of this contract, contractor becomes debarred. The Department may immediately terminate this contract by providing contractor written notice if contractor becomes debarred during the term of this contract.

IV. PROJECT DESCRIPTION AND SCOPE OF WORK

The bidder must provide the following information in response to this Request for Proposal.

A. PROJECT OVERVIEW

The Nebraska Medicaid program served about 237,500 eligibles in State fiscal year (SFY) 2012, ending June 30, 2012. During State fiscal year 2012, 3 million prescriptions were covered in a fee-for-service benefit at a cost of $164 million. The annual growth rate of prescribed drug expenditures was about 7% during SFY 2012.

As a result of a recommendation from the Medicaid Reform Act in 2005 and legislation passed in 2008, a Preferred Drug List was created for Nebraska Medicaid. Nebraska Revised Statute 68-950 to 68-956 (http://uniweb.legislature.ne.gov) is known as the Prescription Drug Act. The purpose of the Act is to provide appropriate pharmaceutical care to recipients in a cost-effective manner by establishing a Preferred Drug List (PDL). All therapeutic classes may be considered for inclusion on the PDL except those specifically excluded under Nebraska Statute.

The Nebraska Medicaid Preferred Drug List for Nebraska Medicaid and Long-Term Care was implemented in 2009.

B. BACKGROUND

Nebraska Medicaid and Long-Term Care entered into a contract with Magellan Medicaid Administration (MMA) February 26, 2009, to provide PDL services. As of the release date of this RFP, MMA is the vendor. The contract expires February 25, 2014. Nebraska Medicaid and Long-Term Care currently participates in TOP$ (The Optimal PDL $olution), the multi-state Medicaid pharmaceutical purchasing pool.

Claims for drugs dispensed are adjudicated through a real-time Point of Sale System. As of the release date of this RFP, Magellan Medicaid Administration of Richmond, Virginia, is the vendor contracted by the Department. The contractor began adjudicating claims on June 11, 2008 and the current contract expires December 31, 2016. Magellan Medicaid Administration currently uses the First Data Bank drug file.

The Medicaid Pharmaceutical and Therapeutics Committee currently meets twice annually, reviewing half of the drug list at each meeting, based on the review schedule of the multi-state purchasing pool.

C. SCOPE OF WORK

The Department is seeking a Contractor as allowed under Nebraska Revised Statute 68-956. The Contractor will be responsible for providing services to support the Medicaid Pharmacy Program, including, but not limited to: a) facilitate Nebraska Medicaid's participation in a multi-state purchasing pool; b) assist with State Plan Amendment preparation, submission, and approval; c) support the Pharmaceutical and Therapeutics Committee; d) provide clinical reviews of drugs or classes of drugs/therapeutic guidelines; e) recommend preferred drugs based on clinical efficacy and cost efficiencies; f) administer a Preferred Drug List; g) negotiate with drug manufacturers for supplemental rebates; h) administer supplemental rebates; i) provide prior authorization services; and j) provide reports as required by the Department. Contractor will be required to have the PDL operational on January 1, 2014.

D. PROJECT REQUIREMENTS

In response to this RFP the Bidder must describe the processes and procedures that will be used to meet each requirement and deliverable.

The project requirements consist of the following:

1. Multi-State Purchasing Pool Participation

Contractor will assist the Department in joining and participating in a Medicaid-only multi-state purchasing pool.

	Contractor Requirements
1.a.	Bidder will describe in detail the Medicaid-only multi-state purchasing pool that Nebraska Medicaid will join. Contractor will complete all necessary requirements for Nebraska Medicaid to join and participate in the Medicaid-only multi-state purchasing pool.
	Bidder Response:

2. State Plan Amendment

The Contractor will assist the Department with the State Plan Amendment preparation, submission to CMS, and approval process.

	Contractor Requirements
2.a.	Contractor will assist the Department in drafting any necessary State Plan Amendments and provide the resources necessary to gain CMS approval at the appropriate time.
	Bidder Response:

3. Pharmacy and Therapeutics Committee

The Contractor will provide support for the Medicaid Pharmaceutical and Therapeutics (P & T) Committee, providing therapeutic class reviews and cost analysis of all medications to be considered by the Committee. This allows the P & T Committee to make informed recommendations from both a clinical and cost perspective. The Department makes the final decision.

	Contractor Requirements
3.a.	Contractor will produce and provide to the Department and the P & T Committee therapeutic class reviews of each therapeutic class or specific drugs under review by the P & T Committee no later than twenty-eight (28) days prior to each P & T Committee meeting. These reviews will include evidence-based monographs which summarize the relative safety, comparative efficacy, side effects, dosing, prescribing trends, and indications of each drug within the therapeutic class.
	Bidder Response:
3.b.	Contractor will produce and provide cost analysis of the therapeutic class to the Department and the P & T Committee no later than twenty-eight (28) days prior to each P & T Committee meeting. This analysis will include supplemental rebate negotiation and savings analyses based on monthly utilization data from the Department's POS vendor for each therapeutic class (or specific drugs out of cycle) under review by the P & T Committee. Savings estimations will be

	coded to protect the confidentiality of rebate information.
	Bidder Response:
3.c.	Contractor will provide therapeutic class reviews and savings information to the P & T Committee for each therapeutic class at least annually and recommend preferred drugs based on clinical efficacy and cost efficiencies.
	Bidder Response:
3.d.	Contractor will provide a clinical account manager, who is a pharmacist, to attend and present clinical and cost information at all P & T committee meetings. The clinical account manager will facilitate the meeting in the review of therapeutic classes, including new medications or indications as approved by the Food and Drug Administration (FDA), and provide recommendations to the P & T Committee and the Department for appropriate changes to the PDL. Describe the clinical account manager's role and function as it relates to this requirement.
	Bidder Response:
3.e.	Contractor will act as the recording secretary of all P & T Committee meetings and provide detailed and comprehensive minutes to the Department within ten (10) business days after the meeting in accordance with the Nebraska Open Meetings Act.
	Bidder Response:

4. Preferred Drug List (PDL)

Contractor will assist in the development and management of a Preferred Drug List. Contractor will maintain documentation needed for claims processing.

	Contractor Requirements
4.a.	Contractor's clinical department will develop a PDL that is clinically sound, cost-effective, and minimally disruptive to Nebraska's Medicaid recipients and providers.
	Bidder Response:
4.b.	Contractor will manage the Department's PDL needs, including provision and maintenance of a website containing status of all drugs on the PDL.
	Bidder Response:
4.c.	Contractor will possess and maintain technology that interfaces with the Department's Point Of Sale vendor. Bidder will indicate which drug reference database is proposed.
	Bidder Response:
4.d.	Upon reasonable notice, Contractor will be available for appearances before the Nebraska Unicameral or other interested parties as requested by the Department. Such appearances are not anticipated to occur more than once per quarter.
	Bidder Response:

4.e.	Contractor will provide an electronic file containing updates for the PDL to the Department's POS vendor within fourteen (14) days after Department's final approval of P & T Committee PDL recommendations.
	Bidder Response:
4.f.	Contractor will provide to the Department not less frequently than weekly new products available on the market, new FDA approved indications for existing products, and new generic introductions.
	Bidder Response:
4.g.	Clinical account manager will interact with the Department to advise of ongoing marketplace conditions that impact the operational function of the PDL. Describe the clinical account manager's role and function as it relates to this requirement
	Bidder Response:
4.h	Contractor will provide interim updates to the PDL between P & T Committee meetings, and will provide an electronic file containing interim updates to the PDL to the Department's POS vendor on a schedule agreed to by the Department and the Contractor, but not less frequently than weekly.
	Bidder Response:

5. Supplemental Rebates:

Contractor will negotiate and assist the Department in contracting for supplemental rebates.

	Contractor Requirements
5.a.	Contractor will negotiate new or renegotiate renewed supplemental rebate contracts with pharmaceutical manufacturers prior to each P & T Committee meeting and in response to changes in market conditions (e.g. when the Federal Food and Drug Administration (FDA) approves a new agent within a class). All contract discussions and inquiries from manufacturers will be handled by the Contractor.
	Bidder Response:
5.b.	Contractor will disclose to the Department all supplemental rebate contracts with the pharmaceutical manufacturers upon request by the Department. Contractor will provide assurances that the supplemental rebate agreements are kept confidential.
	Bidder Response:

6. Supplemental Rebate Administration

Contractor will be responsible for supplemental rebate administration. Contractor will receive quarterly utilization data by NDC from the Department.

	Contractor Requirements
6.a.	Contractor will create supplemental rebate invoices to manufacturers quarterly from NDC utilization data provided by the Department no later than seventy-five (75) days from the end of the quarter.
	Bidder Response:
6.b.	Contractor will accept documentation of receipt of supplemental rebates after the Department receives the rebate funds from the manufacturer. Documentation will include, but not be limited to, copies of the check, envelope, and other detail. Contractor will assure that all supplemental rebate payments are made to the Department.
	Bidder Response:
6.c.	Contractor will perform all dispute resolution activities pertaining to supplemental rebate calculations and collections. Bidder must describe the policies and procedures it will follow for supplemental dispute resolution, including specific timelines for resolution. Contractor will refer all unresolved rebate disputes along with all records of activity relative to the dispute to the Department and will assist the Department in completing the resolution, including participating in the Department's fair hearing process for rebate dispute resolution (see 471 NAC 1.002.02M which can be found at http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Health_and_Human_Services_System/Title-471/Chapter-01.pdf). Contractor will report the dollar amount of supplemental rebates in dispute for current and all past quarters by manufacturer and in total.
	Bidder Response:
6.d.	Contractor will report the expected value of supplemental rebates at supplemental invoice generation. Contractor will provide Supplemental Rebates report quarterly, including quarterly supplemental rebate invoices, and supplemental rebates collected no later than 90 days after the end of the quarter. When there have been adjustments in previous quarters, Contractor will report the previous quarters' gross amounts, with adjustments detailed by drug class.
	Bidder Response:
6.e.	Contractor will report the amount of dollars invoiced, received, and adjusted each quarter within fifteen (15) days after the end of the quarter (for the CMS 649r Report).
	Bidder Response:

7. Prior Authorization

The Contractor will be responsible for prior authorization of non-preferred drugs and use of preferred drugs outside of established guidelines. In the last six months of 2012, there was an average of 900 prior authorization requests per month. There were approximately 25 reconsiderations requested per month.

	Contractor Requirements
7.a.	The Contractor will accept requests for prior authorization by telephone, facsimile, and through a web-based application. The Contractor will provide toll-free (in-state and out-of-state) telephone and facsimile numbers for prior authorization requests.
	Bidder Response:
7.b.	The Contractor will handle all requests for prior authorization of non-preferred drugs and use of preferred drugs outside of established guidelines including the determination of coverage or denial of coverage. The Contractor will be responsible for the entire prior authorization transaction, including initial determinations, providing Nebraska-licensed physician support for handling requests for reconsideration and for peer-to-peer review consultations when requested, and issuing notices in accordance with Nebraska Medicaid procedures. Contractor will provide documentation and testimony in respect to their decisions on prior authorizations to support the Department's handling of a formal appeal filing, A description of the state's appeal process can be found at 465-NAC-2001.02 Right to Appeal. The Contractor will respond to any request for prior authorization within one (1) business day of receipt of the request.
	Bidder Response:
7.c.	The Contractor will develop proposed criteria for prior authorization of non-preferred drugs and use of preferred drugs outside of established guidelines. The Contractor will coordinate the development of the prior authorization criteria with the DUR Board. The Department will determine the final criteria for prior authorization of non-preferred drugs and use of preferred drugs outside of established guidelines. The criteria will be reviewed and updated annually and when a new drug entity becomes available within a class of drugs subject to the Preferred Drug List.
	Bidder Response:
7.d.	The Contractor will design and implement a contact management and reporting system with capabilities to include an electronic recording of all calls and to provide a complete record of communication and documents from providers and other interested parties. The Contractor will provide complete online access by Nebraska Medicaid to all computer files and databases that support the system of applicable pharmacy programs.
	Bidder Response:
7.e.	The Contractor will notify prescriber and pharmacy (when known) of any decision regarding non-preferred drugs and use of preferred drugs outside of established guidelines. Recording of the decision must be retrievable and compliant with confidentiality procedures/policies, including Health Insurance Portability and Accountability Act (HIPAA) requirements.

	Bidder Response:
7.f.	The Contractor will be responsible for arranging the immediate transmission of data concerning the prior authorization review and decision on a client basis to the current POS vendor.
	Bidder Response:
7.g.	Contractor will provide a monthly report of all requests of non-preferred drugs and use of preferred drugs outside of established guidelines and reconsiderations of denials of coverage of non-preferred drugs and use of preferred drugs outside of established guidelines within fourteen (14) days after the end of each month.
	Bidder Response:
7.h.	Contractor will provide Prior Authorization report quarterly, including numbers of approvals, denials, reconsiderations, and peer to peer reviews.
	Bidder Response:

8. Report Requirements

Contractor will provide additional reports to the Department.

	Contractor Requirements
8.a.	Contractor will provide PDL Savings report quarterly, including supplemental rebates and market shift savings per drug class no later than ninety (90) days after the end of each quarter.
	Bidder Response:
8.b.	Contractor will provide a quarterly report of brand vs. generic dispensing rates.
	Bidder Response:
8.c.	Contractor will provide a quarterly report of year to year changes of supplemental rebates and savings from market shifts.
	Bidder Response:
8.d.	Contractor will provide quarterly reports that detail the compliance of Medicaid providers to the PDL no later than ninety (90) days after the end of each quarter.
	Bidder Response:
8.e.	Contractor will provide report of Top 25 drugs by total claims, pharmacy reimbursement, and net-net expenditures no later than ninety (90) days after the end of each quarter.
	Bidder Response:
8.f.	Contractor will provide Ad Hoc reports as required.
	Bidder Response:

9. Diabetic Supplies Program

	Contractor Requirements
1.	Bidder will describe their Diabetic Supplies and Rebate Program for diabetic supplies sold in pharmacies and provide a cost per member fee.
	Bidder Response:

E. TECHNICAL REQUIREMENTS

	Contractor Requirements
1.	Bidder must be able to take the interface file described in Attachment A and process it for supplemental rebate invoicing .See Attachment A for background, format, and additional information about CMS-R-144 (Quarterly Report Data).
	Bidder Response:

F. PROJECT PLANNING AND MANAGEMENT

	Contractor Requirements
1.	Bidder must describe their methodology for managing this project, including change management, communications, risk management, quality control, cost control, and human resource management.
	Bidder Response:

G. PERFORM IMPLEMENTATION

	Contractor Requirements
1.	The Bidder must present an implementation plan and describe the proposed process for implementation of this project on January 1, 2014. The description must fully describe each major task, the timing of beginning and completion, and who will be responsible for that task, by name or position title. The implementation plan must be submitted as part of the Bidder's response to this RFP.
	Bidder Response:

H. ADDITIONAL OPTIONAL SERVICES

	Contractor Requirements
1.	The Bidder may describe any optional services available to the Department, and provide a per hour cost for additional optional services. Describe any additional purchasing coalition opportunities which might be available to the Department.
	Bidder Response:

I. EXIT STRATEGY

	Contractor Requirements
1.	Contractor will create and reconcile invoices for outstanding supplemental rebates for an additional 180 days if the Department transitions to a new PDL contractor.
	Bidder Response:

V. PROPOSAL INSTRUCTIONS

This section documents the mandatory requirements that must be met by bidders in preparing the Technical and Cost Proposal. Bidders should identify the subdivisions of "Project Description and Scope of Work" clearly in their proposals; failure to do so may result in disqualification. Failure to respond to a specific requirement may be the basis for elimination from consideration during the State's comparative evaluation.

Proposals are due by the date and time shown in the Schedule of Events. Content requirements for the Technical and Cost Proposal are presented separately in the following subdivisions:

A. TECHNICAL PROPOSAL

The Technical Proposal shall consist of four (4) sections:

1. SIGNED "State of Nebraska Request For Proposal For Contractual Services" form;
2. Executive Summary;
3. Corporate Overview; and
4. Technical Approach.

1. REQUEST FOR PROPOSAL FORM

By signing the "Request For Proposal For Contractual Services" form, the bidder guarantees compliance with the provisions stated in this Request for Proposal, agrees to the Terms and Conditions stated in this Request for Proposal and certifies bidder maintains a drug free work place environment.

The Request For Proposal For Contractual Services form must be signed in ink and returned by the stated date and time in order to be considered for an award.

2. EXECUTIVE SUMMARY

The Executive Summary shall condense and highlight the contents of the solution being proposed by the bidder in such a way as to provide the Evaluation Committee with a broad understanding of the Contractor's Technical Proposal.

Bidders must present their understanding of the problems being addressed by implementing a new system, the objectives and intended results of the project, and the scope of work. Bidders shall summarize how their Technical Proposal meets the requirements of the Request for Proposal, and why they are best qualified to perform the work required herein.

3. CORPORATE OVERVIEW

The Corporate Overview section of the Technical Proposal must consist of the following subdivisions:

a. BIDDER IDENTIFICATION AND INFORMATION

The bidder must provide the full company or corporate name, address of the company's headquarters, entity organization (corporation, partnership, proprietorship), state in which the bidder is incorporated or otherwise organized to do business, year in which the bidder first organized to do business, whether the name and form of organization has changed since first organized, and Federal Employer Identification Number and/or Social Security Number.

b. FINANCIAL STATEMENTS

The bidder must provide financial statements applicable to the firm. If publicly held, the bidder must provide a copy of the corporation's most recent audited financial reports and statements, and the name, address and telephone number of the fiscally responsible representative of the bidder's financial or banking organization.

If the bidder is not a publicly held corporation, either the reports and statements required of a publicly held corporation, or a description of the organization, including size, longevity, client base, areas of specialization and expertise, and any other pertinent information must be submitted in such a manner that proposal evaluators may reasonably formulate a determination about the stability and financial strength of the organization. Additionally, a non-publicly held firm must provide a banking reference.

The bidder must disclose any and all judgments, pending or expected litigation, or other real or potential financial reversals, which might materially affect the viability or stability of the organization, or state that no such condition is known to exist.

c. CHANGE OF OWNERSHIP

If any change in ownership or control of the company is anticipated during the twelve (12) months following the proposal due date, the bidder must describe the circumstances of such change and indicate when the change will likely occur. Any change of ownership to an awarded vendor(s) will require notification to the State.

d. OFFICE LOCATION

The bidder's office location responsible for performance pursuant to an award of a contract with the State of Nebraska must be identified.

e. RELATIONSHIPS WITH THE STATE

The bidder shall describe any dealings with the State over the previous three (3) years. If the organization, its predecessor, or any party named in the bidder's proposal response has contracted with the State, the bidder shall identify the contract number(s) and/or any other information available to identify such contract(s). If no such contracts exist, so declare.

f. BIDDER'S EMPLOYEE RELATIONS TO STATE

If any party named in the bidder's proposal response is or was an employee of the State within the past eighteen (18) months, identify the individual(s) by name, State agency with whom employed, job title or position held with the State, and separation date. If no such relationship exists or has existed, so declare.

If any employee of any agency of the State of Nebraska is employed by the bidder or is a subcontractor to the bidder, as of the due date for proposal submission, identify all such persons by name, position held with the bidder, and position held with the State (including job title and agency). Describe the responsibilities of such persons within the proposing organization. If, after review of this information by the State, it is determined that a conflict of interest

exists or may exist, the bidder may be disqualified from further consideration in this proposal. If no such relationship exists, so declare.

g. CONTRACT PERFORMANCE

If the bidder or any proposed subcontractor has had a contract terminated for default during the past three (3) years, all such instances must be described as required below. Termination for default is defined as a notice to stop performance delivery due to the bidder's non-performance or poor performance, and the issue was either not litigated due to inaction on the part of the bidder or litigated and such litigation determined the bidder to be in default.

It is mandatory that the bidder submit full details of all termination for default experienced during the past three (3) years, including the other party's name, address and telephone number. The response to this section must present the bidder's position on the matter. The State will evaluate the facts and will score the bidder's proposal accordingly. If no such termination for default has been experienced by the bidder in the past three (3) years, so declare.

If at any time during the past three (3) years, the bidder has had a contract terminated for convenience, non-performance, non-allocation of funds, or any other reason, describe fully all circumstances surrounding such termination, including the name and address of the other contracting party.

h. SUMMARY OF BIDDER'S CORPORATE EXPERIENCE

The bidder shall provide a summary matrix listing the bidder's previous projects similar to this Request for Proposal in size, scope and complexity. The State will use no more than three (3) narrative project descriptions submitted by the bidder during its evaluation of the proposal.

The bidder must address the following:

i. Bidder must provide narrative descriptions to highlight the similarities between their experience and this Request for Proposal. These descriptions must include:

- **a)** the time period of the project;
- **b)** the scheduled and actual completion dates;
- **c)** the contractor's responsibilities;
- **d)** for reference purposes, a customer name (including the name of a contact person, a current telephone number, a facsimile number and e-mail address); and
- **e)** each project description shall identify whether the work was performed as the prime contractor or as a subcontractor. If a bidder performed as the prime contractor, the description must provide the originally scheduled completion date and budget, as well as the actual (or currently planned) completion date and actual (or currently planned) budget.

ii. Contractor and subcontractor(s) experience must be listed separately. Narrative descriptions submitted for subcontractors must be specifically identified as subcontractor projects.

iii. If the work was performed as a subcontractor, the narrative description shall identify the same information as requested for the contractors above. In addition, subcontractors shall identify what share of contract costs, project responsibilities, and time period were performed as a subcontractor.

i. SUMMARY OF BIDDER'S PROPOSED PERSONNEL/MANAGEMENT APPROACH

The bidder must present a detailed description of its proposed approach to the management of the project.

The bidder must identify the specific professionals who will work on the State's project if their company is awarded the contract resulting from this Request for Proposal.

Resumes are required for;

i. clinical account manager,
ii. account manager,
iii. rebate manager, and
iv. implementation manager (if applicable)

The names and titles of the team proposed for assignment to the State project shall be identified in full, with a description of the team leadership, interface and support functions, and reporting relationships. The primary work assigned to each person should also be identified.

The bidder shall provide resumes for all personnel proposed by the bidder to work on the project. The State will consider the resumes as a key indicator of the bidder's understanding of the skill mixes required to carry out the requirements of the Request for Proposal in addition to assessing the experience of specific individuals.

Resumes must not be longer than three (3) pages. Resumes shall include, at a minimum, academic background and degrees, professional certifications, understanding of the process, and at least three (3) references (name, address, and telephone number) who can attest to the competence and skill level of the individual. Any changes in proposed personnel shall only be implemented after written approval from the State.

j. SUBCONTRACTORS

If the bidder intends to subcontract any part of its performance hereunder, the bidder must provide:

i. name, address and telephone number of the subcontractor(s);
ii. specific tasks for each subcontractor(s);
iii. percentage of performance hours intended for each subcontract; and
iv. total percentage of subcontractor(s) performance hours.

4. TECHNICAL APPROACH

The technical approach section of the Technical Proposal must consist of the following subsections:

a. Bidder must provide a description under every requirement in tables IV. D. 1, through IV. D. 8. to describe their proposed solution for the project requirements;

b. Bidder must acknowledge their ability to take the interface file described in Attachment A (IV. E.) and process it for supplemental rebate invoicing;

c. Bidder must describe their methodology for managing this project as described in section IV. F.;

d. Bidder must present an implementation plan and describe the proposed process for implementation of this project as described in section IV. G.;

e. Bidder may describe any optional services available to the Department, as described in IV. H., and provide a per hour cost for additional optional services; and

f. Bidder must acknowledge their acceptance of exit strategy as described in IV. I.

B. COST PROPOSAL REQUIREMENTS

This section describes the requirements to be addressed by bidders in preparing the Cost Proposal. The bidder must submit the Cost Proposal in a section of the proposal that is a separate section or is packaged separately as specified in this RFP from the Technical Proposal section.

The component costs of the fixed price proposal for providing the services set forth in the Request for Proposal must be provided by submitting forms substantially equivalent to those described below.

1. PRICING SUMMARY

This summary shall present the total fixed price to perform all of the requirements of the Request for Proposal. The bidder must include details in the Cost Proposal supporting any and all costs. These details must include, at a minimum, detailed descriptions and/or specifications of the goods and/or services to be provided, quantities, and timing and unit costs, if applicable.

The State reserves the right to review all aspects of the Cost Proposal for reasonableness and to request clarification of any proposal where the cost component shows significant and unsupported deviation from industry standards or in areas where detailed pricing is required.

The cost proposal will include the monthly charge for operation of the PDL/Pool, including the professional component of determining approval or denial of requests for prior authorization on non-preferred drugs and use of preferred drugs outside of established guidelines.

Pricing for subsequent renewal periods may not exceed a 5% increase per two (2) year period.

	First partial year	Remaining Contract period	First renewal	Second renewal
	8/1/13-12/31/13	1/1/14-12/31/16	1/1/17 – 12/31/19	1/1/20 – 12/31/22
Monthly fee for PDL/Pool, prior authorizations				
Annual fee for PDL/Pool, prior authorizations (Monthly x # months in partial or full year)				
Diabetic Supplies Program				
Total				
Optional Exit Strategy (6 months cost)	x	x		x

C. PAYMENT SCHEDULE

The payment schedule for the project is tied to specific dates and deliverables. Invoices may be submitted by the contractor on specific dates based on the completion and acceptance of related deliverables. No invoice will be approved unless the associated deliverables have been approved. A percentage of the total contract cost may then be invoiced based on the following schedule.

Invoice Date	Deliverable
Monthly during operations phase	All tasks required for operation

Form A

Bidder Contact Sheet

Request for Proposal Number 4327Z1

Form A should be completed and submitted with each response to this Request for Proposal. This is intended to provide the State with information on the bidder's name and address, and the specific person(s) who are responsible for preparation of the bidder's response.

Preparation of Response Contact Information	
Bidder Name:	
Bidder Address:	
Contact Person & Title:	
E-mail Address:	
Telephone Number (Office):	
Telephone Number (Cellular):	
Fax Number:	

Each bidder shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the bidder's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

Communication with the State Contact Information	
Bidder Name:	
Bidder Address:	
Contact Person & Title:	
E-mail Address:	
Telephone Number (Office):	
Telephone Number (Cellular):	
Fax Number:	

Attachment A

Supporting Statement

Medicaid Drug Rebate Program Forms
CMS-R-144 (Quarterly Report Data) and CMS-368 (Administrative Data)
OMB 0938-0582

A. BACKGROUND

CMS is requesting a three year approval of the State reporting requirements (forms CMS-R-144 and CMS-368) under the drug rebate program. These State reporting requirements are currently approved under OMB no. 0938-0582 through April 30, 2012. The form CMS-R-144 is required from States quarterly to report utilization for any drugs paid for during that quarter. The form CMS-368 is required only in those instances where a change to the original data submittal is necessary. This form is a report of contact for the State to name the individuals involved in the drug rebate program. The ability to require the reporting of any changes to these data is necessary to the efficient operation of the rebate program. There have been no revisions to the form CMS-368; however, we are requesting approval of a revision to form CMS-R-144 to reflect changes implemented by the Patient Protection and Affordable Care Act.

Section 1927 of the Social Security Act (the Act) requires drug manufacturers to enter into and have in effect a national rebate agreement with the Federal Government for States to receive funding for prescription drugs dispensed to Medicaid recipients. For purposes of this legislation, a drug manufacturer is defined as an entity holding legal title to the National Drug Code (NDC) number for a prescription drug, nonprescription drug or biological product.

To receive a rebate on the drugs dispensed to Medicaid recipients, States are required to submit quarterly utilization data reports to drug manufacturers that have national rebate agreements with the Federal Government. In addition, a copy of these reports must also be submitted to the Centers for Medicare & Medicaid Services (CMS). In turn, States are required to refund the Federal share of all Medicaid drug rebates they collect by reporting such rebates on a quarterly Medicaid expenditure report for the quarter in which the rebate was received.

Section 2501(c) of the Affordable Care Act amended section 1902 of the Act by specifying that covered outpatient drugs dispensed to Medicaid individuals enrolled with a Medicaid managed care organization (MCO) are subject to the same rebate agreement as other drugs authorized under section 1927 of the Act. It also amended section 1927(b) of the Act by requiring States to include information on drugs paid for by Medicaid MCOs under the State plan during the rebate period when requesting rebates from manufacturers and when reporting a copy of such information to CMS. Therefore, in accordance with these new requirements, form CMS-R-144 has been revised to include a new column titled, “Record ID”. This column will allow States to separately identify each drug utilization data record as either Fee-For-Service utilization or MCO utilization when the utilization data is being submitted as part of a a State’s quarterly rebate invoice to drug manufacturers, or as part of a State’s quarterly drug utilization data submission to CMS. To reduce the number of pages necessary for data submittal, CMS does not display the disclosure statement on the form itself. Individual form instructions to the States (attached) contain the required disclosure statement under its own heading.

Listed below is a line-by-line description of the quarterly data (form CMS-R-144) required (electronic record layout and hard copy format attached).

Record ID: Constant "FFSU" or "MCOU". The FFSU Record ID indicates that the information for this NDC represents a Fee-for-Service Utilization record. The MCOU Record ID indicates that the information for this NDC represents a Managed Care Organization Utilization record. Valid Values: 4Q2009 and earlier = Constant record ID of FFSU. 1Q2010 and beyond = FFSU & MCOU.

> **NOTE:** Per the Affordable Care Act, MCO utilization data cannot be reported for periods prior to first quarter 2010.
>
> **NOTE:** Beginning with first quarter 2010, CMS will accept one utilization record per NDC per quarter/year combination per record ID type (FFSU vs. MCOU).

State Code: Two-character post office abbreviation for the state. Alphabetic, 2 digits.

Labeler Code: First segment of National Drug Code (NDC) that identifies the manufacturer, labeler, re-labeler, packager, re-packager or distributor of the drug. Numeric values only, 5-digit field, right justified and zero-filled for 4-digit labeler codes.

Product Code: Second segment of NDC. Alphanumeric values, 4-digit field, right justified, zero-filled for 3-digit product codes.

Package Size Code: Third segment of NDC. Alphanumeric values, 2-digit field, right justified, zero-filled for 1-digit package size codes.

Period Covered: The calendar quarter and year in which the 11-digit NDC was paid for by the State. Numeric, 5-digit field, QYYYY

Valid values for Q:
1 = January 1 – March 31
2 = April 1 – June 30
3 = July 1 – September 30
4 = October 1 – December 31

Valid values for YYYY: 4-digit calendar year covered.

Product FDA Reg. Name: (Abbreviated) – First 10 characters of product name as approved by and/or listed with the FDA. Alphanumeric values, 10 digits.

Unit Rebate Amount: The CMS calculated amount (per reported unit type) to be multiplied by Units Reimbursed by the state during the period covered. Numeric values, 12 digits: 5 whole numbers, 6 decimal places, and a decimal point.

Units Reimbursed: The number of FFS or MCO units (based on Unit Type and Record ID) of the drug (11-digit NDC level) reimbursed by the state during the period covered. Numeric values, 15 digits: 11 whole numbers, 3 decimal places and a decimal point.

Rebate Amount Claimed: The rebate amount that the State Agency claims it is owed by the labeler for the period covered for this (11-digit NDC) FFS or MCO drug. It is calculated by multiplying the FFS or MCO units reimbursed by the rebate amount per unit. Numeric values, 12 digits: 9 whole numbers, 2 decimal places and a decimal point.

Number of Prescriptions: The number of FFS or MCO prescriptions reimbursed (by the Medicaid Program ONLY) to pharmacies for the (11-digit NDC) drug during the period covered. Numeric values, 8 digits, whole numbers only.

M'caid Amount Reimb: Medicaid Amount Reimbursed – The total amount reimbursed (by the Medicaid Program ONLY) FFS or MCO to pharmacies for the (11-digit NDC) drug in the period covered. Numeric values, 13 digits: 10 whole numbers, 2 decimal places and a decimal point.

Non-M'caid Amount Reimb: Non-Medicaid Amount Reimbursed – The amount reimbursed (by non-Medicaid entities) to pharmacies for the (11-digit NDC) FFS or MCO drug in the period covered. The Non-Medicaid Amount Reimbursed includes any reimbursement amount for which the state is not eligible for Federal Matching Funds. Numeric values, 13 digits: 10 whole numbers, 2 decimal places and a decimal point.

Total Amount Reimbursed: The FFS or MCO total amount reimbursed by both Medicaid and non-Medicaid entities to pharmacies for the (11-digit NDC) drug in the period covered (previous two fields added together). This total is not reduced or affected by Medicaid rebates paid to the state. This amount represents both the Federal and State Reimbursement and is inclusive of dispensing fees. Numeric values, 14 digits: 11 whole numbers, 2 decimal places and a decimal point.

Filler: 1 position filler. This field previously contained the Correction Flag Indictor which specified whether the record was the first submission (0=original record) or whether it is a correction (1 = correction) to an existing record. The CMS Medicaid Drug Rebate (MDR) system makes the determination: if the record does not exist within the MDR system, it processes as an original; if the record does exist within the MDR system, it processes as a correction.

B. JUSTIFICATION

1. NEED AND LEGAL BASIS

The authority for requiring States to submit the quarterly data report is found in Section 1927 of the Act. Specifically, Section 1927(a)(1) describes the requirements for rebate agreements and section 1927(b)(2) describes the state's responsibilities with respect to the drug rebate program. Copies of these portions of the statute are attached, along with copies of the relevant statutory changes included in the Affordable Care Act.

2. INFORMATION USERS

CMS develops the rebate amount per drug unit from information supplied by the drug manufacturers and distributes these data to the States. States then must report quarterly to the drug manufacturers and to CMS the total number of units of each dosage form/strength of their covered outpatient drugs reimbursed during a quarter and the rebate amount to be refunded. This report is due within 60 days of the end of each calendar quarter. The information in the report is based on claims paid by the State Medicaid agency during a calendar quarter.

3. USE OF INFORMATION TECHNOLOGY

The States are required to submit their quarterly reports to CMS via magnetic media or Electronic File Transfer (EFT). However, States will determine the vehicle by which they submit the same reports to the drug manufacturers, i.e., electronic media or hard copy. CMS developed a hard copy layout of the required reporting data which contains the same data as that developed for electronic record layout. This layout was agreed upon by the States and CMS for those instances where electronic media is not used for quarterly reporting to drug manufacturers.

4. DUPLICATION OF EFFORTS

This information collection does not duplicate any other effort and the information cannot be obtained from any other source.

5. SMALL BUSINESSES

This collection of information does not involve small businesses or other small entities.

6. LESS FREQUENT COLLECTION

Section 1927 of the Act requires the quarterly reporting by States of the drug identification and rebate data.

7. SPECIAL CIRCUMSTANCES

No special circumstances exist which require completion of this section of the supporting statement.

8. FEDERAL REGISTER/OUTSIDE CONSULTATION

The 60-day Federal Register notice published on April 15, 2011 (76 FR 21370). No comments were received.

9. PAYMENTS/GIFTS TO RESPONDENTS

There is no provision for any payment or gift to respondents associated with this reporting requirement.

10. CONFIDENTIALITY

Confidentiality has been assured in accordance with Section 1927(b)(3)(D) of the Act.

11. SENSITIVE QUESTIONS

There are no questions of a sensitive nature.

12. BURDEN ESTIMATES (HOURS & WAGES)

The majority of the State burden is associated with the quarterly drug utilization reports. All State agencies report drug utilization data to drug manufacturers and to CMS. These reports are submitted to CMS via magnetic media or via EFT. However, CMS has no control over the vehicle by which States report to the drug manufacturers. The States and the drug manufacturers agree on a method of data transmission. Some States opt for hard copy reports, while others use magnetic media or other forms of electronic transmission. States which opt to report via hard copy are required to use the format associated with the CMS-R-144. The estimated quarterly report burden hours below are a total average for both types of data transmission and take into account the revisions that have been made to the CMS-R-144.

In addition, the State burden includes the reporting of changes to previously submitted administrative data (contact persons). We anticipate that only 10 States will need to revise their current administrative data on an as needed basis.

The following is a calculation of the burden estimates:

Changes to Administrative Data Reports (Form CMS-368)
10 States x ½ hour each = 5 hours (annual)

Quarterly Utilization Reports (Form CMS-R-144)
56 States (including Washington, D.C and the U.S Territories) x 54 hours x 4 quarters = 12,096 hours (annual)

TOTAL ANNUAL HOURS: 12,101

Each State participating in the drug rebate program may use either manual or electronic systems to report their data to the manufacturers and many use a combination of both transmission methods. All States must report to CMS via electronic media. An annual estimate of operating and maintenance costs for manual and electronic data reporting is as follows:

Manual and Electronic Data Submission (An Average Based on Reported Estimates from Three Randomly Selected States)
$5,900 / 3 States = $1,967 per quarter
56 States x $1,967 x 4 quarters = $440,608 Annual Cost Burden

13. CAPITAL COSTS

There are no start-up costs associated with this information collection because the Medicaid Drug Rebate Program has been in existence since January 1, 1991. States have had their data systems in place for drug rebate data collection since that time.

14. COST TO FEDERAL GOVERNMENT

The estimate of annualized cost to the Federal Government is 87,500 which includes the cost to implement these changes in CMS's systems.

15. 15. CHANGES TO BURDEN

Section 1927 of the Social Security Act requires each State Medicaid agency to report quarterly prescription drug utilization information to drug manufacturers and to CMS via form CMS-R-144. As part of this information, the State Medicaid agencies are required to report the total Medicaid rebate amount they claim they are owed by each drug manufacturer for each covered prescription drug product each quarter. In accordance with new reporting requirements established by the Patient Protection and Affordable Care Act, form CMS-R-144 is being revised to include a new column that will enable States to distinguish between fee-for-service and managed care utilization.

16. PUBLICATION/TABULATION DATES

There are no plans to publish the information for statistical use.

17. EXPIRATION DATE

CMS is seeking approval to not display the expiration date for OMB approval ONLY on the form CMS-R-144 and only by those States submitting data manually. States that submit their data in electronic format are asked to display the expiration date on the form because it is easily revised when necessary. Because States are responsible for their own supply of these forms and generally have them reproduced in large volumes to guard against depletion, an expiration date is impractical. Because States are required by law to submit these forms within a specific timeframe, they must keep a large supply of the forms on hand at all times. Displaying the expiration date would require States to dispose of their stock of expired forms and reproduce forms with new expiration dates.

To assure that all parties are aware of OMB approval so that current form stock may be depleted, CMS notifies States that forms have been re-approved by OMB and are given the new expiration date.

18. CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

C. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

CMS does not intend to collect information employing statistical methods.