



GOBIERNO DE PUERTO RICO

ADMINISTRACIÓN DE SEGUROS DE SALUD

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7 de marzo de 2022

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Senado de Puerto Rico
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RE: Memorial en Oposición a Informe Parcial sobre la R. del S. 335

Estimados Señores:

El pasado 22 de febrero de 2022, la Administración de Seguros de Salud de Puerto Rico (“ASES”) recibió copia de una comunicación de la Secretaría del Senado de Puerto Rico (“Senado”), con fecha de 17 de febrero de 2022, mediante la cual se notificó copia del Informe Parcial emitido por la Comisión de Salud del Senado (“Informe Parcial” y “Comisión”, respectivamente) con relación a la R. del S. 335 (“RS 335”). La RS 335 se aprobó por el Senado con el propósito de “ordenar a la Comisión de Salud del Senado [...], realizar una investigación sobre el proceso de subasta, llevado a cabo por la [ASES] en relación a los manejadores de beneficios de farmacia o PBM, por sus siglas en inglés, que atienden la distribución de los medicamentos, el impacto que tendrá en el Plan de Salud Vital, el plan de trabajo e itinerario para el proceso de transición y el impacto que este tipo de transacción puede tener en la salud, bienestar y vida de los beneficiarios del Plan Vital.”

Según surge del Sistema Único de Trámite Legislativo de la Oficina de Servicios Legislativos (“SUTRA”), el 16 de septiembre de 2021 el Hon. José Luis Dalmau Santiago, Presidente del Senado, presentó la RS 335, la cual fue referida a la Comisión de Asuntos Internos del Senado el 20 de septiembre de 2021. El 24 de septiembre de 2021, la Comisión de Asuntos Internos rindió un informe positivo con relación a la medida y recomendó su aprobación. El 4 de octubre de 2021, el cuerpo aprobó la medida y ésta fue referida a la Comisión.

Según surge del Informe Parcial, la Comisión solicitó memoriales explicativos a la ASES, el Departamento de Salud (“DS”), la Administración de Servicios Generales (“ASG”) y la Alianza Pro-Acceso a Medicamentos (“Alianza”). Al momento de emitir el Informe Parcial, la Comisión solo contaba con un memorial emitido por la Alianza. Sin embargo, en el Informe Parcial se hace referencia a una comunicación de 3 de diciembre de 2021, emitida por la ASES al Gobernador y los presidentes de los cuerpos legislativos, con copia a los presidentes de las comisiones de salud de los cuerpos legislativos y otros funcionarios ejecutivos.¹ Mediante dicha comunicación se solicitó la consideración de un proyecto de ley para excluir expresamente a la ASES de todos los procesos de adquisición a través de la ASG. Nótese, que la carta de 3 de diciembre no es un

¹ Véase, **Anejo 01**, Carta de 3 de diciembre de 2021. Adoptamos por referencia todos los planteamientos presentados en dicha comunicación como si estuvieran transcritos en el presente memorial.



memorial con relación a la RS 335 por parte de la ASES, sino una comunicación sobre un asunto tangencial al que atiende la RS 335. El memorial de la ASES sobre el RS 335 fue sometido a la Comisión el 7 de febrero de 2022², ya que – en comunicación con el Director Ejecutivo de la Comisión – se prefirió esperar a concluir el proceso de RFP en la ASES para ofrecer una información más completa al cuerpo. El DS y la ASG no presentaron posición alguna al respecto.

Luego de resumir las posturas de la ASES – según surge de la carta de 3 de diciembre, no del memorial de 7 de febrero – y de la Alianza, el Informe Parcial hace varios señalamientos que resultan en extremo preocupantes y que abordaremos en más detalle en las siguientes secciones. Basados en dichos señalamientos, el Informe Parcial concluye que “[e]n vista de la importancia e impacto significativo que tiene este trámite y la controversia existente entre la [ASES] y la [ASG], la Comisión considera auscultar con mayor profundidad el asunto y llevar a cabo vistas públicas en los [sic] que se pueda recibir más información al respecto.”

La ASES somete el presente Memorial en Oposición a Informe Parcial con el propósito de aclarar ciertas premisas incorrectas, así como ciertos hechos falsos o sacados de contexto que le fueron presentados a la Comisión por la Alianza, en los que descansa el Informe Parcial. Además, la ASES pretende proveer información adicional a los miembros de la Comisión sobre los procesos que se llevaron, y que continúan llevándose, a cabo; ello, con el propósito de facilitar el descargo de sus funciones con relación a la tarea delegada por el Senado en la RS 335. La ASES está disponible para comparecer a la Comisión y aclarar cualquier duda adicional que pueda surgir con relación a este tema. Veamos.

I. Hechos relevantes

A. Hechos relacionados al proceso del RFP en la ASES

La ASES es una corporación pública creada al amparo de la Ley Núm. 72-1993, según enmendada, conocida como Ley de la Administración de Seguros de Salud (en adelante, “Ley 72”). El Art. II de la Ley 72 dispuso que la ASES será el ente que “gestionará, negociará y contratará con aseguradoras y proveedores de servicios de salud, para proveer a sus beneficiarios, particularmente los médico-indigentes, servicios médico-hospitalarios de calidad.” En el descargo de dicha función, se creó el Plan de Salud del Gobierno de Puerto Rico, conocido desde 2018 como Plan Vital, (en adelante, “PSG”), quien es responsable de brindar servicios de salud física y mental a 1.6 millones de puertorriqueños.³ Los servicios son ofrecidos mediante contratos con Organizaciones de Cuidado Coordinado (en adelante, “MCOs”, por sus siglas en inglés), quienes, a su vez, contratan redes de proveedores (médicos primarios, especialistas, laboratorios, etc.) a través en toda la isla.⁴

El Artículo VI, Sección 8, de la Ley 72 incluye el beneficio de farmacia como parte de la cubierta del PSG. Dicha sección dispone específicamente que “los medicamentos mediante prescripción

² Véase, **Anejo 02**, Memorial Explicativo sobre la RS 335. Adoptamos por referencia todos los planteamientos presentados en dicha comunicación como si estuvieran transcritos en el presente memorial.

³ Véase, <https://www.asespr.org/beneficiarios/beneficiarios-vital-2/informacion-general/>.

⁴ Véase, <https://www.asespr.org/proveedores-2/contratos/>.

médica, los cuales deberán ser despachados en una farmacia participante, libremente seleccionada por el asegurado, y autorizada bajo las leyes de Puerto Rico” son parte de la cubierta del PSG.

La responsabilidad de proveer y administrar la red de farmacias, el formulario de medicamentos, procesamiento de las reclamaciones del componente de farmacia, entre otros aspectos relacionados a este beneficio del PSG, es del Manejador de Beneficio de Farmacia (en adelante, “PBM” por sus siglas en inglés). Por los pasados veinte (20) años, el servicio de PBM ha estado contratado con la empresa MC-21, LLC. (en adelante, “MC-21”).

Otro servicio medular de la administración de este componente de la cubierta del PSG es la negociación de acuerdos de "rebates" o reembolsos de acuerdo con la utilización de medicamentos determinados. Al presente esta tarea ha sido delegada al Administrador del Programa de Farmacia (en adelante, “PPA” por sus siglas en inglés). Por su parte, el servicio de PPA ha estado contratado con la empresa Abarca Health, LLC. (en adelante, “Abarca”).

Así las cosas y debido al tiempo transcurrido desde la contratación inicial de estas empresas, en febrero de 2021, la Oficina de Contabilidad Gubernamental de los Estados Unidos (en adelante, “GAO” por sus siglas en inglés) emitió un informe en el cual concluyó que algunos de los procesos de adquisición en la ASES no promovían la competencia, por lo que se existía mayor riesgo de fraude, pérdida y abuso. En atención a ello, recomendó que los Centros de Servicios Medicare y Medicaid (“CMS”, por sus siglas en inglés) tomaran “medidas para implementar una supervisión continua basada en el riesgo de los procesos de adquisición de Medicaid en Puerto Rico; dichas acciones podrían incluir la realización de una evaluación de los procesos de adquisición competitivos y no competitivos para identificar los riesgos y abordarlos mediante la promoción de la competencia, según corresponda para la operación eficiente del programa Medicaid.” (traducción nuestra.)⁵

A partir del 1 de enero de 2023, las disposiciones de la Sec. 1927 de la Ley del Seguro Social sobre el reembolso por medicamentos cubiertos para pacientes ambulatorios de Medicaid, incluyendo el *Medicaid Drug Rebate Program* (“MDRP”, por sus siglas en inglés) aplicarán a los territorios de los Estados Unidos, quienes pueden optar por participar o pedir exclusión.⁶ El MDRP ayuda a compensar los costos, tanto federales como estatales, de la mayoría de los medicamentos recetados a pacientes ambulatorios de Medicaid.⁷ Como resultado de lo anterior y por el ahorro que dicho programa representa en los gastos por concepto de medicamentos recetados a los beneficiarios del PSG, Puerto Rico optó por participar en el MDRP.

Con el propósito de cumplir con los requisitos del GAO con relación a la competencia en los procesos de adquisición y de lograr la participación en el MDPR según requerido por el Gobierno Federal, el 31 de marzo de 2021 ASES inició el proceso de Solicitud de Propuestas # Pharmacy 2022 (“RFP”). El RFP procura la adquisición de los servicios de PBM, así como los servicios de negociador del programa de reembolsos y/o administrador del MDRP, que en adelante se conocerá

⁵ Véase, **Anejo 03**, Informe del GAO, pág. 13.

⁶ Véase, <https://www.federalregister.gov/documents/2021/11/19/2021-25009/medicaid-program-delay-of-effective-date-for-provision-relating-to-manufacturer-reporting-of>

⁷ Véase, <https://www.medicaid.gov/medicaid/prescription-drugs/medicaid-drug-rebate-program/index.html>.

como el “*Rebate Aggregator*” (“RA”), para el PSG. El proceso comenzó con la publicación del Aviso de RFP en el periódico El Nuevo Día y Primera Hora, en el Registro Único de Subastas del Gobierno de Puerto Rico (“RUS”) y en la página web de la ASES.

El Pliego del RFP establece que los servicios que se pretende obtener a través del RFP son⁸:

PBM Services:

Developing, implementing, and offering to ASES and the MCOs a comprehensive Pharmacy Benefit Management program including but not limited to the following programs and services:

- Managing and credentialing the Pharmacy Network that covers the whole jurisdiction of Puerto Rico and performing Pharmacy Audits.
- Maintaining a Pharmacy Call Center for the Pharmacy Network.
- Adjudicating and accurately processing Pharmacy Claims and payment including handling Coordination of Benefits (“COB”) with other health insurance plans, including Medicare.
- Developing, maintaining, and updating the Maximum Allowable Cost (“MAC”) list for Pharmacy reimbursement for Generic Drugs and multi-source Brand Drugs and providing an electronic platform to Pharmacies desiring to appeal MAC pricing, and if requested by ASES, coordinating with Puerto Rico's Department of Consumer Affairs (“DACO”) to provide drug price information for DACO's drug price control list, as amended from time to time.
- Providing a comprehensive Drug Utilization Review (“DUR”) program, including capabilities to identify potential opioid abuse and suspect prescribing and dispensing patterns, and to track drug utilization for specific prescription drugs identified by ASES for special monitoring.
- Supporting ASES and the contracted MCOs with the High-Cost High Need (“HCHN”) Program and other care management programs.
- Developing and implementing a compliance plan and Fraud, Waste and Abuse detection initiatives.
- Assisting in the support and operation of formulary management through the Pharmacy & Therapeutics Committee and Pharmacy Financial Committee.
- Managing the Academic Detailing program.
- Updating and maintaining standard operating procedure manual(s) for PBM services.
- Maintaining an Information System, Information management processes and technical support to meet the [PSG] requirements.
- Providing robust reporting and online reporting tool as described in the Contract.
- Retaining and storing data as required under the Contract.

⁸ Véase, **Anejo 04**, Pliego Original del RFP, págs. 2-4.

- Developing strategies to promote an active participation of the MCOs in the development of Enrollee and prescribing Provider educational activities.

RA Services:

The RA Services shall include but are not limited to:

- Producing drug rebate invoices for pharmaceutical manufacturers according to federal schedule requirements for the MDRP and ASES's schedule requirements for non-MDRP rebates.
- Processing and submitting to the Medicaid Program the CMS drug utilization and information necessary for CMS-64 reporting.
- Providing Rebate program reports for retail Pharmacy drugs and PADs to ASES and its designees on a quarterly basis.
- Reconciling and resolving drug rebate disputes with pharmaceutical manufacturers.
- Ensuring quality control to validate accuracy of drug Rebate Data.
- Maintaining administrative, physical, and technical safeguards to ensure security and confidentiality of all drug Rebate Information according to Puerto Rico and federal laws and industry standards.
- Updating and maintaining standard operating procedure manual(s) for Rebate program administration.
- Maintaining a Data repository system that interfaces with multiple Data sources.
- Maintaining a reporting database that can be accessed in real time by ASES to review and analyze rebate information and produce ad hoc reporting.
- Creating and maintaining a secure web portal for Data sharing with pharmaceutical manufacturers.
- Coordinating and assisting in the support and operation of ASES's Pharmacy Financial Committee.

En el Pliego del RFP, la ASES indicó que prefería contratar una empresa que brindara ambos servicios (PBM y RA), aunque podía considerar contratar los servicios por separado si estaba en los mejores intereses del PSG.⁹

El proceso de RFP en la ASES se condujo al amparo de las disposiciones de la Orden Administrativa Núm. 21-0701, según enmendada (“OA-21-0701”), la cual establece unas guías “para garantizar la evaluación uniforme y objetiva de las propuestas sometidas por las entidades que compiten para la contratación de seguros de salud a la población elegible al [PSG], conforme a las disposiciones de la Ley 72” y “en otros procesos de contratación competitiva que lleve a cabo la [ASES]”.¹⁰ En síntesis, la OA-21-0701 establece un proceso de evaluación mediante el cual se crean distintos comités y subcomités técnicos los cuales evalúan distintos aspectos de las propuestas recibidas y someten recomendaciones al Comité Ejecutivo.¹¹ Dicho Comité Ejecutivo

⁹ Véase, **Anejo 04**, Pliego Original del RFP, pág. 1.

¹⁰ Véase, **Anejo 05**, OA-21-0701.

¹¹ Véase, **Anejo 05**, OA-21-0701, págs. 3-7.

prepara entonces un informe mediante el cual le someten recomendaciones a la Junta de Directores de la ASES sobre la adjudicación del RFP.¹²

Seis (6) empresas, sometieron sus respectivas propuestas en o antes del 12 de julio de 2021 y, a partir de esa fecha, a cada empresa se le asignó una letra de manera aleatoria con la que serían identificadas en lo sucesivo.¹³ Estas empresas, así como la letra que le fue asignada, fueron: (A) PharmPix, Inc. (“PharmPix”); (B) Abarca; (C) MC-21; (D) MedImpact Healthcare Systems, Inc. (“MedImpact”); (E) Conduent Business Solutions of Puerto Rico, Inc. (“Conduent”); y (F) OptumRx, Inc. (“Optum”). Cabe señalar que, como parte de su propuesta, MC-21 sometió su certificación, emitida por la ASG, de estar en cumplimiento con el Registro Único de Proveedores de Servicios Profesionales (“RUP”).¹⁴

Según establecido en el Pliego, el Comité Ejecutivo, sin conocer la identidad de los proponentes, solicitó a los tres (3) proponentes con la puntuación más alta que sometieran su mejor y final oferta (“BAFO”, por sus siglas en inglés).¹⁵ Evaluados los BAFOs, el Comité Ejecutivo presentó a la Junta su informe de 15 de septiembre de 2021 con las recomendaciones pertinentes.¹⁶

El 16 de septiembre de 2021, se celebró una Reunión Extraordinaria de la Junta de Directores para la discusión del Informe del Comité Ejecutivo. Según dispone la OA-21-0701, la Junta votó a favor de evaluar el RFP a ciegas; esto es, sin saber los nombres de las empresas evaluadas, las cuales sólo fueron identificadas por las letras antes indicadas.¹⁷ En dicha reunión, además, se confirmó la descalificación de Conduent por incumplir con los requisitos mandatorios del RFP, según recomendado por el Comité Ejecutivo.¹⁸

Luego de varios incidentes procesales, el 20 de octubre de 2020, la Junta instruyó al Comité Ejecutivo a solicitar un segundo BAFO a los tres (3) proponentes a los cuales se les había solicitado el primer BAFO.¹⁹ Recibidos los segundos BAFOs, el Comité Ejecutivo sometió a la Junta su informe con relación a éstos, así como sus recomendaciones.²⁰

El 16 de noviembre de 2021, la Junta discutió estas recomendaciones finales y votó a favor de adjudicar el RFP en su totalidad – esto es, los servicios de PBM y los de RA – a Abarca.²¹ A estos efectos, el 29 de noviembre de 2021, ASES archivó en autos y se envió a los proponentes copia de la Notificación de Intención de Adjudicación (“Notificación”), la cual indica – entre otras cosas – que:

¹² Véase, **Anejo 05**, OA-21-0701, pág. 4.

¹³ Véase, **Anejo 06**, Notificación de Intención de Adjudicación (“Notificación”), págs. 3-4.

¹⁴ Véase, **Anejo 07**, Certificación del RUP de MC-21.

¹⁵ Véase, **Anejos 04 y 06**, Pliego Original del RFP, págs. 46-47; y, Notificación, pág. 6, respectivamente.

¹⁶ Véase, **Anejo 06**, Notificación, pág. 6.

¹⁷ Véase, **Anejo 05**, OA-21-0701, pág. 13.

¹⁸ Véase, **Anejo 06**, Notificación, pág. 6.

¹⁹ Véase, **Anejo 06**, Notificación, pág. 7.

²⁰ Véase, **Anejo 06**, Notificación, pág. 7.

²¹ Véase, **Anejo 06**, Notificación, pág. 7.

- Conduent fue descalificada por no cumplir con los requisitos mandatorios.²²
- Las puntuaciones obtenidas por las propuestas de MedImpact y PharmPix las colocaron en las posiciones #4 y #5, respectivamente.²³
- La puntuación obtenida por MC-21 nunca lo colocó en la posición #1.²⁴
- Optum quedó en la posición #2 en términos de costo y su puntuación técnica también fue menor a la obtenida por Abarca.²⁵
- Abarca fue el proponente con la mejor puntuación técnica y el precio más bajo, con \$13M menos en la propuesta combinada y \$3.3M menos si se otorgaban contratos separados para los servicios de PBM y RA.²⁶

La Notificación establece además que, para poder conceder un periodo de implementación de nueve meses, la fecha en que Abarca comenzará a prestar los servicios será el 1 de enero de 2023.²⁷ Así, los contratos de MC-21 como PBM y Abarca como PPA se extenderán hasta el 31 de diciembre de 2022.

El 20 de diciembre de 2021, MC-21 presentó Solicitud de Reconsideración ante la Junta.²⁸ Como en las otras instancias del proceso, el Comité Ejecutivo evaluó y analizó la Solicitud de Reconsideración de MC-21 y presentó a la Junta un informe en el cual recomendó que la misma fuera declarada no ha lugar.²⁹ El 12 de enero de 2022, la Junta sostuvo una reunión por videoconferencia en la cual, entre otras cosas, acogieron el Informe del Comité Ejecutivo y denegaron la Solicitud de Reconsideración de MC-21.³⁰ El 14 de enero de 2022, se archivó en autos y se notificó copia de la Resolución Núm. 2022-001 (“Resolución”), mediante la cual se notificó a los proponentes la determinación de la Junta.³¹ Ningún otro proponente presentó solicitud de reconsideración ante la Junta.

Inconforme, el 3 de febrero de 2022, MC-21 presentó un Recurso de Revisión Administrativa ante el Tribunal de Apelaciones. Oportunamente, el 22 de febrero de 2022, la ASES presentó su oposición a dicho recurso. El recurso se encuentra ante la consideración del Tribunal de Apelaciones, quien no ha emitido una determinación al respecto.

B. Hechos relacionados a la controversia sobre la jurisdicción para emitir el RFP

Mientras la ASES se encontraba inmersa en el proceso del RFP, el 1 de julio de 2021, la Oficina de Investigaciones Especiales de la ASG (“OIE”), envió a la ASES un Requerimiento de Información (“Requerimiento”), solicitando la producción de varios documentos, incluyendo el

²² Véase, **Anejo 06**, Notificación, págs. 14-17.

²³ Véase, **Anejo 06**, Notificación, pág. 17.

²⁴ Véase, **Anejo 06**, Notificación, págs. 17-18.

²⁵ Véase, **Anejo 06**, Notificación, págs. 18-20.

²⁶ Véase, **Anejo 06**, Notificación, pág. 20.

²⁷ Véase, **Anejo 06**, Notificación, pág. 21.

²⁸ Véase, **Anejo 08**, Resolución Núm. 2022-001 (“Resolución”).

²⁹ Véase, **Anejos 08 y 09**, Resolución, pág. 1; e, Informe del Comité Ejecutivo de 5 de enero de 2022, respectivamente.

³⁰ Véase, **Anejo 08**, Resolución, pág. 1.

³¹ Véase, **Anejo 08**, Resolución, pág. 1.

expediente completo del RFP. El 6 de julio de 2021, ASES respondió a los incisos del Requerimiento con los cuales no tenía objeción. Sin embargo, objetó la producción del expediente del RFP debido a que éste “no es una compra de bienes, obras ni servicios no profesionales regulado por la Ley Núm. 73-2019, según enmendada, conocida como Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico (“Ley 73”) [... sino que] se trata de la contratación de un servicio profesional, por lo que [...] no le son de aplicación [...] las disposiciones de la [Ley 73].”

La OIE no atendió la objeción de ASES. En su lugar, el 7 de julio de 2021, emitió un Segundo y Final Aviso de Requerimiento de Información Previo a Recurrir al Tribunal (“Segundo Aviso”), donde volvió a solicitar el expediente completo del RFP. El 8 de julio de 2021, ASES respondió el Segundo Aviso reiterando su objeción.

Ni la OIE, ni ASG realizaron gestión alguna para atender la controversia trabada. En su lugar, el 6 de octubre de 2021 – esto es, casi tres (3) meses después de recibir la última comunicación de ASES con relación al Requerimiento y al Segundo Aviso – ASG presentó un Mandamus ante el Tribunal de Primera Instancia (“TPI”) solicitando que se ordenara a ASES a proveer copia del expediente del RFP. En dicho caso, antes de que la ASES fuera emplazada y sin darle oportunidad a comparecer, el Tribunal emitió una Resolución ordenando la producción de los documentos. Inconforme, la ASES acudió al Tribunal solicitando reconsideración de la Resolución emitida. En respuesta, el Tribunal concedió término a las partes a expresarse con respecto a la solicitud de la ASES.

Resulta importante destacar que, como parte su Moción en Cumplimiento de Orden, al plantear su posición sobre los reclamos de la ASES, la ASG reconoció que “el alcance del poder de investigación de ASG se extiende con jurisdicción exclusiva sobre los procesos de compras de bienes, obras y servicios no profesionales, y en torno a los servicios profesionales, sobre la fiscalización del cumplimiento de todo proveedor con el [RUP] y los requisitos de contratación gubernamental”.³² En esa misma moción, además, la ASG enmendó el alcance de su solicitud, indicando que:

En este caso, la ASG no ha tenido acceso al contenido del Pliego de la Solicitud de Propuesta o “RFP”, lo que le impide ejercer su función fiscalizadora. No sabemos si efectivamente el “Request For Proposal # Pharmacy 2022 – Pharmacy Benefit Manager (PMB) and Rebate Aggregator (RA) Services”, trata de un servicio profesional o no. Es decir, para determinar cuál es el objeto principal del proceso de licitación que realiza la parte peticionada es necesario analizar el contenido del Pliego del RFP para así determinar y concluir que nos enfrentamos a un servicio no profesional, ya sea mediante la delegación de una función, como administrador del pago de beneficios o ante unos servicios de consultoría.³³

³² Véase, **Anejo 10**, Moción en Cumplimiento de Orden sometida por la ASG en el contexto del caso ASG v ASES, Caso Núm. SJ2021CV06557, SUMAC #17, pág. 4.

³³ Véase, **Anejo 10**, Moción en Cumplimiento de Orden sometida por la ASG en el contexto del caso ASG v ASES, Caso Núm. SJ2021CV06557, SUMAC #17, pág. 9.

Así las cosas, la ASES produjo el Pliego del RFP con todas sus enmiendas, anejos y apéndices. Con ello, el 3 de noviembre de 2021, El TPI decretó el archivo del caso reconociendo que la ASG había enmendado el alcance de su solicitud.³⁴

El 1 de diciembre de 2021, ASES recibió copia del Informe de Investigación ASG-I-21-006 emitido por la OIE (“Informe de la OIE”) firmado por la Sra. Hilda Marie Rivera Colón, Directora de la OIE.³⁵ En su Informe, la OIE hace unas conclusiones de derecho carentes de análisis y fundamentos y llega a la conclusión que el servicio a ser contratado es uno no profesional.³⁶ Al día de hoy, la ASES no ha recibido información alguna de que la Directora Ejecutiva de la ASG haya acogido el Informe de la OIE. Tampoco hemos sido emplazados en pleito alguno promovido por la ASG para proteger su alegada jurisdicción con relación al RFP.³⁷

En atención a la controversia surgida entre la ASES y la ASG y anticipando situaciones similares con otros RFPs en el futuro, el 3 de diciembre de 2021, ASES envió una comunicación al Gobernador de Puerto Rico, los presidentes de los cuerpos legislativos y otros funcionarios de las ramas ejecutivas y legislativas.³⁸ Como puede observarse, la referida carta es una comunicación interagencial en la que se discute la situación de intromisión indebida de ASG en los procesos legales y válidos de la ASES y en la que, precisamente por eso, se solicita que se enmiende la Ley 73 para eximir a la ASES de todos los procesos de compra a través de ASG. Al hacerse la solicitud se reconoce que la ASES tiene que recurrir a ASG para la adquisición de bienes, obras y servicios no profesionales, pero no así para la adquisición de servicios profesionales. Para evitar confusiones adicionales sobre la jurisdicción de cada agencia cada vez que se emita un RFP para servicios altamente técnicos y especializados relacionados a la administración del PSG y tomando en cuenta la importancia de la continuidad de los servicios que presta la ASES y su impacto en la ciudadanía, se solicitó una exclusión total y expresa de todas las compras a través de ASG.

II. Objeciones al Informe Parcial

A. La ASES es la entidad llamada a emitir, evaluar y adjudicar el RFP

Tanto en la RS 335, como en el Informe parcial, se menciona que “según la información provista, [el] tipo de servicio [que será contratado como resultado del RFP] no es profesional, por lo que el estado de derecho actual exige que sea manejado por la [ASG]. En este caso, el proceso de subasta está siendo manejado directamente por ASES y fue radicado en el último día de transición de los empleados de ASES y de otras agencias a la [ASG].”³⁹ Sin embargo, ese planteamiento es erróneo, por varias razones. Veamos.

³⁴ Véase, **Anejo 11**, Resolución en el contexto del caso ASG v ASES, Caso Núm. SJ2021CV06557, SUMAC #22.

³⁵ Véase, **Anejos 12 y 13**, Correo Electrónico Notificando el Informe de la OIE e Informe de la OIE, respectivamente.

³⁶ Véase, **Anejo 13**, Informe de la OIE, págs. 5-14.

³⁷ El 2 de marzo de 2022, hicimos una búsqueda en el Sistema Unificado de Manejo y Administración de Casos de la Rama Judicial (“SUMAC”) y no encontramos ningún caso activo de la ASG contra la ASES.

³⁸ Véase, **Anejo 01**, Carta de 3 de diciembre de 2021.

³⁹ Véase, RS 335, pág. 3; e, Informe Parcial, pág. 2.

i. La Ley 73

El Art. 2 de la Ley 73 establece que ésta “persigue la optimización del nivel de efectividad y eficiencia de la gestión gubernamental, la agilización de los procesos de adquisición de bienes y servicios mediante el uso de avances tecnológicos, la reducción del gasto público, la asignación estratégica de recursos y la simplificación de los reglamentos que regulan las adquisiciones del Gobierno de Puerto Rico.” Nunca ha estado en controversia, que ASG solo está facultada para intervenir en los procesos de adquisición de bienes, obras y servicios no profesionales ya que así ésta lo admitió en el contexto del Caso de ASG v ASES, Caso Núm. SJ2021CV06557.⁴⁰ Sobre la adquisición de servicios profesionales, el Art. 35 de la Ley 73 solo establece que “será requisito mandatorio que el proveedor de servicios profesionales esté registrado en el RUP, bajo la categoría correspondiente y que cuente con la Certificación emitida por el Administrador.” Así pues, corresponde a cada agencia que interesa adquirir un servicio profesional llevar a cabo los procesos para la adquisición de dichos servicios profesionales. Dicho de otra manera, no cabe duda de que, cuando una agencia de gobierno que no esté exenta de los procesos de compras bajo ASG va a adquirir bienes, obras o servicios no profesionales, debe hacer una petición a ASG, quien se encargará del proceso de adquisición. Ejemplo de esto podría ser, la adquisición de efectos de oficina, computadoras, carros, mantenimiento de aires acondicionados, etc. Por el contrario, cuando se van a adquirir servicios altamente técnicos y especializados, por tratarse de servicios profesionales, se adquieren directamente por la agencia. Este sería el caso de los MCOs, los PBM’s, servicios actuariales, legales, de contabilidad, auditores, etc.

ii. La Ley 72

El Art. IV, Sec. 1 de la Ley 72 dispone que la ASES es una corporación pública la cual tiene personalidad jurídica independiente y está regida por una Junta de Directores. Mediante esta legislación se propició una reforma radical de los servicios de salud en Puerto Rico y se delegó en ASES su administración. Sobre la cubierta del PSG, el Art. VI, Sec. 8 de la Ley 72, establece en lo pertinente:

[...]

(a) Cubierta A.— La [ASES] establecerá una cubierta de beneficios a ser brindados por los aseguradores contratados o proveedores participantes. La cubierta comprenderá, entre otros beneficios, los siguientes: [...], **así como medicamentos mediante prescripción médica, los cuales deberán ser despachados en una farmacia participante, libremente seleccionada por el asegurado, y autorizada bajo las leyes de Puerto Rico.** [...] (Énfasis nuestro.)

El Art. IV, Sec. 2, de la Ley 72 establece en lo pertinente:

⁴⁰ Véase, **Anejo 10**, Moción en Cumplimiento de Orden radicada por ASG en el contexto del caso de ASG v ASES, Caso Núm. SJ2021CV06557, SUMAC #17, pág. 4.

La [ASES] será el organismo gubernamental encargado de la implantación de las disposiciones de este capítulo. A estos fines, tendrá los siguientes poderes y funciones, que radicarán en su Junta de Directores:

- (a) Implantar planes de servicios médico-hospitalarios basados en seguros de salud.
- (b) Negociar y contratar con aseguradores públicos y privados, y organizaciones de servicios de salud, cubiertas de seguros médico-hospitalarios, según se definen y establecen éstos en las secs. 7025 a 7036 de este título.

[...]

- (m) Realizar todos los actos necesarios y convenientes para llevar a cabo los propósitos de este capítulo, excepto que la Administración no tendrá facultad para empeñar el crédito del Estado Libre Asociado de Puerto Rico, ni de ninguna de sus subdivisiones políticas.

[...]

El Art. VI, Sec. 14 de la Ley 72 establece el derecho de los beneficiarios del PSG de escoger la farmacia de su predilección, entre otros. Así pues, resulta evidente que la cubierta de farmacia y los servicios provistos a través de ella son una parte integral de la cubierta del PSG.

iii. El informe de la OIE

El 1 de diciembre de 2021, la ASES recibió copia del Informe de la OIE el cual concluye que el servicio a ser contratado es uno no profesional.⁴¹ Sin embargo, el informe de la OIE es meramente el informe presentado por la OIE, el cual no ha sido adoptado por la agencia. Más aún, la agencia no ha hecho gestión alguna ante algún foro con competencia para reclamar su alegada jurisdicción con relación a este asunto.

En primer lugar, nótese que el Informe de la OIE no está suscrito por la Directora Ejecutiva de la ASG, sino por la Directora de la OIE. Nada en el Informe de la OIE sugiere que éste ha sido adoptado por la ASG. Es pues preciso concluir que cualquier postura adoptada en éste es una recomendación de una oficina interna en ASG a la Directora Ejecutiva y, a menos que ASG no actúe sobre éste, no constituye su política pública.

Por otro lado, ASG no ha radicado pleito alguno contra ASES para reclamar su alegada jurisdicción.⁴² Nótese que ASG recibió desde el 2 de noviembre de 2021 los documentos que solicitó a través del pleito ASG v ASES. Nótese, además, que, según surge de los escritos sometidos en dicho pleito, esos documentos se solicitaron con el propósito de evaluar si la ASG tenía o no jurisdicción para atender el RFP. A pesar de ello, y de contar con el Informe de la OIE desde el 1 de diciembre de 2021, la ASG no ha tomado acción alguna sobre este asunto. La ASG sabe que el proceso del RFP ha continuado su curso, sin embargo, aun así, no realizó gestión alguna para hacer valer su alegada jurisdicción. Así pues, es forzoso concluir que su política pública no es compatible con las conclusiones a las que llegó la OIE.

⁴¹ Véase, **Anejo 13**, Informe de la OIE, págs. 5-14.

⁴² El 2 de marzo de 2022, hicimos una búsqueda en el Sistema Unificado de Manejo y Administración de Casos de la Rama Judicial (“SUMAC”) y no encontramos ningún caso activo de la ASG contra la ASES.

iv. Los servicios para prestarse bajo el contrato de PBM/RA son profesionales

Ahora bien, a pesar de lo que concluye el Informe de la OIE y lo que ha manifestado MC-21 en su Recurso de Revisión Administrativa, los servicios a contratarse en el RFP son altamente técnicos y especializados, lo que los convierte en servicios profesionales, según definidos en la Ley 73. El Art. 4, incisos (hh) e (ii), de la Ley 73 definen los términos “servicios no profesionales” y “servicios profesionales” de la siguiente manera:

(hh) Servicios no profesionales. — Aquellos servicios que no son ofrecidos por una persona natural o jurídica con conocimientos o habilidades especializadas a quien se le requiere poseer un título universitario o licencia que lo acredite como profesional especializado.

(ii) Servicios profesionales. — Aquellos servicios que son ofrecidos por una persona natural o jurídica con conocimientos o habilidades especializadas a quien se le requiere poseer un título universitario o licencia que lo acredite como profesional especializado; **o cuya prestación principal consiste en el producto de la labor intelectual, creativa o artística, o en el manejo de destrezas altamente técnicas o especializadas.** (Énfasis y subrayado nuestro.)

En Puerto Rico se aprobó la Ley Núm. 82-2019, conocida como Ley Reguladora de los Administradores de Beneficios y Servicios de Farmacia (“Ley 82”).⁴³ La Ley 82 define PBM como un “[...] ente u organización dedicada a proveer servicios de manejo, administración, revisión, asesoría de beneficios de medicamentos recetados para auspiciadores (“plan sponsors”) [...] que contratan dichos servicios para realizar alguna o varias de las siguientes actividades, entre otras: administrar servicios o cubierta de farmacia del auspiciador, procesamiento de recetas y reclamaciones, manejo de beneficios de servicios de medicamentos, programas de adhesión al uso de medicamentos (“*drug adherence management*”), programa de interacción de medicamentos, programa de utilización de medicamentos, formulario de medicamentos, comité y asesoría de formularios de medicamentos y su manejo, programas de utilización de genéricos e incentivos; análisis de datos médicos y de medicamentos, servicios de revisión de la utilización de medicamentos (“*drug utilization review*”), servicios de pre-autorización de medicamentos, manejo de programas de repeticiones de medicamentos, manejo de terapia médica (“*medical therapy management o MTM*”), manejo de bienestar, contratación de red de proveedores de servicios de farmacia, centros de servicio al cliente y de llamadas, manejo de servicios de farmacia por correo, contrataciones con manufactureros de medicamentos y terceros relacionados a sus servicios, informes, servicios actuariales, servicios de informática y procesamiento, manejo de la terapia de medicamentos de enfermedades y asesoría y utilización de farmacéuticos clínicos. [...]”⁴⁴

⁴³ Estamos conscientes de que la Ley 82 fue impugnada por la Junta de Supervisión Fiscal ante el Tribunal de Distrito Federal que atiende la reestructuración de la deuda de Puerto Rico bajo el *Puerto Rico Oversight, Management, and Economic Stability Act* (“**PROMESA**”). Como resultado de dicha impugnación se ordenó que no se implementara la Ley 82, concluyendo que ésta no era compatible con el Plan Fiscal. Independientemente de este hecho, el cual sólo tuvo que ver con aspectos fiscales, la Ley 82 establece la intención del legislador sobre los servicios que proveen los PBM’s en Puerto Rico y ello es pertinente para propósitos de argumentación.

⁴⁴ Muchos de estos servicios son similares a los que se pretende contratar bajo el RFP. Véase, **Anejo 04**, Pliego Original del RFP, págs. 2-4.

Finalmente, el Art. 5 de la Ley 82 establece que, para poder operar en Puerto Rico, los PBM están obligados a mantener una licencia emitida por el ente regulador que se creaba bajo la ley.

Los argumentos presentados en el Informe de la OIE son incorrectos en derecho, ya que – aunque no explican el racional detrás de sus conclusiones – parecen indicar que el único criterio para determinar si un servicio es o no profesional para propósitos de la Ley 73 es si se requiere o no profesionales licenciados para ejecutar las tareas a ser contratadas. Aun cuando ese es uno de los elementos de la definición de servicios profesionales bajo la Ley 73, éste no es el único criterio. Como vimos, la definición de la Ley 73 es más amplia e incluye también que la “prestación principal consist[a] en el producto de la labor intelectual, [...] o en el manejo de destrezas altamente técnicas o especializadas”.

El Pliego establece una descripción de los servicios que habrán de contratarse bajo el RFP.⁴⁵ Aun cuando la OIE concluye – sin base o fundamento – que cada uno de estos servicios no son profesionales, la realidad es que cada uno de los servicios que ASES pretende contratar a través de RFP son servicios altamente especializados que requieren una pericia en cubiertas de seguros, servicios de farmacia, entre otros. De hecho, solo basta una lectura a la propuesta sometida por MC-21 para darse cuenta de este hecho. Ello es bien revelador ya que este proponente es el que está realizando los servicios de PBM en la actualidad bajo un contrato con la ASES y, curiosa y temerariamente, es el que también está impugnando ante el Tribunal de Apelaciones la adjudicación del RFP. Acompañamos a este memorial un documento que preparó la ASES con el propósito de resumir todas las instancias en las cuales surge de la propia propuesta de MC-21 lo técnico y especializado de las funciones a ser contratadas, así como aquellas instancias en las que se requiere de algún profesional licenciado para ejercer las funciones.⁴⁶

De las funciones descritas en el Pliego del RFP, así como de la descripción detallada que se incluye en el Anejo 15, surge claramente que las tareas que se realizarán bajo el contrato que se otorgue como resultado del RFP son altamente técnicas y especializadas. Además, muchas de ellas deben ser realizadas por personal adiestrado en farmacia, medicina, gerencia, sistemas de información, etc. Otras tantas requieren la supervisión de personal adiestrado en farmacia o en medicina para poder realizar las mismas.

v. **ASES es la entidad llamada a realizar el RFP**

La intención de la Ley 72 es que ASES sea la entidad sobre la que recae la responsabilidad de emitir y adjudicar el RFP. Además, como los dineros que sufragan el PSG provienen de fondos Medicaid, la intromisión de ASG en el RFP violentaría las disposiciones que rigen dicha asignación.

En primer lugar, según surge del detalle de los servicios incluidos en el Contrato Modelo, el PBM es el responsable de recibir, adjudicar y pagar las reclamaciones de pago por los medicamentos

⁴⁵ Véase, **Anejo 04**, Pliego Original del RFP, págs. 2-4.

⁴⁶ Véase, **Anejos 14 y 15**, Propuesta de MC-21; y, Relación de las Instancias en las que la Propuesta de MC-21 Demuestra lo Especializado y Técnico del Servicio a ser Provisto y la Necesidad de Profesionales Licenciados para Realizar algunas Funciones a ser Contratadas, respectivamente.

dispensados por las farmacias en la red.⁴⁷ En otras palabras, en términos del pago a las farmacias, el PBM opera de forma similar a como lo hacen los MCOs con relación al pago de los demás proveedores bajo el PSG. Lo mismo aplica para otras áreas del servicio a ser contratado, tales como la resolución de disputas.

El Art. IV, Sec. 2, de la Ley 72 delega en la ASES la negociación y contratación de estos servicios. Es razonable concluir que la intención del legislador era delegar en ASES, que es la única agencia del Gobierno de Puerto Rico con la pericia requerida para ello, el proceso de negociación y administración de los contratos con las entidades que habrán de viabilizar el servicio y el pago a los proveedores de todas facetas de la cubierta del PSG. Así pues, lo que se busca con el RFP es contratar un servicio similar al de los MCOs dirigido a la parte de la cubierta que tiene que ver con los servicios de farmacia. Por lo tanto, la negociación y contratación del PBM, al igual que la contratación de los MCOs, debe recaer enteramente en la única agencia con la pericia para ello; esto es, la ASES. Concluir lo contrario equivaldría a que en el día de mañana se pueda alegar que es a ASG a quien le corresponde adjudicar el RFP para la contratación de los MCOs, lo que claramente choca con la política pública del Gobierno y la intención de la Ley 72.

Por otro lado, el PSG es financiado con fondos estatales y fondos federales del programa Medicaid.⁴⁸ La participación de los estados y los territorios en Medicaid es voluntaria. No obstante, una vez eligen participar de Medicaid deben cumplir estrictamente con la ley federal. Al decidir participar, el estado tiene que confeccionar un Plan Estatal de Medicaid, también conocido como el *State Medicaid Plan*, el cual debe cumplir con las especificaciones de la ley federal y ser aprobado por el Gobierno Federal, así como todas sus enmiendas.⁴⁹ Como parte del *State Medicaid Plan*, cada estado tiene que designar a un *Single State Agency* a cargo de la administración del programa. En Puerto Rico, el Departamento de Salud es el *Single State Agency* y éste a su vez mantiene, con aprobación del Gobierno Federal, un acuerdo de colaboración con ASES para implementar y administrar el PSG.⁵⁰ La designación de un *Single State Agency* tiene su origen en la necesidad de concentrar en una sola agencia estatal la responsabilidad frente al Gobierno Federal de la administración del programa de Medicaid.

El Gobierno Federal es quien único tiene la autoridad y jurisdicción para supervisar a ASES en las funciones delegadas por el *Single State Agency* para la administración del PSG.⁵¹ Éste tiene la autoridad para: llevar a cabo revisiones y auditorías⁵²; realizar inspecciones de políticas y procedimientos y sobre aspectos operacionales⁵³; ofrecer asistencia o retener, reducir o recobrar fondos⁵⁴; etc. Como podrá apreciarse, la autoridad y jurisdicción del Gobierno Federal sobre el

⁴⁷ Véase, **Anejo 16**, Contrato Modelo, págs. 38-49.

⁴⁸ Véase, Art. VI, Sec. 11 de la Ley 72.

⁴⁹ Véase, 42 U.S.C. §1396a(a), (b); 42 C.F.R. §§430.10; 42 C.F.R. §§430.12 a 430.15.

⁵⁰ Véase, <https://www.medicaid.gov/state-overviews/puerto-rico.html>

⁵¹ Véase, 42 C.F.R. §430.10 y §§430.12 a 430.15.

⁵² Véase, 42 C.F.R. §430.32 y §430.33.

⁵³ Véase, 42 C.F.R. §430.32

⁵⁴ Véase, 42 C.F.R. §430.35, §430.45 y §430.48.

State Medicaid Plan es total y no da espacio a que una agencia como ASG intente inmiscuirse en la administración del programa Medicaid mediante la contratación del PBM.

Como se podrá apreciar de la legislación y reglamentación antes discutida, tanto estatal como federal, quien único tiene autoridad para administrar todo lo relativo al PSG, incluyendo todas las contrataciones requeridas para poner en vigor el PSG, es ASES. ASG no tiene inherencia alguna, pues violenta la intención legislativa de la Ley 72 y produciría un conflicto insalvable con las disposiciones y acuerdos alcanzados con el Gobierno Federal en el *State Medicaid Plan*.

B. El memorial de la Alianza

i. Procesos de competencia para adjudicar el RFP

Del Informe Parcial surge que la Alianza sometió un memorial donde indica que:

Según expone la portavoz, el contrato de estas empresas ha sido objeto de varias enmiendas, a los fines de extender su vigencia y aumentar los pagos de remuneración. En la última revisión del contrato, la Junta de Control Fiscal (JCF), en misiva de fecha de 29 de junio de 2018, trajo a la atención de la ASES la necesidad de llevar a cabo un proceso de competencia sobre este servicio, ya que el último RFP fue llevado a cabo en el año 2006. Mediante la enmienda sometida, el contrato de ambas empresas fue aumentado, para un total de \$15 millones cada una.

Asimismo, el *United States Government Accountability Office* en su reporte de febrero 2021, levantó unas deficiencias asociadas [*sic*] a la administración del plan de salud del gobierno, destacando la falta de fiscalización adecuada sobre los proveedores de servicios, la carencia de controles y la omisión de llevar a cabo procesos de competencia que permitan alcanzar mejores servicios y reducción de costos asociados. La realidad experimentada en la isla es que cada año los costos en la partida de medicamentos aumentan y los pacientes tienen menos beneficios y acceso.

En primer lugar, es menester señalar que el Informe del GAO no encontró “falta de fiscalización adecuada sobre los proveedores de servicios” o “carencia de controles” por parte de la ASES, como señala la Alianza. La conclusión del GAO fue que:

Puerto Rico ha gastado billones de dólares en procesos de adquisición de servicios para administrar su programa Medicaid. Sin embargo, algunas de las adquisiciones de Puerto Rico no reflejan los estándares federales destinados a promover la competencia. Además, debido a que CMS no ha supervisado las adquisiciones de Medicaid de Puerto Rico, no puede determinar si el territorio cuenta con procesos para ayudar a garantizar la competencia y minimizar el riesgo de fraude, desperdicio y abuso. En ausencia de tal supervisión, CMS y el Congreso no pueden estar seguros de que el programa Medicaid de Puerto Rico esté gestionando

adecuadamente el riesgo de fraude, despilfarro y abuso. (Traducción nuestra. Subrayado nuestro.)⁵⁵

En otras palabras, tanto la JSF como el GAO recomendaron que se llevaran a cabo procesos de competencia para la adquisición de los servicios para la administración del PSG, el cual se financia con fondos Medicaid. Además, el GAO recomendó que:

El Administrador de CMS debe tomar medidas para implementar una supervisión continua basada en el riesgo de los procesos de adquisición de Medicaid en Puerto Rico; dichas acciones podrían incluir la realización de una evaluación de los procesos de adquisición competitivos y no competitivos para identificar los riesgos y abordarlos mediante la promoción de la competencia, según corresponda para la operación eficiente del programa Medicaid.⁵⁶

CMS ha hecho precisamente esto. Durante el proceso del RFP, CMS solicitó de la ASES información particular sobre el proceso. Específicamente, CMS solicitó que se llenara una tabla donde se comparan las recomendaciones y/o señalamientos del GAO con el proceso seguido por la ASES para el RFP. La tabla que fue suministrada se incluye como Anejo a este memorial.⁵⁷ Una vez sometida la tabla, la Administradora de Seguros de Salud ("*Health Insurance Administrator*") del *Medicaid & CHIP Operations Group* en CMS le indicó al personal de ASES que entendía que se había cumplido con el requisito de demostrar el cumplimiento con los señalamientos de GAO.

Así pues, el proceso del RFP se está llevando a cabo con el propósito, entre otros, de cumplir con los requerimientos de las agencias reguladoras, quienes han señalado la necesidad de llevar a cabo un proceso competitivo de selección del proveedor de dichos servicios. Más aun, dichas agencias han manifestado estar complacidos con el proceso que se ha seguido y entienden que el mismo corrige las deficiencias señaladas previamente.

ii. Los requisitos a los proponentes en el RFP

También surge del Informe Parcial que en su memorial la Alianza indica que

La Sra. Cristy añade que, dos años después, la ASES publicó un Aviso Público anunciando un proceso de Request for Proposal (RFP), para los servicios de a) manejador de beneficios de farmacia y b) manejador del Programa de Reembolso de Medicamentos de Medicaid, y otros servicios de reembolso de medicamentos, con el "Rebate Aggregator" para el Plan de Salud del Gobierno (PSG). Dicho Aviso contenía una serie de requerimientos para acceso [*sic*] a los pliegos del RFP, a saber:

⁵⁵ Véase, **Anejo 03**, Informe del GAO, pág. 13

⁵⁶ Véase, **Anejo 03**, Informe del GAO, pág. 13

⁵⁷ Véase, **Anejo 17**, Tabla Comparativa del GAO v RFP.

1. Se requirió que los participantes estuvieran autorizados para hacer negocio en Puerto Rico;
2. Contar con una certificación vigente en el Registro Único de Proveedores de Servicios Profesionales (RUP) de la ASG;
3. Estar inscrito en el Sistema para el Manejo de Adjudicación del Gobierno Federal (SAM);
4. El pago, no reembolsable, de \$5,000;
5. Una fianza de licitación de 10% del total ofertado para el primer año contrato;
6. Una fianza de cumplimiento de 30% de la cuantía total del contrato para el año correspondiente, y aplicable a todo subcontratista del Proponente para realizar funciones y responsabilidades bajo el alcance del trabajo del RFP.

La Alianza indica que estos requisitos “tienen el efecto de descartar o dejar fuera de competencia una serie de empresas, demarcando la competencia en tan sólo mínimas opciones.” Sin embargo, estos requisitos se incluyeron en el RFP con el propósito de cumplir con alguna ley o requisito estatal o federal; para evitar que personas no cualificadas trataran de competir; y/o para proteger los intereses del PSG y del Gobierno de Puerto Rico. Veamos cada requisito por separado.

1. Autorización para hacer negocios en PR

El Estado, a través de la Ley Núm. 164-2009, según enmendada, conocida como la Ley General de Corporaciones de 2009 (“Ley de Corporaciones”), ha establecido una serie de requisitos para que las corporaciones puedan hacer negocios en Puerto Rico. El Tribunal Supremo ha reconocido que “[e]l propósito de estos requisitos o condiciones, de cuyo cumplimiento depende el que puedan ‘hacer negocios,’ en dicha jurisdicción, es colocar a las corporaciones foráneas en la misma posición en que se encuentran las corporaciones domésticas. De este modo estarán sujetas a ser inspeccionadas de forma tal que se conozcan las condiciones bajo las cuales operan. Pou v. American Motors Corp., 127 D.P.R. 810, 825 (1991). Además, se ha indicado que “el propósito de las disposiciones de la Ley de Corporaciones [...] es el reglamentar las corporaciones foráneas y extranjeras que, a través de agentes o representantes destacados en Puerto Rico, hagan negocios en la Isla. A estas corporaciones foráneas se les exige, entre otras cosas, llevar y conservar en Puerto Rico los libros de contabilidad, antecedentes, documentos y circunstancias que acrediten la forma en que están realizando sus operaciones. A estas personas jurídicas se les considera que están dentro del área territorial de Puerto Rico.” Pou v. American Motors Corp., supra, a la pág. 828.

Así pues, está en los mejores intereses del PSG y del Gobierno de Puerto Rico que la empresa que se contrate para proveer unos servicios tan importantes como los que se contratarán como resultado del RFP haya cumplido con los requisitos que exige la Ley de Corporaciones para “hacer negocios” en Puerto Rico. De esa manera se garantiza que los brazos reguladores del Gobierno de Puerto Rico, como lo es el Departamento de Estado, el Departamento de Hacienda, los Tribunales, etc. tienen autoridad para fiscalizar que su operación se ajusta a lo requerido por las leyes y reglamentos aplicables.

2. Certificación del RUP

El Art. 35 de la Ley 73 establece que:

Para la adquisición y/o contratación de servicios profesionales en el Gobierno de Puerto Rico, **será requisito mandatorio** que el proveedor de servicios profesionales esté registrado en el Registro Único de Proveedores de Servicios Profesionales, bajo la categoría correspondiente y que cuente con la Certificación emitida por el Administrador. Sin embargo, esta disposición no se aplicará a los profesionales de la salud que laboren en los hospitales, programas e instalaciones de la Administración de Servicios Médicos de Puerto Rico (ASEM), el Centro Médico y el Hospital Cardiovascular.

Tratándose de la contratación de servicios profesionales, la ASES está obligada por las disposiciones de la Ley 73 a cumplir con este requisito.

3. Estar inscritos en el Sistema para el Manejo de Adjudicación del Gobierno Federal (“SAM”, por sus siglas en inglés)

La Ley Federal de Responsabilidad y Transparencia de Financiamiento de 2006 (“*Federal Funding Accountability and Transparency Act of 2006*”) requiere que todas las entidades que utilicen un Número de Identificación Patronal (“EIN”, por sus siglas en inglés) y deseen aplicar para obtener subvenciones federales deben, entre otras cosas, estar registrados en la base de datos SAM. Esto aplica a todo programa subvencionado con fondos federales, incluyendo asistencia financiera (“*grants*”), acuerdos de cooperación, contratos federales y acuerdos de contribución. Como el PSG está financiado en gran parte con fondos provenientes de Medicaid, este es un requisito impuesto por ley federal con el cual la ASES está obligada a cumplir.

4. Pago de \$5,000.00 para adquirir el Pliego

En Puerto Rico es práctica común el cobrar una cantidad razonable para que los proponentes interesados adquieran los pliegos de un RFP. A manera de ejemplo, el Reglamento Uniforme de Compras y Subasta de Bienes, Obras y Servicios no Profesionales de la ASG (“Reglamento 9030”)⁵⁸ establece que el aviso de Subasta – formal o informal – y de RFP deben especificar, entre otras cosas, el costo de los pliegos, si alguno.⁵⁹

Por otro lado, dicho costo ayuda a la agencia a subvencionar el costo de la preparación del pliego del RFP. En el caso del RFP en controversia, por lo especializado del asunto, la redacción de los pliegos requiere de la intervención intensa de consultores externos expertos en la materia. Además, el mismo incluye una serie de anejos y apéndices, los cuales constan de cientos de páginas. Algunos de estos documentos incluyen información actuarial y de utilización necesaria para que

⁵⁸ Disponible en <https://asg.pr.gov/Leyes%20Español/03.%20Reglamento%209230%20-%20Reglamento%20Uniforme%20de%20Compras%20y%20Subastas%20de%20Bienes.%20Obras%20y%20Servicios%20No%20Profesionales.pdf>

⁵⁹ Véase, Reglamento 9030, pág. 85, inciso 5; pág. 125, inciso 5; y, pág. 171, inciso 6.

los proponentes puedan cotizar los servicios que habrán de proveer. Esta información tiene un valor en el mercado que es significativo. Así pues, el costo se establece en una cuantía que permita a los licitadores serios acceder el RFP, mientras que evita que otras personas o entidades que no tienen la capacidad de prestar el servicio accedan a los mismos. Nótese que el proponente al que se le adjudicó la buena pro cotizó cerca de diecisiete millones de dólares (\$17M) por tres (3) años contrato. Una compañía capacitada para manejar un contrato de esa cuantía puede fácilmente invertir cinco mil dólares (\$5,000.00) para adquirir los pliegos del RFP.

5. Fianza de licitación

La fianza de licitación, también conocida como “*Bid Bond*”, se establece con el propósito de asegurar que el proponente seleccionado en un proceso de RFP o subasta celebrará un contrato vinculante para realizar el trabajo de acuerdo con la propuesta que sometió, de lo contrario, la entidad que emitió el RFP recibe una cantidad fija de dinero para compensarlo por los daños que dicha negativa le ocasione. Además, provee un incentivo para evitar que los proponentes retiren sus ofertas durante el proceso de adjudicación. 1 E. Mills and M. Rhodes, Holme’s Appleman on Insurance, 2D Sec. 1.32 (1996). El Tribunal Supremo ha reconocido que, de establecerse dicho requisito como uno mandatorio en los pliegos de un RFP o subasta, su incumplimiento conlleva la descalificación del proponente. Véase, Aut. Carreteras v. CD Builders, Inc., 177 D.P.R. 398, 407 (2009).

La fianza de licitación no implica el depósito de la cantidad requerida. Si no que los proponentes van a empresas autorizadas por la Oficina del Comisionado de Seguros, quienes emiten este tipo de fianza por un precio razonable. Dicha fianza se somete a la ASES, en original, antes de someter la propuesta y se incluye copia de los documentos que así lo acrediten junto con la propuesta. Así pues, el requisito no es uno oneroso para las empresas que compiten en este tipo de proceso.⁶⁰

Dada la importancia y la cuantía del contrato envuelto, opera en el mejor interés de la ASES imponer como requisito mandatorio la presentación de una fianza de licitación para garantizar que, una vez adjudicado el RFP, el proponente agraciado no habrá de retirar su oferta, dejando a la ASES en la difícil posición de tener que volver a evaluar los demás proponentes para adjudicarle la buena pro a uno de ellos, si fuera posible, o tener que comenzar un nuevo proceso de RFP.

6. Fianza de cumplimiento

Similar a la fianza de licitación, la fianza de cumplimiento – también conocida como “*performance bond*” – es una garantía que tiene la ASES de que la entidad agraciada cumpla con los compromisos a los que se obligó durante la duración del contrato. Dicha fianza la somete solamente el proponente agraciado antes de firmar el contrato. Dicho proponente agraciado además está obligado a mantener la misma por la duración del contrato.⁶¹ Esta es una importante garantía que

⁶⁰ Véase, **Anejo 04**, Pliego Original del RFP, págs. 28 y 50. La fecha para someter la propuesta y la fianza de licitación fue enmendada posteriormente, sin embargo, el requisito se mantuvo de manera similar.

⁶¹ Véase, **Anejo 04**, Pliego Original del RFP, pág. 30.

pretende resarcir a la ASES por los daños que sufriría si el contratista incumple con sus compromisos contractuales.

Ahora bien, queremos aclarar que, en los casos en que existan subcontratistas, ASES no hace pagos directos a estos, todos los pagos son hechos al contratista quien es el responsable de toda la obra ante ASES. Por ello, el contratista principal igualmente paga y mantiene una fianza del 30% de la cuantía total anual del contrato. La única diferencia es que deberá asegurarse de obtener de cada subcontratista una fianza del 30% del monto anual del subcontrato y proveer a ASES evidencia de la misma. Por ejemplo, si el contrato completo tendrá un costo de \$100, si es un solo contratista, éste pagará y mantendrá una fianza de cumplimiento por un valor de \$30. Ahora bien, si ese mismo contrato lo va a realizar un contratista que realizará el 50% del trabajo y un subcontratista que realizará el otro 50%, el contratista principal debe pagar y mantener una fianza de cumplimiento por un valor de \$30 (igual que el contratista que no tiene subcontratistas), y tiene que asegurarse de que su subcontratista pague y mantenga una fianza de \$15. Así, al final del día el valor de la fianza para un contratista será el mismo, tenga o no subcontratista, pero si el incumplimiento es causado por su subcontratista, tendrá bajo dicho subcontrato una garantía contra la cual ir.

iii. El requisito de experiencia

En la página 8 del informe parcial se cita a la Alianza indicando que el RFP requiere una experiencia mínima de diez (10) años en el manejo de fondos Medicaid o Medicare. Sin embargo, no hemos encontrado dicha disposición en el pliego del RFP.⁶² Así pues, entendemos que la Comisión debe descartar de plano cualquier argumento de la Alianza basado en dicho argumento erróneo.

iv. Criterio de calidad

Por otro lado, el Informe parcial indica que:

A lo anterior añade que el criterio calidad de servicio no es considerado para fines de cualificación en el proceso de competencia, lo que resulta muy importante. La portavoz expresa que, en la medida en que la consecución del servicio y el cumplimiento no sean considerados, los contratistas no tendrán presión alguna para alcanzar esta meta. Tampoco se dispone de la responsabilidad del potencial proveedor de servicios de mantener una observancia de los parámetros y criterios a nivel federal, como lo es el evaluar y determinar sobre una receta en tiempo oportuno (máximo de 48-72 horas). Al presente uno de los mayores retos que enfrentan los pacientes es la dilación irrazonable en la determinación sobre su receta, alcanzando términos de hasta seis (6) meses.

El Pliego del RFP establece claramente los criterios para la evaluación de las propuestas. Estos incluyen una parte mandatoria, una parte técnica y una parte de costo. Cada requisito técnico tiene

⁶² Véase, **Anejo 04**, Pliego Original del RFP, incisos 2.1.1 (pág. 20), 6.2 (pág. 49); 6.3 (pág. 50), 7 (pág. 58), 7.3.8 (pág. 60), 7.4.1 (pág. 60), 7.4.3 (pág. 60), 7.5.1 (pág. 60), 7.5.2 (pág. 60), 7.6.3 (pág. 61), 7.8.3 (pág. 62), 7.9.2 (pág. 62), 7.10.5 (pág. 62), 7.11.4 (pág. 63), 7.12.1 (pág. 63), 7.14.1 (pág. 64), y 7.14.3 (pág. 64).

un valor o peso en la evaluación, dependiendo de la importancia relativa de éste en relación con los demás criterios. El capítulo 5 del Pliego explica estos criterios en detalle.⁶³ Por otra parte, el Artículo 7 del Contrato Modelo establece los requisitos que tiene que cumplir el proponente agraciado con relación a mantener una red de farmacias adecuada.⁶⁴ Dicho Contrato Modelo formó parte del Pliego del RFP, por lo que cada proponente tenía conocimiento de las expectativas de la ASES en cuanto al alcance y calidad de los servicios a ser provistos.

v. *Caso ASG v. ASES*

La Alianza también indicó en su memorial, según recoge el Informe Parcial, que:

Por otro lado, la [Ley 73] agrupa el proceso de evaluación y licitación en la adquisición de bienes y servicios del gobierno, bajo la [ASG]. Igualmente, faculta a la ASG a promulgar y adoptar la reglamentación necesaria en la configuración de aspectos procesales, y requerimientos asociados, así como la creación del Registro de Licitadores. Bajo esta facultad, la ASG solicitó a la ASES acceso al expediente del RFP, lo cual ASES se negó a proveer. Luego de varios requerimientos, la ASG se ve obligado a recurrir al Tribunal de Primera Instancia, el cual en fecha de 7 de octubre de 2021 determinó y ordenó a la ASES, so pena de desacato, proveer la información solicitada en un término de 10 días. De igual forma, el Tribunal reconoció la facultad de la ASG, bajo el Artículo 82 de la Ley 73, supra, de requerir y obtener la data peticionada.

Nuevamente, la Alianza se equivoca en su apreciación de lo ocurrido en el caso de ASG v. ASES. Para evitar ser repetitivos, referimos a la Comisión a la relación de hechos sobre la controversia entre la ASG y la ASES sobre la jurisdicción para emitir el RFP.⁶⁵ Allí se establece que la ASG obtuvo la Resolución ordenando la producción de los documentos antes de que la ASES fuera emplazada y tuviera la oportunidad de comparecer al pleito para plantear su posición con respecto a la falta de autoridad para ello. Sin embargo, luego de comparecer y hacer los planteamientos procedentes en derecho, la ASG enmendó el alcance de lo solicitado para, en lugar de solicitar el expediente del RFP en su totalidad, solicitar solamente el Pliego del RFP, a lo que la ASES no tuvo reparo. Nótese que el expediente completo del RFP comprende mucho más que el Pliego. Este incluye las propuestas, las comunicaciones entre la agencia y los licitadores, las evaluaciones, las minutas de las reuniones, los informes a la Junta, entre otros. Al producir el pliego del RFP, con todas sus enmiendas, Anejos y Apéndices, el Tribunal estuvo satisfecho con que se había cumplido con la solicitud, según esta fue enmendada por la ASG.

Así pues, es falso que el Tribunal ordenó la producción del expediente completo o que la ASES lo entregó. Contrario a otros documentos en el expediente, los documentos entregados que eran públicos al momento de la producción, por lo que no existía razón para objetar la producción. De hecho, si la ASG hubiera limitado su solicitud al pliego desde el principio, no hubiera sido

⁶³ Véase, **Anejo 04**, Pliego Original del RFP, págs. 41-48.

⁶⁴ Véase, **Anejo 16**, Contrato Modelo, págs. 28-38.

⁶⁵ Véase, Sección I(B) de este memorial, a las págs. 8-9.

necesario comparecer al Tribunal. Sin embargo, la ASG decidió acudir al Tribunal en lugar de atender la objeción levantada por la ASES desde el primer Requerimiento sometido.

vi. Alegaciones de prejuicio por parte de un licitador

Finalmente, la Alianza alegó en su memorial que “el proceso de competencia del servicio ante consideración ha estado circundado por controversias diversas, como por ejemplo la alegación de uno de los competidores de que el Director de la ASES ha hecho expresiones para desprestigiar a uno de los competidores, alegando "mal manejo del contrato y problemas operativos", lo que levantó un potencial impacto negativo en la atmósfera de imparcialidad y pulcritud que debe permear los procesos evaluativos y la selección final.” Suponemos que la Alianza se refiere a unas alegaciones que levantó MC-21 sobre prejuicio y parcialidad por parte de este servidor con relación a su empresa. Sin embargo, el suscribiente ha negado enfáticamente las imputaciones infundadas de MC-21. El récord administrativo está claro a este respecto.

En este caso, varios factores operan en contra de la alegación de que algún prejuicio o parcialidad pudieran haber afectado el proceso del RFP. Primero, la recomendación a la Junta sobre la adjudicación del RFP provino del Comité Ejecutivo como entidad colegiada, no del Lcdo. Galva. Segundo, la decisión final recayó sobre la Junta, la cual está compuesta de once (11) miembros, ninguno de los cuales es el suscribiente. MC-21 no ha presentado evidencia de que los otros miembros del Comité Ejecutivo o los de la Junta tenían prejuicio o parcialidad contra ésta. Tampoco surge razón alguna para concluir razonablemente que cualquier prejuicio o parcialidad por parte del suscribiente, si es que existiera alguno, influyó la decisión del Comité Ejecutivo para recomendar o de la Junta para adjudicar el RFP. Tercero, el proceso de evaluación y adjudicación fue uno ciego, en el cual el Comité Ejecutivo y la Junta se limitaron a evaluar las puntuaciones obtenidas por los licitadores, sin consideraciones externas ya que no conocían la identidad de los proponentes. Cuarto, aun cuando negué cualquier imputación de prejuicio o parcialidad, para evitar incluso la apariencia de conflicto de interés, me inhibí de los procesos relacionados al RFP desde el 20 de octubre de 2021. Ello significa que no estuve presente cuando se discutieron las ofertas bajo el segundo BAFO – el cual fue la base para la adjudicación final – ni en la reunión donde se votó finalmente para adjudicar el RFP. Así, cualquier opinión que pudiera este servidor tener con respecto a cualquier proponente en este proceso, evidentemente, no tuvo el efecto de influenciar de manera alguna la decisión final que tomó la Junta.

III. Conclusión

Esperamos que esta información adicional haya podido aclarar el récord sobre los procedimientos que la ASES llevó y continúa llevando con relación al RFP.

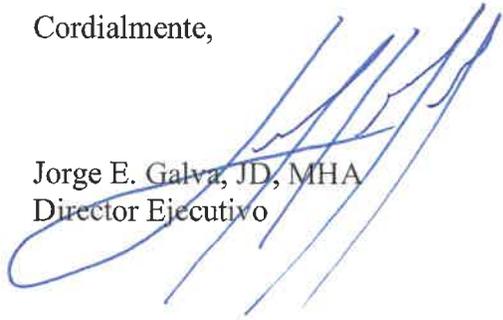
En primer lugar, no debe quedar duda que los servicios a contratarse en este proceso son profesionales a la luz de la definición que establece la Ley 73. La propia propuesta presentada por la entidad que presta parte de esos servicios en la actualidad establece lo técnico y especializado de dichos servicios. Por otro lado, tanto la propia Ley 72, como las leyes y reglamentos que regulan los fondos federales que financian el PSG, establecen que el RFP tiene que ser emitido por la ASES. Más aun, como parte de la evaluación que ha realizado CMS sobre estos procedimientos,

la agencia federal ha expresado está complacida con el cumplimiento de la ASES con los procesos requeridos por el GAO en su informe. Así pues, en la emisión del RFP, la ASES ha respondido a los señalamientos presentados por las agencias reguladoras.

Por otro lado, hemos tenido la oportunidad de aclarar los errores y/o falsedades expresadas por la Alianza en su memorial. En atención a ello, entendemos que la Comisión puede descartar de plano dicho memorial, el cual en nada abona los procesos ante su consideración.

Estamos a su disposición para discutir más en detalle el contenido de este memorial.

Cordialmente,



Jorge E. Galva, JD, MHA
Director Ejecutivo



GOBIERNO DE PUERTO RICO
ADMINISTRACIÓN DE SEGUROS DE SALUD
Director Ejecutivo | Jorge E. Galva, JD, MHA | jgalva@asespr.org

3 de diciembre de 2021

Hon. Pedro Pierluisi Urrutia
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Hon. José Luis Dalmau Santiago
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Estimados todos:

El 31 de marzo de 2021, la Administración de Seguros de Salud de Puerto Rico (“ASES”) emitió una invitación para el proceso de Solicitud de Propuestas # Pharmacy 2022 para la adquisición de Servicios de Manejador del Beneficio de Farmacia y Programa de Reembolsos (“RFP PBM/RA”, por sus siglas en inglés). A partir de esa fecha, se ha seguido un largo y riguroso proceso de evaluación de los proponentes que participaron del mismo. Dicho proceso ha requerido la colaboración y asesoría de empleados y contratistas de la ASES con la pericia necesaria para poder determinar cuál es el proponente que ofrecía el mejor valor para el Plan de Salud del Gobierno de Puerto Rico (“PSG”) y para los beneficiarios del mismo. El pasado 29 de noviembre de 2021, finalmente se emitió la notificación de adjudicación del RFP PBM/RA. Con ello comenzaron a discurrir los términos para solicitar reconsideración de la adjudicación y/o para impugnar el proceso ante el Tribunal de Apelaciones.

Sin embargo, desde el pasado 1 de julio de 2021, la Administración de Servicios Generales de Puerto Rico (“ASG”) ha incurrido en un patrón de intromisión indebida en los procesos de este RFP PBM/RA, alegando – erróneamente – que tiene facultad para ello. Dicha intromisión ha causado y continúa causando una perturbación en los procesos de evaluación, adjudicación y revisión del RFP PBM/RA. Más aún, la intromisión indebida de la ASG en los procesos de adjudicación de la contratación de servicios profesionales impide a la ASES el descargar adecuadamente las funciones que le fueron delegadas mediante la Ley Núm. 72-1993, según enmendada, conocida como *Ley de la Administración de Seguros de Salud* (“Ley 72”). Finalmente, pero no menos importante, los retrasos ocasionados por las controversias generadas por la ASG ubican a la ASES en

riesgo de incumplimiento con directrices y fechas límites impuestas por el Gobierno Federal, quien financia una porción significativa de los costos del PSG.

En atención a ello, según discutiremos en detalle más adelante, resulta necesario que se exima a la ASES de las disposiciones de la Ley Núm. 73-2019, según enmendada, conocida como la *Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico* (“Ley 73”). Acompañamos para su beneficio, como **Anejo 1**, un borrador del Proyecto de Ley para proponer la enmienda solicitada.

I. TRASFONDO

El Art. II de la Ley 72 dispuso que la ASES será el ente que “gestionará, negociará y contratará con aseguradoras y proveedores de servicios de salud, para proveer a sus beneficiarios, particularmente los médico-indigentes, servicios médico-hospitalarios de calidad.” El conjunto de estos servicios es lo que se conoce como el PSG, el cual es responsable de brindar servicios de salud física y mental a 1.6 millones de puertorriqueños.

En el descargo de dicha función, en 2018, la ASES negoció y firmó contratos con cinco (5) organizaciones de cuidado coordinado (“MCOs”, por sus siglas en inglés) para prestar servicios de salud física y mental bajo el PSG efectivo al 1 de noviembre de 2018. Al presente, la ASES mantiene contrato con cuatro (4) MCOs. Estos servicios son ofrecidos por redes de proveedores (médicos primarios, especialistas, laboratorios, etc.) a través en toda la isla.

Además, el Art. VI, Sec. 8, de la Ley 72 establece la obligación de incluir el beneficio de farmacia como parte de la cubierta del PSG. La responsabilidad de proveer y administrar la red de farmacias, el formulario de medicamentos, procesamiento de las reclamaciones del componente de farmacia, entre otros aspectos relacionados a este beneficio del PSG, es del Manejador de Beneficio de Farmacia (“PBM”, por sus siglas en inglés). Otro servicio medular de la administración de este componente de la cubierta del PSG es la negociación de acuerdos de “rebates” o reembolsos de acuerdo con la utilización de medicamentos determinados. Hasta el presente esta tarea ha sido delegada al Administrador del Programa de Farmacia (“PPA”, por sus siglas en inglés).

Por otra parte, el Government Accountability Office (“GAO”, por sus siglas en inglés) emitió un hallazgo señalando que el servicio de PBM que contrata la ASES no ha sido sometido a un proceso de competencia por sobre quince (15) años y requirió que se emitiera un proceso de RFP para la readquisición del referido servicio. Nótese que el GAO proporciona al Congreso, a los jefes de agencias ejecutivas y al público información oportuna, no partidista y basada en hechos que se puede utilizar para mejorar el gobierno y ahorrar miles de millones de dólares a los contribuyentes. Su trabajo se realiza a petición de las comisiones o subcomisiones del Congreso o es requerido por ley o por los informes de las comisiones, de acuerdo con los Protocolos del Congreso.¹ Además, el GAO es la

¹ Véase, <https://www.gao.gov/about/what-gao-does>

institución fiscalizadora de mayor jerarquía de los Estados Unidos. Los auditores federales y estatales esperan por el GAO para que les proporcione los estándares de controles internos, auditorías financieras y otros tipos de auditorías gubernamentales.²

Por otro lado, luego de varias extensiones, el 1 de enero de 2023, entrarán en vigor para todos los Territorios de los Estados Unidos las disposiciones de la Sec. 1927 de la Ley del Seguro Social relacionadas con el reembolso de Medicaid por medicamentos cubiertos para pacientes ambulatorios, incluyendo el programa *Medicaid Drug Rebate* (“MDRP”, por sus siglas en inglés). El MDRP es un programa que incluye al Centers for Medicare and Medicaid Services (“CMS”, por sus siglas en inglés), agencias estatales de Medicaid y fabricantes de medicamentos participantes y que ayuda a compensar los costos, tanto federales como estatales, de la mayoría de los medicamentos recetados para pacientes ambulatorios que son dispensados a pacientes de Medicaid.³

Con el propósito de cumplir con los requisitos antes mencionados, de lograr mayor competencia y reducir el costo actual de esta contratación de servicios profesionales, el 31 de marzo de 2021 ASES inició el proceso de RFP PBM/RA. Dicho proceso se condujo siguiendo los procesos establecidos en el pliego del RFP PBM/RA y en la Orden Administrativa Núm. 21-0701, según enmendada que regula estos procesos de RFPs en la ASES. El RFP PBM/RA pretende contratar a una firma capacitada que pueda proveer los siguientes servicios:

PBM Services:

Developing, implementing and offering to ASES and the MCOs a comprehensive Pharmacy Benefit Management program including but not limited to the following programs and services:

- Managing and credentialing the Pharmacy Network that covers the whole jurisdiction of Puerto Rico and performing Pharmacy Audits;
- Maintaining a Pharmacy Call Center for the Pharmacy Network;
- Adjudicating and accurately processing Pharmacy Claims and payment including handling Coordination of Benefits (“COB”) with other health insurance plans, including Medicare;
- Developing, maintaining and updating the Maximum Allowable Cost (“MAC”) list for Pharmacy reimbursement for Generic Drugs and multi-source Brand Drugs and providing an electronic platform to Pharmacies desiring to appeal MAC pricing, and if requested by ASES, coordinating with Puerto Rico's Department of Consumer Affairs (“DACO”) to provide drug price information for DACO's drug price control list, as amended from time to time;

² Véase, <https://www.gao.gov/about/what-gao-does/audit-role>

³ Véase, <https://www.medicaid.gov/medicaid/prescription-drugs/medicaid-drug-rebate-program/index.html>

- Providing a comprehensive Drug Utilization Review (“DUR”) program, including capabilities to identify potential opioid abuse and suspect prescribing and dispensing patterns, and to track drug utilization for specific prescription drugs identified by ASES for special monitoring;
- Supporting ASES and the contracted MCOs with the High Cost High Need (“HCHN”) Program and other care management programs;
- Developing and implementing a compliance plan and Fraud, Waste and Abuse detection initiatives;
- Assisting in the support and operation of formulary management through the Pharmacy & Therapeutics Committee and Pharmacy Financial Committee;
- Managing the Academic Detailing program;
- Updating and maintaining standard operating procedure manual(s) for PBM services;
- Maintaining an Information System, Information management processes and technical support to meet the [PSG] requirements;
- Providing robust reporting and online reporting tool as described in the Contract;
- Retaining and storing data as required under the Contract;
- Developing strategies to promote an active participation of the MCOs in the development of Enrollee and prescribing Provider educational activities.

RA Services:

The RA Services shall include but are not limited to:

- Producing drug rebate invoices for pharmaceutical manufacturers according to federal schedule requirements for the MDRP and ASES's schedule requirements for non-MDRP rebates;
- Processing and submitting to the Medicaid Program the CMS drug utilization and information necessary for CMS-64 reporting;
- Providing Rebate program reports for retail Pharmacy drugs and PADs to ASES and its designees on a quarterly basis;
- Reconciling and resolving drug rebate disputes with pharmaceutical manufacturers;
- Ensuring quality control to validate accuracy of drug Rebate Data;
- Maintaining administrative, physical and technical safeguards to ensure security and confidentiality of all drug Rebate Information according to Puerto Rico and federal laws and industry standards;
- Updating and maintaining standard operating procedure manual(s) for Rebate program administration;

- Maintaining a Data repository system that interfaces with multiple Data sources;
- Maintaining a reporting database that can be accessed in real time by ASES to review and analyze rebate information and produce ad hoc reporting;
- Creating and maintaining a secure web portal for Data sharing with pharmaceutical manufacturers.
- Coordinating and assisting in the support and operation of ASES's Pharmacy Financial Committee.

Mientras la ASES se encontraba inmersa en el proceso del RFP, el 1 de julio de 2021, la ASG, a través de su Oficina de Investigaciones Especiales (“OIE”), emitió un *Requerimiento de Información* dirigido a la ASES (“*Requerimiento*”). En el *Requerimiento* la OIE solicitó, entre otras cosas, la producción del “Expediente hasta esta fecha del RFP [PBM/RA]”. El 6 de julio de 2021, la ASES envió una comunicación a la OIE respondiendo al *Requerimiento*. Con respecto a la solicitud del expediente del RFP [PBM/RA], la ASES objetó su producción sosteniendo que “el proceso de contratación competitivo objeto de esta investigación no es una compra de bienes, obras ni servicios no profesionales regulado por la [Ley 73]. Por el contrario, se trata de la contratación de un servicio profesional, por lo que, con excepción de lo dispuesto en el Artículo 35 sobre el Registro Único de Proveedores de Servicios Profesionales, no le son de aplicación a este RFP las disposiciones de la [Ley 73].”

La OIE no atendió el planteamiento de la ASES. En su lugar, el 7 de julio de 2021, emitió un *Segundo y Final Aviso de Requerimiento de Información Previo a Recurrir al Tribunal* (“*Segundo Aviso*”). El *Segundo Aviso*, es prácticamente igual al *Requerimiento*, con la excepción de que sólo se limitó a solicitar nuevamente y de manera idéntica el expediente completo del RFP PBM/RA. El 8 de julio de 2021, la ASES respondió expresando que se reafirmaba en lo expuesto en la carta de 6 de julio.

Ni la OIE, ni la ASG realizaron gestión alguna para dilucidar, discutir o atender la controversia trabada con la ASES. En su lugar, el 6 de octubre de 2021 – esto es, casi tres (3) meses después de recibir la última comunicación de la ASES con relación al *Requerimiento* y al *Segundo Aviso* – la ASG presentó una demanda ante el Tribunal de Primera Instancia de San Juan (“TPI”). En su *Demanda*, la ASG alegó, en síntesis, que tiene facultad para solicitar el expediente en controversia, que existe un deber ministerial de la ASES de proveer los mismos y que la ASES había incumplido con dicho deber. Además solicitó que se emitiera una orden *ex parte* instruyendo a la ASES a entregar el expediente.

Así las cosas, el 7 de octubre de 2021, el TPI emitió una *Resolución Enmendada y Orden* (“*Resolución*”) *ex parte* en la que declaró ha lugar la solicitud de ASG y ordenó la producción del expediente. La ASES recibió copia de la *Resolución*, la *Demanda* y su Anejo mediante notificación personal el 8 de octubre de 2021. Por entender que se erró al

expedir la *Resolución* sin su comparecencia, el 12 de octubre de 2021, la ASES presentó una *Moción de Reconsideración de Resolución*. El mismo 12 de octubre el Tribunal emitió una *Orden* concediendo término a la ASES para exponer sus argumentos al respecto y un término posterior similar a la ASG para responder a la moción de la ASES.

Ambas agencias presentaron sus respectivas mociones. Sin embargo, la moción de la ASG alteró el alcance de lo solicitado y se limitó a argumentar que necesitaban el pliego del RFP PBM/RA para poder determinar si los servicios a contratarse era servicios profesionales o no. Ante este cambio de postura. La ASES procedió a radicar una *Moción de Desestimación* acompañada con el pliego del RFP PBM/RA, sus enmiendas, anejos y apéndices. El TPI indicó que si la ASG se daba por satisfecha con los documentos producidos podía proceder con el archivo del caso. Ese mismo día, la ASG indicó que se daba por satisfecha. A estos efectos el TPI dio por cumplida la *Resolución* “según su alcance fue delimitado posteriormente por la [ASG]”.

Es importante mencionar que la demanda de la ASG causó desasosiego en los proponentes, que temían por los efectos que la divulgación del contenido de sus propuestas podía tener en el proceso de evaluación y adjudicación que estaba en proceso. Además, causó incertidumbre en los miembros de la Junta de Directores de la ASES, quienes temían el efecto que el proceso pudiera tener en su facultad para adjudicar el RFP PBM/RA. Sin embargo, concluido el proceso ante el TPI, la Junta de Directores de la ASES procedió a adjudicar el RFP PBM/RA el pasado 29 de noviembre de 2021.

Así, el 30 de noviembre de 2021, recibimos mediante correo electrónico el *Informe de Investigación ASG-I-21-006* (“*Informe*”), emitido por la OIE.⁴ El *Informe* concluye que:

- “[L]os servicios de PBM y RA que procura la ASES no son considerados servicios profesionales.”
- “[E]l personal clave que los PBM y RA no requieren de personal que provea servicios profesionales.”
- “[T]odo servicio de PBM y RA que ASES pretenda obtener para la prestación de servicios de PBM y RA están sujetos a la aplicación de la [Ley 73] y su Reglamento.”
- “La OIE recomienda a la [ASG] que tome las acciones correspondientes según las facultades otorgadas en la [Ley 73] en lo referente a las adquisiciones de bienes y servicios por parte de entidades gubernamentales bajo su jurisdicción.”

El *Informe* pretende ser una evaluación del Pliego del RFP PBM/RA y sus enmiendas, anejos y apéndices, según provisto por la ASES como parte del proceso judicial antes descrito. Sin embargo, en realidad es un documento descarnado, sin el mínimo análisis o rigor y cuyas conclusiones son claramente erróneas. Más aún, el *Informe* lo que demuestra es la falta de pericia y del más básico conocimiento por parte de las personas

⁴ Se incluye copia del Informe como Anejo 2.

que redactaron el mismo de lo que constituye y conlleva el servicio de PBM/RA a ser contratado.

Así pues, ante este informe y el historial antes descrito, anticipamos que la ASG habrá de tomar alguna acción contra la ASES – ya sea a nivel administrativo o judicial – para tratar de detener el RFP PBM/RA ya adjudicado. Cualquier acción en esta dirección, además de impropia por carecer de facultad para ello, resultaría en consecuencias desastrosas para el PSG y el cumplimiento con las fechas y requerimiento establecidos por el Gobierno Federal.

Por otro lado, la ASES constantemente está emitiendo RFPs con el propósito de adquirir servicios relacionados con la administración e implantación del PSG. Todos estos servicios son altamente técnicos, que requieren de una pericia particular para poder evaluar las propuestas sometidas y escoger realmente al proponente que ofrezca el mejor valor al Gobierno de Puerto Rico. La intromisión de la ASG en el RFP PBM/RA solo demuestra que no cuentan con dicha pericia. Permitir que la ASG reclame facultad para intervenir en estas adjudicaciones solo logrará entorpecer indebidamente los procesos y afectar innecesariamente el PSG y a sus beneficiarios.

Para evitar lo anterior, la solución más práctica y que va acorde con la intención legislativa al aprobar la Ley 72, es excluir explícitamente a la ASES de las disposiciones de la Ley 73. Solo así se lograrán los mejores resultados a favor del PSG y, más importante aún, de los beneficiarios de éste, quienes resultan ser también la población más vulnerable en Puerto Rico. Veamos.

II. DERECHO APLICABLE

A. La Ley 73

La Ley 73 “persigue la optimización del nivel de efectividad y eficiencia de la gestión gubernamental, la agilización de los procesos de adquisición de bienes y servicios mediante el uso de avances tecnológicos, la reducción del gasto público, la asignación estratégica de recursos y la simplificación de los reglamentos que regulan las adquisiciones del Gobierno de Puerto Rico.” Véase, Art. 2 de la Ley 73.

Aunque no está en controversia, ya que la propia ASG lo admite, ésta solo está facultada para intervenir en los procesos de adquisición de bienes, obras y servicios no profesionales. El propio Art. 2 de la Ley 73, en su declaración de política pública establece que “[e]sta Ley otorga a la ASG las herramientas necesarias para agilizar los procesos estableciendo nuevos métodos que gobernarán las adquisiciones de bienes y servicios no profesionales por parte del Gobierno de Puerto Rico.” (Énfasis nuestro.) Siguiendo esa misma política pública, el Art. 3 de la Ley 73 es claro al establecer que sus disposiciones sólo “regirán los procesos de compras y subastas de bienes, obras y servicios no profesionales en todas las entidades gubernamentales y las entidades exentas.” (Énfasis nuestro.) Más aún, el Art. 5 de la Ley 73 establece que la ASG se creó como el organismo

en la Rama Ejecutiva responsable de establecer la política pública relacionada con las compras de bienes, obras y servicios no profesionales para todas las entidades gubernamentales y entidades exentas.

De hecho, con relación a la adquisición de servicios profesionales, la Ley 73 solo establece que “será requisito mandatorio que el proveedor de servicios profesionales esté registrado en el Registro Único de Proveedores de Servicios Profesionales [“RUP”], bajo la categoría correspondiente y que cuente con la Certificación emitida por el Administrador.” Véase. Art. 35 de la Ley 73.

La Ley 73 incluye una serie de agencias o instrumentalidades que están expresamente excluidas de su aplicación. Así, en su versión original, el Art. 4(o) de la Ley 73 define “entidad exenta” como “Entidad Gubernamental que no viene obligada a realizar sus compras a través de la [ASG] ya sea por razón de operar bajo lo dispuesto en un plan fiscal vigente o por tratarse de entidades fiscalizadoras de la integridad del servicio público y la eficiencia gubernamental. Para propósitos de esta Ley se considerarán entidades exentas las siguientes: Oficina de Ética Gubernamental, Oficina del Inspector General de Puerto Rico, Universidad de Puerto Rico, Comisión Estatal de Elecciones, Autoridad de Asesoría Financiera y Agencia Fiscal de Puerto Rico, Banco Gubernamental de Fomento para Puerto Rico, Autoridad para las Alianzas Público Privadas de Puerto Rico, Autoridad para el Financiamiento de la Infraestructura de Puerto Rico, Autoridad de Acueductos y Alcantarillados, Autoridad de Energía Eléctrica, Autoridad de Carreteras y Transportación y la Corporación Pública Para la Supervisión de Seguros de Cooperativas de Puerto Rico.”

Posteriormente, la Ley Núm. 22-2020 (“Ley 22”) enmendó el referido artículo para añadir a la Autoridad de Edificios Públicos a la lista de entidades exentas. La exposición de motivos de la Ley 22 establece que “entendemos que para la consecución efectiva de los objetivos de la Autoridad de Edificios Públicos y la agilidad de los procesos que estos llevan a cabo, resulta pertinente que estos puedan establecer sus propios procedimientos para la adquisición de bienes y servicios, incluyendo subastas públicas. Además, cabe señalar que la Autoridad de Edificios Públicos cuenta con un departamento de subastas, conformado por inspectores, ingenieros y agrimensores con basto conocimiento y experiencia en estos procesos.”

Por otro lado, la Ley Núm. 150-2020 (“Ley 150”) enmendó nuevamente el artículo para incluir a “programas e instalaciones de la Administración de Servicios Médicos de Puerto Rico (ASEM), el Centro Médico, el Hospital Cardiovascular, el Hospital Universitario de Adultos, el Hospital Pediátrico Universitario, el Hospital Universitario Dr. Ramón Ruiz Armau, los Centros de Diagnóstico y Tratamiento y facilidades de discapacidad intelectual adscritos al Departamento de Salud, el Hospital Industrial y dispensarios regionales e intermedios, la Corporación del Fondo del Seguro del Estado, [y] la Autoridad Metropolitana de Autobuses” a la lista de entidades exentas. Nótese que la mayoría de estas entidades proveen servicios de salud, por lo que – aunque la exposición de motivos de la Ley no es clara con relación al motivo de la enmienda, más allá de mencionar la emergencia causada por el COVID-19 – es razonable concluir que la misma

responde al reconocimiento de la importancia de tener flexibilidad en los procesos de compras en las agencias relacionadas a la prestación de servicios de salud.

Finalmente, el Art. 74 de la Ley 73 establece que “[t]oda ley vigente al momento de la aprobación de esta Ley que regule y/o establezca algún procedimiento de la [ASG] y sobre la cual no se disponga de alguna otra manera mediante las disposiciones de este capítulo, se entenderá enmendada a los fines de facilitar la implantación de las disposiciones y propósitos del mismo. Dichas leyes deberán ser interpretadas de la manera más amplia y favorable a la implantación y los propósitos de este capítulo. **En caso de existir cualquier conflicto entre las disposiciones de cualquier ley y las disposiciones de este capítulo, las disposiciones de este capítulo prevalecerán sobre aquellas.**” (Énfasis nuestro.)

B. La Ley 72

La ASES es una corporación pública creada al amparo de la Ley 72, la cual tiene personalidad jurídica independiente y está regida por una Junta de Directores. Véase, Art. IV, Sec. 1 de la Ley 72. Mediante esta legislación se propició una reforma radical de los servicios de salud en Puerto Rico y se delegó en la ASES la administración de la misma. El Art. IV, Sec. 2, de la Ley 72 establece en lo pertinente:

La Administración será el organismo gubernamental encargado de la implantación de las disposiciones de este capítulo. A estos fines, tendrá los siguientes poderes y funciones, que radicarán en su Junta de Directores:

- (a) Implantar planes de servicios médico-hospitalarios basados en seguros de salud.
- (b) Negociar y contratar con aseguradores públicos y privados, y organizaciones de servicios de salud, cubiertas de seguros médico-hospitalarios, según se definen y establecen éstos en las secs. 7025 a 7036 de este título.
[...]
- (k) Negociar y otorgar toda clase de contratos, documentos y otros instrumentos públicos con personas y entidades jurídicas.
[...]
- (m) Realizar todos los actos necesarios y convenientes para llevar a cabo los propósitos de este capítulo, excepto que la Administración no tendrá facultad para empeñar el crédito del Estado Libre Asociado de Puerto Rico, ni de ninguna de sus subdivisiones políticas.
[...]

Sobre la cubierta del PSG, el Art. VI, Sec. 8 de la Ley 72, establece en lo pertinente:

Los planes de salud tendrán una cubierta amplia, con un mínimo de exclusiones. No habrá exclusiones por condiciones preexistentes, como tampoco periodos de espera, al momento de otorgarse la cubierta al beneficiario.

- (a) Cubierta A.— La Administración establecerá una cubierta de beneficios a ser brindados por los aseguradores contratados o proveedores participantes. La cubierta comprenderá, entre otros beneficios, los siguientes: servicios ambulatorios, hospitalizaciones, salud dental, salud mental, vacunaciones y tratamientos para el virus del Papiloma Humano, estudios, pruebas y equipos para beneficiarios que requieran el uso de un ventilador para mantenerse con vida, un mínimo de un (1) turno diario de ocho (8) horas por paciente, de servicios de enfermeras(os) diestros con conocimientos en terapia respiratoria o especialistas en terapia respiratoria con conocimientos en enfermería, los suplidos que conllevan el manejo de los equipos tecnológicos, terapia física y ocupacional necesaria para el desarrollo motor de éstos pacientes, laboratorios, rayos X, **así como medicamentos mediante prescripción médica, los cuales deberán ser despachados en una farmacia participante, libremente seleccionada por el asegurado, y autorizada bajo las leyes de Puerto Rico.** La cubierta dispondrá para que cada beneficiario tenga a su alcance anualmente los exámenes de laboratorio e inmunización apropiados para su edad, sexo y condición física. [...] (Énfasis nuestro.)

Por su parte, el Art. VI, Sec. 14 de la Ley 72 establece el derecho de los beneficiarios del PSG de escoger la farmacia de su predilección, entre otros derechos. Además, el Art. VII, Sec. 2, de la Ley 72 incluye entre los informes que los MCOs deben proveer a la ASES “[d]atos estadísticos sobre medicación, los cuales deberán incluir todos los medicamentos recetados y una relación de costos de los mismos.” Así pues, resulta evidente que la cubierta de farmacia y los servicios provistos a través de ella son una parte integral de la cubierta del PSG.

Finalmente, el Art. VIII, Sec. 2, de la Ley 72 establece que “[l]a [ASES] estará excluida de las disposiciones de la Ley de Personal del Servicio Público de Puerto Rico, **de la Ley de Compras y Suministros del Estado Libre Asociado de Puerto Rico**, y de todos los reglamentos promulgados en virtud de dichas leyes. No obstante, deberá aprobar un Reglamento General para la implantación de las disposiciones de este capítulo dentro de los seis (6) meses siguientes a la fecha de vigencia del mismo. También deberá aprobar dentro de igual término un Reglamento de Personal, basado en el principio de mérito, **así como un Reglamento de Compras, Suministros y Contratación de Servicios.**” (Énfasis nuestro.)

C. Los PBMs

En Puerto Rico se aprobó la Ley Núm. 82-2019, conocida como *Ley Reguladora de los Administradores de Beneficios y Servicios de Farmacia* (“Ley 82”). Dicha ley fue impugnada por la Junta de Supervisión Fiscal. En atención a ello, el Tribunal de Distrito Federal que atiende la reestructuración de la Deuda de Puerto Rico bajo el *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”, por sus siglas en inglés) ordenó que no se implementara la misma concluyendo no era compatible con el Plan Fiscal. Independientemente de este hecho, el cual sólo tuvo que ver con aspectos financieros, la Ley 82 establece la intención del legislador sobre los servicios que proveen los PBMs en Puerto Rico.

A estos efectos, la exposición de motivos de la Ley 82 establece que “[l]os [PBMs] y Administradores de Beneficios de Farmacia (Pharmacy Benefit Administrators “PBA”, por sus siglas en inglés) son intermediarios que negocian los servicios y los costos de medicamentos entre las empresas farmacéuticas y los terceros pagadores, tales como el Gobierno, compañías de seguros, las empresas y los clientes que pagan directamente. Estas entidades tienen relación con la mayoría de los aspectos relacionados a medicamentos recetados, como por ejemplo, el procesamiento de reclamaciones a las farmacias, la revisión de la utilización de medicamentos, el desarrollo y la gestión de formularios, la negociación con los fabricantes para los descuentos (rebates) de los medicamentos recetados, la operación de pedidos de medicamentos por correo, la sustitución de medicamentos y el reembolso a los proveedores y los pacientes.”

La Ley 82 define PBM como “una persona, persona jurídica, ente u organización dedicada a proveer servicios de manejo, administración, revisión, asesoría de beneficios de medicamentos recetados para auspiciadores (“plan sponsors”) como los patronos, patronos autoasegurados, organizaciones de servicios de salud, planes de salud, administradores de terceros, grupos sindicales y otras personas que contratan dichos servicios para realizar alguna o varias de las siguientes actividades, entre otras: administrar servicios o cubierta de farmacia del auspiciador, procesamiento de recetas y reclamaciones, manejo de beneficios de servicios de medicamentos, programas de adhesión al uso de medicamentos (“drug adherence management”), programa de interacción de medicamentos, programa de utilización de medicamentos, formulario de medicamentos, comité y asesoría de formularios de medicamentos y su manejo, programas de utilización de genéricos e incentivos; análisis de datos médicos y de medicamentos, servicios de revisión de la utilización de medicamentos (“drug utilization review”), servicios de pre-autorización de medicamentos, manejo de programas de repeticiones de medicamentos, manejo de terapia médica (“medical therapy management o MTM”), manejo de bienestar, contratación de red de proveedores de servicios de farmacia, centros de servicio al cliente y de llamadas, manejo de servicios de farmacia por correo, contrataciones con manufactureros de medicamentos y terceros relacionados a sus servicios, informes, servicios actuariales, servicios de informática y procesamiento, manejo de la terapia de medicamentos de enfermedades y asesoría y utilización de farmacéuticos clínicos. Se podrá hacer referencia en esta Ley como PBMs e incluyen entidades afines que no se hagan llamar o se

identifiquen como PBMs. La definición también incluye a cualquier persona o entidad ofreciendo los servicios y productos que el PBM contrató con la farmacia.”

Finalmente, el Art. 5 de la Ley 82 establecía que, para poder operar en Puerto Rico, los PBM estaban obligados a mantener una licencia emitida por el ente regulador que se creaba bajo la ley.

D. Los servicios profesionales y los servicios no profesionales

Los incisos (hh) e (ii) del Art. 4 de la Ley 73 definen los términos servicios no profesionales y servicios profesionales de la siguiente manera:

(hh) Servicios no profesionales. — Aquellos servicios que no son ofrecidos por una persona natural o jurídica con conocimientos o habilidades especializadas a quien se le requiere poseer un título universitario o licencia que lo acredite como profesional especializado.

(ii) Servicios profesionales. — Aquellos servicios que son ofrecidos por una persona natural o jurídica con conocimientos o habilidades especializadas a **quien se le requiere poseer un título universitario o licencia que lo acredite como profesional especializado; o cuya prestación principal consiste en el producto de la labor intelectual, creativa o artística, o en el manejo de destrezas altamente técnicas o especializadas.** (Énfasis nuestro.)

III. DISCUSIÓN

A. Contrario a lo que alega la ASG, los servicios que se pretenden adquirir a través de este RFP son servicios profesionales, por lo que ASG no tiene facultad para intervenir en el RFP

Los servicios que la ASES pretende contratar a través de RFP PBM/RA son servicios especializados que requieren una pericia en cubiertas de seguros, servicios de farmacia, desarrollo de sistemas de información, entre otros. Específicamente, del PBM se requiere – a manera de ejemplo – administrar y dar las credenciales a la red de farmacia, así como auditar las mismas; adjudicar y procesar las reclamaciones de farmacia, incluyendo la coordinación de beneficios; desarrollar, mantener y actualizar la lista de precios máximos permitidos de los medicamentos; proveer un programa de revisión de utilización de medicamentos; etc. Por su parte, del RA se requiere – a manera de ejemplo – procesar y someter la información de utilización al Programa Medicaid cumpliendo con los requisitos impuestos por éste; resolver y reconciliar disputas con los manufactureros con relación a los reembolsos; asegurar el control de calidad en los rebates; asegurar la protección de los datos relacionados con los reembolsos; etc.

Como vimos anteriormente, los servicios profesionales se definen como aquellos “que son ofrecidos por una persona natural o jurídica con conocimientos o habilidades especializadas a quien se le requiere poseer un título universitario o licencia que lo acredite como profesional especializado; o cuya prestación principal consiste en el producto de la labor intelectual, creativa o artística, o en el manejo de destrezas altamente técnicas o especializadas.” En el *Informe*, la ASG parece descansar únicamente en el hecho de si se requiere o no profesionales licenciados para ejecutar las tareas a ser contratadas. Aun cuando ello es un elemento de la definición de servicios profesionales, éste no es el único criterio. La definición establecida en la propia Ley 73 también incluye como criterio alternativo que la “prestación principal consiste en el **producto de la labor intelectual**, creativa o artística; o en el **manejo de destrezas altamente técnicas o especializadas**”.

En primer lugar, de las funciones antes descritas surge claramente que las tareas que realizará el PBM y el RA son altamente técnicas y especializadas. Pero también, la mayoría de ellas deben ser realizadas por personal adiestrado en farmacia, ingeniería, sistemas de información, etc. Otras tantas requieren la supervisión de personal adiestrado en farmacia o en medicina para poder realizar las mismas. A manera de ejemplo, la tarea de administrar, dar las credenciales y auditar las farmacias requiere validar que las farmacias que habrán de pertenecer a la red cumplen con todos los requisitos para operar, incluyendo la correcta dispensación de los medicamentos recetados. En muchas instancias, las auditorías requieren que los farmacéuticos del PBM discutan aspectos clínicos con el personal de la farmacia auditada antes de emitir las determinaciones, conclusiones y hallazgos.⁵ Además, requieren personal con la preparación adecuada en auditoría para poder llevar a cabo las mismas siguiendo los principios generales aceptados para estos procesos.

Un análisis similar de cada uno de los servicios requeridos en el RFP PBM/RA en el contexto de la industria que representan y de la manera en que se requiere que se desempeñen los mismos es suficiente para establecer que los servicios son claramente profesionales. Cualquier conclusión en contrario refleja un claro desconocimiento del servicio a ser contratado y un pobre análisis de los documentos provistos.

B. Los servicios del PBM/RA son similares a los servicios de los MCOs, los cuales están delegados exclusivamente a la ASES

Según surge del detalle de los servicios incluidos en el Contrato Modelo – que formó parte de los pliegos del RFP – el PBM es el responsable de recibir, adjudicar y pagar las reclamaciones de pago por los medicamentos dispensados por las farmacias en la red. En otras palabras, conceptualmente, en términos del pago a las farmacias, el PBM opera de forma similar a como lo hacen los MCOs con relación al pago de los demás proveedores

⁵ Véase, Art. 10(d) de la Ley 82 que establece que “[e]n la eventualidad que la auditoría requiera de conocimiento profesional, tanto los PBMs, PBAs o entidades afines, así como la farmacia, se deberá nombrar un farmacéutico debidamente licenciado en Puerto Rico, para que dichos profesionales puedan discutir los asuntos relacionados a la auditoría.”

de servicios médicos bajo el PSG. Lo mismo aplica para otras áreas del servicio a ser contratado, tales como la resolución de disputas.

Sobre la contratación de los MCOs, el Art. IV, Sec. 2, de la Ley 72 delega en la ASES la negociación y contratación de estos servicios. Es razonable concluir que la intención del legislador era delegar en la ASES, que es la agencia con la pericia requerida, el proceso de negociación y administración de los contratos con las entidades que habrán de viabilizar el servicio y el pago a los proveedores de todas facetas de la cubierta del PSG.

Así pues, independientemente del tipo de servicio contratado – sea profesional o no profesional – lo que se busca con el RFP PBM/RA es contratar un servicio similar al de los MCOs dirigido a la parte de la cubierta que tiene que ver con la cubierta de farmacia. Por lo tanto, la negociación y contratación de este servicio, al igual que la contratación de los MCOs debe recaer enteramente en la única agencia con la pericia para ello; esto es, la ASES.

C. La ASG no tiene la pericia necesaria para evaluar y adjudicar este o cualquier otro RFP para obtener servicios claves para la administración del PSG.

Como vimos, los servicios a ser contratados a través del RFP PBM/RA son servicios profesionales. Sin embargo, aun si se determinara que no lo son – lo que se niega enfáticamente y se plantea solo para propósitos de argumentación – resulta evidente que la ASG no posee la pericia requerida para llevar a cabo el proceso requerido para poder emitir, evaluar y adjudicar un RFP con la complejidad del RFP PBM/RA. De igual manera, no tiene la pericia necesaria para emitir, evaluar ni adjudicar cualquier otro RFP para la obtención de servicios y/o bienes necesarios para la adecuada administración del PSG.

Por una parte, basta con ver el análisis superficial y sin sustancia de la OIE en el *Informe* para concluir que la ASG desconoce totalmente el tipo de servicio que provee un PBM. Sin embargo, aun cuando el contrato modelo que fue anejado al Pliego del RFP PBM/RA establece claramente el alcance de los servicios, la ASG aun no fue capaz de evaluar adecuadamente dicho servicio e identificar los aspectos particulares del mismo y cómo éstos distan de un contrato de servicios no profesionales.

Ante este hecho irrefutable, nos preguntamos ¿cómo podemos confiar en que la ASG será capaz de redactar un pliego de RFP que incluya los requisitos necesarios que los proponentes deben incluir en sus ofertas para demostrar su capacidad – técnica y financiera – para ejecutar los servicios para implantar el PSG? Ello claramente va más allá de probar una capacidad financiera u ofrecer un precio más bajo. Por otro lado, ¿cómo podemos confiar en que la ASG será capaz de evaluar las propuestas recibidas a la luz del servicio altamente especializado que se requiere? Ello es de especial importancia cuando – como ocurre en el RFP PBM/RA – se incluye un servicio requerido por el Gobierno Federal que será implantado por primera vez en Puerto Rico.

La contestación a estas preguntas es evidente y tiene que ser que no podemos confiar en la ASG tendrá esa capacidad. No la demostrado hasta ahora y no debemos permitir que utilice este o cualquier otro proceso de la ASES para tratar de probarlo. Hay demasiado en juego. Por una parte, se pone en riesgo el cumplimiento con requisitos federales que pueden significar la pérdida de cientos de millones de dólares. Por otra parte, se pone el riesgo la calidad del servicio que se le provee a cerca de 1.6 millones de beneficiarios del PSG, que dependen del mismo para vivir.

D. La Ley 72 eximia a la ASES de los procesos ante la ASG

Al presente, el Art. VIII, Sec. 2, de la Ley 72 excluye a la ASES de las disposiciones de la Ley de Compras y Suministros del Estado Libre Asociado de Puerto Rico y requería de ésta la aprobación de un Reglamento de Compras, Suministros y Contratación de Servicios. Sin embargo, a la luz de las disposiciones del Art. 74 de la Ley 73, por dicha disposición estar en conflicto con la Ley 73, las disposiciones de la Ley 73 prevalecen. En otras palabras, aunque el legislador nunca derogó directamente la exclusión de la ASES de los procesos generales de compras en el Gobierno, el Art. 74 de la Ley 73 lo hizo de manera tácita.

Aunque no surge de la exposición de motivos de la Ley 72 la razón para excluir a la ASES originalmente de las disposiciones de la Ley de Compras y Suministros del Estado Libre Asociado de Puerto Rico, es razonable pensar que se quería evitar problemas como el que discutimos en esta comunicación y, a la vez, proveer a la ASES la flexibilidad de poder llevar a cabo los procesos de adquisición requeridos para los servicios necesarios para administrar el PSG, sean o no servicios profesionales. En otras palabras, al crear la ASES, el legislador entendió que la ASES posee la pericia necesaria para llevar a cabo sus propios procesos de adquisición y que el PSG estaba mejor servido permitiendo que fuera la ASES la que ejecutara los mismos.

IV. CONCLUSIÓN

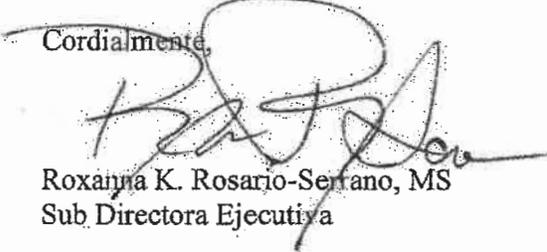
La práctica reciente de la ASG de tratar de intervenir y controlar los procesos de adquisición de servicios profesionales de la ASES no solo excede sus facultades en ley, sino que atenta contra la estabilidad del PSG. Por una parte, su intervención en el proceso del RFP PBM/RA ha tenido el efecto de crear controversias innecesarias, atrasar los procesos y si, como anticipamos, tratan de paralizar el mismo, pone en riesgo el cumplimiento con requerimientos del Gobierno Federal e incrementa el costo de la provisión de servicios. Por otra parte, con relación a todos los procesos de adquisición de servicios para la administración del PSG – independientemente de si son o no servicios profesionales – la ASG simplemente no cuenta con la pericia necesaria para emitir, evaluar y adjudicar un RFP de la complejidad de los que emite la ASES.

En atención a ello, y para evitar que se afecte el PSG y los beneficiarios cuya salud depende de éste, resulta necesario que se tramite un Proyecto de Ley que enmiende el Art. 4(o) de la Ley 73 para incluir a la ASES como una de las entidades excluidas de su

aplicación. En el pasado se reconoció que muchas entidades relacionadas a la salud debían estar excluidas de la misma. Ahora corresponde reconocer que la agencia que facilita que se provean los servicios de salud a cerca de 1.6 millones de puertorriqueños esté igualmente excluida.

Estamos a su disposición para aclarar cualquier duda al respecto.

Cordialmente,



Roxanna K. Rosario-Serrano, MS
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Anejos

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7 de febrero de 2022

Hon. Rubén Soto Rivera
Presidente
Comisión de Salud
Senado de Puerto Rico

Atención: Dr. José Luis Castro
Director Ejecutivo
Comisión de Salud
Senado de Puerto Rico

RE: Memorial Explicativo sobre la R del S 335

Estimado Señor Presidente:

El pasado 15 de octubre de 2021, se suscribió una comunicación mediante la cual se solicitó de la Administración de Seguros de Salud de Puerto Rico (“ASES”) un memorial explicativo con su recomendación y opinión con relación a la Resolución del Senado 335 (“RS 335”). La RS 335 fue aprobada el 16 de septiembre de 2021 “para ordenar a la Comisión de Salud del Senado de Puerto Rico, realizar una investigación sobre el proceso de subasta, llevado a cabo por la [ASES] en relación a lo manejadores de beneficios de farmacia o PBM, por sus siglas en inglés, que atienden la distribución de los medicamentos, el impacto que tendrá en el Plan de Salud Vital, el plan de trabajo e itinerario para el proceso de transición y el impacto que este tipo de transacción puede tener en la salud, bienestar y vida de los beneficiarios del Plan Vital.” En cumplimiento con lo solicitado, la ASES somete el presente memorial explicativo.

A. Introducción y Trasfondo

El Plan de Salud del Gobierno de Puerto Rico, conocido desde 2018 como Plan Vital, (“PSG”) es responsable de brindar servicios de salud física y mental a 1.6 millones de puertorriqueños. Los servicios son ofrecidos por redes de proveedores (médicos primarios, especialistas, laboratorios, etc.) a través en toda la isla.

La ASES es una corporación pública creada al amparo de la Ley Núm. 72-1993, según enmendada, conocida como Ley de la Administración de Seguros de Salud (“Ley 72”). El Art. II de la Ley 72 dispuso que la ASES será el ente que “gestionará, negociará y contratará con aseguradoras y proveedores de servicios de salud, para proveer a sus beneficiarios, particularmente los médico-indigentes, servicios médico-hospitalarios de calidad.” En el descargo de dicha función, en 2018, la ASES negoció y firmó contratos con cinco (5) organizaciones de cuidado coordinado (“MCOs”,

por sus siglas en inglés) para prestar servicios bajo el PSG efectivo al 1 de noviembre de 2018. Al presente, la ASES mantiene contrato con cuatro (4) MCOs.

El Artículo VI, Sección 6, de la Ley 72 incluye el beneficio de farmacia como parte de la cubierta del PSG. La responsabilidad de proveer y administrar la red de farmacias, el formulario de medicamentos, procesamiento de las reclamaciones del componente de farmacia, entre otros aspectos relacionados a este beneficio del PSG, es del Manejador de Beneficio de Farmacia (“PBM”). Otro servicio medular de la administración de este componente de la cubierta del PSG es la negociación de acuerdos de “rebates” o reembolsos de acuerdo con la utilización de medicamentos determinados. Al presente esta tarea ha sido delegada al Administrador del Programa de Farmacia (“PPA”). Por los pasados dieciséis (16) años, el servicio de PBM ha estado contratado con la empresa MC-21, LLC mientras que el servicio de PPA ha estado contratado con la empresa Abarca Health, LLC.

Así las cosas y debido al tiempo transcurrido desde la contratación inicial de estas empresas, en febrero de 2021, la Oficina de Contabilidad Gubernamental de los Estados Unidos (“GAO”, por sus siglas en inglés) emitió un informe en el cual concluyó que algunos de los procesos de adquisición en la ASES no promovían la competencia, por lo que se existía mayor riesgo de fraude, pérdida y abuso. En atención a ello, recomendó que los Centros de Servicios Medicare y Medicaid (“CMS”, por sus siglas en inglés), supervisaran a Puerto Rico en los procesos de adquisición para asegurar la competencia, según sea apropiado para la operación eficiente del Programa Medicaid.

Por otro lado, después de varias extensiones, a partir del 1 de enero de 2023, aplicarán a los Territorios de los Estados Unidos, las disposiciones de la Sec. 1927 de la Ley del Seguro Social relacionadas con el reembolso por medicamentos para pacientes ambulatorios cubiertos por Medicaid, incluyendo el programa *Medicaid Drug Rebate* (“MDRP”, por sus siglas en inglés). Con esta enmienda los Territorios, incluyendo a Puerto Rico, tienen la opción de participar en el MDRP o pedir exclusión del mismo. El MDRP es un programa que incluye a CMS, agencias estatales de Medicaid y fabricantes de medicamentos participantes que ayuda a compensar los costos, tanto federales como estatales, de la mayoría de los medicamentos recetados que son dispensados a pacientes ambulatorios de Medicaid. Aproximadamente 600 fabricantes de medicamentos participan actualmente en este programa. Como resultado de lo anterior y por el ahorro que dicho programa representa en los gastos por concepto de medicamentos recetados a los beneficiarios del PSG, Puerto Rico optó por participar en el MDRP.

B. Procedimiento de Solicitud de Propuestas, su Estatus Actual y Proyecciones Futuras

Con el propósito de cumplir con los requisitos del GAO con relación a la competencia en los procesos de adquisición y de lograr la participación en el MDPR según requerido por el Gobierno Federal, el 31 de marzo de 2021 ASES inició el proceso de Solicitud de Propuestas (“RFP”, por sus siglas en inglés) para la selección del PBM y del negociador del programa de “rebates”/reembolsos y/o administrador del MDRP, que en adelante se conocerá como el *Rebate Aggregator* (“RA”), para el PSG (“RFP PBM/RA”). El proceso comenzó con la publicación del Aviso de RFP en el periódico El Nuevo Día y Primera Hora, en el Registro Único de Subastas (“RUS”) de la Administración de Servicios Generales de Puerto Rico (“ASG”) y en la página web de la ASES. Los servicios que se pretende obtener a través del RFP son:

PBM Services:

Developing, implementing and offering to ASES and the MCOs a comprehensive Pharmacy Benefit Management program including but not limited to the following programs and services:

- Managing and credentialing the Pharmacy Network that covers the whole jurisdiction of Puerto Rico and performing Pharmacy Audits;
- Maintaining a Pharmacy Call Center for the Pharmacy Network;
- Adjudicating and accurately processing Pharmacy Claims and payment including handling Coordination of Benefits (“COB”) with other health insurance plans, including Medicare;
- Developing, maintaining and updating the Maximum Allowable Cost (“MAC”) list for Pharmacy reimbursement for Generic Drugs and multi-source Brand Drugs and providing an electronic platform to Pharmacies desiring to appeal MAC pricing, and if requested by ASES, coordinating with Puerto Rico's Department of Consumer Affairs (“DACO”) to provide drug price information for DACO's drug price control list, as amended from time to time;
- Providing a comprehensive Drug Utilization Review (“DUR”) program, including capabilities to identify potential opioid abuse and suspect prescribing and dispensing patterns, and to track drug utilization for specific prescription drugs identified by ASES for special monitoring;
- Supporting ASES and the contracted MCOs with the High Cost High Need (“HCHN”) Program and other care management programs;
- Developing and implementing a compliance plan and Fraud, Waste and Abuse detection initiatives;
- Assisting in the support and operation of formulary management through the Pharmacy & Therapeutics Committee and Pharmacy Financial Committee;
- Managing the Academic Detailing program;
- Updating and maintaining standard operating procedure manual(s) for PBM services;
- Maintaining an Information System, Information management processes and technical support to meet the [PSG] requirements;
- Providing robust reporting and online reporting tool as described in the Contract;
- Retaining and storing data as required under the Contract;
- Developing strategies to promote an active participation of the MCOs in the development of Enrollee and prescribing Provider educational activities.

RA Services:

The RA Services shall include but are not limited to:

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- Producing drug rebate invoices for pharmaceutical manufacturers according to federal schedule requirements for the MDRP and ASES's schedule requirements for non-MDRP rebates;
- Processing and submitting to the Medicaid Program the CMS drug utilization and information necessary for CMS-64 reporting;
- Providing Rebate program reports for retail Pharmacy drugs and PADs to ASES and its designees on a quarterly basis;
- Reconciling and resolving drug rebate disputes with pharmaceutical manufacturers;
- Ensuring quality control to validate accuracy of drug Rebate Data;
- Maintaining administrative, physical and technical safeguards to ensure security and confidentiality of all drug Rebate Information according to Puerto Rico and federal laws and industry standards;
- Updating and maintaining standard operating procedure manual(s) for Rebate program administration;
- Maintaining a Data repository system that interfaces with multiple Data sources;
- Maintaining a reporting database that can be accessed in real time by ASES to review and analyze rebate information and produce ad hoc reporting;
- Creating and maintaining a secure web portal for Data sharing with pharmaceutical manufacturers.
- Coordinating and assisting in the support and operation of ASES's Pharmacy Financial Committee.

El proceso de RFP PBM/RA en la ASES se está conduciendo al amparo de las disposiciones de la Orden Administrativa Núm. 21-0701, según enmendada (“OA-21-0701”). La OA-21-0701 establece unas guías “para garantizar la evaluación uniforme y objetiva de las propuestas sometidas por las entidades que compiten para la contratación de seguros de salud a la población elegible al [PSG], conforme a las disposiciones de la Ley 72” y “en otros procesos de contratación competitiva que lleve a cabo la [ASES], según sea determinado por el(la) Director(a) Ejecutivo(a).”

Mientras la ASES se encontraba inmersa en el proceso del RFP PBM/RA, el 1 de julio de 2021, la ASG, a través de su Oficina de Investigaciones Especiales (“OIE”), emitió un *Requerimiento de Información* dirigido a la ASES (“*Requerimiento*”). En el *Requerimiento* la OIE solicitó la producción de varios documentos, incluyendo el expediente completo del RFP PBM/RA. Por entender que la solicitud excedía la facultad delegada a la ASG a través de la Ley Núm. [73-2019, según enmendada, conocida como *Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico* (“Ley 73”), la ASES se opuso por escrito a producir el expediente solicitado.¹ La oposición a la producción estaba sostenida en el hecho de que el RFP PBM/RA es un proceso de adquisición de servicios profesionales, lo que

¹ Cabe señalar que la ASES proveyó respuestas al resto de la información solicitada en el *Requerimiento* y produjo los documentos que sustentaban dichas respuestas.

queda excluido de la facultad de compras delegado a la ASG mediante la Ley 73, la cual se limita a la adquisición de bienes, obras y servicios no profesionales.

La OIE no atendió el planteamiento de la ASES con relación al expediente solicitado. En su lugar, el 7 de julio de 2021, emitió un *Segundo y Final Aviso de Requerimiento de Información Previo a Recurrir al Tribunal* (“*Segundo Aviso*”). En el *Segundo Aviso* se solicitaba de manera idéntica el expediente completo del RFP PBM/RA. Al siguiente día, la ASES respondió al Segundo Aviso reiterando la oposición antes expresada.

Ni la OIE, ni la ASG realizaron gestión alguna para dilucidar, discutir o atender la controversia trabada con la ASES. En su lugar, el 6 de octubre de 2021 – esto es, casi tres (3) meses después de recibir la última comunicación de la ASES con relación al *Requerimiento* y al *Segundo Aviso* – la ASG presentó una *Demanda de Mandamus* ante el Tribunal de Primera Instancia, Sala Superior de San Juan (“TPI”) solicitando que se ordenara a la ASES a proveer el expediente completo del RFP PBM/RA. El 7 de octubre de 2021, sin que la ASES hubiera sido emplazada y sin su comparecencia, el TPI emitió una *Resolución Enmendada y Orden* (“*Resolución*”) mediante la cual ordenó la producción del expediente.

Inconforme, la ASES solicitó reconsideración de la *Resolución*. El TPI concedió tiempo a las partes para presentar sus posiciones al respecto. En su posición, la ASG alegó que lo que requería era el Pliego del RFP PBM/RA (“*Pliego*”)² para determinar si los servicios a adquirirse eran o no profesionales y así determinar quién tenía facultad para emitir el mismo. En atención a ello, la ASES procedió a someter al TPI copia del *Pliego* en su totalidad, incluyendo sus anejos y enmiendas. Además, se solicitó la desestimación del pleito por academicidad. Así las cosas, el 3 de noviembre de 2021, el TPI emitió una *Resolución* donde dio por cumplida y satisfecha la *Resolución* de 7 de octubre, “**según su alcance fue delimitado posteriormente por la [ASG]**”.

Recibidos los documentos por parte de la ASES, el 30 de noviembre de 2021, la OIE emitió un *Informe de Investigación ASG-I-21-006* (“*Informe de la OIE*”) mediante el cual establece, de forma conclusoria y sin análisis alguno para sustentar el mismo, que los servicios a contratarse en el RFP PBM/RA no son servicios profesionales y que la ASES no tiene jurisdicción para emitir el mismo. Sin embargo, nótese que dicho informe solamente está firmado por la Directora de la OIE y que no obra en el mismo la firma de la Directora Ejecutiva de la ASG. Ello evidencia que el mismo no ha sido acogido por ésta. Más aún, al momento de someter el presente memorial explicativo, la ASG no ha acudido ante ningún foro pertinente para reclamar su alegada jurisdicción y obtener algún remedio.

Mientras todo lo anterior ocurría, la ASES continuó el proceso de evaluación y adjudicación del RFP PBM/RA. Dicho proceso, según lo permite la reglamentación aplicable y tal como fuera aprobado por la Junta de Directores de la ASES (“*Junta*”), se llevó a cabo de manera ciega. Esto es, cuando se recibieron las propuestas, cada una recibió una letra de la “A” a la “F”. A partir de

² Nótese que la petición de la ASG cambió dramáticamente ya que anteriormente había solicitado copia del expediente completo del RFP PBM/RA el cual, además del *Pliego*, contiene las propuestas recibidas, todas las comunicaciones entre la ASES y los proponentes, así como los documentos que sustentan todas las etapas y gestiones realizadas durante el proceso de RFP PBM/RA.

ese momento toda comunicación al Comité Ejecutivo y a la Junta se tramitó identificando a cada proponente únicamente con la letra asignada. Así pues, el único criterio utilizado para la evaluación y adjudicación de las propuestas fue la puntuación obtenida en el análisis de cada una y, al no conocerse la identidad de cada proponente, se evitó que entraran en consideración otros aspectos ajenos a la información provista por cada proponente en sus respectivas propuestas. Culminado el proceso y luego de la aprobación unánime de la Junta, el 29 de noviembre de 2021, se envió la *Notificación de Adjudicación* a todos los proponentes que participaron en el proceso. Como resultado, la empresa Abarca Health, LLC obtuvo la buena pro del RFP PBM/RA. Según se desprende de la *Notificación de Adjudicación*, la empresa OptumRx, Inc. quedó en segundo lugar, mientras que la empresa MC-21, LLC quedó en tercer lugar. Además, una empresa fue descalificada antes de entrar en el proceso de evaluación técnica y de costo por incumplir con los requisitos mandatorios del *Pliego*. Las ofertas de los restantes proponentes estaban tan distantes en términos de puntuación que no se consideraron que estaban en rango competitivo para propósitos de negociación.

Según dispuesto en el *Pliego* y en la Ley de Procedimiento Administrativo Uniforme del Gobierno de Puerto Rico, Ley Núm. 38-2017 (“LPAU”), el envío de la *Notificación de Adjudicación* activó los términos para acudir en reconsideración ante la Junta. Dicho término venció el 20 de diciembre de 2021. En esa misma fecha, la empresa MC-21, LLC sometió una *Solicitud de Reconsideración*, la cual fue denegada por la Junta de manera unánime. La *Resolución Núm. 2022-001*, notificando dicha denegación fue notificada el 14 de enero de 2022. Ninguna otra empresa proponente acudió ante la Junta solicitando reconsideración de la *Notificación de Adjudicación*. Así las cosas, según dispone el *Pliego*, así como la Sec. 4.2 de la LPAU, MC-21, LLC tiene un término de veinte (20) días, a partir de esa fecha (esto es, en o antes del 3 de febrero de 2022), para acudir en revisión judicial ante el Tribunal de Apelaciones (“TA”).

El 3 de febrero de 2022, MC-21, LLC presentó ante el Tribunal de Apelaciones Recurso de Revisión Administrativa reiterando los mismos argumentos levantados ante la Junta de Directores de ASES. La ASES defenderá el proceso y la adjudicación del RFP PBM/RA. Se anticipa que, de no haber retrasos en el proceso, la etapa de transición e implementación debe tomar unos nueve (9) meses y los servicios comenzarán a prestarse en vivo a partir del 1 de enero de 2023.

C. Controversia sobre la Jurisdicción de la ASES para emitir el RFP PBM/RA

La Exposición de Motivos de la RS335 establece, en la página 3, que “[s]egún la información que ha sido traída a nuestra atención, este tipo de servicio es uno no profesional, por lo que el estado de derecho actual exige que sea manejado por la [ASG]. En este caso, el proceso de subasta está siendo manejado directamente por ASES y fue radicado en el último día de transición de los empleados de ASES y de otras agencias a la [ASG].” Muy respetuosamente, pero enérgicamente, diferimos de esta conclusión. No sólo los servicios a contratarse bajo el RFP PBM/RA son profesionales, sino que la ASES es la única agencia del Gobierno de Puerto Rico con la pericia necesaria para poder emitir, evaluar y adjudicar un RFP como este por su alto grado de complejidad y especialidad. Veamos.

a. La Ley 73

La Ley 73 “persigue la optimización del nivel de efectividad y eficiencia de la gestión gubernamental, la agilización de los procesos de adquisición de bienes y servicios mediante el uso de avances tecnológicos, la reducción del gasto público, la asignación estratégica de recursos y la simplificación de los reglamentos que regulan las adquisiciones del Gobierno de Puerto Rico.” Véase, Art. 2 de la Ley 73. Nunca ha estado en controversia, ya que la propia ASG así lo ha admitido, que ésta solo está facultada para intervenir en los procesos de adquisición de bienes, obras y servicios no profesionales.³ De hecho, sobre la adquisición de servicios profesionales, la Ley 73 solo establece que “será requisito mandatorio que el proveedor de servicios profesionales esté registrado en el Registro Único de Proveedores de Servicios Profesionales [“RUP”], bajo la categoría correspondiente y que cuente con la Certificación emitida por el Administrador.” Véase, Art. 35 de la Ley 73. Así pues, **corresponde a cada agencia el llevar a cabo los procesos para la adquisición de servicios profesionales.**

Los incisos (hh) e (ii) del Art. 4 de la Ley 73 definen los términos servicios no profesionales y servicios profesionales de la siguiente manera:

(hh) Servicios no profesionales.— Aquellos servicios que no son ofrecidos por una persona natural o jurídica con conocimientos o habilidades especializadas a quien se le requiere poseer un título universitario o licencia que lo acredite como profesional especializado.

(ii) Servicios profesionales.— Aquellos servicios que son ofrecidos por una persona natural o jurídica con conocimientos o habilidades especializadas a quien se le requiere poseer un título universitario o licencia que lo acredite como profesional especializado; **o cuya prestación principal consiste en el producto de la labor intelectual, creativa o artística, o en el manejo de destrezas altamente técnicas o especializadas.** (Énfasis nuestro.)

b. La Ley 72

La ASES es una corporación pública creada al amparo de la Ley 72, la cual tiene personalidad jurídica independiente y está regida por una Junta de Directores. Véase, Art. IV, Sec. 1 de la Ley 72. Mediante esta legislación se propició una reforma radical de los servicios de salud en Puerto Rico y se delegó en la ASES la administración de la misma. Sobre la cubierta del PSG, el Art. VI, Sec. 8 de la Ley 72, establece en lo pertinente:

Los planes de salud tendrán una cubierta amplia, con un mínimo de exclusiones. No habrá exclusiones por condiciones preexistentes, como tampoco períodos de espera, al momento de otorgarse la cubierta al beneficiario.

³ Véase, a manera de ejemplo, los Artículos 2, 3 y 5 de la Ley 73 que específicamente limitan la facultad de la ASG a la compra de bienes, obras y servicios no profesionales.

- (a) Cubierta A.— La [ASES] establecerá una cubierta de beneficios a ser brindados por los aseguradores contratados o proveedores participantes. La cubierta comprenderá, entre otros beneficios, los siguientes: servicios ambulatorios, hospitalizaciones, salud dental, salud mental, vacunaciones y tratamientos para el virus del Papiloma Humano, estudios, pruebas y equipos para beneficiarios que requieran el uso de un ventilador para mantenerse con vida, un mínimo de un (1) turno diario de ocho (8) horas por paciente, de servicios de enfermeras(os) diestros con conocimientos en terapia respiratoria o especialistas en terapia respiratoria con conocimientos en enfermería, los suplidos que conllevan el manejo de los equipos tecnológicos, terapia física y ocupacional necesaria para el desarrollo motor de éstos pacientes, laboratorios, rayos X, **así como medicamentos mediante prescripción médica, los cuales deberán ser despachados en una farmacia participante, libremente seleccionada por el asegurado, y autorizada bajo las leyes de Puerto Rico.** La cubierta dispondrá para que cada beneficiario tenga a su alcance anualmente los exámenes de laboratorio e inmunización apropiados para su edad, sexo y condición física. [...] (Énfasis nuestro.)

El Art. IV, Sec. 2, de la Ley 72 establece en lo pertinente:

La [ASES] será el organismo gubernamental encargado de la implantación de las disposiciones de este capítulo. A estos fines, tendrá los siguientes poderes y funciones, que radicarán en su Junta de Directores:

- (a) Implantar planes de servicios médico-hospitalarios basados en seguros de salud.
(b) Negociar y contratar con aseguradores públicos y privados, y organizaciones de servicios de salud, cubiertas de seguros médico-hospitalarios, según se definen y establecen éstos en las secs. 7025 a 7036 de este título.
[...]
(k) Negociar y otorgar toda clase de contratos, documentos y otros instrumentos públicos con personas y entidades jurídicas.
[...]
(m) Realizar todos los actos necesarios y convenientes para llevar a cabo los propósitos de este capítulo, excepto que la Administración no tendrá facultad para empeñar el crédito del Estado Libre Asociado de Puerto Rico, ni de ninguna de sus subdivisiones políticas. [...]

Por su parte, el Art. VI, Sec. 14 de la Ley 72 establece el derecho de los beneficiarios del PSG de escoger la farmacia de su predilección, entre otros derechos. Además, el Art. VII, Sec. 2, de la Ley 72 incluye entre los informes que los MCOs deben proveer a la ASES los “[d]atos estadísticos sobre medicación, los cuales deberán incluir todos los medicamentos recetados y una relación de costos de los mismos.” Así pues, resulta evidente que la cubierta de farmacia y los servicios provistos a través de ella son una parte integral de la cubierta del PSG.

c. ***La Ley Reguladora de los Administradores de Beneficios y Servicios de Farmacia (“Ley 82”)***

En Puerto Rico se aprobó la Ley Núm. 82-2019, conocida como *Ley Reguladora de los Administradores de Beneficios y Servicios de Farmacia* (“*Ley 82*”). Dicha ley fue impugnada por la Junta de Supervisión Fiscal ante el Tribunal de Distrito Federal que atiende la reestructuración de la Deuda de Puerto Rico bajo el *Puerto Rico Oversight, Management, and Economic Stability Act* (“*PROMESA*”, por sus siglas en inglés). Como resultado de dicha impugnación se ordenó que no se implementara la Ley 82, concluyendo que ésta no era compatible con el Plan Fiscal. Independientemente de este hecho, el cual sólo tuvo que ver con aspectos fiscales, la Ley 82 establece la intención del legislador sobre los servicios que proveen los PBMs en Puerto Rico.

A estos efectos, la exposición de motivos de la Ley 82 establece que “[l]os [PBMs] y Administradores de Beneficios de Farmacia (Pharmacy Benefit Administrators “PBA”, por sus siglas en inglés) son intermediarios que negocian los servicios y los costos de medicamentos entre las empresas farmacéuticas y los terceros pagadores, tales como el Gobierno, compañías de seguros, las empresas y los clientes que pagan directamente. Estas entidades tienen relación con la mayoría de los aspectos relacionados a medicamentos recetados, como, por ejemplo, el procesamiento de reclamaciones a las farmacias, la revisión de la utilización de medicamentos, el desarrollo y la gestión de formularios, la negociación con los fabricantes para los descuentos (rebates) de los medicamentos recetados, la operación de pedidos de medicamentos por correo, la sustitución de medicamentos y el reembolso a los proveedores y los pacientes.”

La Ley 82 define PBM como “una persona, persona jurídica, ente u organización dedicada a proveer servicios de manejo, administración, revisión, asesoría de beneficios de medicamentos recetados para auspiciadores (“plan sponsors”) como los patronos, patronos autoasegurados, organizaciones de servicios de salud, planes de salud, administradores de terceros, grupos sindicales y otras personas que contratan dichos servicios para realizar alguna o varias de las siguientes actividades, entre otras: administrar servicios o cubierta de farmacia del auspiciador, procesamiento de recetas y reclamaciones, manejo de beneficios de servicios de medicamentos, programas de adhesión al uso de medicamentos (“drug adherence management”), programa de interacción de medicamentos, programa de utilización de medicamentos, formulario de medicamentos, comité y asesoría de formularios de medicamentos y su manejo, programas de utilización de genéricos e incentivos; análisis de datos médicos y de medicamentos, servicios de revisión de la utilización de medicamentos (“drug utilization review”), servicios de pre-autorización de medicamentos, manejo de programas de repeticiones de medicamentos, manejo de terapia médica (“medical therapy management o MTM”), manejo de bienestar, contratación de red de proveedores de servicios de farmacia, centros de servicio al cliente y de llamadas, manejo de servicios de farmacia por correo, contrataciones con manufactureros de medicamentos y terceros relacionados a sus servicios, informes, servicios actuariales, servicios de informática y procesamiento, manejo de la terapia de medicamentos de enfermedades y asesoría y utilización de farmacéuticos clínicos. Se podrá hacer referencia en esta Ley como PBMs e incluyen entidades afines que no se hagan llamar o se identifiquen como PBMs. La definición también incluye a cualquier persona o entidad ofreciendo los servicios y productos que el PBM contrató con la farmacia.”

Finalmente, el Art. 5 de la Ley 82 establece que, para poder operar en Puerto Rico, los PBM estaban obligados a mantener una licencia emitida por el ente regulador que se creaba bajo la ley.

d. Los servicios que se prestarán bajo el contrato de PBM/RA son profesionales

Como vimos, desde el 30 de noviembre de 2021, se emitió el *Informe de la OIE* donde se alega – de manera conclusoria y sin fundamentos – que la ASES no tiene jurisdicción para atender el RFP PBM/RA, ya que los servicios a contratarse son alegadamente no profesionales. Sin embargo, los argumentos presentados en el *Informe de la OIE* son incorrectos en derecho, ya que parecen indicar que el único criterio para determinar si un servicio es o no profesional para propósitos de la Ley 73 es, si se requiere o no profesionales licenciados para ejecutar las tareas a ser contratadas. Aun cuando ese es uno de los elementos de la definición de servicios profesionales bajo la Ley 73, éste no es el único criterio. La definición establecida en la propia Ley 73 también incluye como criterio alternativo que la “prestación principal consiste en el **producto de la labor intelectual**, creativa o artística, **o en el manejo de destrezas altamente técnicas o especializadas**”.

Aun cuando la OIE concluye – sin base o fundamento – que cada uno de estos servicios no son profesionales, la realidad es que **cada uno de los servicios que la ASES pretende contratar a través de RFP PBM/RA son servicios altamente especializados que requieren una pericia en cubiertas de seguros, servicios de farmacia, desarrollo de sistemas de información, entre otros**. Específicamente, del PBM se requiere – a manera de ejemplo – administrar y dar las credenciales a la red de farmacia, así como auditar las mismas; adjudicar y procesar las reclamaciones de farmacia, incluyendo la coordinación de beneficios; desarrollar, mantener y actualizar la lista de precios máximos permitidos de los medicamentos; proveer un programa de revisión de utilización de medicamentos; etc. Por su parte, del RA se requiere – a manera de ejemplo – procesar y someter la información de utilización al Programa Medicaid cumpliendo con los requisitos impuestos por éste; resolver y reconciliar disputas con los manufactureros con relación a los reembolsos; asegurar el control de calidad en los rebates; asegurar la protección de los datos relacionados con los reembolsos; etc.

De las funciones descritas surge claramente que las tareas que realizará el PBM y el RA son altamente técnicas y especializadas. Pero también, muchas de ellas deben ser realizadas por personal adiestrado en farmacia, ingeniería, sistemas de información, etc. Otras tantas requieren la supervisión de personal adiestrado en farmacia o en medicina para poder realizar las mismas. A manera de ejemplo, la tarea de administrar, dar las credenciales y auditar las farmacias requiere validar que las farmacias que habrán de pertenecer a la red cumplen con todos los requisitos para operar, incluyendo la correcta dispensación de los medicamentos recetados. En muchas instancias, las auditorías requieren que los farmacéuticos del PBM discutan aspectos clínicos con el personal de la farmacia auditada antes de emitir las determinaciones, conclusiones y hallazgos.⁴ Las demás

⁴ Véase, Art. 10(d) de la Ley 82 que establece que “[e]n la eventualidad que la auditoría requiera de conocimiento profesional, tanto los PBMs, PBAs o entidades afines, así como la farmacia, **se deberá nombrar un farmacéutico debidamente licenciado en Puerto Rico**, para que dichos profesionales puedan discutir los asuntos relacionados a la auditoría.” (Énfasis suplido.)

auditorías requieren personal con la preparación adecuada en auditoría para poder llevar a cabo las mismas siguiendo los principios generales aceptados para estos procesos.

Un análisis similar de cada uno de los servicios requeridos en el RFP PBM/RA, en el contexto de la industria que representan y de la manera en que se requiere que se desempeñen los mismos, es suficiente para concluir inequívocamente que los servicios son claramente profesionales. Cualquier conclusión en contrario refleja un claro desconocimiento del servicio a ser contratado y un pobre análisis de los documentos provistos.

Cabe señalar que estamos conscientes de que la ASES no está exenta de cumplir con la Ley 73. Sin embargo, las compras que la ASES está obligada a realizar a través de la ASG son las de bienes, obras o servicios no profesionales. Ejemplo de estos casos podría ser, la adquisición de efectos de oficina, computadoras, carros, el mantenimiento de aires acondicionados, o incluso la construcción de un edificio. Cuando la ASES se propone realizar estas compras, debe hacer una petición a ASG, quien se encargará del proceso de adquisición. Sin embargo, cuando se trata de servicios profesionales, ya sea porque se trata de servicios altamente técnicos y especializados o porque requieren de una licencia para proveer los mismos, entonces la Ley 73 delega en la agencia adquiriente el utilizar su pericia para adquirir los servicios profesionales directamente. Este sería el caso de los MCOs, los PBMs, servicios actuariales, servicios legales, de contabilidad, auditores, y otros.

e. La ASES es la única agencia del Gobierno de Puerto Rico con la pericia necesaria para realizar el RFP PBM/RA

Además de tratarse de un servicio profesional, por el tipo de servicios a contratarse, resulta evidente que es la ASES la entidad sobre la que recae la responsabilidad de emitir y adjudicar el RFP PBM/RA. Según surge del detalle de los servicios incluidos en el Contrato Modelo,⁵ el PBM es el responsable de recibir, adjudicar y pagar las reclamaciones de pago por los medicamentos dispensados por las farmacias en la red. En otras palabras, conceptualmente, en términos del pago a las farmacias, el PBM opera de forma similar a como lo hacen los MCOs con relación al pago de los demás proveedores de servicios médicos bajo el PSG. Lo mismo aplica para otras áreas del servicio a ser contratado, tales como la resolución de disputas.

Sobre la contratación de los MCOs, el Art. IV, Sec. 2, de la Ley 72 delega en la ASES la negociación y contratación de estos servicios. Es razonable concluir que la intención del legislador era delegar en la ASES, que es la única agencia del Gobierno de Puerto Rico con la pericia requerida para ello, el proceso de negociación y administración de los contratos con las entidades que habrán de viabilizar el servicio y el pago a los proveedores de todas facetas de la cubierta del PSG.

Como vimos, lo que se busca con el RFP PBM/RA es contratar un servicio similar al de los MCOs dirigido a la parte de la cubierta que tiene que ver con la cubierta de farmacia. Por lo tanto, la

⁵ Como anejo al *Pliego* se acompañó un *Contrato Modelo*, el cual establece el detalle de los servicios a ser contratados en el FRP PBM/RA y las cláusulas que se pretende incluir en el contrato que en su día se firme con el proponente agraciado.

negociación y contratación de este servicio, al igual que la contratación de los MCOs debe recaer enteramente en la única agencia con la pericia para ello; esto es, la ASES. Concluir lo contrario equivaldría a que en el día de mañana se pueda alegar que es a la ASG a quien le corresponde emitir, evaluar y adjudicar el RFP para la contratación de los MCOs, lo que claramente choca con la política pública del Gobierno de Puerto Rico y la intención de la Ley 72.

D. Impacto de la Nueva Contratación para el PSG

Según discutimos anteriormente, el RFP PBM/RA busca, entre otras cosas, cumplir con las exigencias del Gobierno Federal en cuanto a la competencia en los procesos de adquisición de servicios financiados con fondos Medicaid. A estos efectos, el GAO emitió un reporte que recomendó que se llevaran a cabo estos procesos, por lo que es responsabilidad de la ASES el cumplir con dichos requisitos, así como coordinar y mantener informado a CMS del resultado de los mismos. No cumplir con ello podría significar señalamientos por parte del GAO, de CMS, o incluso del Congreso, poniendo en riesgo los fondos que se utilizan para financiar el PSG.

Por otro lado, también mencionamos que el Congreso enmendó la Ley del Seguro Social para requerir a los territorios el participar – o solicitar explícitamente ser excluido – del MDRP. Tras una evaluación de los ahorros que dio programa representaría en relación a los costos de medicamentos recetados en el PSG, la ASES determinó que obra en los mejores intereses de Puerto Rico y del PSG el participar del mismo y así lo expresó a CMS. En atención a ello, la fecha de comienzo del MDRP en los territorios que lo habrán de implementar es el 1 de enero de 2023. Para esa fecha, Puerto Rico debe haber firmado el contrato resultante del RFP PBM/RA y haber concluido el proceso de transición e implementación, el cual – como mencionamos – se extenderá por nueve (9) meses.

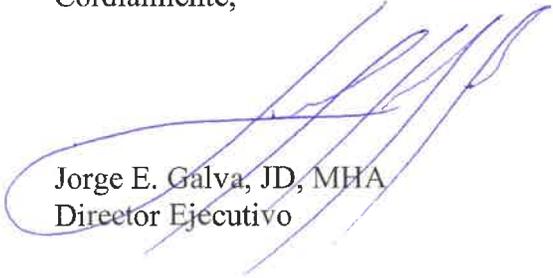
Finalmente, al presente, MC-21, LLC realiza los servicios de PBM a través de un contrato con la ASES a un costo anual de quince millones de dólares (\$15M). Por su parte, los servicios de PPA – que pasarán a ser los servicios de RA bajo el nuevo contrato – están siendo provistos por Abarca Health, LLC a un costo adicional de quince millones de dólares (\$15M) al año. Sin embargo, según surge de la *Notificación de Adjudicación*, el contrato resultante del RFP PBM/RA tendrá un costo total por los servicios de PBM y RA de menos de diecisiete millones de dólares (\$17M) por un término de tres (3) años. Ello representa un ahorro de sobre setenta y tres millones de dólares (\$73M) en un periodo de tres (3) años. El ahorro significativo que representa esta contratación es, sin duda, un beneficio clave al PSG que permitirá que se puedan brindar más servicios a los beneficiarios.

E. Conclusión

A la luz de todo lo anteriormente discutido, resulta evidente que el RFP PBM/RA busca contratar servicios altamente técnicos y especializados, los cuales – según definidos por la Ley 73 – son profesionales. Así pues, no corresponde a la ASG, sino a la ASES emitir, evaluar y adjudicar el referido RFP. Por otro lado, surge claramente que el RFP PBM/RA se ha llevado a cabo por la ASES con el propósito de cumplir con la ley y reglamentación federal aplicable, así como para lograr ahorros significativos en el costo de los beneficios de farmacia que se proveen a los beneficiarios. Además, la ASES, siendo la única agencia con la pericia necesaria para evaluar y

adjudicar este RFP, descargó sus facultades de manera adecuada logrando los propósitos que se perseguían.

Cordialmente,



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February 2021

MEDICAID

CMS Needs to Implement Risk- Based Oversight of Puerto Rico's Procurement Process

GAO@100 Highlights

Highlights of [GAO-21-229](#), a report to congressional committees

Why GAO Did This Study

States' and U.S. territories' Medicaid procurement processes can directly affect their ability to prevent fraud, waste, and abuse in the program. A 2019 federal indictment alleging fraudulent Medicaid procurements in Puerto Rico has raised questions about the program's oversight.

The Consolidated Appropriations Act, 2020 includes a provision for GAO to review oversight of Puerto Rico's Medicaid procurement process and its use of competition. This report examines CMS oversight of Puerto Rico's procurement process from its initial steps through the award, and how it helps ensure competition. GAO reviewed federal regulations, guidance, and Puerto Rico's December 2020 procurement reform plan; interviewed Puerto Rico and federal officials; and reviewed eight awards that represented about 97 percent of the costs of Puerto Rico's procurements in effect as of April 2020. These procurements were selected based on variation in cost, use of competition, and other factors. GAO assessed whether CMS addressed risks in Puerto Rico's procurement process by reviewing selected procurements against certain federal standards that apply to other non-federal entities and aim to mitigate the risk of fraud, waste, and abuse. GAO also assessed CMS's policies and procedures against federal internal control standards.

What GAO Recommends

GAO recommends that CMS implement risk-based oversight of the Medicaid procurement process in Puerto Rico. The Department of Health and Human Services concurred with this recommendation.

View [GAO-21-229](#). For more information, contact Carolyn L. Yocom at (202) 512-7114 or YocomC@gao.gov.

February 2021

MEDICAID

CMS Needs to Implement Risk-Based Oversight of Puerto Rico's Procurement Process

What GAO Found

Like other U.S. territories and states, Puerto Rico implements major functions of its Medicaid program by procuring services from contractors, such as the delivery of managed care services to Medicaid beneficiaries. In 2018, procurement costs represented \$2.4 billion of Puerto Rico's \$2.5 billion in total Medicaid expenditures. A 2019 federal indictment alleging Puerto Rico officials unlawfully steered Medicaid contracts to certain individuals has raised concerns about Puerto Rico's Medicaid procurement process, including whether this process helps ensure appropriate competition.

The Centers for Medicare & Medicaid Services (CMS), within the Department of Health and Human Services, is responsible for overseeing the Medicaid program. CMS requires states and territories to use the same process for Medicaid procurements as they do for their non-federal procurements. However, CMS has not taken steps to ensure Puerto Rico has met this requirement. Instead, CMS has relied on Puerto Rico to oversee the territory's procurement process and to attest to its compliance. CMS approved Puerto Rico's attestation of compliance in 2004 and has not required subsequent updates. CMS officials told GAO that states and territories are in the best position to ensure compliance with their respective procurement laws.

GAO and others have found that competition is a cornerstone of procurement. Using competition can reduce costs, improve contractor performance, curb fraud, and promote accountability. GAO reviewed selected Puerto Rico Medicaid procurements against federal procurement standards designed to promote competition and reduce risks of fraud. States and territories are generally not required to meet such standards. However, GAO and others have found that such standards can indicate whether a state's or territory's procurement process includes necessary steps to achieve fair competition.

GAO found that seven of the eight selected Puerto Rico procurements did not include important steps to promote competition and mitigate the risk for fraud, waste, and abuse, underscoring the need for federal oversight.

- **Competitive procurements.** The requests for proposals for two of the three competitive procurements GAO reviewed did not include certain information on factors used to evaluate proposals and make awards. In contrast, Puerto Rico's managed care procurement—the largest procurement reviewed— included this information.
- **Noncompetitive procurements.** None of the five noncompetitive procurements GAO reviewed documented circumstances to justify not using competitive procurements, such as a lack of competition or an emergency. Puerto Rico officials explained that territorial law allows noncompetitive procurement for professional services regardless of circumstances.

Because CMS does not oversee Puerto Rico's procurement process, the agency lacks assurance that Puerto Rico's Medicaid program is appropriately managing the risk of fraud, waste, and abuse. Procurements that did not include important steps to promote competition could have unnecessarily increased Medicaid costs, reducing funding for Medicaid services to beneficiaries.

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Abbreviations

| | |
|------|--|
| ASES | Puerto Rico Administración de Seguros de Salud |
| CMS | Centers for Medicare & Medicaid Services |
| DOH | Puerto Rico Department of Health |
| HHS | Department of Health and Human Services |
| MCO | managed care organization |

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February 5, 2021

Chairman
Ranking Member
Committee on Finance
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Republican Leader
Committee on Energy and Commerce
House of Representatives

Among the U.S. territories, Puerto Rico administers the largest Medicaid program, covering over 1 million beneficiaries at a total cost of \$2.5 billion in 2018.¹ Similar to states, the federal government and U.S. territories jointly fund Medicaid to provide health care coverage for low-income and medically needy populations. However, unlike states that receive open-ended federal matching funds, Puerto Rico can access federal funds for Medicaid up to an annual limit. Roughly 40 percent of Puerto Rico's population qualifies for Medicaid, and over the past decade, Congress has provided the territory with increased federal funding.²

Like other states and territories, Puerto Rico implements major functions of its Medicaid program by procuring a variety of administrative and other services from contractors. In calendar year 2018, states and territories paid contractors at least half of the \$619 billion in total Medicaid expenditures. In that same year, Puerto Rico paid contractors at least 96 percent (\$2.4 billion) of its \$2.5 billion in total Medicaid expenditures,

¹Five territories of the United States participate in the Medicaid program: American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands. See GAO, *Medicaid and CHIP: Increased Funding in U.S. Territories Merits Improved Program Integrity Efforts*, [GAO-16-324](#) (Washington, D.C.: Apr. 8, 2016).

²Most recently, for fiscal years 2020 and 2021, Congress provided additional federal funding for all territories. See Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, div. N, § 202, 133 Stat. 2534, 3103 (2019); Family First Coronavirus Response Act, Pub. L. No. 116-127, § 6009, 134 Stat. 178, 209 (2020).

primarily to managed care organizations (MCO) for coverage of Medicaid services.³

A state's or territory's Medicaid procurement process can directly affect the efficient operation of its program and its ability to prevent fraud, waste, and abuse.⁴ By promoting competition for procurements, states and territories can select contractors that provide the greatest value to their Medicaid programs. Competition also reduces the risk of fraud, waste, and abuse that—if left unabated—could increase procurement costs and reduce funding available for Medicaid services to beneficiaries.

In April 2016, we found little assurance that Puerto Rico and other territories' Medicaid funds were protected from fraud, waste, and abuse.⁵ Since then, the Centers for Medicare & Medicaid Services (CMS)—the federal agency in the Department of Health and Human Services (HHS) that oversees Medicaid—and Puerto Rico have taken some steps to improve oversight of the territory's Medicaid program. These steps included increased oversight of program integrity and taking steps to improve program spending information. However, in July 2019, the Department of Justice indicted three individuals, including the former executive director of Puerto Rico's Administración de Seguros de Salud (ASES), which oversees the territory's procurements for Medicaid managed care services, for unlawfully steering Medicaid contracts to certain individuals.⁶ These allegations have raised concerns about Puerto Rico's Medicaid procurement process, including whether it helps ensure appropriate competition, and prompted members of Congress to ask

³Under managed care, states and territories typically procure from MCOs a specific set of Medicaid-covered services for Medicaid beneficiaries in return for a set payment per beneficiary, referred to as a capitated rate.

⁴The term "procurement" in this report refers specifically to the process of obtaining goods or services via government contract. Each state and territory must provide a Medicaid state plan that describes how it will administer its program according to methods that the Secretary of the Department of Health and Human Services (HHS) finds to be necessary for the program's proper and efficient operation. 42 U.S.C. § 1396a(a)(4)(A).

⁵See [GAO-16-324](#).

⁶U.S. Department of Justice, *Former Secretary Of Puerto Rico Department Of Education And Former Executive Director Of Puerto Rico Health Insurance Administration Indicted With Four Others For Conspiracy, Wire Fraud, Theft Of Government Funds, And Money Laundering*, (San Juan, Puerto Rico: July 10, 2019), accessed November 20, 2020, <https://www.justice.gov/usao-pr/pr/former-secretary-puerto-rico-department-education-and-former-executive-director-puerto-1>.

additional questions about federal oversight of Puerto Rico's Medicaid program.

The Further Consolidated Appropriations Act, 2020 directs Puerto Rico to publish a Medicaid procurement reform plan by December 20, 2020, to combat fraud, waste, or abuse.⁷ The act also includes a provision for us to review CMS's oversight of Puerto Rico's Medicaid procurement process, including whether procurements are subject to competition. This report examines the extent to which CMS oversees Puerto Rico's Medicaid procurement process and how this process helps ensure competition.

To examine the extent to which CMS oversees Puerto Rico's Medicaid procurement process and how this process helps ensure competition, we reviewed relevant federal regulations and CMS guidance. We focused on the procurement process beginning with the development of solicitations for proposals through the award; we did not examine the management of procurements after they were made. To supplement this information, we interviewed officials from CMS, Puerto Rico's Office of the Comptroller, and the two entities that administer Puerto Rico's Medicaid program: Puerto Rico's Department of Health (DOH) and the Administración de Seguros de Salud. DOH manages Medicaid eligibility determinations, provider enrollment, and other administrative functions; and ASES oversees procurements with MCOs, through which all Medicaid beneficiaries in Puerto Rico obtain services.

Additionally, we selected a non-generalizable sample of eight Puerto Rico procurements (three competitive and five noncompetitive) that were in effect as of April 1, 2020.⁸ These procurements represented about 97 percent of the total costs of Puerto Rico's Medicaid procurements in effect

⁷Pub. L. No. 116-94, div. N, § 202(a)(2), 133 Stat. 2534, 3105 (2019) (codified at 42 U.S.C. § 1308(g)(7)(A)(iii)). Puerto Rico provided us with a copy of this plan on December 18, 2020. In this plan, Puerto Rico identifies opportunities for procurement reform related to competition and transparency, among other areas, and identifies priority initiatives to complete by September 2021. The plan further notes that implementation of these procurement reforms is dependent on CMS approval, as well as funding from CMS and Congress to support needed resources.

⁸To select these procurements, we obtained a list of Puerto Rico's Medicaid contracts in effect as of April 1, 2020, from DOH and ASES and compared it to a list of contracts provided by CMS. We initially selected nine procurements for review, but excluded one procurement after determining that DOH conducted it through a sealed bid process. A single procurement can result in the award of multiple contracts.

at that time. We selected these procurements based on variation in the use of competition and procurement amounts, among other factors.⁹ We reviewed DOH and ASES documentation of the processes used to make these eight procurements. Specifically, we identified the extent to which they were consistent with federal standards within the uniform administrative requirements for federal awards to non-federal entities as implemented by HHS.¹⁰ We selected federal procurement standards related to (1) the documentation of procurement activities, such as the solicitation of proposals; and (2) noncompetitive procurements. Generally, states and territories are not required to meet these standards. However, these standards can indicate whether a state's or territory's procurement process includes necessary steps to achieve fair competition, which we and other organizations have found to be a cornerstone of procurement.¹¹

To assess CMS's approach to overseeing Puerto Rico's procurement process, we relied on federal internal control standards.¹² We determined that the risk assessment, control activities, and information and communication components were significant to our objective, including the underlying principles that management should (1) consider the potential for fraud when identifying and responding to risk, and (2) design control activities to achieve its objectives and respond to risks. To make this assessment, we reviewed CMS's policies and procedures to

⁹These other factors include (1) the agency making the procurement—DOH or ASES; and (2) the type of service or equipment being procured.

¹⁰Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule; 79 Fed. Reg. 75871 (Dec. 19, 2014) (codified at 45 C.F.R. Parts 75, 92 (2019)). These provisions apply to HHS grant and cooperative agreement programs, including Medicaid.

¹¹See GAO, *Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received*, [GAO-10-833](#) (Washington, D.C.: July 26, 2010). Selected standards align with provisions of the American Bar Association's 2000 Model Procurement Code for State and Local Governments, which was based on a national consensus among knowledgeable professionals, organizations, public agencies, and private firms as to the key elements of effective, transparent, yet stable procurement systems.

¹²See GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014). Internal control is a process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved.

determine the extent to which CMS's oversight of Puerto Rico's procurement process addresses risks of fraud, waste, and abuse.

We conducted this performance audit from March 2020 to February 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

HHS regulations generally require a state or territory to "follow the same policies and procedures it uses for procurements from its non-federal funds."¹³ According to CMS officials, states and territories must attest in their Medicaid state plans to complying with this requirement. States and territories generally do not have to meet additional federal procurement standards that apply to other non-federal entities.¹⁴ However, under HHS regulations, the agency may require a state or territory to comply with federal competition standards under limited circumstances, such as when the agency determines that the state's or territory's procurement process for certain procurements is an impediment to competition that could substantially impact project cost or the risk of failure.¹⁵

Although states and territories are generally not required to meet federal procurement standards, the standards were designed to promote competition, which we and other organizations have found to be a cornerstone of procurement. States and territories that adopt them could help ensure that they award procurements to contractors that provide the

¹³See 45 C.F.R. § 75.326 (2019). States and territories must also follow federal requirements regarding the procurement of recovered materials and include certain contract provisions in every purchase order or other contract. See 45 C.F.R. §§ 75.331, 75.335 (2019).

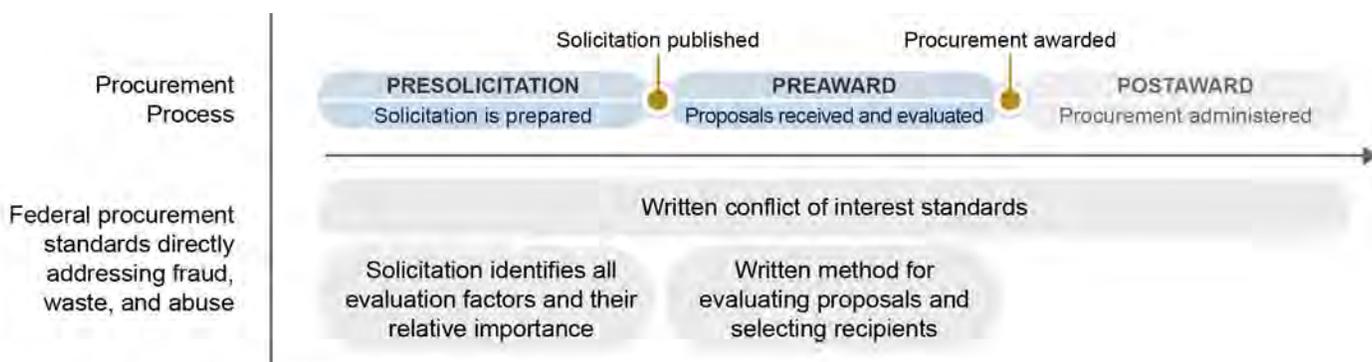
¹⁴These additional federal procurement standards apply to other non-federal entities, such as local governments, Indian tribes, and nonprofit organizations that participate in the Medicaid program. The federal standards we reviewed are located at 45 C.F.R. §§ 75.327-75.329 (2019).

¹⁵HHS may require states and territories to follow federal competition standards for two types of procurements: (1) information systems that support Medicaid programs, known as administrative data processing equipment and services, and (2) services from external quality review organizations for an annual review of the quality, timeliness, and access to health care services provided by states' MCOs. See 45 C.F.R. § 95.613(a) (2019); 42 C.F.R. § 438.356(e) (2019).

greatest value to their Medicaid programs and decrease the risks of fraud, waste, and abuse. As we previously found, competition helps reduce costs, improve contractor performance, curb fraud, and promote accountability.¹⁶ The federal standards we selected include the following:

- **Written process for competitive procurements.** For competitive procurements, which typically involve the solicitation of proposals from multiple sources, certain steps must be documented in the proposal solicitations, proposal evaluations, and award selections.¹⁷ (See fig. 1.)

Figure 1: Steps in the Competitive Procurement Process and Examples of Federal Standards



Source: GAO analysis of federal guidance and regulations, including 45 C.F.R. §§ 75.327-75.329. | GAO-21-229

Note: This review does not examine the post-award phase of the procurement process. In general, states and U.S. territories must follow the same process for Medicaid procurements that they use to make procurements using their non-federal funds. Other non-federal entities, including local governments, Indian tribes, and nonprofit organizations, must follow the more detailed federal procurement standards at 45 C.F.R. §§ 75.327-75.329 (2019). These standards were designed to promote competition and mitigate fraud, waste, and, abuse.

- **Justification of noncompetitive procurements.** Certain circumstances must arise to justify the use of noncompetitive procurements, which typically involve solicitation of a proposal from only one source.¹⁸ These circumstances include when (1) the item is available only from a single source; (2) an emergency does not provide sufficient time to conduct a competitive procurement; (3) CMS expressly authorizes noncompetitive procurement; or (4) after

¹⁶See [GAO-10-833](#).

¹⁷See 45 C.F.R. §§ 75.328(c), 75.329(d) (2019).

¹⁸See 45 C.F.R. § 75.329(f) (2019).

solicitation of a number of sources, competition is determined to be inadequate.

- **Conflict of interest standards.** The procurement process must be governed by written standards that prohibit employees from participating in the selection, award, or administration of a contract where they have a real or apparent conflict of interest.¹⁹ Such conflicts might arise when employees awarding procurements or their immediate family have financial interests in companies being considered for procurement.

CMS Has Not Overseen Puerto Rico's Medicaid Procurement Process, Leaving the Program Vulnerable to Fraud, Waste, and Abuse

Puerto Rico must follow the same policies and procedures that it uses for procurements using non-federal funds.²⁰ According to CMS officials, the agency has not overseen compliance with this federal requirement, because states and territories are in the best position to ensure compliance with their respective procurement laws. CMS officials stated that the agency has treated Puerto Rico the same as states and other U.S. territories, as CMS has not overseen the Medicaid procurement process in any state or territory.²¹

In addition, states and territories must attest to compliance with this federal procurement requirement in their state plan. CMS officials said that they review these attestations when states or territories submit changes to the relevant portion of their state plans, but this occurs infrequently and CMS does not proactively initiate this process.²² For example, in 2004, CMS approved an attestation by Puerto Rico through its state plan amendment submission, wherein the territory certified that it procures MCOs' services through an open, competitive process that is

¹⁹See 45 C.F.R. § 75.327(c)(1) (2019).

²⁰See 45 C.F.R. § 75.326 (2019).

²¹While beyond the scope of this review, the absence of CMS oversight of other states' and territories' Medicaid procurement process may have broader implications for program integrity.

²²In addition, as it relates to procurements for information systems that support Medicaid programs, CMS officials said the agency does not review the procurement process, but does require prior approval for certain, related documents, such as advanced planning documents and requests for proposals. CMS officials told us they review documents for compliance with federal regulations at 45 C.F.R. Part 95, subpart F. For additional information on this review process, see GAO, *Medicaid Information Technology: Effective CMS Oversight and States' Sharing of Claims Processing and Information Retrieval Systems Can Reduce Costs*, [GAO-20-179](#) (Washington, D.C.: Sept. 9, 2020), 14-25.

consistent with federal regulations.²³ This attestation had not been subsequently updated as of October 2020.

CMS officials told us that the agency has discretion in determining when it can exercise oversight of a state's or territory's compliance with federal procurement requirements. CMS officials told us that the agency does not have documented procedures specifying the circumstances under which it would take such oversight actions, reiterating that states and territories are in the best position to ensure compliance with their respective procurement laws. However, CMS officials did provide examples of actions the agency could take to address non-compliance if identified through program reviews or audits. In particular, CMS officials said the agency could provide technical assistance or withhold federal funding if a state or territory was not complying with federal requirements.

To determine how Puerto Rico's procurement process helps ensure competition, we reviewed eight selected Medicaid procurements to determine if Puerto Rico's process was consistent with the federal procurement standards we identified. While Puerto Rico's Medicaid procurement process is not required to meet these standards, the standards were designed to reduce fraud, waste, and abuse. These standards also promote competition, which could help reduce costs, improve contractor performance, curb fraud, and promote accountability. Not adhering to these standards can indicate whether a state's or territory's procurement process is an impediment to competition that could substantially impact costs—a circumstance under which CMS may impose competition standards for certain procurements.²⁴

These eight procurements are comprised of three competitive and five noncompetitive procurements that collectively represent approximately 97 percent of the total costs of Puerto Rico's Medicaid procurements in effect as of April 1, 2020. (See table 1.)

²³Puerto Rico attested to following requirements at 45 C.F.R. Part 74, which refer to regulations requiring states and territories to follow the same policies and procedures that they use for procurements using non-federal funds. Since then, HHS has adopted new regulations moving Part 74 to Part 75 in title 45 of the Code of Federal Regulations.

²⁴See 45 C.F.R. § 95.613(a) (2019).

Table 1: Selected Puerto Rico Medicaid Procurements by Type and Agency

| Type of procurement (Number selected) | Selected procurements | |
|--|--|---|
| | Department of Health | Administración de Seguros de Salud |
| Competitive procurements (3) | <ul style="list-style-type: none"> Eligibility & enrollment system | <ul style="list-style-type: none"> Managed care organizations Managed care enrollment counselor |
| Noncompetitive procurements (5) | <ul style="list-style-type: none"> Independent verification and validation of eligibility & enrollment system External quality review organization | <ul style="list-style-type: none"> Administrative consulting Actuarial services Public relations |

Source: GAO analysis of information from Puerto Rico’s Department of Health and Administración de Seguros de Salud. | GAO-21-229

Note: These eight procurements represent a non-generalizable sample of Puerto Rico Medicaid procurements that were in effect as of April 1, 2020. They represented approximately 97 percent of the total costs of Puerto Rico’s Medicaid procurements in effect at that time.

Our review of DOH and ASES documentation found that for seven of the eight selected procurements, Puerto Rico did not take important steps to enable or seek competition. The one exception was Puerto Rico’s Medicaid MCO procurement, which was the largest of our selected procurements.²⁵ As previously noted, Puerto Rico is not required to meet the federal procurement standards we reviewed.²⁶ However, these standards are significant, because they were designed to promote competition and reduce risks of fraud, waste, and abuse.

- One of three competitive procurements met all federal procurement standards reviewed.** Puerto Rico’s Medicaid MCO procurement—which resulted in nearly \$4.3 billion for procurements lasting between 2 and 3 years—had a documented process that was consistent with the federal standards we reviewed. Puerto Rico’s requests for proposals for the other two selected competitive procurements were not consistent with the federal standards we selected. Specifically, these two procurements did not include information about the relative importance of proposal evaluation factors. (See table 2.) Not including this information may compromise

²⁵In addition to our review of selected procurements, we found that Puerto Rico had conflict of interest policies, which are required under federal procurement rules. 45 C.F.R. § 75.327(c)(1) (2019). Both DOH and ASES officials identified territorial law that (1) covers conflicts of interest in procurements; (2) governs relevant employees’ actions; and (3) provides for disciplinary actions for violations.

²⁶While we did not examine post-award management, CMS officials said that the agency reviews Puerto Rico’s MCO contracts to ensure they include certain federally required provisions, such as termination procedures.

fair competition and agencies' ability to obtain proposals that are as responsive as possible, according to the American Bar Association's 2000 Model Procurement Code for State and Local Governments, which includes similar requirements.²⁷

Table 2: Three Puerto Rico Medicaid Competitive Procurements' Alignment with Certain Federal Standards

| Procurement description | Puerto Rico agency | Total procurement amount (dollars in millions) | Federal standards applicable to other non-federal entities' competitive procurement documentation ^a | | | |
|-----------------------------------|------------------------------------|--|--|---|-----------------------|----------------------|
| | | | All evaluation factors | Relative importance of all evaluation factors | Method for evaluation | Method for selection |
| Managed care organizations (MCO) | Administración de Seguros de Salud | 4,346 | ✓ | ✓ | ✓ | ✓ |
| Eligibility and enrollment system | Department of Health | 43 | ✗ | ✗ | ✓ | ✓ |
| MCO enrollment counselor | Administración de Seguros de Salud | 23 | ✓ | ✗ | ✓ | ✓ |

Legend: ✓ = documented process reflects federal standards; ✗ = documented process does not reflect federal standards

Source: GAO analysis of data and documents from Puerto Rico's Department of Health and Administración de Seguros de Salud. | GAO-21-229

^aFederal procurement standards summarized in this table do not apply to states and territories, including Puerto Rico, but apply to other non-federal entities, such as local governments. These standards appear at 45 C.F.R. §§ 75.329(d)(1) and 75.329(d)(3) and specify that (1) requests for proposals must identify all evaluation factors and their relative importance; and (2) the non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.

- **Noncompetitive procurements were inconsistent with federal procurement standards reviewed.** For the five selected noncompetitive procurements—which resulted in approximately \$15 million for procurements lasting less than 2 years—Puerto Rico did not document any of the justifications for forgoing competition included in the federal standards we selected. The federal standards allow for a noncompetitive process under specified circumstances,

²⁷According to the American Bar Association, its Model Procurement Code makes it easier for companies to compete for procurements across the thousands of state and local jurisdictions that have adopted it. Similar to the federal standard for other non-federal entities at 45 C.F.R. § 75.329(d)(1) that “[r]equests for proposals must be publicized and identify all evaluation factors and their relative importance,” the American Bar Association explains that “[t]he Request for Proposals shall state the relative importance of price and other factors and subfactors, if any.” See, American Bar Association, Section of Public Contract Law, Section of State and Local Government Law, *The 2000 Model Procurement Code for State and Local Governments*, (2000).

such as when the item is available only from a single source.²⁸ For three of these procurements, ASES did not provide a justification of its use of a noncompetitive process, which would be required if these federal standards applied. For the two remaining procurements, DOH officials explained that they had previously used competitive procurement for similar awards to the selected contractors.²⁹ For the larger of these two procurements, DOH officials explained that they initially intended to conduct a competitive procurement, but did not because there was not enough time to carry out a competitive procurement process and competition was not required under Puerto Rico law. DOH and ASES officials told us that Puerto Rico law authorizes noncompetitive procurements for professional services, regardless of circumstances. Officials from Puerto Rico’s Office of the Comptroller confirmed this, while noting that they encourage the use of competition in procurements as a best practice. The selected noncompetitive procurements were for public relations and other services that may have been available from multiple contractors. (See table 3.)

Table 3: Five Puerto Rico Medicaid Noncompetitive Procurements’ Alignment with Certain Federal Standards

| Procurement description | Puerto Rico agency | Total procurement amount (dollars in millions) | Federal standards applicable to other non-federal entities for noncompetitive procurements ^a | | | |
|---|------------------------------------|--|---|--|---|---------------------------|
| | | | Only one source | Emergency limits competitive procurement | CMS expressly authorizes noncompetitive procurement | Competition is inadequate |
| Independent verification and validation | Department of Health | 10.7 | X | X | X | X |
| Administrative consulting | Administración de Seguros de Salud | 1.7 | X | X | X | X |
| Actuarial services | Administración de Seguros de Salud | 1.3 | X | X | X | X |

²⁸Federal standards specify four circumstances under which noncompetitive procurements can be awarded: (1) the item is available only from a single source; (2) an emergency does not provide sufficient time to conduct a competitive procurement; (3) CMS expressly authorizes noncompetitive procurement; or (4) after solicitation of a number of sources, competition is determined to be inadequate. 45 C.F.R. § 75.329(f) (2019).

²⁹Federal regulations require states and territories to follow an open, competitive process in accordance with state law and regulations for procuring services from an external quality review organization. 42 C.F.R. § 438.356(e) (2019). DOH officials explained that they viewed their noncompetitive procurement for these services as a continuation of a competitive procurement awarded in 2013 that was awarded to the same contractor for a similar scope of work.

Federal standards applicable to other non-federal entities for noncompetitive procurements^a

| Procurement description | Puerto Rico agency | Total procurement amount (dollars in millions) | Federal standards applicable to other non-federal entities for noncompetitive procurements ^a | | | |
|--------------------------------------|------------------------------------|--|---|--|---|---------------------------|
| | | | Only one source | Emergency limits competitive procurement | CMS expressly authorizes noncompetitive procurement | Competition is inadequate |
| Public relations | Administración de Seguros de Salud | 0.8 | X | X | X | X |
| External quality review organization | Department of Health | 0.4 | X | X | X | X |

Legend: X = documented process does not reflect federal standards

Source: GAO analysis of data and documents from Puerto Rico's Department of Health and Administración de Seguros de Salud. | GAO-21-229

^aFederal procurement standards summarized in this table do not apply to states and territories, including Puerto Rico, but apply to other non-federal entities, such as local governments. These standards appear at 45 C.F.R. § 75.329(f)(1)-(4) and specify four circumstances under which noncompetitive procurements can be awarded: (1) the item is available only from a single source; (2) an emergency does not provide sufficient time to conduct a competitive procurement; (3) the Centers for Medicare & Medicaid Services (CMS) expressly authorizes noncompetitive procurement; or (4) after solicitation of a number of sources, competition is determined to be inadequate.

Our review of selected Medicaid procurements shows that Puerto Rico has not taken actions designed to promote competition, such as those established in the federal standards applicable to other non-federal entities, which could adversely affect program integrity. Because CMS does not oversee Puerto Rico's procurement processes, the agency lacks assurance that the territory is appropriately managing the risk of fraud, waste, and abuse in its Medicaid procurements. This lack of oversight is inconsistent with federal internal control standards that require agencies to (1) consider the potential for fraud when identifying, analyzing, and responding to risks; and (2) design control activities to respond to risks. It is also inconsistent with the statutory requirement for CMS to ensure that Puerto Rico's methods of administering its Medicaid program ensure the efficient operation of the program.³⁰ CMS officials said they intend to review Puerto Rico's procurement reform plan.³¹ As of November 2020, they had not documented how they will conduct this review, when it will be complete, or whether they will oversee Puerto Rico's implementation of its procurement reform plan.

³⁰See [GAO-14-704G](#); 42 U.S.C. § 1396a(a)(4)(A).

³¹In November 2020, CMS officials said they were reviewing Puerto Rico's procurement of services from an external quality review organization for compliance with 42 C.F.R. § 438.356(e) (2019), which requires an open, competitive procurement process in accordance with state law and regulations.

Conclusions

Puerto Rico has spent billions of dollars through procurements to administer its Medicaid program. However, some of Puerto Rico's procurements do not reflect federal standards intended to promote competition. Additionally, because CMS has not provided oversight of Puerto Rico's Medicaid procurements, it is unable to determine whether the territory has processes in place to help ensure competition and minimize the risk of fraud, waste, and abuse. Absent such oversight, CMS and the Congress cannot be assured that Puerto Rico's Medicaid program is appropriately managing the risk of fraud, waste, and abuse.

Recommendation for Executive Action

The Administrator of CMS should take steps to implement ongoing, risk-based oversight of Medicaid procurement processes in Puerto Rico; such actions could include performing an assessment of competitive and noncompetitive procurement processes to identify risks and address them by promoting competition, as appropriate for the efficient operation of the Medicaid program. (Recommendation 1)

Agency Comments and Our Evaluation

We provided a draft of this report to HHS for comments. In its written comments, HHS concurred with our recommendation and indicated a commitment to work with Puerto Rico to improve its procurement processes. In doing so, HHS cited its current reviews of Puerto Rico's Contract Reform Plan and the territory's procurement of external quality review services, the latter of which was initiated as a result of our review. HHS described oversight tools it has to ensure state and territory compliance with applicable federal regulations and statutes, and reiterated that states and territories are in the best position to ensure that their procurement processes comply with applicable requirements. We maintain that fair competition is a cornerstone of procurement. Promoting competition could contribute to the efficient operation of Puerto Rico's Medicaid program and its ability to prevent fraud, waste, and abuse. HHS also provided technical comments, which we incorporated as appropriate. HHS's comments are reprinted in appendix I.

We also provided relevant portions of a draft of this report to Puerto Rico's Administración de Seguros de Salud (ASES) and Department of Health (DOH). Officials from ASES and DOH provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Health and Human Services, the Administrator of CMS, and other interested parties. In addition, the report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7114 or at YocomC@gao.gov. Contact points for our Office of Congressional Relations and Office of Public Affairs can be found on the last page of this report. Other major contributors to this report are listed in appendix II.

A handwritten signature in black ink, appearing to read "Carolyn L. Yocom". The signature is fluid and cursive, with a long horizontal stroke at the end.

Carolyn L. Yocom
Director, Health Care

Appendix I: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

January 13, 2021

Carolyn Yocom
Director, Health Care
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Ms. Yocom:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "*MEDICAID: CMS Needs to Implement Risk-Based Oversight of Puerto Rico's Procurement Process*" (Job code 104218/ GAO-21-229).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

**Sarah C.
Arbes -S**

Digitally signed by
Sarah C. Arbes -S
Date: 2021.01.12
15:10:53 -05'00'

Sarah C. Arbes
Assistant Secretary for Legislation

Attachment

**Appendix I: Comments from the Department of
Health and Human Services**

**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN
SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT
REPORT ENTITLED – MEDICAID: CMS NEEDS TO IMPLEMENT RISK-BASED
OVERSIGHT OF PUERTO RICO'S PROCUREMENT PROCESS (GAO-21-229)**

The U.S. Department of Health & Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on the GAO's draft report on Medicaid contracting in Puerto Rico.

Both states and the Centers for Medicare & Medicaid Services (CMS) share responsibility for operating Medicaid programs consistent with title XIX of the Social Security Act (the Act) and ensuring its overall fiscal integrity. The Federal-State partnership is central to ensuring the proper and efficient administration of the Medicaid program and CMS will continue to work with Puerto Rico, as it does with all other states and territories, to ensure compliance with the applicable contracting regulations. As the direct administrators of their Medicaid programs, states and territories are in the best position to ensure that their procurement processes comply with the applicable state requirements. As detailed in the GAO's report, HHS regulations generally require a state or territory, including Puerto Rico, to follow the same policies and procedures used for procurements from its non-Federal funds. While there are instances when CMS has required states and territories to comply with additional requirements that apply to other non-Federal entities, such as local governments and nonprofit organizations, they are limited only to procurements for External Quality Review Organization (EQRO) services¹ and Automatic Data Processing (ADP) equipment and services.²

As stated in the GAO's report, the Federal standards, within the uniform administrative requirements for Federal awards to non-Federal entities, do not apply to states and territories. CMS appreciates the GAO's previous work that found that competition reduces costs, improves contractor performance, curbs fraud, and promotes accountability; however, the sample of eight Puerto Rico procurements in the GAO's review were assessed against Federal procurement standards that do not apply to states or territories. Further, it is important to note that the GAO did not find any issues with Puerto Rico's Medicaid Managed Care Organization procurements, which accounted for the majority of the territory's Medicaid expenditures paid to contractors from the GAO's sample of eight contracts in effect as of April 2020.

As noted in the GAO's report, CMS utilizes Medicaid State Plans to require and assess adherence to relevant regulations and statutes. The State Plan serves as an agreement between a state or territory and the Federal government that sets out groups of individuals to be covered, services to be provided, methodologies for providers to be reimbursed, and the administrative activities that are underway in the state or territory. Through the State Plan, or a State Plan Amendment, states and territories attest to being in compliance with the applicable provisions of 45 C.F.R. § 75 in order to be eligible to receive Federal Financial Participation (FFP). Once states and territories amend their State Plans to incorporate the appropriate attestations for compliance with federal requirements, they are not required to make further updates unless a programmatic change is proposed. In addition to requiring a state or territory to follow the same policies and procedures used for procurements from its non-Federal funds,³ these regulations

¹ 42 C.F.R. § 438.356(e)

² 45 C.F.R. § 95.611

³ 45 C.F.R. § 75.326

GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED – MEDICAID: CMS NEEDS TO IMPLEMENT RISK-BASED OVERSIGHT OF PUERTO RICO'S PROCUREMENT PROCESS (GAO-21-229)

also ensure that once awarded, contracts will contain the necessary provisions related to various environmental and employee protection laws.⁴

CMS conducts regular oversight of states and territories, including program reviews⁵ and audits.⁶ Through these oversight activities, if CMS becomes aware that a state or territory is not in compliance with the approved State Plan, pursuant to 42 C.F.R. § 430.32, the agency is able to review a state or territory's policies and procedures, conduct an on-site review of selected aspects of agency operations, or examine samples of individual case records. Generally, one of the first options exercised by CMS is to offer and provide technical assistance to the state or territory, which may include an assessment to determine the root cause of the noncompliance and explore available options to help bring the program back into compliance. This initial approach may require the state to develop a corrective action plan; however, should the state fail to come into compliance with the approved State Plan, CMS may pursue the withholding of FFP.⁷ Further, as a result of the GAO's review, CMS has already begun reviewing Puerto Rico's procurement of services from an EQRO to ensure that an open and competitive procurement process was conducted, as is required in the Medicaid managed care regulations at 42 C.F.R. § 438.356(e), and will explore available options to address any compliance issues found.

As required by the Consolidated Appropriations Act of 2020, Puerto Rico submitted its Contract Reform Plan to Congress on December 18, 2020. The Puerto Rico Department of Health and the Puerto Rico Health Insurance Administration collaborated on the plan. Phase I of the plan (January – September 2021) includes planning activities critical to the successful implementation of the plan which includes a number of priority initiatives, and phase II (October 2021 and beyond) focuses on additional initiatives to optimize the contracting process as well as tracking and reporting of metrics. Puerto Rico intends to submit an annual progress report to Congress as an addendum to the existing annual report beginning in 2022, and will provide a quarterly status report to CMS identifying progress on the Contracting Reform Plan. CMS is currently reviewing the plan against the applicable regulatory and statutory requirements and Puerto Rico's approved State Plan.

Recommendation

The Administrator of CMS should take steps to implement ongoing, risk-based oversight of Medicaid procurement processes in Puerto Rico; such actions could include performing an assessment of competitive and noncompetitive procurement processes to identify risks and address them by promoting competition, as appropriate to ensure efficient operation of the program.

HHS Response

CMS concurs with this recommendation and will take steps to implement risk-based oversight of Medicaid procurement processes in Puerto Rico. In considering risk-based oversight, it is important to note that the GAO did not find any issues with Puerto Rico's Medicaid Managed

⁴ 45 C.F.R. § 75.335

⁵ 42 C.F.R. §430.32

⁶ 42 C.F.R. §430.33

⁷ 42 C.F.R. §430.35

**Appendix I: Comments from the Department of
Health and Human Services**

**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN
SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT
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OVERSIGHT OF PUERTO RICO'S PROCUREMENT PROCESS (GAO-21-229)**

Care Organization procurements, which accounted for the majority of the territory's Medicaid expenditures paid to contractors during the review period. As previously stated, CMS is currently reviewing Puerto Rico's Contract Reform Plan and assessing the plan against the applicable regulatory and statutory requirements. CMS will continue to monitor Puerto Rico's progress of the Contract Reform Plan for sufficient assurance of compliance with their approved State Plan. As a result of the GAO's review CMS has already begun reviewing Puerto Rico's procurement of services from an EQRO to ensure that an open and competitive procurement process was conducted, as is required by 42 C.F.R. § 438.356(e), and will explore available options to address any compliance issues found.

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Carolyn L. Yocom at (202) 512-7114 or yocomc@gao.gov

Acknowledgments

In addition to the contact named above, Susan Anthony and Leslie Gordon (Assistant Directors), Russell Voth (Analyst in Charge), Kelly Krinn, Drew Long, Werner Miranda-Hernandez, Ethiene Salgado-Rodriguez, Marie Suding, and Jennifer Whitworth made key contributions to this report.

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**ADMINISTRACIÓN DE
SEGUROS DE SALUD DE PUERTO RICO
(ASES)**

**PUERTO RICO HEALTH INSURANCE
ADMINISTRATION (PRHIA)**



**PHARMACY BENEFIT MANAGER (PBM) AND
REBATE AGGREGATOR (RA) SERVICES**

GOVERNMENT HEALTH PLAN

REQUEST FOR PROPOSALS

RFP # PHARMACY 2022

ISSUE DATE: MARCH 31, 2021

PROPOSAL DUE DATE: MAY 5, 2021 6:00 PM (AST)

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1

General Information

1.1 Introduction

Purpose

This document constitutes a request for proposals for the provision of Pharmacy Benefit Management (PBM) and Rebate Aggregator (RA) services for the Government Health Plan (GHP), also known as Vital, ("hereinafter referred to as "GHP") pursuant to Title XIX of the Federal Social Security Act, codified as 42 USC 1396 et seq, (the "Social Security Act"), and Act No. 72 of September 7, 1993, as amended, of the Laws of the Commonwealth ("Act No. 72"). GHP serves a mixed population including not only the Medicaid and CHIP populations, but also other eligible individuals as established in Act 72.

ASES reserves the right, at its sole discretion to award a contract for a term beginning on February 1, 2022 and ending January 31, 2025 with two (2) optional one (1) year Contract Term extensions, subject to availability of funds. After the second year of the initial Contract Term, ASES shall evaluate the contractor's performance and the GHP to determine the necessity and desirability to exercise the optional contract extensions. The Offeror should provide their best cost estimate for optional years. The Offeror should be aware that optional years may be subject to renegotiation based on prevailing market prices and evaluation of Contractor's performance

The Implementation Date for the provision of the PBM and RA Services is expected to be February 1, 2022. Puerto Rico intends to join the Medicaid Drug Rebate Program (MDRP) as of the Implementation Date. In addition to providing MDRP Services, the Offeror must be able to provide non-MDRP (Other Enrollee) Rebate Services for the State Population. Notwithstanding the above, the awarded Contractor needs to have operational capacity to provide MDRP Services and Other Enrollee Rebate Services upon the Implementation Date as determined by ASES.

Offerors are invited to bid for either the PBM Services business (PBM Services Only); the RA Services business (RA Services Only); or a Combined Services contract that includes both sets of services. If the Offeror chooses to bid for both services, it must then present costs for each type of service and costs for the combined services. Nonetheless, ASES retains the sole discretion to determine which service(s) will be awarded to which Offeror. Accordingly, regardless whether the Offeror chooses to bid for both set of services, ASES may opt to award only one of the services to said Offeror and the other service to another Offeror.

ASES's preference is for the best Combined Services contract but will consider separate RA and PBM Services contracts if it is in the best interest for Puerto Rico based on quality and value. The intent is to award a Contract or Contracts to the most responsive and responsible entity or entities that demonstrate the ability to meet the requirements of this RFP at the most competitive prices.

The Offeror must agree and quote implementation and ongoing costs based on the Total Ownership Cost Method. The Total Ownership Cost Method includes not only the direct costs of the specific

deliverables required for the provision of the Contracted Services but also all indirect costs that would be logically attributed to the provision of such Services. It is an all-inclusive rate.

ASES is seeking Offerors that:

1. Demonstrate a clear understanding of ASES's needs, the services sought and the Offeror's responsibilities.
2. Demonstrate that the Offeror understands its role as partner and advisor to ASES.
3. Demonstrate the Offeror's capability to perform all services and meet all Contract requirements.
4. Demonstrate how the Offeror will contribute to the achievement and advancement of ASES's goals and objectives.
5. Demonstrate operational capacity to support a February 1, 2022 Implementation Date.
6. Demonstrate financial solvency and stability to perform the services of this RFP.

A general description of the required functions of the PBM and RA Services are as follows:

PBM Services:

Developing, implementing and offering to ASES and the MCOs a comprehensive Pharmacy Benefit Management program including but not limited to the following programs and services:

- Managing and credentialing the Pharmacy Network that covers the whole jurisdiction of Puerto Rico and performing Pharmacy Audits;
- Maintaining a Pharmacy Call Center for the Pharmacy Network;
- Adjudicating and accurately processing Pharmacy Claims and payment including handling Coordination of Benefits ("COB") with other health insurance plans, including Medicare;
- Developing, maintaining and updating the Maximum Allowable Cost ("MAC") list for Pharmacy reimbursement for Generic Drugs and multi-source Brand Drugs and providing an electronic platform to Pharmacies desiring to appeal MAC pricing, and if requested by ASES, coordinating with Puerto Rico's Department of Consumer Affairs ("DACO") to provide drug price information for DACO's drug price control list, as amended from time to time;
- Providing a comprehensive Drug Utilization Review ("DUR") program, including capabilities to identify potential opioid abuse and suspect prescribing and dispensing patterns, and to track drug utilization for specific prescription drugs identified by ASES for special monitoring;
- Supporting ASES and the contracted MCOs with the High Cost High Need (HCHN) Program and other care management programs;

- Developing and implementing a compliance plan and Fraud, Waste and Abuse detection initiatives;
- Assisting in the support and operation of formulary management through the Pharmacy & Therapeutics Committee and Pharmacy Financial Committee;
- Managing the Academic Detailing program;
- Updating and maintaining standard operating procedure manual(s) for PBM services;
- Maintaining an Information System, Information management processes and technical support to meet the GHP requirements;
- Providing robust reporting and online reporting tool as described in the Contract;
- Retaining and storing data as required under the Contract;
- Developing strategies to promote an active participation of the MCOs in the development of Enrollee and prescribing Provider educational activities.

RA Services:

- Providing comprehensive management of the RA Services for all GHP populations, which includes:
 - Other Enrollee Rebate Services for populations not eligible for MDRP rebates, and
 - MDRP Rebate Services for Medicaid and CHIP Eligibles' covered outpatient drugs in accordance with Section 1927(b)(1) of the Social Security Act and the terms of the Medicaid National Drug Rebate Agreement (NDRA).

The RA Services shall include but are not limited to:

- Producing drug rebate invoices for pharmaceutical manufacturers according to federal schedule requirements for the MDRP and ASES's schedule requirements for Other Enrollee (non-MDRP) rebates;
- Processing and submitting to the Medicaid Program the CMS drug utilization and information necessary for CMS-64 reporting;
- Providing Rebate program reports for retail Pharmacy drugs and PADs to ASES and its designees on a quarterly basis;
- Reconciling and resolving drug rebate disputes with pharmaceutical manufacturers;
- Ensuring quality control to validate accuracy of drug Rebate Data;

- Maintaining administrative, physical and technical safeguards to ensure security and confidentiality of all drug Rebate Information according to Puerto Rico and federal laws and industry standards;
- Updating and maintaining standard operating procedure manual(s) for Rebate program administration;
- Maintaining a Data repository system that interfaces with multiple Data sources;
- Maintaining a reporting database that can be accessed in real time by ASES to review and analyze rebate information and produce ad hoc reporting;
- Creating and maintaining a secure web portal for Data sharing with pharmaceutical manufacturers;
- Coordinating and assisting in the support and operation of ASES's Pharmacy Financial Committee.

1.2 Content of RFP

This Request for Proposals (RFP) defines the Puerto Rico Health Insurance Administration's (Administración de Seguros de Salud de Puerto Rico – ASES) minimum service requirements, solicits responses and outlines the process for evaluating proposals and selecting the Contractor(s). This RFP contains the following information:

1. Instructions to Offerors contained throughout this RFP
2. Procedures and policies for the presentation and for the adjudication of the proposal
3. Technical specifications: See Contract in Appendix K and the Procurement Library
4. Summarized Pharmacy utilization data and Pharmacy Call Center data
5. Appendices, including the Cost Proposal Template and Other Required Forms

1.3 Background on GHP and Pharmacy Benefit Services

Pursuant to Title XIX of the Federal Social Security Act, codified as 42 USC 1396 et seq. ("the Social Security Act"), and Act No. 72 of September 7, 1993 of the Laws of Puerto Rico ("Act 72"), a comprehensive program of medical assistance for needy persons exists in Puerto Rico. The Puerto Rico Health Department ("the Health Department") is the single State agency designated to administer medical assistance in Puerto Rico under Title XIX of the Social Security Act of 1935, as amended, and is charged with ensuring the appropriate delivery of health care services under the Medicaid and the Children's Health Insurance Program ("CHIP") in Puerto Rico, and ASES manages these programs pursuant to a delegation of authority.

ASES is a public corporation with autonomy to develop and execute the terms of its organic law, Act No. 72 of September 7, 1993, as amended. As part of its responsibilities, ASES contracts with Managed Care Organizations ("MCOs"), PBMs, and/or Pharmacy Program Administrators ("PPAs") to provide medical and prescription drug services island-wide in Puerto Rico to persons who are eligible for

Medicaid, CHIP and Other Enrollees. ASES is responsible for health care policy, purchasing, planning, and regulation pursuant to Act 72, as amended, and other sources of law of Puerto Rico, and pursuant to this statutory provision. ASES has established a managed care program under the medical assistance program, known as “GHP,” “GHP Program,” “the Government Health Plan”, or “Vital”.

In 2018, ASES contracted with five (5) Managed Care Organizations (MCOs) under GHP. Effective October 1, 2020, ASES now holds contracts with four (4) MCOs to provide GHP services. ASES also has current contracts with a PBM to provide Pharmacy Benefit Management services and a Pharmacy Program Administrator (PPA) to provide Rebate services, Maximum Allowable Cost (MAC) list services and Formulary Management services. The MCOs are obligated to accept the terms and conditions of the contract that ASES holds with these entities.

Pursuant to the Covered Outpatient Drugs Final Rule with Comment (CMS-2345-FC) subsequently amended by 84 FR 64783 the regulatory definitions of “States” and “United States” under § 447.502 were amended to include the U.S. Territories by April 1, 2022 and allows U.S. Territories to participate in the MDRP or opt out via an 1115 waiver. As a result, Puerto Rico has decided to join and implement the MDRP by the Implementation Date of the Contract.

As of March 1, 2021, GHP serves approximately 1,495,440 beneficiaries including (1) 1,387,367 Medicaid Enrollees, (2) 91,231 CHIP enrollees and (3) 16,842 Other Enrollees. The Other Enrollees population includes individuals who meet State-eligibility standards established by the Puerto Rico Medicaid Program but do not qualify for Medicaid or CHIP. In November 15, 2020, Puerto Rico temporarily expanded Medicaid and CHIP enrollment and services through September 30, 2021 taking advantage of current federal funding available. The current enrollment numbers provided reflect the impact of the expansion which effectively added 202,000 individuals to the Federal and CHIP populations overall. After September, the expansion will be dependent on available funds, thus enrollment numbers may change.

The present PBM adjudicates approximately 14.9 million Claims annually (July 1, 2019-June 30, 2020) and maintains a Pharmacy Network of approximately 900 Pharmacies.

Table 1 below provides additional summarized data for the GHP program.

Table 1: Summarized GHP Information

| | July 1, 2018 through June 30, 2019 | July 1, 2019 through June 30, 2020 | July 1, 2020 through December 31, 2020 |
|--|--|--|---|
| Number of Beneficiaries (Medicaid and CHIP)* | 1,109,916 | 1,026,111 | 1,028,686 |
| Number of Beneficiaries (Other Enrollees)* | 131,912 | 122,025 | 123,339 |
| Total Number of Beneficiaries (GHP)* | 1,241,828 | 1,148,136 | 1,152,025 |
| Number of Unique Utilizers (Medicaid and CHIP) | 803,684 | 711,720 | 483,199 |

| | July 1, 2018 through June 30, 2019 | July 1, 2019 through June 30, 2020 | July 1, 2020 through December 31, 2020 |
|---|--|--|---|
| Number of Unique Utilizers (Other Enrollees) | 101,839 | 95,937 | 67,820 |
| Total Number of Unique Utilizers (GHP) | 859,945 | 785,782 | 550,020 |
| Number of Pharmacies Enrolled in GHP | 910 | 906 | 905 |
| Retail Pharmacy Claims (Medicaid and CHIP) | | | |
| Total Count of All Paid Claims | 14,444,473 | 13,521,894 | 6,454,767 |
| Total Count of 340B Claims | 1,283,504 | 1,195,523 | 556,851 |
| Total Paid Amount for All Paid Claims | \$646,306,662 | \$720,318,508 | \$371,895,412 |
| Unique Members with Retail Pharmacy Claim | 803,684 | 711,720 | 483,199 |
| Percentage of Unique Member Utilization of Pharmacy Services** | 72% | 69% | 47% |
| Retail Pharmacy Claims (Other Enrollees) | | | |
| Total Count of All Paid Claims | 992,779 | 1,318,069 | 690,696 |
| Total Count of 340B Claims | 82,247 | 100,635 | 48,439 |
| Total Paid Amount for All Paid Claims | \$30,666,754 | \$44,482,272 | \$24,749,157 |
| Unique Members with Retail Pharmacy Claim | 101,839 | 95,937 | 67,820 |
| Percentage of Unique Member Utilization of Pharmacy Services | 77% | 79% | 55% |
| Retail Pharmacy Claims (Total GHP) | | | |
| Total Count of All Paid Claims | 15,437,252 | 14,839,963 | 7,145,463 |
| Total Count of 340B Claims | 1,365,751 | 1,296,158 | 605,290 |
| Total Paid Amount for All Paid Claims | \$676,973,416 | \$764,800,781 | \$ 396,644,569 |
| Unique Members with Retail Pharmacy Claim | 859,945 | 785,782 | 550,020 |
| Percentage of Unique Member Utilization of Pharmacy Services | 69% | 68% | 48% |
| Department of Health Claims Processed by PBM (Under MOU, Protease Inhibitors and Other Miscellaneous Drugs Provided by ADAP) | | | |
| Total Count of All Paid Claims | 152,056 | 151,470 | 66,285 |
| Total Paid Amount for All Paid Claims | \$59,672,383 | \$62,896,795 | \$34,105,243 |

| | July 1, 2018 through June 30, 2019 | July 1, 2019 through June 30, 2020 | July 1, 2020 through December 31, 2020 |
|--|--|--|---|
|--|--|--|---|

*Monthly average is displayed.

**Monthly average of members participating of the pharmacy benefit is displayed.

Table 2- provides information about the Pharmacy Call Center. The increase of incoming calls in July 2020 was related to the COVID emergency declared by Puerto Rico. The top reasons for calls to the Pharmacy Call Center from January – July 2020 were for claim processing information requests (43.5%), plan limits (14.7%), prior authorizations (11.5%), formulary drug questions (7.4%) and eligibility (5.2%).

Table 2-A: Pharmacy Call Center Summary

| Pharmacy Call Center | Calendar Year 2019 | Calendar Year 2020 |
|-----------------------------|--------------------|--------------------|
| January | 4,464 | 1,085 |
| February | 3,748 | 1,204 |
| March | 4,328 | 1,626 |
| April | 4,390 | 1,288 |
| May | 2,837 | 1,004 |
| June | 1,890 | 1,260 |
| July | 1,578 | 3,102 |
| August | 1,415 | 2,626 |
| September | 1,592 | 1,895 |
| October | 1,616 | 1,590 |
| November | 1,340 | 1,128 |
| December | 1,408 | 1,323 |
| Total Answered Calls | 30,606 | 19,131 |
| Average per Month | 2,551 | 1,594 |

Table 2-B: Pharmacy Call Center Utilization Data for Calendar Year 2021

| Measure Label | January | February |
|----------------------------------|---------|----------|
| Total Pharmacy Call Center Calls | 1,489 | 1,165 |

1.4 Legal Foundation

Offerors must comply with federal and Government laws and regulations, outlined in Attachment 1 of the Contract in Appendix K.

ASES reserves the right to modify requirements stated in this RFP at any time by either a supplement to this RFP or otherwise by modifying the Contract, or as necessary based on any federal requirements or as may be required by CMS, or any Government of Puerto Rico laws or regulations or any directives of the Financial Oversight and Management Board for Puerto Rico. ASES may continue to revise the Contract.

1.5 Legal or Regulatory Warnings and Restrictions

The following legal warnings or regulatory restrictions are applicable to and Mandatory for this procurement. Failure to comply with any of these could result in the Offeror's disqualification from this procurement process.

1.5.1 Statements by the Offeror

An Offeror's Proposal constitutes the instrument through which the Offeror manifests its interest, offers, commitments and representations and agrees to be legally bound by the contents thereof.

Statements included in the Offeror's Proposal will be accepted in good faith by ASES's officials during the evaluation and adjudication process. The Offeror's Proposal constitutes material evidence of the Offeror's commitments and representations and will be incorporated into the Contract to the extent the Offeror is awarded such Contract.

ASES reserves the right to reject an Offeror's Proposal or to disqualify any Offeror at any time during the presentation, evaluation or adjudication process.

1.5.2 Prohibition Regarding Interference in the Evaluation and Adjudication Process

During this procurement process, Offerors shall not be allowed to obtain Information, interfere, influence, exert pressure or communicate with individuals named to this RFP evaluation committee nor any other employee, consultant or Agent of ASES. **See Section 1.8 of this RFP.** One exception is for instances in which such communication is unrelated to this procurement and limited to the normal operations of current Contracts with ASES. Therefore, as explained in Section 1.8 of this RFP, on matters related to this procurement, Offerors may only communicate directly with the Procurement Contact.

FAILURE TO STRICTLY ABIDE BY THESE RULES WILL CAUSE THE DISQUALIFICATION OF THE OFFEROR FROM THIS PROCESS.

1.5.3 Delegation of Authority

Offerors acknowledge that Government and federal laws generally limit ASES's capacity to delegate certain decisions to a Contractor, such as the formulation of public policy and determination of program eligibility.

The Offeror awarded the Contract accepts this condition and commits to comply with any new requirement or applicable law after contract execution.

The Offeror awarded the Contract is required to keep all accounts, books and records pertaining to financial and economic transactions for expenses related to GHP separate from the Offeror's other lines of business. Because GHP is financed with federal and Government of Puerto Rico funds, the Contract is subject to the Audit rules of Puerto Rico and the United States of America's Office of the Comptroller, as well as to those from any other Government agency having jurisdiction over the subject matter, which may include without limitation, the Financial Oversight and Management Board for Puerto Rico.

1.5.4 Conflicts of Interests

ASES is required by federal and Government of Puerto Rico law to assure the integrity and equal, fair and impartial treatment of the Offerors who elect to participate in this RFP procurement process. This duty and principle apply throughout this procurement process, including the evaluation, selection, negotiation, adjudication and execution of the Contract. To maintain among the Offerors in this RFP open and free competition, ASES maintains an aggressive policy towards actual or potential conflicting interests.

FOR PURPOSES OF THIS RFP, ASES RESERVES THE RIGHT TO DISQUALIFY ANY OFFEROR WITH A CONFLICT OF INTEREST OR LACK OF INDEPENDENCE. ASES will investigate any charge or allegation to this effect, prior to the disqualification, if any. Likewise, ASES reserves the right, during the Term of the Contract, at any time after concluding the due process of law required, to amend, cancel, rescind, or terminate the Contract awarded to an Offeror, if ASES becomes aware of the existence of a Conflict of Interest or any situation which may affect the Offeror's independence.

Offerors who participate in this RFP procurement process shall not have any interest that may or could represent an actual, potential or future Conflict of Interest, in relation to the award, execution and performance of the Contract to be signed with ASES, nor with the grantors, personnel and ASES's public service officials, its Board of Directors, or any other personnel responsible for the evaluation or adjudication of the Contract, their family members or persons with whom they live, up to a fourth-degree of consanguinity or a second-degree of affinity. Neither can the Offeror be awarded a Contract that, in ASES's sole discretion, creates the appearance of impropriety.

1.5.5 Independence and Conflict of Interest Safeguards

A. **Independence.** The Offeror/Contractor and any Subcontractor(s) which may be engaged by the Offeror/Contractor(s) to perform any part of the Scope of Work (SOW) of this RFP shall be independent from the influence of any: (a) pharmaceutical company/manufacturer; (b) pharmacy; or (c) MCO or healthcare provider of the GHP, herein after collectively referred to as "GHP Participant". Therefore, at the time of the signature of the Contract, the Contractor(s) and any Subcontractor(s) which may be engaged by the Contractor(s) to perform any part of the SOW of this RFP **shall not:** (a) operate, directly or through an agreement, arrangement, contract, corporate operational scheme or through an executive or employee of the Contractor/Subcontractor, or family member within the fourth-degree of consanguinity or second degree of affinity, a pharmaceutical

company/manufacturer, pharmacy, or GHP Participant; and/or (b) be owned or controlled by, or own or control a pharmaceutical company/manufacturer, pharmacy or GHP Participant; unless ASES in its sole discretion waives these independence and conflict of interest safeguards.

WARNING: If such a lack of independence exists at the time of the submission of the Proposal for this RFP, the Offeror shall be required to submit with its Proposal either (i) an action plan to divest of the property, control or financial interest that causes the lack of independence (hereinafter referred to as “Divestiture Action Plan”), and remedy the same, or (ii) a detailed explanation as to why a conflict of interest is eligible to be waived and should be waived in ASES’ sole discretion prior to the awarding of the RFP, and/or the actions that Offeror proposes and shall take in order to further eliminate the conflict of interest (both hereinafter referred to as “Conflict Avoidance Plan”). ASES retains sole discretion to determine whether a Divestiture Action Plan or Conflict Avoidance Plan sufficiently addresses an apparent conflict of interest to ASES’ satisfaction in order for the Offeror to be awarded the RFP. The Offeror shall also submit Appendix C of this RFP accepting that, if awarded a Contract, the Divestiture Action Plan or Conflict Avoidance Plan, as approved in writing by ASES, will be expeditiously implemented before the signature of the Contract. **FAILURE TO PROVIDE A DIVESTITURE ACTION PLAN OR CONFLICT AVOIDANCE PLAN WHERE REQUIRED, AND APPENDIX C, WILL BE SUFFICIENT CAUSE FOR THE DISQUALIFICATION OF THE OFFEROR.** Furthermore, failure to comply with the Divestiture Action Plan or Conflict Avoidance Plan as approved by ASES shall be deemed sufficient cause for the forfeiture of the Proposal Bond by the Contractor and/or subcontractor(s) and in favor of ASES. For more information, see Appendix C of this RFP.

- B. **Conflict of Interest Safeguards.** The Offeror/Contractor and any Subcontractor that may be engaged by the Offeror/Contractor to perform any part of the Scope of Work (SOW) of this RFP shall be free from conflict of interest. This includes but is not limited to situations where the Offeror/Contractor or any proposed Subcontractor has an ongoing contract with a pharmaceutical company, pharmacy, or GHP Participant, that does not fall under Section 1.5.5. (A) or is otherwise covered under Section 1.5.4. and Appendix C of this RFP.

If a conflict of interest exists at the time of the submission of the Proposal or is reasonably expected to occur during the term of the Contract, the Offeror and proposed subcontractor must fully divulge the circumstances creating or expected to create the conflict of interest and submit with the Proposal a Conflict Avoidance Plan with the corrective measures that will be taken to eliminate such conflict(s).

WARNING: If a conflict of interest is determined to exist that cannot be resolved to the satisfaction of ASES before the signature of the Contract, the conflict will be grounds for deeming a **Proposal non-responsive and the disqualification of the Offeror will ensue.** For more information, see Appendix C of this RFP.

1.5.6 Criminal Background Check

ASES is prohibited by law to enter into contracts with any Offeror that has been convicted or pleaded guilty in Puerto Rico, the United States of America, or any other country, of criminal acts or constituting corruption, Fraud, embezzlement, or unlawful appropriation of public funds, pursuant to Act 2 of 2018, as amended.

Likewise, ASES is prohibited by law to grant a contract to an Offeror, if its affiliated or subsidiary companies, or if any of its officers, directors, agents, members, partners, ruling bodies or other persons that perform equivalent functions for the Offeror, have been convicted or pleaded guilty at a state or federal court in any jurisdiction of the United States of America of any crime involving corruption, fraud, embezzlement, unlawful appropriation of public funds, pursuant to Act 2 of January 4, 2018, as amended, and crimes stated in Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, as amended; Articles 250-266 of Act No. 146-2012 as amended; or any of the crimes stated in Article 6.8 of Act No. 8-2017 as amended.

In addition, ASES may refuse to contract with any Offeror if any person who has an ownership or Control interest in the entity, or is an agent or managing employee of the Offeror, has been convicted of a criminal offense related to the person's involvement in any program established under Medicare, Medicaid, or the Title XX services programs.

Taking into consideration the public policy for careful oversight in the adequate use of public funds, as well as the rules for proper public administration in Government contracts, ASES is required to adopt, in all of their contracts and amendments, the following safeguards:

- In the case of a legal person, to require a certification to the effect that neither it nor any of its shareholders, members, partners, Agents, officers, principals, employees, subsidiaries, or Parent Companies has been convicted or pleaded guilty for any crimes involving corruption, Fraud, embezzlement, or unlawful appropriation of public funds or property, in the Government of Puerto Rico or federal jurisdictions. (Refer to Appendix E).
- To include a contractual clause to the effect that the Contract will be terminated and rescinded if the Contractor is convicted for the commission of any crimes involving corruption, Fraud, embezzlement, or unlawful appropriation of public funds or property, in the Government of Puerto Rico or federal jurisdictions.
- To require that the Contractor recognize its obligation to report, in a continuous manner, during the Term of the Contract, any fact or event related to the conviction for crimes involving corruption, Fraud, embezzlement, or unlawful appropriation of public funds or property, in the Government of Puerto Rico or federal jurisdictions. This duty shall be of a continuous nature during all the stages of this procurement and term of the Contract.
- To require the Contractor that in the event it knows that it or one of its Subcontractors is under investigation for, or accused of, in Puerto Rico or any other jurisdiction, a crime involving corruption, fraud, embezzlement, or unlawful appropriation of public funds, pursuant to Act No. 2 of 2018, it must affirmatively disclose this information to ASES in writing immediately upon

acquiring such knowledge. See Article 33 of the Contract, Appendix K of this RFP. Refer also to Appendix E of this RFP.

- To require a certification to the effect that, during the ten (10) years prior to the formalization of the Contract, the entity entering into the Contract has not committed any crimes involving corruption, fraud, embezzlement, unlawful appropriation of public funds or property, in the Government of Puerto Rico or federal jurisdictions.
- To include a contractual clause to the effect that before the Effective Date of the Contract, pursuant to 42 CFR 455.104, the Contractor shall disclose to ASES the identity of any person who has an ownership or control interest in the entity, or is an agent or managing employee of the entity, who has been convicted of a criminal offense related to the Medicare, Medicaid, or Title XX services programs.

1.5.7 Lobbying

No federally appropriated funds can be paid at any time by or on behalf of an Offeror or selected Contractor or any other person, for influencing or attempting to influence an officer or employee of any agency, a Member of the Puerto Rico Legislature or an employee of a Member of the Puerto Rico Legislature, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, or the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federally appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. See Appendix F.

1.5.8 Ownership of Information

ASES is the sole and exclusive owner of all the Information related to, or generated, or in connection to this RFP, including, but not limited to, the use and costs of the services provided, health Information, etc. ASES is the sole and exclusive owner of the property rights over all the Data and Information related to the GHP Contract, including this RFP and the Proposals not otherwise withdrawn.

All the documents related to the Contract will be subject to evaluation and Audits, and shall be made available, within a reasonable period of time and without modifications, for evaluation by ASES's personnel and their Authorized Representatives. Additionally, ASES will have the right to request these documents at no cost to ASES.

The Offeror awarded the Contract for the PBM and RA services who will be subcontracting services under this RFP shall include a clause in their subcontracts stating that the personal and utilization information or data pertaining to the GHP Enrollees belongs exclusively to ASES. This clause shall also require that the Contractor and its Subcontractor not give access, assign, or sell, the Information and Data to Third Parties, without the prior written consent from ASES, and all private Information be managed in accordance with HIPAA requirements. The Offeror awarded the Contract is required

to include penalty clauses in Subcontractor contracts to discourage this practice. The penalty clauses shall state that related fines will be payable to ASES.

1.5.9 Rights over the Information

The Offeror recognizes and accepts that ASES is the exclusive owner and that ASES has all the ownership rights over any and all Information related to or generated or in connection to the Contract(s). ASES has exclusive rights over all the Information and Data, including but not limited to, the Enrollees' personal and health information and the Data related to Utilization, costs, and fees.

The Offeror selected, and its Subcontractor shall not transfer, assign, dispose or sell this Information to Third Parties or use it for commercial purposes or in their own private businesses. Engaging in such a practice constitutes a violation of HIPAA and ASES's property rights and shall result in penalties, fines or the rescission and termination of the Contract.

All documents related to Contract, including, but not limited to: policies, procedures, analysis, protocols, and communications, shall be made available and filed with ASES's representatives, without changes to their original format (no PDF), whenever requested. In the event that ASES requests copies of these, the Contractor shall deliver them without alterations and/or omissions. The Contractor shall not refuse, and if so, it will constitute an obstruction to the efforts of ASES's auditors and a breach of Contract subject to penalties and sanctions.

In addition to the intellectual property ownership rights in the Contract, the following subsection describes the intellectual property ownership requirements that the Contractor shall meet during the term of the Contract in relation to federal financial participation.

1.5.9.1 To facilitate obtaining the desired amount of federal financial participation under 42 CFR 433.112, ASES shall have all ownership rights, not superseded by other licensing restrictions, in all materials, programs, procedures, etc., designed, purchased, or developed by the Contractor and funded by ASES. The Contractor shall use contract funds to develop all necessary materials, programs, products, procedures, etc., and data and software to fulfill its obligations under the Contract. ASES's funding used in the development of these materials, programs, procedures, etc. shall be documented by the Contractor(s). ASES shall have all ownership rights in Data and software, or modifications thereof and associated documentation and procedures designed and developed to produce any systems, programs report and documentation and all other work products or documents created under the Contract. ASES shall have these ownership rights, regardless of whether the work product was developed by the Contractor or any Subcontractor for work product created in the performance of this Contract. ASES reserves, on behalf of itself, the U.S. Department of Health and Human Services and its contractors, a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use such software, modifications, documentation and procedures. Such resolved data and software include, but is not limited to, the following:

- a. All computer software and programs, which have been designed or developed for ASES, or acquired by the Contractor on behalf of ASES, which are used in the performance of the Contract.

- b. All internal system software and programs developed by the Contractor or Subcontractor(s), including all source codes, which result from the performance of the Contract;
- c. All necessary Data files;
- d. User and operation manuals and other documentation;
- e. System and program documentation in the form specified by ASES;
- f. Training materials developed for ASES's staff, agents or designated representatives in the operation and maintenance of this software and other programs.

1.5.9.2 No deliverable, report, data, procedure or system created by the Contractor for ASES that is necessary to fulfilling the Contractor's responsibilities under the Contract, as determined by ASES, shall be considered proprietary of the Contractor.

1.5.10 Availability of Funds

Any Contract resulting from this RFP will be subject to the availability of funds on the part of the Government of Puerto Rico, subject to the transfer of federal, Government of Puerto Rico, and municipal funds being made available to ASES.

1.5.11 Relations with Government Entities

In the event that the Offeror is awarded a Contract, the Offeror will be required and obligated to establish a close cooperative and working relationship with ASES and with awarded Contractor in the future. The Offeror will also be obligated to work with the current Contractor to ensure a safe and efficient transition of the Contractor functions, within the timeframe established by ASES.

The Offeror awarded a Contract will have a continuous obligation to establish a close and cooperative relationship with ASES, and the concerned Government of Puerto Rico and federal agencies, including, but not limited to:

- CMS;
- The Puerto Rico and U.S.A. Offices of the Comptroller;
- The Office of the Inspector General;
- The Department of Justice and the Medicaid Fraud Control Unit (MFCU)
- The United States Department of Health and Human Services;
- The Puerto Rico Health Department and its Office for the Medicaid Program;

- The Administración de Familias y Niños (ADFAN – Families and Children Administration); among others.

1.5.12 Access to contract materials

The Contract awarded by ASES will include a provision to the effect that ASES, the Department of Health, the U.S. Comptroller General, or any of their duly Authorized Representatives, must have access to any books, documents, papers and records and staff of the Contractor which are directly pertinent to the PBM and RA Services for the purpose of making evaluations, examinations, excerpts and transcriptions.

1.5.13 Contractual Clauses* pursuant to Executive Order Memorandum Number 2021-003 from the Governor of Puerto Rico and Circular Letter CC-001-2021 from the Office of Management and Budget of the Government of Puerto Rico.

1.5.13.1 As applicable, the contracted services under this RFP can be rendered to any entity of the Executive Branch, with which ASES executes an interagency agreement or by direct disposition of the Governor's Chief of Staff. These services shall be rendered under the same terms and conditions specified on the ensuing contract, as for work hours and compensation. The term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as instrumentalities and public corporations, and the Office of the Governor.

1.5.13.2 The Governor's Chief of Staff has the power to cancel the ensuing contract under this RFP at any moment.

1.5.13.3 Contract Review Policy of the Financial Oversight and Management Board for Puerto Rico: The Parties shall acknowledge that the Contractor will submit the certification entitled "Contractor Certification Requirement" required in accordance with the Contract Review Policy of the Financial Oversight and Management Board for Puerto Rico and in force as of November 6, 2017 and as amended on October 30, 2020, signed by the Contractor's Executive Director (or other official with a position or authority equivalent to issue such certifications). A signed copy of the Contractor Certification Requirement shall be included as an annex to the ensuing contract.

*ASES understands that clauses in subsections 1.5.13.1 and 1.5.13.2 are not applicable to the Contract resulting from this RFP but includes the same in the abundance of caution as any contract for professional services without these clauses will be deemed to be null and void from its inception.

1.5.14 Prohibition against Discrimination

The Offeror cannot discriminate on account of race, nationality, economic condition, social condition, sex, sexual orientation, gender identity, age, origin, religion, political ideology, health condition, veteran status, or physical and/or mental disability or as otherwise provided under applicable Government of Puerto Rico and federal law.

1.5.15 Single Registry of Professional Services Provider

For the contracting of professional services in the Government of Puerto Rico, it is a mandatory requirement that the professional service provider be registered in the Single Registry of Professional Service Providers (RUP for its Spanish acronym), under the corresponding category and that it has the corresponding certification of registry issued by the Puerto Rico General Services Administration (“Administración de Servicios Generales” or “ASG” for its Spanish acronym). See Boletín Informativo #2021-003 RUP, located in the Procurement Library.

1.5.16 Outstanding debts with the Government

Any Offeror with any outstanding debts that are owed to any state governmental agency/facility shall be prohibited from executing a Contract. Offerors with outstanding debts are not prohibited from participating in this procurement but must settle such outstanding debts or have a reconciliation plan prior to Contract Execution. Likewise, the health service provider or contracting insurer may not be eligible for contracting if it has any overdue debt for a term greater than sixty (60) days, as certified by the Puerto Rico Medical Services Administration (ASEM for its Spanish acronym). For the purposes of this Section, any debt that is the object of a payment plan with which the Offeror is in compliance, in an active process of reconciliation of invoices and payments with which the Offeror is in compliance, or pending administrative review under applicable law or regulations, will not be considered outstanding. In such case, the Offeror must submit recent evidence of said payment plan, debt reconciliation agreement or pending administrative review.

1.5.17 Order of Precedence

All inconsistencies and conflicts between the terms and conditions appearing in the final Contract and the proposed terms and conditions appearing in this RFP will be resolved by giving precedence to the final Contract.

1.6 Scope of Procurement

The scope of this procurement includes the implementation and operation of the PBM and RA Services, as outlined throughout this RFP and in the Contract.

Following this procurement, ASES’s intent is to contract with the selected Offeror(s) pursuant to the evaluation procedures outlined below and the rules and regulations that govern ASES. ASES reserves the right to award the Contract for a term beginning on February 1, 2022 and ending January 31, 2025, with two (2) optional one (1) year term extensions, expected beginning on February 1, 2025 and ending January 31, 2027. The contract years will be as follows:

- **Contract Year 1:** February 1, 2022– January 31, 2023
- **Contract Year 2:** February 1, 2023– January 31, 2024
- **Contract Year 3:** February 1, 2024– January 31, 2025
- **Optional Contract Year 4:** February 1, 2025– January 31, 2026

- **Optional Contract Year 5:** February 1, 2026– January 31, 2027

The Offeror will be responsible for the provision of all Covered Services described in the Contract beginning February 1, 2022, to the extent the Offeror has demonstrated readiness.

The Implementation Date for the provision of the PBM and RA Services is expected to be no later than February 1, 2022. Puerto Rico intends to join the Medicaid Drug Rebate Program (MDRP) by the Implementation Date. Therefore, the awarded Contractor needs to have operational capacity to provide MDRP Services and Other Enrollee Rebate Services upon the Implementation Date as determined by ASES.

Following execution of the Contract, the successful Offeror shall work with ASES through an implementation review period to demonstrate its readiness to carry out the provisions outlined in the Contract, including all Appendices. The “implementation readiness review” will commence shortly after the Contract is signed. The scope of the review will be determined by ASES. Certification to Go Live is contingent upon the Contractor’s ability to meet the implementation review requirements and any additional applicable requirement stated in this RFP and ensuing Contract. See Sections 3.3.12 and 3.4.2 of this RFP.

1.7 Re-procurement of Services

During any period, either before the execution of the Contract(s) or thereafter, ASES reserves the right to issue requests for proposal or offers to other potential contractors for performance of any portion of the services covered by this procurement or similar or comparable services.

1.8 Procurement Contact

ASES has designated a Procurement Contact person who is responsible for the conduct and administration of this procurement. Any inquiries or requests regarding this procurement shall be submitted only to the Procurement Contact, in writing, and by email. Questions shall be clearly labeled and shall cite the specific source that forms the basis of the question. For example, if the Offeror has a question related to this procurement schedule, the Offeror(s) must cite to Section 3.1 of this RFP.

The Offeror may only contact the Procurement Contact regarding this procurement. Other Government of Puerto Rico employees, consultants, and Agents do not have the authority to respond on behalf of ASES. ASES shall not assume responsibility for any answers or clarifications provided by other ASES staff, or by any other Government of Puerto Rico employee or agent. An Offeror that contacts another Government of Puerto Rico employee or agent in violation of this requirement will be excluded and disqualified from further participation in this procurement. **See Section 1.5.2 of this RFP.**

The decisions notified by the Procurement Contact on any matter regarding this procurement shall be final.

Contact information for the Procurement Contact is as follows:

Martha L. Vélez González, Esq.
Urb. Caribe Sector El Cinco

1549 Calle Alda
San Juan, PR 00926-2712
Tel. 787 474 3300 ext. 1100, 3006
pharmacyrfp2022@asespr.org

1.9 Offeror Qualifications/Conflicts of Interest

This RFP is open to any Offeror capable of performing the work addressed in the Contract in Appendix K, subject to the following stipulations:

1.9.1 The Offeror and any proposed subcontractor is/are authorized by the Department of State of Puerto Rico to do business in Puerto Rico prior to Contract Award. If at the time of submittal of the proposal, the Offeror and any proposed subcontractor is in the process of being so authorized, the Offeror must present sufficient evidence of said process and the current status. (See Section 6.7.3.1.2 (k) of this RFP.)

1.9.2 The burden is on the Offeror to present sufficient assurance to ASES that awarding the Contract to the Offeror shall not create a conflict of interest. (See Sections 1.5.4, 1.5.5 and Appendix C) of this RFP for additional information on compliance with independence and conflict of interest requirements).

1.9.3 The Offeror and any proposed subcontractor is/are in compliance with other applicable legal requirements to become a government service provider. (e.g. See Sections 1.5.6, 1.5.15, 1.5.16 of this RFP).

ASES may make such investigations as it may deem necessary and/or convenient to determine the Offeror's ability to adhere to the requirements specified in this RFP.

ASES will reject the Proposal of any Offeror that is not a responsible Offeror or that fails to submit a responsive offer.

1.9.4 ASES reserves the right to check any references, regardless of the source of the reference Information, including but not limited to, those that are directly provided by entities using Appendix H of this RFP, those identified by the company in the Proposal, those that are identified during the review of the Proposal and/or result from independent analysis by the Evaluation Committee members, or those that result from communication with other entities involved with similar projects. Results of these reviews are intended to contribute to the recommendation of the Evaluation Committee.

Information to be requested and evaluated from references may include, but is not limited to, some or all of the following:

1.9.4.1 Project description and background;

1.9.4.2 Job performed;

1.9.4.3 Functional and technical abilities;

- 1.9.4.4 Communication skills and timeliness;
- 1.9.4.5 Problems (e.g., poor quality of Deliverables, contract disputes);
- 1.9.4.6 Results of federal or other Audits;
- 1.9.4.7 Overall performance, and
- 1.9.4.8 Whether or not the reference would re-engage the Contractor.

1.10 Procurement Library

The Procurement Contact has established a procurement library in the repository of documents' secure site. The library includes data and other electronic documents with relevant information for the process. Offerors are encouraged to review the materials contained in the library. Hard copies will not be made available. Registered Offerors will be notified when information in this procurement library changes.

Disclaimer

Information provided in the Procurement Library is intended only as a resource and is not intended to be comprehensive. It provides a window into the current operations and activities relevant to this RFP.

It is the responsibility of the Offerors to obtain and review all pertinent information relating to the RFP. If information is not clear or more information is needed, Offerors have the responsibility of asking for clarification and/or for more information during the Questions & Answer phase of the procurement.

If any materials, documentation, information, or data are discovered to be inaccurate or incomplete, such inaccuracy or incompleteness shall not constitute a basis for challenging the Contract award, Contract rejection, or any payment amount or rate either prior to or after Contract award. All statistical information and information concerning volumes contained in the Library and in this RFP represent the best information available to ASES at the time the RFP was prepared. Requirements specified in the RFP shall take precedence over documentation in the Library if a conflict exists.

2 Scope of Work

2.1 Minimum General Requirements

2.1.1 ASES seeks to partner with a Contractor that has demonstrated experience in providing high quality services, meets all requirements of this RFP, is financially stable and can comply with the expected Implementation Date of February 1, 2022. As such, the following are the minimum requirements for the Contractor:

2.1.1.1 Have the operational capacity to support an expected February 1, 2022 Implementation Date for PBM and RA Services. At the Implementation Date, the Offeror must have operational capacity to provide both MDRP Services and Other Enrollee Rebate Services.

2.1.1.2 Be financially solvent to provide services for short-term period (thirty to ninety (30–90) Calendar Days) in the event of delayed reimbursement.

2.1.1.3 Meet all the specific requirements as outlined in the Contract in Appendix K of this RFP. Specifically, the core statement of work for PBM and RA Services are described in Articles 6 through Article 22 of the Contract.

As noted in the Contract, all Administrative Functions of the Contractor must be located within the United States. However, effective February 1, 2022, the following Administrative Functions must be located in Puerto Rico:

- 2.1.1.3.1 Key Administrative Functions, including but not limited to Contractor personnel responsible for the coordination or participation in the P&T Committee, the Pharmacy Financial Committee, or any other committee required under this Contract;
- 2.1.1.3.2 Marketing;
- 2.1.1.3.3 Management of Contractor's compliance plan and fraud, waste and abuse monitoring activities;
- 2.1.1.3.4 Pharmacy Call Center adequately staffed to promptly respond to inquiries from Network Pharmacies about systems, Claims, and administrative Pharmacy edits, and any other inquiries related to the Pharmacy Benefit program for GHP and Other Enrollee populations. In addition, the Pharmacy Call Center staff must be fluent in English and Spanish to allow for Culturally Competent communication; and
- 2.1.1.3.5 Decision-making authority related to the Pharmacy Network, such as claim dispute resolution, credentialing activities, pharmacy contracting,

administrative (but not clinical) reviews of prior authorization requests, approvals to dispense early prescription refills or replacement fills.

2.2 Additional RA Services

ASES reserves the right to exercise the joining of a Supplemental Rebate purchasing pool, implementing a Supplemental Rebate and/or Value Based Purchasing Agreement program during the Contract Term. Upon written notice by ASES, the Contractor providing RA Services shall assist ASES with the development, implementation and management of the Additional Rebate service(s). The requirements of these additional services are listed in Article 16 of the Contract in Appendix K.

2.3 Subcontracts

The services to be provided under this RFP and subsequent Contract, may not be assigned or Subcontracted without the prior written approval of ASES, in its sole discretion. The request to contract a Third Party must specify the matters in which he/she will intervene and must be submitted in writing and include the same documents and certifications required for government contracting that are required from the Contractor. See Section 6.12 of this RFP. Contractor must adhere to all requirements in this RFP (for example: Sections 1.5.4, 1.5.5, 1.5.8, 1.5.9, 1.9, 3.3.10, 3.4.4, and 6.12) and in Article 33 of the Contract in Appendix K. **See also, Section 3.4.4.1.**

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3

Conditions Governing this RFP

The following is the schedule of the major events of this RFP. This section also describes the major procurement events as well as the conditions governing this procurement.

3.1 Issuing Office and RFP Reference Number

ASES is the issuing office for this RFP and all subsequent addenda relating to it. This RFP is titled PBM and RA Services and its reference number is **RFP # Pharmacy 2022**.

It is required to refer to or include this number on all proposals, correspondence, and documentation relating to the RFP.

3.2 Schedule

The delivery schedule set forth in Table 3 herein represents ASES’s best estimate of the schedule that will be followed. Unless stated otherwise, items will be due at 6:00 pm (Atlantic Standard Time/AST) on the dates specified below. If a component of this schedule—such as Submission of Proposals—is delayed, the rest of the schedule will likely be shifted by the same number of days. ASES will make every effort to adhere to the following schedule:

Table 3: RFP Schedule

| Action | Responsible Party | Date |
|---|-------------------|---|
| 1. Notice of RFP | ASES | March 31, 2021 |
| 2. Acquisition of RFP Document Package | Potential Offeror | April 1, 2021 through April 13, 2021 (6:00 PM AST). |
| 3. Deadline to submit Acknowledgement of Receipt of RFP Form and Notice of Intent | Potential Offeror | April 14, 2021 (due at 3:00 PM AST) |
| 4. Pre-Proposal Conference | ASES | April 15, 2021 at 11:00 AM AST |
| 5. Deadline to submit written questions | Offeror | April 19, 2021 (due at 10:00 PM AST) |
| 6. Publishing of responses to written questions | ASES | April 26, 2021 |

| Action | Responsible Party | Date |
|---|--------------------------------|---|
| 7. Submission of Proposal Bond | Offeror | May 5, 2021 (due at 4:00 PM AST at ASES's Finance Office) |
| 8. Submission of References | Referring Party | May 5, 2021 (due at 6:00 PM AST) |
| 9. Submission of Proposals | Offeror | May 5, 2021 (due at 6:00 PM AST) |
| 10. Notice of Intent to Award Contract | ASES | Approximately 40 days after submission of the proposals |
| 11. Reconsideration/Request for Administrative Review | Offeror | See Article 3.19 of Act 38 of 2017, as amended |
| 12. Contract Execution | ASES and awarded Contractor(s) | Mid-August 2021 |
| 13. Implementation Review | ASES and awarded Contractor(s) | See Section 3.3.12 |
| 14. Implementation Date | ASES and awarded Contractor(s) | February 1, 2022 |

NOTE: Dates are subject to change based on number of Proposals to evaluate and any unforeseen situation or force majeure. ASES reserves the right to request additional/clarification from Offeror(s) at any time during the process.

3.3 Explanation of Events

3.3.1 Acquisition of RFP Document Package:

- A. As of April 1, 2021, entities interested in obtaining an electronic copy of the RFP Document Package and participate in the process must send a written request by email to pharmacyrfp2022@asespr.org, signed at least by the highest-ranking local management official, stating its:
- (1) interest in submitting a Proposal;
 - (2) that it has the necessary legal and financial capacity; and
 - (3) provide the contact information (name, position, email address and telephone number) of the person authorized to communicate during the process with the ASES' Procurement Contact.
- B. Upon receipt of the request, ASES will send the bank account information for the corresponding payment of the RFP Document Package, which will have a non-refundable cost of five thousand dollars (\$5,000.00) payable exclusively by wire transfer in the name of ASES.

PAYMENT MUST BE MADE BY THE ENTITY THAT WILL SUBMIT THE PROPOSAL.

- C. After payment, the interested entity will send to ASES, by email, the evidence of payment provided by the financial institution, which must include:
- (1) date of payment;
 - (2) amount of the wire transfer made to ASES; and
 - (3) name of the interested entity making the payment.
- D. Any deficit in payment, even caused by a transaction fee charged by the financial institution or an intermediary, will preclude ASES from providing the RFP documents until such deficit is covered. **THE DEADLINE TO SEND EVIDENCE OF FULL PAYMENT FOR THE ACQUISITION OF THE RFP DOCUMENT PACKAGE IS 6:00 PM (AST) ON APRIL 13, 2021.**

3.3.2 Acknowledgement of Receipt of RFP Form and Notice of Intent to Participate

Potential Offerors must return by email the Acknowledgment of Receipt Form of RFP and Notice of Intent to Participate that accompanies this document (Appendix A of this RFP) to have their organization placed on the procurement distribution list and be able to participate in this RFP. **The form must be signed by the Offeror's representative authorized to legally bind the Offeror,** dated, and returned to pharmacyrfp2022@asespr.org.

FAILURE TO SUBMIT AN ACKNOWLEDGEMENT OF RECEIPT FORM BY 3:00 PM (AST) APRIL 14, 2021 SHALL CONSTITUTE A PRESUMPTION OF RECEIPT OF THE RFP AND WILL RESULT IN THE POTENTIAL OFFEROR NOT ABLE TO CONTINUE TO PARTICIPATE IN THE PROCUREMENT PROCESS.

At a minimum, the procurement distribution list will be used to distribute:

- Written responses to questions
- Any RFP amendments
- Link to join virtually the Pre-proposal Conference, if not able to attend in person.

Offerors who submit an Acknowledgment of Receipt of RFP Form will receive a username and password to access the secure site where Proposals will be uploaded. If an Offeror does not receive a username and password within three (3) Business Days from the date of submission of App. A, the Offeror may contact the Procurement Contact.

3.3.3 Pre-Proposal Conference

- A. A non-mandatory Pre-proposal Conference will be held to allow Offerors to ask questions and clarify issues concerning this RFP. This Conference will be offered both in-person and virtually if the Offeror is unable to attend in-person.

- B. Only potential Offerors who acquired the RFP documents and submit a timely Acknowledgement of Receipt Form (Appendix A of the RFP) will be included in the participation list at the in person conference or be provided the corresponding virtual conference link to join the meeting and be allowed access to the Conference Room. **Please include in App. A of this RFP the names of the individuals who will be participating in the Conference and their contact information and whether they will be participating in person or virtually.**
- C. The Conference will be held on April 15, 2021, at 11:00 AM (AST) at the following location:

Centro Cardiovascular de Puerto Rico y del Caribe
(Dr. Ramón M. Suárez Calderón)
Conference Rooms B & C
Americo Miranda Ave.
Corner of Medical Center
San Juan, PR

- The Conference will also be broadcasted simultaneously via electronic platform, for those who are unable to attend in person.
- D. It shall be each Potential Offeror's responsibility to join the conference promptly before 11:00 AM (AST).
1. In person registry will be opened beginning 10:15 AM (AST). Seating for the in-person Conference will be limited due to COVID-19 protocols and social distancing requirements. Seating will be provided on a first come first serve basis.
 2. The Conference Call Electronic Waiting Room will be opened beginning at 10:45 AM (AST).
 3. ASES reserves the right not to repeat information for participants that join the conference after it has begun.
 4. The Conference will be recorded and later posted in the Procurement Library.
- E. While attendance at the Pre-proposal Conference is not mandatory, ASES recommends and strongly encourages Offerors to attend. The Pre-proposal Conference will provide Offerors an opportunity to gain insight and ask questions about the RFP and receive

many answers in real time. An Offeror's decision not to attend will be to the Offeror's own disadvantage.

- F. Spontaneous verbal remarks provided in response to questions/inquiries are unofficial and are not binding on ASES unless later confirmed in writing. ASES will share written responses to questions received shortly after the Conference.
- G. Conference attendees are responsible for their costs to participate in the Conference. Those costs cannot be charged to ASES or included in any cost element of an Offeror's price offering.

3.3.4 Deadline to submit written questions regarding RFP

Offerors that fail to report a known or suspected problem with the RFP and/or its accompanying materials or fail to seek clarification and/or correction of the RFP and/or its accompanying materials shall submit a Proposal at their own risk. In addition, if awarded the Contract, the Contractor shall not be entitled to additional compensation for any additional work caused by such problem, including any ambiguity, conflict, discrepancy, omission, or error.

Potential Offerors may submit a maximum of twenty-five (25) written questions as to the intent or clarity of this RFP and its appendices. Questions made during the Preproposal Conference will not count towards the 25 this limit. The Offeror shall submit all questions in writing by email to the Procurement Contact using the Questions and Answers Template in Appendix I of this RFP. Offerors shall submit all questions in writing by **a non-encrypted email** to the Procurement Contact. ASES will not accept questions and issues submitted by means other than email, except during the Preproposal Conference. The email message must contain the following as the subject line:

Question/Clarifications: (Offeror's Name)

Questions must be received by deadline **10:00 PM (AST) on April 19, 2021.**

Questions shall be clearly labeled and shall cite the Section(s) in this RFP or other document that forms the basis of the question. No compound or multi-part questions are allowed. If submitted, each part of the compound or multi-part question will count as one (1) of the twenty-five (25) questions allowed. ASES will not answer more than twenty-five (25) questions per Offeror.

Notwithstanding the initial question submission deadline and quantity restriction, ASES will accept questions or inquiries about the reporting of RFP errors or irregularities if such inquiries are received at least 10 business days prior to the Proposal Submission Date.

3.3.5 Publishing Responses to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed to all potential Offerors appearing on the procurement distribution list.

ASES shall make every effort to provide answers as close to the deadline (April 26, 2021) as possible. ASES reserves the right to determine, at its sole discretion, appropriate and adequate

responses to written comments, questions, and requests for clarification. To the extent practical, inquiries shall remain as submitted. However, ASES may consolidate and/or paraphrase similar or related inquiries.

ASES's official responses and other official communications pursuant to this RFP shall constitute an amendment or supplement of this RFP.

ASES reserves the right to amend this RFP (including all appendices) any time before the closing date for submitting proposals (May 5, 2021), excluding changes to the schedule of events. Amendments shall be sent to all Offerors appearing on the procurement distribution list pursuant to Section 3.3.2 of this RFP.

3.3.6 Deadline to submit reference letters

The Offeror must submit with the Proposal a list that include (3) specific client references, with at least one for a state Medicaid program or other large similar government or large private industry project within the last five (5) years. Each reference noted on the list must include the contact name and phone number, a brief description of the services provided, and the period of service. Offerors may NOT request References from ASES. See Section 6.2.6 of this RFP.

Offerors must ensure that all reference letters from the clients listed in the list mentioned above are delivered by email directly by the client to the Procurement Contact by 6:00 PM (AST) May 5, 2021. See Section 6.2.6 of this RFP. Offerors must ensure references are completed using the reference form in Appendix H of this RFP. Offerors may contact the Procurement Contact prior to the deadline to confirm references have been received.

Offerors are responsible for:

- Making a duplicate (hard copy or electronic document) of the appropriate form, as it appears in Appendix H of this RFP, and adding the following customized information to the form:
 - Offeror's name;
 - Reference organization's name; and
 - Reference contact's name, title, telephone number, and email address.
- Sending the form to each reference contact;
- Giving the contact a deadline that allows for ASES to receive the reference form on or before 6:00 PM (AST) May 5, 2021.

Reference forms must be emailed by the referring party directly to pharmacyrfp2022@asespr.org with the subject "Reference for [Name of Offeror] for RFP Pharmacy2022." **Reference forms**

submitted by the Offeror directly to ASES will not be accepted. References received after the deadline will not be accepted.

3.3.7 Submission of Proposal Bond and Proposal

3.3.7.1 The Offeror must deliver in-person, an original Proposal Bond, in the terms specified in Section 3.4.8 of this RFP, to the ASES Administrative and Finance Office, no later than **4:00 pm AST, May 5, 2021**. **FAILURE TO PROVIDE A PROPOSAL BOND IN THE TERMS SPECIFIED IN THIS RFP WILL CAUSE THE PROPOSAL TO BE DEEMED INCOMPLETE AND THE OFFEROR WILL BE DISQUALIFIED.**

3.3.7.2 **Proposals are due at 6:00 pm (AST), May 5, 2021.** Offerors are required to submit only one (1) Proposal in response to this RFP. The entire Proposal must be uploaded onto the secure site with the unique password and username given to the Offeror. The Offeror must place the Proposal in the appropriate folders with the Offeror's name on the secure site. **A LATE PROPOSAL SHALL NOT BE ACCEPTED AND SHALL CAUSE THE PROPOSAL TO BE DISQUALIFIED.**

3.3.7.2.1 The Offeror shall not distribute the Proposal to any entity not specified in this RFP, nor shall the Offeror share its Proposal with other potential Offerors.

3.3.7.2.2 The contents of any Proposal shall be maintained in strict confidentiality by ASES and shall not be disclosed to competing Offerors or the general public during the procurement process and only may be disclosed after the Contract is awarded.

3.3.8 Notice of Intent to Award Contract

Based on ASES's Board of Directors selection of the successful Offeror(s), the Executive Director of ASES shall send such Offeror(s) a written Notice of Intent to Award.

3.3.9 Reconsideration/Request for Administrative and Judicial Review

3.3.9.1 Any reconsideration request by an Offeror must be made in accordance with applicable Puerto Rico law; see Articles 3.19 & 4.2 of Act 38 of 2017, as amended.

3.3.9.2 Any Offeror who understands that it has been affected by the final determination of ASES in the adjudication of this RFP may submit a written Petition for Reconsideration within twenty (20) Calendar Days from the date of the mailing of the Notice of Award of this RFP. This is a jurisdictional term, that is, it is not subject to extension of time. Failure to timely present the petition will preclude ASES from considering the same.

3.3.9.3 The petition must be addressed to the attention of ASES Board of Directors and filed at the following addresses:

Urb. Caribe Sector El Cinco
1549 Calle Alda

San Juan, PR 00926-2712
Tel. (787) 474-3300 ext. 3006

pharmacyrfp2022@asespr.org

The envelop must clearly and prominently state the name and number of this RFP and be titled "PETITION FOR RECONSIDERATION". The email must include in the subject "Petition for Reconsideration".

3.3.9.4 The petitioner must notify all other Offerors who participated in this RFP with a copy of the Petition of Reconsideration within the same term mentioned in Section 3.3.9.2 of this RFP. This is a requirement of strict compliance.

3.3.9.5 The petition must contain the following requirements which are essential to perfect the petition. Failure to duly comply with these requirements may be sufficient cause to dismiss the petition.

3.3.9.5.1 Be signed by a duly Authorized Representative of the petitioner;

3.3.9.5.2 Clearly establish the relevant facts, reasons and arguments on which it is based;

3.3.9.5.3 Include the necessary documentary evidence to sustain the veracity of the facts alleged;

3.3.9.5.4 Clearly state the remedy(ies) sought;

3.3.9.5.5 Certify that all parties have been duly notified of the petition, as stated in Section 3.3.9.4 of this RFP.

3.3.9.6 The Board of Directors of ASES shall consider the request for reconsideration within thirty (30) Calendar Days of the filing of the petition. ASES may extend said Term only once, for an additional Term of fifteen (15) Calendar Days. Failure to do so shall be deemed as an outright rejection of the petition and thereafter, shall run the twenty (20) Calendar Day's term to request a judicial review before the Court of Appeals.

3.3.9.7 If a determination is made in its consideration, the Term for requesting judicial review will begin from the date on which a copy of the notification of the decision of the Board of Directors of ASES was deposited in the mail, resolving the request.

3.3.9.8 Likewise, the party adversely affected by a decision on reconsideration filed before ASES, may request judicial review before the Court of Appeals within a jurisdictional period of twenty (20) Calendar Days from the date of the mailing of notice of the final order or resolution.

3.3.10 Performance Bond

3.3.10.1 The Offeror must provide, prior to signing the contract and maintain throughout the Term of the Contract, a Performance Bond in the amount of thirty percent (30%) of the applicable estimated annual Contract amount. The Bond must be issued by an insurance company duly authorized to do business in Puerto Rico, duly certified by the Office of the Insurance Commissioner of Puerto Rico and approved by ASES.

3.3.10.2 If the Offeror will be using Subcontractor(s) for functions and responsibilities under the Scope of Work of this RFP, it must also obtain from such Subcontractor(s), a Performance Bond in the amount of thirty percent (30%) of the corresponding annual Subcontract amount. The same must be maintained throughout the Term of the Subcontract and be from an insurance company that complies with the same requirements mentioned in Section 3.3.10.1 above. The Offeror must provide ASES, prior to signing the Contract, evidence of the Subcontractor's/Subcontractors' Performance Bond.

3.3.11 Contract Execution

The Offeror shall not have a right to open negotiations of the Contract with ASES. Any Offeror who places conditions on its Proposal to negotiate the terms and conditions of the Contract, excluding pricing, will be disqualified from the process. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's Proposal will be incorporated into and become part of the Contract. ASES assumes no liability for any work performed by the selected Offeror in anticipation of a binding Contract prior to the approval date and the Effective Date of the Contract.

3.3.12 Implementation Review

ASES, or designated Third Party, shall conduct an implementation review of the Contractor's operations beginning no later than three (3) months before the Implementation Date of the Contract as specified in Section 4.7 of the Contract in Appendix K.

Any changes required to the Contractor's processes as identified through implementation review activities must be made by the Contractor prior to the Implementation Date. Costs associated with these changes must be borne by the Contractor.

The Offeror awarded a Contract shall demonstrate to ASES's satisfaction that it is able to meet the requirements of this RFP and the Contract. **Certification to Go Live is contingent upon the Offeror's ability to meet the implementation review requirements.**

The Offeror shall cooperate in the implementation review, which will commence shortly after the Contract is executed.

3.3.13 Implementation Date

The Implementation Date is the date on which the Offeror would initiate the PBM and RA services. As of the date of this RFP, the Implementation Date is expected to be February 1, 2022.

Puerto Rico intends to join the Medicaid Drug Rebate Program (MDRP) by the Implementation Date. The Awarded Contractor needs to have operational capacity to provide MDRP Services and Other Enrollee Rebate Services upon the Implementation Date as determined by ASES.

3.4 General Requirements

3.4.1 Acceptance of Conditions Governing this Procurement and Other Factors

Offerors must indicate their acceptance of the conditions governing this procurement in the Letter of Transmittal Form (see Appendix B). Submission of a Proposal constitutes acceptance of the evaluation process contained in Section 5 of this RFP. ASES assumes no liability for any work performed by the selected Offeror(s) in anticipation of a binding Contract prior to the approval date and the Implementation Date of the Contract.

3.4.2 Incurring Cost

Any costs or expenses incurred by the Offeror in preparing, transmitting, or presenting any Proposal or other material submitted in response to this RFP shall be borne solely by the Offeror. Costs associated with the implementation review and preparation for Contract implementation, except as otherwise specifically permitted and considered under this RFP, shall be borne solely by the selected Offeror. ASES assumes no liability for any work performed by the selected Offeror in anticipation of a binding Contract prior to the Implementation Date of the Contract.

3.4.3 Contractor Responsibility

Any Contract that may result from this RFP shall specify that the successful Offeror is solely responsible for fulfillment of the Contract with ASES. ASES will make Payments only to the Contractor.

3.4.4 Subcontractor

3.4.4.1 Any entity who intends to provide services under this RFP as a Subcontractor of another Offeror may not participate in this process as an Offeror.

3.4.4.2 No part of the Contract resulting from this RFP may be Subcontracted without written consent of ASES prior to Subcontract execution. If Subcontractor is to be used, for functions and responsibilities under the scope of work of this RFP, the Offeror must clearly identify and explain in the Proposal their participation. Hence, all Subcontractors must be identified by name. Offeror/Contractor must also disclose the remuneration that the subcontractor will receive for the work to be carried out, and the profit margin, if any, that the Offeror will have in relation to the

subcontractor's paid fees. **Failure to comply with this requirement may be sufficient cause to disqualify the Offeror or may be held as a breach of the Contract as applicable.**

3.4.4.3 The Contractor shall be wholly responsible for the entire performance under the terms of the Contract, whether or not Subcontractors are used.

3.4.4.4 The Offeror(s) awarded a Contract must submit Subcontract(s) to ASES for review.

3.4.4.5 If Subcontractors are used, they must abide by all terms and conditions of the Contract and the Contractor must guarantee that the Subcontractor complies with all the requirements of this RFP, including all the documentation required for contracts with the Government.

3.4.4.6 ASES reserves the right to Audit Subcontractor at the Contractor's expense.

3.4.4.7 All Subcontractors are required to have a Business Associates Agreement (BAA) agreement with the Contractor.

3.4.5 Amended Proposals

Proposals may be amended prior to the submission Proposal deadline. If amended, Proposal shall be resubmitted by Offeror. Any previous submission will be discarded and ASES will only evaluate the amended/revised Proposal.

3.4.6 Offeror's Rights to Withdraw Proposal

The Offeror may withdraw its Proposal at any time prior to Contract Award through an official communication duly signed by the Authorized Representative. The Withdrawal of the Proposal does not entail the reimbursement of the \$5,000.00 fee paid for the acquisition of the RFP.

3.4.7 Proposal Offer Firm

All responses to this RFP, including Proposal prices, will be considered firm for one hundred and fifty (150) **Calendar Days**, unless ASES requests an extension of the Proposal Bond due to a change in the schedule of events of this procurement, notwithstanding whether or not a particular Proposal was selected and awarded a Contract.

3.4.8 Proposal Bond

A Proposal Bond in the amount of ten percent (10%) of the total bid for the first-year term is **REQUIRED**. **If the Offeror is presenting a Proposal for combined services, the amount of the Proposal Bond must be computed on the basis of the total bid for the combined services for the first contract year.** The Proposal Bond must be accompanied with a pledge that the Offeror will enter into a contract with ASES on the terms stated in the Proposal Bond, if awarded the RFP.

The Proposal Bond shall be either in a Certified Check or Original Proposal Bond issued by a surety company duly authorized to do business in Puerto Rico, duly certified by the Insurance Commissioner of Puerto Rico, and accepted by ASES. The Proposal must be accompanied with the corresponding evidence that the surety company is a qualified institution as herein stated. The Proposal Bond or check will be payable to ASES. **A copy must be included with the Proposal and the original must be delivered in person to ASES' Finance Office no later than 4:00 pm AST May 5, 2021.** The name of the company to whom the bond is issued must be the same as in the Proposal. **No Letter of Credit and Annual Proposal Bond will be accepted.**

If the Proposal Bond is submitted in a certified check, ASES will not pay interest at any rate for the period from when the check is submitted to ASES to the time of its return to the Offeror.

FAILURE TO COMPLY WITH THE TIMELY SUBMISSION OF A PROPOSAL BOND, ISSUED BY A QUALIFIED INSTITUTION AS STATED IN THIS SECTION, IN THE NAME OF ASES, TO COVER THIS PROCUREMENT PROCESS AND IN THE AMOUNT SPECIFIED HEREIN, WILL DISQUALIFY THE OFFEROR.

If the Offeror(s) chosen to receive a Contract withdraws its Proposal after ASES issues notice of intent to award, does not honor the terms offered in its Proposal, does not sign the Contract within a reasonable period before the implementation review, or fails to comply with an approved Divestiture Action Plan or Conflict Avoidance Plan at the time of signature of the Contract, the Proposal Bond shall be forfeited by the Offeror(s) in favor of and kept by ASES.

The Proposal Bond will be returned to the unsuccessful bidders after one hundred and fifty (150) Calendar Days of the submission of the Proposal, unless the Proposal Bond term herein established is otherwise extended per ASES request due to an extension of the schedule of events of this procurement.

3.4.9 Disclosure of Proposal Contents

Proposals will be kept confidential until the Contract is awarded. At that time, all Proposals and documents pertaining to the Proposals will be open to the public, except for the material that has been duly marked as proprietary or confidential by the Offerors. The Procurement Contact will not disclose or make public any pages of a Proposal on which the Offeror has stamped or imprinted in a conspicuous way "proprietary" or "confidential," subject to the requirements herein below mentioned.

Blanket labeling of the entire document as "confidential" or "proprietary," however, shall result in the bid not being evaluated.

Proprietary or confidential data shall be readily separable from the Proposal to facilitate eventual public inspection of the non-confidential portion of the Proposal. See, Section 6.13 of this RFP. If the Offeror requests confidential treatment, Offeror must submit one (1) copy of the full Proposal

(including the Cost Proposal) with proposed confidential Information redacted. **Mere labeling of a document as confidential or proprietary will not suffice and will not be considered a redacted document.** This redacted copy must tell the general nature of the material removed and shall retain as much of the Proposal as possible.

In a separate appendix, Offerors shall supply a listing of the provisions identified by Section/Subsection number for which it seeks confidential treatment and identify the statutory basis or bases under federal law and/or Puerto Rico Law, including a detailed justification for exempting the information from public disclosure.

Confidential Data is normally restricted to confidential financial Information concerning the Offeror's organization and Data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act and Act #80 of June 3, 2011, as amended, (known as "Industrial and Trade Secret Protection Act of Puerto Rico"). **The price of products offered, or the cost of services proposed shall not be designated nor considered as proprietary or confidential information. Hence, it will be fully disclosed to the public.**

If a request is received for disclosure of Data that an Offeror has marked confidential in accordance with the rules of this RFP, the Procurement Contact shall examine the Offeror's confidentiality requests and issue a written Determination that specifies which portions of the Proposal may be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the disclosure of the nonconfidential portions of the Proposal will be so disclosed. The Proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential Data.

By submitting a Proposal, Offeror acknowledges that it is responsible for defending the confidential nature of the portions of its Proposal marked as such and agrees to hold harmless and indemnify the Government of Puerto Rico, ASES and the Federal Government for all costs or damages associated with ASES or other governmental entities defending Offeror's request for confidential treatment. Offeror also agrees that ASES may copy the Proposal to facilitate evaluation, or to respond to requests for public records. Offeror warrants that such copying will not violate the rights of any Third Party.

The Government of Puerto Rico maintains the right to use all ideas, or adaptations of those ideas, contained in any Proposal received in response to this RFP. Selection or rejection of the Proposal shall not affect this right.

3.4.10 No Obligation

This procurement in no manner obligates the Government of Puerto Rico or any of its agencies to use any proposed professional services until a valid written Contract is executed and approved by the appropriate authorities.

If within a reasonable time after the Notice of Intent to Award is issued and the Contract is finally approved by all applicable governmental agencies, a Contract is not finally executed between ASES and the selected Offeror(s), ASES reserves the right to cancel said award and award the contract to the next best Offeror(s).

Upon submitting its Proposal, the Offeror acknowledges and accepts that even if it is selected, if there is a breakdown in the Contract negotiation that prevents its execution, ASES may proceed as herein stated.

3.4.11 Termination

This RFP may be terminated at any time, and any and all Proposals may be rejected, in whole or in part, when ASES determines in its sole discretion such action to be in the best interest of the Government of Puerto Rico. If the Government of Puerto Rico terminates this procurement, the Offerors will be refunded the \$5,000.00 no later than ninety (90) Calendar Days after termination date or credited if a new procurement is announced and the Offeror elects to participate in such procurement.

3.4.12 Sufficient Appropriation

Any Contract awarded as a result of this RFP process may be terminated if sufficient Government of Puerto Rico and/or federal appropriations or authorizations, including from the Financial Oversight and Management Board for Puerto Rico, do not exist. Such termination will be effected by written notice to the Contractor. ASES's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final. See also Section 1.5.10 of this RFP.

3.4.13 Legal Review

ASES requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly brought to the attention of the Procurement Contact. See, Appendix B of this RFP.

3.4.14 Governing Law

This procurement and any Agreement that may result from it shall be governed by the laws of the Government of Puerto Rico and the federal government.

3.4.15 Basis for Proposal

Only Information included in this RFP, the Procurement Library and the information supplied by ASES in writing through the Procurement Contact in the form of questions and answers should be used as the basis for the preparation of Offeror's Proposal.

3.4.16 Contract Terms and Conditions

The Contract(s) between ASES and the Offeror(s) selected will be provided by ASES. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's Proposal will be incorporated into and become part of the Contract(s).

3.4.17 Offeror Qualifications

The Evaluation Committee (Section 5 of this RFP) may make such investigations as it may deem necessary and/or convenient to determine the Offeror's ability to adhere to the requirements specified in this RFP. The Proposal of any Offeror that is not a responsible Offeror or that fails to submit a responsive offer will be rejected.

3.4.18 Notice

Offerors are advised that any violation of federal or Puerto Rico law and regulation regarding attempts to improperly influence this procurement may result in criminal and/or civil penalties.

3.4.19 Right to Publish

Throughout this RFP process and Contract Term, potential Offerors, and the selected Contractor(s) must secure from ASES written approval prior to the release of any information that pertains to the potential work or activities covered by this RFP or a subsequent Contract. Failure to adhere to this requirement may result in disqualification of the Offeror's Submission or termination of the Contract.

3.4.20 Ownership of Proposals

All documents submitted in response to this RFP shall become the property of ASES and the Government of Puerto Rico.

3.4.21 Electronic Mail Address Requirement

A large part of the communication regarding this procurement will be conducted by electronic mail (email) and through the secure site. Offerors must have a valid email address to receive all correspondence and notices during this RFP procurement.

3.4.22 Use of Electronic Versions of this RFP

Certain portions of this RFP may be provided in Word format upon requesting it by a written email to pharmacyrfp2022@asespr.org. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to this RFP. In the event of conflict between a version of this RFP in the Offeror's possession and the version maintained by ASES, the

version maintained by ASES shall govern. The Offerors should avoid using encrypted or password protected email communications.

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Response Format and Organization

This section describes the format and organization of the Offeror's response. Failure to conform to these specifications may result in disqualification of the Proposal.

4.1 Number of Responses

Offeror shall submit only one (1) Proposal and Cost Proposal Template. Alternative proposals will not be accepted. A compliant Proposal includes the Mandatory Requirements and forms listed in Section 6 of this RFP, responses to the questions in Section 7 of this RFP, the cost proposal, and other forms and appendices required in this RFP.

4.2 Proposal Format

All proposals must be typewritten on standard 8 ½" x 11" paper. The pages should have one-inch margins, and the font shall be 12-point Arial. The Proposal must be set at a one and one-half (1.5) line spacing. Larger paper (up to 11" x 17") and smaller fonts are permissible for charts, diagrams, spreadsheets, etc. Offerors must comply with the page limit requirements specified in Section 4.5 of this RFP. The Proposals must be in Microsoft Word or a searchable PDF format. All pages of the Proposal shall include the RFP title "GHP PBM and RA Services RFP # Pharmacy 2022" consistently in either the footer or header on each page.

The Proposal and its appendices must be drafted in the English language, excluding certifications and/or documents issued by the Government of Puerto Rico. Each document containing tabulated data is required in Excel® format, preferably latest version.

The Proposal and its Appendices shall not be password protected or locked.

4.3 Proposal Organization

Proposals should be prepared simply and economically. ASES will determine the responsiveness of the Proposal by its quality, not by its volume, packaging or colorful displays. ASES is interested in proposals that provide well-organized, comprehensive, technically sound business solutions and straightforward, concise but at the same time detailed and precise descriptions of the Offeror's ability to meet the requirements of this RFP. Vague explanations may undermine the proposing firm's credibility and may result in reduced Proposal scores.

Proposals must comply with the page limits provided in Section 4.5.

Proposals may include appendices. Pages in excess to the specified page limits for Section 7 of this RFP will not be considered as part of the Proposal.

4.4 Mandatory Requirements Section of the Proposal

The Offeror's response to the Mandatory Requirements listed in Section 6 of this RFP must be uploaded to the secure site as a separate document. The documents and appendices pertaining to each subsection of Section 6 must be uploaded to the corresponding folder created and identified accordingly. The name of the file to be uploaded to each folder must contain either an abbreviated name or initial letters of the Offeror and the specific section or appendix. (e.g., if the Offeror's name is Unity Care System, Inc. and the file is Appendix B the file should be named Unity App B or UCS App B).

The table of contents for Section 6 must contain a list of all sections and subsections of the Mandatory Requirements and the corresponding page numbers.

For example:

Section 6.3 Pages 55–85

Section 6.3 (1) Pages 57–60

Section 6.3 (2) Pages 60–85

The Table of Contents shall be linked to appropriate sections in the Mandatory Requirements document. The Table of Contents shall contain hyperlinks to allow a reviewer to navigate through this RFP using the Table of Contents. There are no page limits on the Mandatory Requirements documents.

4.5 Technical Proposal

The Offeror's response to the Technical Proposal listed in Section 7 of this RFP must be uploaded to the corresponding folders created and identified accordingly. The table of contents for Section 7 must contain a list of all sections and subsections of the technical requirements and the corresponding page numbers.

For example:

Section 7.2 Pages 75–85

Section 7.2 (a) Pages 75–78

The Table of Contents shall be linked to appropriate sections in the technical requirements document. The Table of Contents shall contain hyperlinks to allow a reviewer to navigate through this RFP using the Table of Contents.

The Offeror is limited to the following technical proposal page limits, excluding appendices, which will not count towards this limit for the following types of offers:

- 1) Combined Services Offer: One hundred (100) pages
- 2) PBM Services Only Offer: Seventy (70) pages
- 3) RA Services Only Offer: Thirty (30) pages

The response to the first question in Section 7 of this RFP shall be labeled as Page 1 with each subsequent page numbered thereafter. The pages in the electronic file technical proposal must be numbered sequentially and include the section type (e.g., Staffing – pg. ____).

Numbering of pages should continue in sequence through each separate section (e.g., if the answers to the questions in Section 7.2 of this RFP begin on page 10 it should be labeled as “Staffing” – pg. 10).

4.6 Cost Proposal

Must include a duly signed PDF copy of the cost proposal template with initials on each page (See Section 4.8 of the RFP) as well as an Excel version. Both must contain the same information and each page must be identified with the name of the Offeror. In case of any inconsistencies between the PDF signed copy and the Excel version of the Offeror’s Cost Proposal, the signed copy will prevail.

4.7 Responses to the Mandatory Requirements and Technical Proposal

All information must be incorporated in response to a specific requirement and clearly referenced. Evaluation sub-committees will review only the section of the Proposal that is assigned to their sub-committee. Therefore, it is imperative that the response to each question is complete and independent of information or responses in other sections of the Proposal. Offerors may not reference the Cost Proposal in response to the Mandatory Requirements or Technical Proposal.

ASES will not search for responses in other sections of the Proposal nor outside of the Proposal when citations to other sources or hyperlinks are provided. A policy, brochure, manual, or reference to a policy, brochure, manual or website does not constitute an adequate response and will not be considered.

Appendices must be included sequentially in the response and described in the narrative as necessary. If an appendix must be referenced twice – it must be included twice. Meaning, if the Offeror wants to include the same appendix in a response to Question 1 of Section 7.1 and Question 2 of Section 7.3 it must include that same appendix twice in its response to Question 1 and Question 2.

4.8 Signature

The person authorized to legally bind the Offeror must sign each RFP appendix that requires a signature and/or initials.

5

Evaluation and Scoring

5.1 General

- 5.1.1 ASES's Evaluation Committee, and its Subcommittees, designated by the Executive Director of ASES, shall conduct a comprehensive, fair and impartial evaluation of proposals received in response to this RFP.
- 5.1.2 Only Offerors who acquired the RFP documents and submitted a timely Acknowledgment of Receipt Form of RFP and Notice of Intent to Participate (Appendix A of this RFP), may present a Proposal.
- 5.1.3 Failure of the Offeror to comply with the instructions of this RFP, failure to submit a complete Proposal or failure to submit a timely Proposal and Proposal Bond shall be grounds to disqualify the Offeror's Proposal. However, ASES reserves the right to waive minor irregularities and minor instances of non-compliance. ASES reserves the right to use its best judgment to determine what constitutes a minor irregularity and a minor instance of non-compliance.
- 5.1.4 ASES reserves the right to ask clarifying questions and request additional information from the Offeror at any stage of the process. If the Offeror fails to answer and/or respond to any clarifying questions or requests for additional Information, the Offeror's Proposal will be disqualified.
- 5.1.5 ASES shall be the sole judge in the selection of the successful Offeror(s).

5.2 Scoring Summary

- 5.2.1 Regardless of whether the Offeror bids on Combined Services or separately for PBM Services Only or RA Services Only, proposals will be weighted as noted in Table 4.

Table 4: Scoring Summary

| Section Title | Section Weighting |
|------------------------------------|-------------------|
| Mandatory Requirements (Section 6) | Pass/Fail |
| Technical Proposal (Section 7) | 80% |
| Cost Proposal (Section 8) | 20% |

5.3 Mandatory Requirements Evaluation

Each Proposal shall be evaluated to determine whether the requirements, as specified in this RFP, have been met. Failure to adequately meet any Mandatory submission requirement may cause the entire

Proposal to be deemed non-responsive and be rejected from further consideration. However, ASES reserves the right to waive minor irregularities and minor instances of non-compliance. See, Section 5.1.3. Each Proposal will be evaluated against the following Mandatory Requirements criteria:

- Proposal Bond and Proposal was submitted within the closing date and time (refer to Section 3.3.7 Submission of Proposal Bond and Proposal of this RFP).
- Mandatory Requirements will be scored as either “Pass” or “Fail”. If the Proposal meets all requirements in Section 6 Mandatory Requirements Proposal of this RFP, the Proposal will “Pass” the Mandatory Requirements section. If the proposal is missing certain requirements in Section 6 Mandatory Requirements Proposal of this RFP that are not minor irregularities and minor instances of noncompliance as noted above, the Proposal will “Fail” the Mandatory Requirements section.
- If ASES does not receive any Proposal that meets the Mandatory Requirements, ASES may cancel this RFP.

5.4 Technical Proposal Evaluation

5.4.1 Each Proposal that passed the Mandatory Requirements evaluation shall be evaluated to determine whether the technical requirements, as specified in this RFP, have been met. The Technical Proposal Evaluation Subcommittees will evaluate the Technical Proposals pursuant to Section 7 Technical Proposal (Operational and Programmatic Requirements) of this RFP. Through a consensus process, the Technical Proposal Evaluation Subcommittees will prepare one (1) final score sheet for each technical section of each Technical Proposal.

5.4.2 The Technical Proposal Evaluation Subcommittees will review only the sections of the Proposal that are assigned to their particular subcommittee. Therefore, it is imperative that the response to each question is complete and independent of information or responses in other sections of the Technical Proposal.

5.4.2.1 The Evaluation Subcommittees will review, evaluate and score the sections of each Technical Proposal based on the Proposal’s completeness, thoroughness, and how it demonstrates that it meets or exceeds the RFP requirements.

5.4.2.2 Table 5 shows the scoring criteria ASES will use to assign points.

Table 5: Scoring and Criteria for Point Assignment

| Point Value | Descriptions | Criteria for Point Assignment |
|-------------|------------------------|--|
| 0 | Absent or Unresponsive | Proposal response is missing or is non-responsive for it does not address ASES’s requirements. |

| Point Value | Descriptions | Criteria for Point Assignment |
|-------------|------------------------|---|
| 1 | Barely Satisfactory | Proposal response is incomplete. The Offeror failed to provide a fully compliant response to the requirements in the Procurement and the omission(s), or defect(s), are significant. The quality of the proposal response is considered to be less than average for a qualified Offeror. |
| 2 | Satisfactory | Proposal response is satisfactory or meets ASES' requirements. This score may be awarded if the Offeror has met the minimum requirements established in the Procurement. Omission(s) or defect(s), if any, are insignificant and acceptable. The proposal response is considered to be of average quality for a qualified Offeror |
| 3 | More than Satisfactory | Proposal response is more than satisfactory and fully meets ASES's requirements. No omission(s) or defect(s) are apparent. The proposal response is above the average quality that is expected from a qualified Offeror. |
| 4 | Superior | Proposal response surpasses ASES's requirements. Proposer offers one (1) or more enhancing feature, method or approach that will benefit ASES. |

In assigning points, evaluators shall consider issues including, but not limited to, the extent to which a Proposal response:

- a. Is lacking the required information (e.g. whether it is lacking depth or breadth or significant facts and/or details).
- b. Is fully developed.
- c. Demonstrates that the Offeror understands ASES's needs, the services sought, and/or the Offeror's responsibilities.
- d. Illustrates the Offeror's capability to perform all services and meet all requirements.
- e. If implemented, will contribute to the achievement of ASES's goals and objectives.
- f. Demonstrates the Offeror's capacity, capability and/or commitment to exceed regular service needs, that is, whether it offers enhanced features, approaches, or methods, or creative or innovative business solutions.

5.4.3 Table 6 shows the maximum points for each Technical Proposal category to be scored for a Combined Services Offer.

Table 6: Maximum Points by Technical Proposal Section – Combined Services

| Technical RFP Section | RFP Section | Section % Weighting | Total Points for Section | Number of Questions | Points for Each Question |
|--|-------------|---------------------|--------------------------|---------------------|--------------------------|
| Implementation | 7.1 | 3% | 40 | 4 | 10 |
| Pharmacy Network | 7.2 | 4% | 50 | 5 | 10 |
| Claims Processing and Payment | 7.3 | 23% | 280 | 8 | 35 |
| P&T Committee | 7.4 | 5% | 60 | 4 | 15 |
| Pharmacy Financial Committee | 7.5 | 2% | 30 | 3 | 10 |
| Formulary Management | 7.6 | 2% | 30 | 3 | 10 |
| Drug Utilization Review and Evaluation | 7.7 | 2% | 20 | 5 | 4 |
| Care Management and High Cost High Needs Program | 7.8 | 2% | 20 | 4 | 5 |
| Fraud, Waste, and Abuse | 7.9 | 2% | 30 | 3 | 10 |
| Other Enrollee Rebate Invoicing and Processing | 7.10 | 8% | 100 | 5 | 20 |
| MDRP Invoicing and Processing | 7.11 | 20% | 240 | 4 | 60 |
| Additional Rebate I Services: Supplemental Rebates and Value Based Purchasing Agreements | 7.12 | 2% | 30 | 1 | 30 |
| Information System and Management | 7.13 | 7% | 80 | 8 | 10 |
| Staffing and Key Personnel | 7.14 | 12% | 150 | 3 | 50 |
| Reporting | 7.15 | 5% | 60 | 4 | 15 |
| Total Questions and Technical Points | | | 1220 | 64 | |

Because there are overlapping technical questions and questions only for PBM Services and others only for RA Services, the maximum technical points for those individual service offers are:

- 1) PBM Services Only (49 questions): 775 points
- 2) RA Services Only (30 questions): 740 points

5.4.3.1 Points to each question will be awarded as follows in Table 7:

Table 7: Point Value Assessed

| Point Value | % of Possible Points |
|-------------|----------------------|
| 4 | 100% |
| 3 | 75% |
| 2 | 50% |
| 1 | 25% |
| 0 | 0% |

For example, if a response to question 7.1.1 receives a 3 score, it will receive 7.5 points for question 7.1.1 as shown in Table 8.

Table 8: Point Value Example

| Subsection | Point Value Given | % of Possible Points | Points Obtained |
|--------------------|-------------------|----------------------|-----------------|
| 7.1.1 | 3 | 75% | 7.5 |
| 7.1.2 | 2 | 50% | 5 |
| 7.1.3 | 3 | 75% | 7.5 |
| 7.1.4 | 1 | 25% | 2.5 |
| Total for Sec. 7.1 | | | 22.5 |

5.5 Cost Proposal Evaluation

Each Proposal that passed the Mandatory Requirements evaluation shall have its Cost Proposal evaluated.

5.5.1 Each Cost Proposal shall be reviewed to ensure that the Cost Proposal is complete. Submission of a complete Cost Proposal in ASES’s prescribed format is mandatory. The Cost Proposal may be determined non-responsive if the Offeror fails to comply with the Cost Proposal instructions and requirements.

5.5.2 The Sum of the Total Annual Costs proposed for Contract Years 1 through 3 will be evaluated in the Cost Proposal Evaluation (Offeror’s Total Costs). Proposed costs for Years 4 and 5 will be reviewed but not be included in the Cost Proposal Evaluation calculation for Cost Proposal Points, as those Contract Years may be further negotiated in the third contract year. Proposed costs for Additional Rebate Aggregator Services (Article 16 of the Contract in Appendix K) also will be

reviewed but not included in the Cost Proposal Evaluation calculation for Cost Proposal Points, as these services may be further negotiated upon ASES’s determination to exercise these services. Maximum available cost proposal points by offer type are shown in Table 9.

Table 9: Maximum Cost Proposal Points

| Services | Maximum Available Cost Proposal Points |
|-------------------|--|
| PBM Services Only | 194 |
| RA Services Only | 185 |
| Combined Services | 306 |

5.5.3 An example of the application of the formula for determining Cost Proposal Points is as follows:

$$\text{Cost Proposal Points} = (1 - (\text{Offeror's Total Costs Being Scored} - \text{Lowest Offeror's Total Costs}) / \text{Lowest Offeror's Total Costs}) \times \text{Maximum Points}$$

If the formula results in a negative number (which happens when the Offeror’s cost is more than 2 times the lowest Total Cost submitted), zero points are awarded.

Table 10 provides a Hypothetical Computation of Cost Proposal Scores for Combined Services with Maximum Points = 306. Other Offeror’s points determined by formula.

Table 10: Hypothetical Computation of Cost Proposal Scores (Combined Services)

| PBM Services Offeror | 3 Year Total Annual Costs | Formula | Cost Proposal Points |
|----------------------|---------------------------|--|----------------------|
| A | \$750,000 | $(1 - (\$750,000 - \$500,000) / \$500,000) \times 306 = 153$ | 153 |
| B | \$500,000 | $(1 - (\$500,000 - \$500,000) / \$500,000) \times 306 = 306$ | 306 |
| C | \$2,000,000 | $(1 - (\$2,000,000 - \$500,000) / \$500,000) \times 306 = - 612$ Results in negative number | 0 |

5.5.4 Cost Proposal Points will be determined separately for PBM Services, RA Services and Combined Services.

5.6 Final Evaluation

5.6.1 Once all Technical Proposals and Cost Proposals have been scored, the Evaluation Committee will identify up to the Top 5 Technical Scores for consideration of the Best and Final Offer (BAFO) Evaluation. The Top Offerors will be determined separately for 1) PBM Services and 2) RA

Services. Only those Offerors that are in the Top 5 for Technical Scores for both PBM Services and RA Services will be considered for the Top 5 Combined Services.

5.6.2 From the Top 5 Technical Score selections in each category, the Evaluation Committee will add the Cost Proposal Evaluation Scores to narrow the selection to determine the Offerors to be considered for BAFO negotiations. ASES has full discretion to choose the Top 3 for Combined Services and/or to choose the Top 3 individually for RA Services and PBM Services for BAFO negotiations. ASES's preference is for the best Combined Services offer but will consider separate RA and PBM Services contracts if it is in the best interest for Puerto Rico based on quality and value.

5.6.3 The Evaluation Committee will add the Cost Proposal Points to the Top 5 Technical Proposal Offers. Subsequently, the Offerors' Combined Technical and Cost Proposal Scores will be re-ranked to determine the Top 3 Offerors for Combined Services and/or the Top 3 Offerors for separate PBM Services and RA Services that will move onto the BAFO Evaluation.

ASES reserves the right to expand the Top 3 to the Top 4 if the Total Combined Scores is very close in Technical and Cost Proposal Scores.

5.7 Best and Final Offer (BAFO)

The Offeror(s) selected for the BAFO Evaluation will be notified by the Procurement Contact of the term to submit their BAFO. The BAFO must be submitted within no less than thirty-six (36) hours of the notification, unless otherwise stated in the notification. The BAFO must be submitted using Appendix J - Cost Proposal Template unless otherwise instructed and be signed by the individual identified in the Corporate Resolution, see Section 6.7.3.4 of this RFP, following the same requirements of Section 4.6.

5.8 Interviews

The Evaluation Committee may hold virtual interviews or demonstrations with the top total scoring Offerors. No points will be allocated to the interviews. The interviews will function solely as a verification check of the Offeror's proposals. Offerors shall be responsible for any and all costs related to the interview and/or demonstration.

5.9 Executive Committee Evaluation

Results of all the evaluations of the finalists will be presented blind to the Executive Committee, who after their holistic analysis will make their recommendation to the Board of Directors of ASES.

5.10 Intent to Award Contract

5.10.1 Upon careful consideration of the final recommendations of the Executive Committee, ASES's Board of Directors will make a final determination as to the Offeror(s) that will receive a Contract from the Government of Puerto Rico. See also Section 3.3.8 of this RFP.

5.10.2 ASES reserves the right to select a Proposal with a higher Cost Proposal, if the quality of the service or if it is in the best interest of the Government of Puerto Rico in this regard, so warrants it. Such a determination must be fully justified in the record.

5.10.3 ASES reserves the right to reject any and all proposals in whole or in part, if it is determined to be in the best interest of Puerto Rico.

5.10.4 Puerto Rico reserves the right to consider economic impact for Puerto Rico when evaluating proposals. This includes, but is not limited to: job creation, job retention, tax revenue implications and other economic considerations.

5.10.5 In case that only one Proposal is received or that only one Offeror is a responsive proponent, ASES reserves the right, in its best interest and in its sole discretion, to award the RFP to said Offeror with or without a prior negotiation or cancel the RFP.

5.10.6 Upon selection of the Offeror(s) that will receive a Contract, ASES shall initiate the contracting process. The selected Offeror(s) shall be notified in writing by the Executive Director of ASES that the Proposal has been accepted and that ASES intends to engage Offeror(s) under the terms of the Contract.

5.11 Communication with Offeror(s)

During all phases and stages of the evaluation period, the Procurement Contact may initiate discussions with Offeror(s) who submit responsive or potentially responsive Proposals for the purpose of clarifying aspects of the Proposals. These discussions SHALL NOT be initiated by Offeror(s).

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6

Mandatory Requirements Proposal

6.1 Letter of Transmittal

The Mandatory Requirements Proposal must include a signed Letter of Transmittal. (See Appendix B of this RFP).

6.2 Qualifications and References

6.2.1 Provide the Independence and Conflict of Interest Certification and the Conflict of Interest Affidavit (Appendix C and C-1). Offeror must submit Appendices C and C-1 for the Offeror and for each Subcontractor to be used for functions and responsibilities under the Scope of Work of this RFP.

6.2.2 Provide a detailed description of the company, its operations, and ownership, addressing the following, in no more than three (3) pages:

6.2.2.1 General description of primary business of the organization and its client base;

6.2.2.2 Organization's areas of specialization.

6.2.2.3 Any current or recent experience working with state Medicaid agencies;

6.2.2.4 Size of organization, including structure and ownership. The organizational chart or diagram should present information clearly and concisely and include, at a minimum, the lines of authority and reporting and roles and functions for each position. Include a narrative description to supplement the chart or diagram.

6.2.2.5 Length of time organization has been in business.

6.2.3 Describe the Offeror's experience in providing services similar to those included in the scope of this RFP, with emphasis on clients of similar size as GHP and Other Enrollees and details on the number of years of providing services. **Do not include ASES as one of your clients.**

6.2.4 Provide a certification confirming the Offeror's/Offerors' adherence to the requirements of this RFP and the expectations of ASES as stated in Section 1.1 of the RFP.

6.2.5 Provide a list of terminated contracts for the type of services required in this RFP, including expired or non-renewed Contracts, in the last five (5) years and the reason/circumstances pertaining to the termination.

6.2.6 Provide a list of three (3) specific business references with at least one (1) for a state Medicaid program or other large similar government or large private industry project within the last (5) years, or similar engagement. **The Offeror shall not use ASES as a reference to fulfill this requirement.**

Each reference must include the contact name, phone number, email address, a brief description of the services provided, and the period of service.

References for the Offeror shall be submitted to ASES using the questionnaire contained in Appendix H of this RFP strictly following the instructions therein stated as well as those in Section 3.3.6 of this RFP.

6.3 Key Personnel

The Offeror must demonstrate that staff proposed as Key Personnel as described in Article 20 of the Contract in Appendix K have the proper credentials and experience to perform all duties and responsibilities of that role. For each Key Personnel, include the following:

- Name;
- Role; and
- Resume.

NOTE: The information to be provided under this section must be for specific individuals, not generic for title/role.

6.4 Proposal Bond

Include with the Proposal a copy of the Proposal Bond in the amount of ten percent (10%) of the total bid for the first contract year, **delivered in person to ASES' Finance Office no later than 4:00 PM AST May 5, 2021. If the Offeror is presenting a Proposal for combined services, the amount of the Proposal Bond must be computed on the total bid for the combined services for the first contract year.**

Also include with the Proposal evidence that the issuing bond entity is a qualified institution. For further details, requirements and instructions regarding the Proposal Bond, refer to Section 3.4.8 of this RFP.

FAILURE TO COMPLY WITH THE TIMELY SUBMISSION OF A PROPOSAL BOND, ISSUED BY A QUALIFIED INSTITUTION AS STATED IN SECTION 3.4.8 OF THIS RFP, IN THE NAME OF ASES, TO COVER THIS PROCUREMENT PROCESS AND IN THE AMOUNT SPECIFIED HEREIN, WILL DISQUALIFY THE OFFEROR.

6.5 Tax Identification Number

Provide the Offeror's federal taxpayer identification number and Commonwealth taxpayer identification number, if different.

6.6 Suspension and Debarment Form

The Offeror must complete the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters Form to certify compliance with federal regulations relating to suspension and debarment. (See Appendix D of this RFP).

6.7 Financial and Legal Documentation

6.7.1 Financial Statement

6.7.1.1 Provide audited financial statements prepared by an independent Certified Public Accountant (CPA) for the two (2) most recent fiscal years. If the Financial Statements for the latest full fiscal years have not been issued, submit Management-prepared financial statement and related notes.

6.7.1.1.1 Must provide a detail of any significant outstanding account balances that represents, alone or when added to other accounts, more than seventy-five percent (75%) of account receivables and payables.

6.7.1.1.2 Must provide a description of any substantial business surpluses resulting from nonrecurring transactions or items, changes in accounting treatment, and/or asset transfers or other activities with affiliates.

6.7.1.1.3 The Offeror's firm name must be included on each page submitted.

6.7.1.1.4 Must include the contact information for the CPA/Audit firm, a copy of the CPA's Opinion Statement and report, and an explanation to all noted audit exceptions

6.7.1.2 Provide the current Month-End Balance Sheet and Year-to-Date Income Statement at the time of Proposal submission.

6.7.1.3 Explain any negative financial information in the Offeror's financial statements.

6.7.1.4 Provide any relevant documentation regarding your organization's relationship to Parent, affiliated and/or related business entities, including, but not limited to Subcontractor(s), subsidiaries, joint ventures, or sister companies.

6.7.1.5 Provide Offeror's projected pro forma financial statement and statement of changes in financial position for the next three (3) years predicted upon operation without the award of this Contract.

6.7.1.6 Provide Offeror's detailed financial plan and proposed cash flow budget demonstrating that the availability and source of sufficient funds to cover the Offeror's projected operation cost without risk of insolvency were the Offeror to provide the contractual services under the Contract period.

6.7.2 Provide a statement of whether there is any pending or recent (within the past five (5) years) litigation against the Offeror(s). This shall include but not be limited to litigation involving

noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of this RFP and Contract. The Offeror does not need to report workers' compensation cases.

6.7.2.1 If there is a pending or recent litigation against the Offeror, the Offeror shall describe the damages being sought or awarded or the extent to which adverse judgment is/would be covered by insurance or reserves set aside for this purpose. Include an opinion of counsel as to the degree of risk presented by any pending litigation and whether the pending or recent litigation will impair the Offeror's performance in a Contract under this RFP.

6.7.2.2 If there has been a judgment against the Offeror please provide the details of the judgment and an opinion of counsel as to the degree of risk presented by the judgment and whether the judgment will affect the Offeror's solvency and/or impair the Offeror's ability to perform under the Contract. The Offeror shall include its Parent organization, affiliates, and subsidiaries.

6.7.2.3 Additionally, for the last five (5) years, list any monetary sanctions Offeror has incurred pursuant to contract enforcement from any state, Government of Puerto Rico, federal, or private entity, including the date, amount of sanction, and a brief description of such enforcement and resolution. Include in your response, a brief description of any corrective action plan the Offeror has been under during the same time period.

6.7.2.4 Indicate whether, in the last ten (10) years, the Offeror, a predecessor company, or the Offeror's parent organization has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, provide an explanation detailing relevant facts, including the date on which the Offeror emerged from bankruptcy or expects to emerge. If still in bankruptcy, provide a summary of and anticipated timeframe for approval of a plan of reorganization.

6.7.3 Provide the following Certifications:

6.7.3.1 Current Certification of the Single Registry of Professional Service Providers ("RUP" for its Spanish acronym) issued by the Puerto Rico General Services Administration ("Administración de Servicios Generales de Puerto Rico" or "ASG" for its Spanish acronym).

6.7.3.1.1 If the Offeror has completed the registry process and is awaiting issuance of the certification by ASG at the time of submitting the Proposal, the Offeror must submit:

- (1) evidence of payment of the certification process;
- (2) the current status of said process;
- (3) all the certifications and documentation submitted to the RUP with evidence of submission; and

(4) a certification attesting that it recognizes that, if a Contract is awarded to the Offeror under this RFP:

- a. the Offeror must provide, before the signature of the Contract, a Current Certification of the Single Registry of Professional Service Providers (RUP Certification);
- b. that failure to provide the RUP Certification will cause the forfeiture of the Proposal Bond in favor of ASES and that ASES may cancel the Award and issue an Award in favor of the next best Offeror(s).

ASES reserves the right to Award the RFP, even if at the time of the Award the Graceful Offeror does not have the RUP Certification, provided that ASES has been given sufficient reliable and convincing proof that there is no impediment for the ASG to issue the RUP Certification before the Contract is signed.

6.7.3.1.2 If the Offeror is not registered in the RUP at the time of submission of the Proposal:

(1) the Offeror must submit with the Proposal all the certifications required by the RUP, namely:

- a. Current Certification from the Treasury Department of Puerto Rico that the Offeror has no outstanding debt with the Department or, if such a debt exists, it is subject to a payment plan or pending administrative review under applicable law or regulation (Model SC 6096).
- b. Certification of filing of income tax returns issued by the Department of the Treasury confirming filing for the last five (5) years prior to the Contract. If the Offeror has not filed a return in any of the five (5) years, it must indicate the reasons for not filing a return. (Model SC 6088).
- c. Current Certifications from the Center for the Collection of Municipal Revenues ("CRIM", its Spanish acronym) certifying:
 - i. that there is no outstanding debt on all concepts of property or, if a debt exists, that such debt is subject to payment plan or pending administrative review under applicable law or regulations;
 - ii. filing of property tax returns for the last five (5) years prior to the Contract. If the Offeror has not filed a return in any of the five (5) years, it must submit a sworn statement indicating the reasons for not filing a return.

- d. Certification issued by the Minor Children Support Administration (“ASUME”, by its Spanish acronym) of no outstanding order of withholding of wages for the payment of alimony or child support debts, if applicable.
- e. Certification of Unemployment Insurance and Disability Insurance issued by the Department of Labor of the Commonwealth of Puerto Rico;
- f. Certification of no debt and registration as employer under the Chauffer Insurance Act, issued by the Department of Labor of the Commonwealth of Puerto Rico or, if such a debt exists, it is subject to a payment plan or pending administrative review under applicable law or regulation;
- g. Certification of current insurance policy with the Commonwealth of Puerto Rico Workmen’s Compensation Fund (Fondo de Seguro del Estado);
- h. Current Copy of the Certificate of Merchant’s Registry (Model SC2918). If the Offeror is a retaining Agent, must also submit:
 - 1. Current Certificate of filing of IVU returns issued by the Department of the Treasury confirming filing for the last five (5) years prior to the Contract. If the Offeror has not filed a return in any of the five (5) years, it must indicate the reasons for not filing a return.
 - 2. Current Certificate from the Treasury Department of Puerto Rico that it has no outstanding debt related to the IVU (Model SC 2942) or, if such a debt exists, it is subject to a payment plan or pending administrative review under applicable law or regulation.
- j. Current Certificate of Incorporation and Good Standing issued by the State Department and date of issue;
- k. Current Certificate of authorization to do business in Puerto Rico issued by the State Department. If the Offeror is in the process of being so authorized, the Offeror must present sufficient evidence of said process and the current status; See Section 1.9.1 of the RFP (“The Offeror and any proposed subcontractor **must be authorized** by the Department of State of Puerto Rico to do business in Puerto Rico **prior to Contract Award**”).
- l. Certificate of Criminal Record issued by the Puerto Rico Police Department.

(2) the Offeror will be given an automatic non-extendable term of five (5) business days, from the date of the submission of the Proposal, to submit the RUP Certification. If at the term of the five (5) business days, the Offeror does not have

the certification, it must comply with the requirements of Section 6.7.3.1.1 of this RFP.

Failure to comply with Section 6.7.3.1.1 and/or Section 6.7.3.1.2, as the case may be, will cause the disqualification of the Offeror.

6.7.3.2 A sworn statement certifying that it has no debts with the government of Puerto Rico, or with any state agencies, corporations or instrumentalities that provide or are related to the provision of health services or, if a debt exists, that such debt is subject to a payment plan with which the Offeror is in compliance, a work plan to reconcile amounts in controversy with which the Offeror is in compliance, or pending administrative review under applicable law or regulations. In such case, the Offeror must submit recent evidence of said payment plan, debt reconciliation agreement or pending administrative review. See Section 1.5.16 of the RFP.

6.7.3.3 Certification from the Puerto Rico Administration of Medical Services (“ASEM”, its Spanish acronym) certifying that there is no outstanding debt or, if a debt exists, that such debt is subject to a payment plan with which the Offeror is in compliance, a work plan to reconcile amounts in controversy with which the Offeror is in compliance, or pending administrative review under applicable law or regulations. See Section 1.5.16 of the RFP.

6.7.3.4 Corporate resolution identifying the person authorized to represent and legally bind the entity. In case of a Limited Liability Company, the Offeror must submit evidence of the designation as Administrator or as authorized voting member. See Letter of Transmittal, Appendix B of this RFP.

6.7.3.5 Letter to indicate the agencies or government agencies with which the Offeror has or is in contract negotiation process;

6.7.3.6 Certification of updated municipal patent.

6.7.3.7 Retention waiver issued by the Treasury Department, in order to reduce or eliminate the applicable tax retention. If no waiver is presented, ASES shall deduct the applicable amount from payments to be made to Contractors for services rendered.

6.7.3.8 Provide evidence of registration in the System for Award Management (SAM) <https://www.sam.gov/SAM/>. If not currently registered, provide evidence of current status of registration process. **WARNING:** The Offeror must be registered at the time of the Award.

6.7.3.9 Provide a certification to the effect that all current personnel who would be providing services under the RFP and eventual contract are trained in the administrative, physical and technical aspects of HIPAA Law as established in 45 CFR §§ 164.308, 164.310, 164.312, 164.316. If said personnel is not currently trained, explain why and submit a Certification to the effect that, if awarded a contract, will fully comply with this requirement.

6.8 Information Systems Audit

Provide a copy of the Offeror's most recent information systems audit (e.g. SSAE18).

6.9 Insurance Policies

Provide a copy of any and all liability insurance policies including at a minimum, commercial general liability policy, Electronic Data Processes Error and Omissions, Miscellaneous Error & Omissions Insurance, excess liability, workers' compensation policy, unemployment insurance policy, Professional Responsibility Insurance and Cyber Security Liability Insurance. If the Offeror presently does not possess the insurance policies mentioned in Article 23 of the Contract or with the limits mentioned in said Article, please explain the reason and submit a Certification to the effect that, if awarded a contract, will fully comply with these requirements.

6.10 Fraud and Misappropriation

Submit the Sworn Statement on Fraud and Misappropriation duly filled in and signed before a Notary Public (Appendix E of this RFP).

6.11 Other Appendices or required documents in the RFP

6.11.1 Submit the Disclosure of Lobbying Activities, if applicable. If not applicable, explain. (Appendix F of this RFP).

6.11.2 Submit any other applicable appendices and documentation required throughout the RFP that is not expressly requested under another item in Sections 6, 7 and 8 of this RFP.

6.12 Subcontractor(s)

If the Offeror(s) will be using Subcontractor(s) for functions and responsibilities under the Scope of Work of this RFP, it must provide the following documentation:

6.12.1 Identify each subcontractor, specify the tasks in which each subcontractor will intervene and disclose the remuneration that the subcontractor will receive for the work to be carried out, and the profit margin, if any, that the Offeror will have in relation to the subcontractor's paid fees.

6.12.2 Attestation of Independence and Freedom from Conflict of Interests and Conflict of Interest Affidavit (Appendices C and C-1 of this RFP)

6.12.3 Suspension and Debarment Form (Appendix D of this RFP)

6.12.4 Sworn Statement on Fraud and Misappropriation (Appendix E of this RFP)

6.12.5 Disclosure of Lobbying Activities, if applicable. If not applicable, explain. (Appendix F of this RFP)

6.12.6 All Certifications required under Section 6.7.3 of this RFP.

6.12.7 Copy of insurance policies mentioned in Section 6.9 of this RFP that apply to services to be provided.

6.12.8 Provide a list of any litigations or sanctions that have been applied under any current or former services contract in the last three (3) years. State the status, final outcome and findings in said process, particularly, any findings of noncompliance under federal or state law.

6.12.9 Provide at least three (3) specific business references with at least one (1) for a state Medicaid program or other large similar government or large private industry project within the last (5) years, or similar engagement or project of similar size and scope to those functions and responsibilities that it would be performing under this RFP, within the last five (5) years. **Do not use ASES as one of the references to fulfill this requirement.** Each reference must include the contact name, phone number, email address, a brief description of the services provided, and the period of service. Include with the above required information a letter addressed to the Executive Director of ASES authorizing ASES to contact said business references to obtain the information stated in Section 1.9 of this RFP.

6.12.10 Provide a copy of the Subcontractor's most recent information systems audit (e.g. SSAE18).

6.13 Redacted Proposal

6.13.1 If the Offeror requests confidential treatment, submit one (1) copy of the full Proposal (including the Cost Proposal) with proposed confidential Information redacted. The redacted copy must tell the general nature of the material removed and shall retain as much of the Proposal as possible.

6.13.2 Supply a listing of the provisions identified by Section/subsection number for which the Offeror sought confidential treatment and the statutory basis or bases under federal law, Puerto Rico Law, including a detailed justification for exempting the information from public disclosure.

6.13.3 If the Offeror does not request confidential treatment of any portion of its proposal, it must submit a certification to that effect agreeing to release and hold ASES, the federal and state government harmless, as stated in Section 3.4.9 of this RFP.

7

Technical Proposal (Operational and Programmatic Requirements)

The Offeror shall complete all requirements, including the narratives and required appendices, in this section. In responding to each question, the Offeror shall explicitly state whether a subcontractor will be utilized. If the Offeror intends to utilize a subcontractor(s), the Offeror must provide the name of the subcontractor in the response.

Offeror must have responses for all questions pertaining to the selected bidding option:

- If Offeror is submitting a proposal for the Combined PBM and RA Services option, then all questions must have responses.
- If Offeror is submitting a proposal for the PBM Services only option, then all questions noted as [Both] and [PBM Services] must have responses.
- If Offeror is submitting a proposal for the RA Services only option, then all questions noted as [Both] and [RA Services] must have responses.

Offeror must demonstrate the necessary experience and capacity to assume all applicable functions as demonstrated by providing detailed responses to the following questions. This includes providing a detailed narrative, diagrams, exhibits, examples, sketches, descriptive literature and/or detailed information specifically tailored for the services required under this RFP to demonstrate its ability to meet requirements.

Bidders should understand that all items in the Contract in Appendix K constitutes the complete list of Contractor requirements, with the exception of ad hoc requests.

Refer to Section 5.4.3, Table 6 for total points allotted for each following section.

7.1 Implementation

7.1.1 **[Both]** Provide a detailed Implementation Plan to achieve a seamless transition and implementation of services by the Implementation Date. How will resources be deployed, who will provide oversight, and how are staff hired, trained and tested?

7.1.2 **[Both]** Describe the systems (Information Management, Operations, Claims Processing) build and testing strategy and timeline. Describe how initial testing and auditing of the system for accuracy, timeliness, and quality of the services will be accomplished prior to the Implementation Date.

7.1.2.1 **[PBM Services]** Provide your recommendation for transferring necessary Data to perform the required services such as, claims history, provider data, enrollee data, and prior authorization information.

7.1.2.2 **[RA Services]** Provide your recommendation for obtaining the necessary information to perform the required services such as CMS Rebate files, Other Enrollee Rebate files, and Claims Data.

7.1.3 **[Both]** Describe any barriers the Offeror has identified to meeting the timeframes and how those barriers will be mitigated.

7.1.4 **[Both]** Explain plan for restoring systems (Information Management, Operations, Claims Processing) in the event of a natural or man-made disaster to accommodate:

7.1.4.1 Loss of online communications

7.1.4.2 Loss of data

7.1.4.3 Software malfunction

7.1.4.4 **[PBM Services]** Loss of Pharmacy Call Center services

7.2 Pharmacy Network

7.2.1 **[PBM Services]** Describe how the Offeror shall have an adequate Pharmacy Network of Participating Pharmacies meeting all Contract requirements as described in Article 7 of the Contract in Appendix K as of the Implementation Date. Describe how you will also meet the location criteria in Section 7.2 of the Contract.

7.2.2 **[PBM Services]** Describe how the Offeror will ensure that its Pharmacy Network is adequate to assure access to all Covered Services, and that all Network Pharmacies are appropriately credentialed throughout the Contract Term.

7.2.3 **[PBM Services]** Describe the Offeror's Pharmacy Call Center operations and services and how the Offeror will meet the performance standards outlined in Attachment 4 of the Contract in Appendix K.

7.2.4 **[PBM Services]** Describe the Offeror's communication plan to ensure Pharmacies, Pharmacy billing agents, MCOs and other interested parties are kept informed of GHP Pharmacy benefits, billing requirements and services.

7.2.5 **[PBM Services]** Describe Offeror's process for handling pharmacy disputes.

7.3 Claims Processing and Payment

7.3.1 **[PBM Services]** Describe the Offeror's claims processing system and how it has the ability to meet all claims processing requirements as described in Article 8 of the Contract in Appendix K, including but not limited to coordination of benefits and supporting different payment methodologies depending on Provider and Enrollee type.

7.3.2 **[PBM Services]** Describe the Offeror's ability to implement an Automated Clearinghouse ("ACH") mechanism that will allow Network Pharmacies to request and receive electronic funds transfer ("EFT") of Claims Payments.

7.3.3 **[PBM Services]** Describe the Offeror's Claims processing system to screen all Claims and apply all ASES approved and required Data validation procedures and edits.

7.3.4 **[PBM Services]** Describe the Offeror's Network Pharmacy payment management function.

7.3.5 **[PBM Services]** Describe how the Offeror will implement and maintain a MAC list that is similar in breadth and depth of rates established with the current MAC list.

7.3.6 **[PBM Services]** Describe how the Offeror will implement Pharmacy reimbursement changes as may be requested by ASES throughout the Contract Term.

7.3.7 **[PBM Services]** Describe the Offeror's quality assurance process to assure accuracy of all Data received including but not limited to the enrollment file, drug reimbursement files and the Claims processing and ancillary systems proposed.

7.3.8 **[PBM Services]** Describe the Offeror's experience and expertise with other Medicaid agencies in working with 340B covered entity providers and 340B Claims.

7.4 Pharmacy and Therapeutics Committee

7.4.1 **[PBM Services]** Describe the Offeror's experience with and ability to support the P&T Committee as required in Section 9.2.1 of the Contract in Appendix K.

7.4.2 **[PBM Services]** Describe the Offeror's ability to monitor existing medications included in the FMC and the LME for new or expanded indications, or new information regarding side effects or contraindications and make recommend changes to the P&T Committee regarding Prior Authorization criteria, step therapy protocols, quantity limits and other related edits.

7.4.3 **[RA Services]** Describe the Offeror's experience with and ability to support the P&T Committee as required in Section 9.2.1 of the Contract in Appendix K.

7.4.4 **[RA Services]** Describe the Offeror's qualifications to make pharmacoeconomic recommendations regarding FMC and LME medications and Prior Authorization criteria, step therapy protocols, quantity limits and other cost containment related edits.

7.5 Pharmacy Financial Committee

7.5.1 **[RA Services]** Describe the Offeror's experience with and ability to support the Pharmacy Financial Committee as required in Article 10 of the Contract found in Appendix K.

7.5.2 **[RA Services]** Describe the Offeror's ability and experience with evaluating and making recommendations on cost-effective drug therapies to be included on the FMC and the LME.

7.5.3 **[RA Services]** Describe the Offeror's ability and methods to maintain the confidentiality of all information that is protected by law and/or deemed confidential, including, but not limited to, any financial, cost, or market analyses that may be presented to the P&T Committee and PFC.

7.6 Formulary Management

7.6.1 **[PBM Services]** Describe how the Offeror will fulfill core components of the Formulary Management requirements as described in Article 11 of the Contract in Appendix K, including but not limited to maintenance of the Formulary of Medications Covered (FMC) and List of Medications by Exception (LME), administration of Prior Authorization decisions determined by MCOs, and commitment to substitution restrictions.

7.6.2 **[PBM Services]** For Prior Authorization administrations, describe how the Offeror will work with the MCOs to meet the requirements of Section 11.2 in the Contract and how the Offeror will process technical Prior Authorizations.

7.6.3 **[PBM Services]** Describe the Offeror's Formulary Management experience, recommendations to keep it reflective of marketplace changes and cost effective.

7.7 Drug Utilization Review and Evaluation

7.7.1 **[PBM Services]** Describe how the Offeror will support the MCO in fulfilling the Drug Utilization Review (DUR) program requirements, including the functions of the IT systems and Information needed to support the Prospective DUR (pro-DUR), Retrospective DUR (retro-DUR) requirements, and annual DUR report requirements upon ASES's request as outlined in Article 12 of the Contract in Appendix K.

7.7.2 **[PBM Services]** Describe the capabilities of the Offeror's DUR system, the ability to customize the systems and DUR program priorities as needed and how savings are calculated for DUR activities. Provide examples of how the Offeror has made significant improvement in outcomes for other state agencies based on DUR activities.

7.7.3 **[PBM Services]** Describe how the Offeror will run the Academic Detailing Program. Provide examples of three potential topics for messaging through the Academic Detailing Program and explain what messaging would be done with regard to those topics.

7.7.4 **[PBM Services]** Describe Offeror's capabilities to identify potential opioid abuse, suspect prescribing and dispensing patterns, etc.

7.7.5 **[PBM Services]** Describe Offeror's capabilities to track drug utilization trends for specific drugs identified by ASES for special monitoring, e.g. drugs that are the subject to class action suits, product recalls, etc.

7.8 Care Management and High Cost High Needs Program

7.8.1 **[PBM Services]** Describe examples of "best in class" care management strategies that could result in cost-containment efforts and positive health outcomes in Puerto Rico Medicaid.

7.8.2 **[PBM Services]** Describe how the Offeror will implement care management initiatives among Network Pharmacy Providers, including monitoring of patients for potential use of care management.

7.8.3 **[PBM Services]** Describe the Offeror's experience in care management initiatives that reflect the current health condition priorities of the High Cost High Need Program (e.g., asthma, diabetes/hypertension, congestive heart failure, cardiovascular diseases, obesity, and chronic renal disease stages 1 and 2).

7.8.4 **[PBM Services]** Describe Offeror's strategies to manage orphan drugs, high and extremely high cost specialty drugs (for example, enhanced clinical protocols, close monitoring and tracking of utilization.)

7.9 Fraud, Waste, and Abuse

7.9.1 **[PBM Services]** Describe how the Offeror will meet the core requirements for Fraud, Waste, and Abuse activities described in Article 18 of the Contract, including but not limited to the Fraud, Waste and Abuse Plan requirements, a Compliance Plan, Reporting and Investigation requirements, and Program Integrity Requirements.

7.9.2 **[PBM Services]** Describe the Offeror's experience in preventing and abating Fraud, Waste, and Abuse, including innovations and recommendations that could be considered by Puerto Rico Medicaid.

7.9.3 **[PBM Services]** Describe in detail the Offeror's Pharmacy Auditing services to ensure Pharmacies comply with contract provisions.

7.10 Other Enrollee Rebate Negotiating, Invoicing and Processing

7.10.1 **[RA Services]** Describe the Offeror's process for rebate negotiations with pharmaceutical manufacturers.

7.10.2 **[RA Services]** Describe the Offeror's approach for accurate and timely Rebate invoicing and processing as prescribed in Article 15 of the Contract. Describe how the Offeror will resolve Rebate disputes in a way that is most favorable to ASES.

7.10.3 **[RA Services]** Describe the Offeror's ability to coordinate all Data transfers and reporting requirements between its Rebate Program systems and designated stakeholders including but not limited to ASES and MCOs.

7.10.4 **[RA Services]** Describe how the Offeror will ensure a seamless transition in rebate processing during implementation.

7.10.5 **[RA Services]** Describe the Offeror's experience with other clients in identifying 340B Claims for Rebate exclusion.

7.11 MDRP Rebate Invoicing and Processing

7.11.1 **[RA Services]** Describe the Offeror's approach for accurate and timely MDRP Rebate invoicing and processing as prescribed in Article 14 of the Contract. Describe how the Offeror will resolve Rebate disputes in a way that is most favorable to ASES.

7.11.2 **[RA Services]** Describe the Offeror's ability to coordinate all Data transfers and reporting requirements between its Rebate Program systems and designated stakeholders including but not limited to ASES, CMS and MCOs.

7.11.3 **[RA Services]** Describe how the Offeror will ensure seamless transitions in rebate processing if CMS makes changes to Data submission platforms or processes.

7.11.4 **[RA Services]** Describe the Offeror's experience with other Medicaid agencies in identifying 340B Claims for Rebate exclusion.

7.12 Additional RA Services: Supplemental Rebates and Value Based Purchasing Agreements

7.12.1 **[RA Services]** ASES reserves the right to exercise the implementation of a Supplemental Rebate Program and/or Value Based Purchasing Agreements during the Contract Term. Describe the Offeror's experience with supporting such initiatives and how the Offeror will assist ASES with the development, implementation and management of the additional rebate services.

7.13 Information System and Management

7.13.1 **[Both]** Describe how the Offeror's Information management processes, Information systems and technical support will meet the GHP requirements, ASES and federal reporting requirements, all other Contract requirements, and any other applicable Puerto Rico and federal laws, rules and regulations.

7.13.2 **[PBM Services]** Describe the Offeror's Information systems capacity and sufficiency to handle the workload projected for the start of the program and the ability to be scalable and flexible to adapt and/or upgrade to more advanced levels of technology as needed, within negotiated timeframes.

7.13.3 **[PBM Services]** Describe the Offeror's ability to assure that systems shall be able to transmit, receive and process Data in HIPAA-compliant and NCPDP-compliant formats that are in use as of the Implementation Date.

7.13.4 **[Both]** Describe how the Offeror will assure that applications will interface with ASES's systems and its designees, including but not limited to MCOs and other entities, as allowed by law, for purposes of Data exchange and will conform to standards and specifications set by ASES.

7.13.5 **[Both]** Describe the physical safeguarding of the Offeror's Data processing facilities and the systems and Information housed therein.

7.13.6 **[Both]** Provide a summary of the Business Continuity and Disaster Recovery (“BC-DR”) Plan that provides reasonable safeguards against the destruction, loss, intrusion and unauthorized alteration of Data and system processes.

7.13.7 **[PBM Services]** Describe how the Offeror will collaborate with ASES and the MCOs to develop solutions during an emergency/disaster situation.

7.13.8 **[PBM Services]** Describe how the Offeror handles scheduled and unscheduled system unavailability.

7.14 Staffing and Key Personnel

7.14.1 **[Both]** Describe how the Offeror will meet and maintain the core Staffing and Key Personnel requirements described in Article 20, including but not limited to employment of sufficient qualified, bilingual, and experienced and knowledgeable staff to meet the requirements of the Contract.

7.14.2 **[Both]** Describe how the Offeror will appropriately train and ensure appropriate licensing and certification requirements for staff.

7.14.3 **[Both]** Describe separately the IT implementation team and the IT operational team that will be participating in this project. Provide years of experience, specialty and certifications obtained. State if they will be fully dedicated to this project.

7.15 Reporting

7.15.1 **[Both]** Describe how the Offeror will meet the core components of the reporting requirements described in Article 21 of the Contract, including but not limited to the requisite reports, the reporting timeframes, and the reporting formats required by ASES.

7.15.2 **[Both]** Describe systems in place to ensure appropriate Data transfer and Data retention for requisite reporting, including adherence to HIPAA and other federal laws and regulations, in addition Puerto Rico laws and regulations.

7.15.3 **[Both]** Describe how the Offeror will meet the special reporting requirements described in the Contract, including but not limited to actuarial reporting, and Fraud, Waste, and Abuse reporting.

7.15.4 **[Both]** Describe the Offeror’s online database and reporting capabilities that will be offered and accessible to ASES staff and its designees.

8

Cost Proposal

8.1 General Instructions

The Offeror shall also submit a Cost Proposal, using the Cost Proposal Workbook template included in Appendix J that addresses all costs associated with meeting the requirements noted above in this RFP and in the Contract. At the discretion of ASES, the Contract may be extended for up to two (2) additional one (1) year contract extension periods, beyond the initial Contract period. Therefore, the Offeror's Cost Proposal submission must include costs for each year of the possible total (5) years Contract Term. The Offeror should provide their best cost estimate for optional years 4 and 5. The Offeror should be aware that optional years 4 and 5 are subject to renegotiation based on prevailing market prices and evaluation of Contractor's performance. Furthermore, proposed costs for Additional Rebate Aggregator Services (Article 16 of the Contract in Appendix K) also will be reviewed but not included in the Cost Proposal Evaluation calculation for Cost Proposal Points, as these services may be further negotiated upon ASES's determination to exercise these services.

Offerors are cautioned not to make assumptions when submitting cost proposals. If clarifications are needed, please submit questions during the Q&A period to ensure all assumptions are confirmed or clarified. Costs left out of a proposal based on an assumption will not be negotiated at time of award.

The Offeror **MUST BID FOR ALL REQUIRED SERVICES/DELIVERABLES PERTAINING TO THE PBM AND/OR RA SERVICES FOR WHICH THE OFFEROR IS BIDDING. FAILURE TO DO SO WILL CAUSE THE DISQUALIFICATION OF THE OFFEROR. See also Section 4.6 of the RFP.**

The submitted Cost Proposal must include a duly signed PDF copy of the cost proposal template with initials and printed name on each page (See Section 4.8 of the RFP) as well as an Excel version. Both must contain the same information and each page must be identified with the name of the Offeror. In case of any inconsistencies between the PDF signed copy and the Excel version of the Offeror's Cost Proposal, the signed copy will prevail.

8.2 Cost Proposal Workbook

8.2.1 Using the Cost Proposal Workbook template (Appendix J of this RFP), the Offeror must propose costs, including implementation costs, to provide the services. The template must have the name of the Offeror listed on the Table of Contents (TOC) worksheet. The Offeror must populate cell B9 on the TOC worksheet so that the rest of the worksheets will automatically include the name of the Offeror.

8.2.2 The Offeror must complete the worksheets of the Cost Proposal Workbook pertaining to the services for which the Offeror is bidding as selected from the list in cell B10 of the Table of Contents (TOC) worksheet.

If the Offeror is bidding on both the PBM and RA Services, then the Offeror must complete ALL worksheets of the Cost Proposal Workbook. See Section 1.1 of the RFP.

If the Offeror is bidding on only the PBM Services, then the Offeror must complete only the worksheet labeled “3. PBM Worksheet”.

If the Offeror is bidding on only the RA Services, then the Offeror must complete the worksheets labeled “4. Rebate Worksheet”.

For each worksheet, the Proposal must provide a narrative response explaining the associated costs for the applicable required services.

8.2.3 The Offeror must only enter Information in the yellow and blue cells for each line item. The yellow cells will be used to calculate the Offeror’s total bid. The blue cells are to be completed to provide additional detail about the buildup of the values entered in the yellow cells. The blue cells must sum up and match the total in the yellow cells. Calculation checks are provided for each section to alert the Offeror of a calculation error. If the Cost Proposal Workbook is submitted with a calculation error, ASES will assume the lower of either the total cost submitted in the yellow cell or the sum of the line items will prevail.

8.2.4 All line items must be filled out. If the Offeror combines line items, the Offeror must disclose how the combined costs were derived and the annual costs of each separately in the respective narrative response section of the Cost Proposal Workbook.

8.2.5 The Offeror must quote implementation and ongoing costs based on the Total Ownership Cost Method. The Total Ownership Cost Method includes not only the direct costs of the specific deliverables required for the provision of the PBM and RA services but also all indirect costs that would be logically attributed to the provision of these services. It is an all-inclusive rate.

8.2.6 Implementation Costs

8.2.6.1 Implementation costs for all Contractor functions will not be paid separately. They must be allocated and included in the corresponding ongoing costs - PBM Service Costs section and Rebate Aggregator Service Costs section of the Cost Proposal Workbook. The Implementation Costs must be amortized over the first three years of the Contract.

8.2.6.2 Although Implementation Costs are to be included with the corresponding proposed ongoing costs, ASES requires Offerors to provide detail about these costs for informational purposes only.

8.2.6.3 The details of the total implementation costs must be described in Section 1.1 of the Cost Proposal Workbook tabs and included in subsequent sections as noted in the Cost Proposal Workbook. For each section, the Offeror must explain the associated costs in the narrative section provided.

8.2.6.4 PBM and RA Implementation Costs (Cost Proposal Workbook Tab “2.PBM & Rebate Worksheet”)

8.2.6.4.1 This section of the Cost Proposal Workbook captures implementation costs for establishing all the PBM and RA Services functions and services.

8.2.6.4.2 For each line item, enter the expected cost for the noted activity.

8.2.6.4.3 Implementation Plan: captures the costs associated with developing the detailed Implementation Plan.

8.2.6.4.4 Technology and Information System: captures system implementation costs associated with the Offeror's functions and services related to PBM and RA technology systems and service contracts, including but not limited to pharmacy claims adjudication and payment, RA services, PBM and RA scheduled reporting and online reporting tool(s).

8.2.6.4.5 Pharmacy Call Center: captures the costs to implement and transition the Pharmacy Call Center from the current PBM, including equipment, phone lines/service contracts and Pharmacy Provider communications.

8.2.6.4.6 Equipment: captures implementation costs for equipment.

8.2.6.4.7 Recruitment: captures implementation recruitment costs for Key Personnel and staff.

8.2.6.4.8 Training: captures implementation training costs for Key Personnel and staff.

8.2.6.4.9 Maximum Allowable Cost (MAC) List Development: captures the implementation and transition of the MAC program for off-patent Brand Drugs and Generic Drugs and the electronic mechanism for the MAC program appeal process.

8.2.6.4.10 Clinical Program Management: captures implementation and transition costs for Clinical program services including but not limited to formulary management, Drug Utilization Review, fraud, waste and abuse, academic detailing, and care management services.

8.2.6.4.11 Administrative Expenses: captures PBM and RA implementation costs for establishing the Offeror's administrative functions.

8.2.6.5 PBM Implementation Costs (Cost Proposal Workbook Tab "3.PBM Worksheet")

8.2.6.5.1 This section of the Cost Proposal template captures implementation costs for establishing all the PBM Offeror's functions and services.

8.2.6.5.2 For each line item, enter the expected cost for the noted activity.

8.2.6.5.3 Implementation Plan: captures the costs associated with developing the detailed Implementation Plan.

8.2.6.5.4 Technology and Information System: captures system implementation costs associated with the Offeror's functions and services related to PBM technology systems and service contracts, including but not limited to pharmacy claims adjudication and payment, PBM scheduled reporting and online reporting tool.

8.2.6.5.5 Pharmacy Call Center: captures the costs to implement and transition the Pharmacy Call Center from the current PBM, including equipment, phone lines/service contracts and Pharmacy Provider communications.

8.2.6.5.6 Equipment: captures implementation costs for equipment.

8.2.6.5.7 Recruitment: captures implementation recruitment costs for Key Personnel and staff.

8.2.6.5.8 Training: captures implementation training costs for Key Personnel and staff.

8.2.6.5.9 Maximum Allowable Cost (MAC) List Development: captures the implementation and transition of the MAC program for off-patent Brand Drugs and Generic Drugs and the electronic mechanism for the MAC program appeal process.

8.2.6.5.10 Clinical Program Management: captures implementation and transition costs for Clinical program services including but not limited to formulary management, Drug Utilization Review, fraud, waste and abuse, academic detailing, and care management services.

8.2.6.5.11 Administrative Expenses: captures PBM implementation costs for establishing the Contractor's administrative functions.

8.2.6.6 RA Implementation Costs (Cost Proposal Workbook Tab "4.Rebate Worksheet")

8.2.6.6.1 This section of the Cost Proposal template captures implementation costs for establishing all the RA functions and services.

8.2.6.6.2 For each line item, enter the expected cost for the noted activity.

8.2.6.6.3 Implementation Plan: captures the costs associated with developing the detailed Implementation Plan.

8.2.6.6.4 Technology and Information System: captures system implementation costs associated with the Offeror's functions and services related to technology systems and service contracts, including but not limited to RA services and scheduled reporting and online reporting tool.

8.2.6.6.5 Equipment: captures implementation costs for equipment.

8.2.6.6.6 Recruitment: captures implementation recruitment costs for Key Personnel and staff.

8.2.6.6.7 Training: captures implementation training costs for Key Personnel and staff.

8.2.6.6.8 Administrative Expenses: captures RA implementation costs for establishing the Offeror's administrative functions.

8.2.7 PBM and RA Service Costs

8.2.7.1 This section captures the Offeror's ongoing costs to maintain PBM and/or RA Services functions. See, Section 8.2.6.1.

8.2.7.2 All ongoing service costs must be quoted as follows:

8.2.7.2.1 All ongoing service costs, including amortized implementation costs, associated with PBM Services must be quoted on a per final paid prescription basis. No denied claims (i.e., claims that were received and adjudicated by the PBM but a negative determination was made) or reversed claims (i.e., claims that were reversed by the pharmacy after having been submitted and paid by the PBM) will be included.

8.2.7.2.2 On a monthly basis, the PBM Services will be paid a per final paid prescription fee based on the month's prescription claim volume.

8.2.7.2.3 All ongoing costs, including amortized implementation costs, associated with RA Services must be quoted on an annual basis.

8.2.7.2.4 On a monthly basis, the RA Services will be paid 1/12th of the total annual proposed cost.

8.2.7.2.5 For each line item, the associated Article of the Contract is provided in the Cost Proposal Workbook to indicate what services must be included in the costs proposed for the line item.

8.2.7.2.6 For each section, the Offeror must explain in the narrative section provided the associated costs and the factors considered in the Offeror's proposed total cost.

8.2.7.3 The Offeror must enter the total cost for each Contract Year. The Offeror must ensure each Contract Year is entered, even if the cost is the same year to year.

8.2.8 Additional RA Services

8.2.8.1 ASES maintains the right to implement at a later date Additional RA Services that are part of the core services described in the Contract. ASES may submit in writing approval and request for implementation of the provision of these other services at any time during this contract. Offerors must provide their best cost estimate for Additional RA services, but these proposed costs will not be included in the Cost Proposal Evaluation. Additional RA Services may be subject to renegotiation upon ASES's determination to exercise these services.

8.2.8.1.1 Supplemental rebate purchasing pool support

8.2.8.1.2 Single entity supplemental rebate program development and maintenance

8.2.8.1.3 Value Based Purchasing agreement program development and maintenance

8.2.8.1.4 State Plan Amendment support for supplemental rebates and/or Value Based Purchasing Agreements

8.2.8.2 As part of the Cost Proposal, the Offeror must propose a firm fixed price for these services.

8.2.8.2.1 All Additional RA Services costs must be quoted on an annual basis.

8.2.8.2.2 On a monthly basis, the Additional RA Services will be paid 1/12th of the total annual proposed cost.

8.2.8.2.3 For each line item of the Additional RA Services, the associated Article of the Contract is provided in the Cost Proposal Workbook to indicate what services must be included in the costs proposed for the line item.

8.2.7.2.4 For each section, the Offeror must explain in the narrative section provided a detailed description of the optional services to be provided and the associated costs and factors considered in the Offeror's proposed total cost.

8.2.9 Total Proposal Fees

8.2.9.1 This section of each of the worksheets of the Cost Proposal Workbook captures total cost summary information from the Cost Proposal Template and does not require entry information from the Offeror.

8.3 Bidding Rules, Requirements, Process, and Adjustments

8.3.1 With this RFP, Offeror will receive an Excel workbook template on which to provide their Cost Proposal. See Appendix J. See also, Section 4.6

8.3.2 Cost Proposals will be evaluated based on the criteria outlined in Section 5 of this RFP.

Failure to submit the Proposal using this template will constitute noncompliance and will result in the Offeror being **DISQUALIFIED.**



PROCEDIMIENTO PARA EL ANALISIS Y LA ADJUDICACION DE PROPUESTAS PARA EL PLAN DE SALUD DEL GOBIERNO DE PUERTO RICO Y OTROS PROCESOS DE CONTRATACION COMPETITIVOS

ORDEN ADMINISTRATIVA 21-0701, enmendado

SECCION I - BASE LEGAL

La Administración de Seguros de Salud (en adelante, la ASES o la Administración) emite este Procedimiento interno en virtud de la Ley 72 de 7 de septiembre de 1993, según enmendada, (Ley de la Administración de Seguros de Salud) 24 LPRA 7001 et seq. (en adelante, Ley 72), del Reglamento General de la ASES 9068 de 29 de marzo de 2019 y de la Ley Núm. 38 de 30 de junio de 2017, según enmendada (Ley de Procedimiento Administrativo Uniforme del Gobierno de Puerto Rico, en adelante, LPAU).

SECCION II - PROPÓSITO

Este Procedimiento tiene el objetivo de establecer unas guías para garantizar la evaluación uniforme y objetiva de las propuestas sometidas por las entidades que compiten para la contratación de seguros de salud a la población elegible al Plan de Salud del Gobierno de Puerto Rico, conforme a las disposiciones de la Ley 72. Las evaluaciones de las propuestas tienen que realizarse conforme a los criterios que establece la Ley 72, los pliegos y especificaciones de la Solicitud de Propuestas ("Request for Proposals" o "RFP" por sus siglas en inglés) que emita la ASES y de los principios jurídicos aplicables a la adjudicación de los procesos de contratación competitivos.

Este Procedimiento será utilizado también, según aplique, en otros procesos de contratación competitiva que lleve a cabo la Administración, según sea determinado por el(la) Director(a) Ejecutivo(a).

SECCION III- CREACIÓN Y COMPOSICIÓN DEL COMITÉ EVALUADOR

- a) El(la) Director(a) Ejecutivo(a) o la persona en la que éste delegue, designará el Comité Ejecutivo Evaluador (Executive Committee) y los Subcomités que se determinen necesarios según la metodología de evaluación establecida para el proceso de contratación competitivo correspondiente y la Sección IV de este

Procedimiento, para realizar el proceso de calificación y evaluación de las propuestas.

- b) El(la) Director(a) Ejecutivo(a), o su representante autorizado, podrá designar empleados, funcionarios y/o consultores de ASES y/o designados por otras agencias de gobierno para formar parte del Comité Ejecutivo y sus Subcomités (en adelante, el Comité Evaluador) los cuales tendrán el número de miembros que el(la) Director(a) Ejecutivo(a) determine.
- c) En caso de procesos competitivos cuyo nivel de complejidad y/o la naturaleza del servicio a ser contratado lo amerite, el (la) Director(a) Ejecutivo(a) podrá delegar ciertas funciones de revisión en personas específicas. Por ejemplo, la evaluación de asuntos legales y/o financieros que de ordinario forman parte de los requisitos mandatorios, podrá referirse al director(a) del área legal y/o de finanzas para que uno de sus empleados y/o consultores evalúe ese aspecto de las propuestas. Igualmente, conforme al nivel de complejidad del proceso y/o la naturaleza del servicio a ser contratado, el (la) Director(a) Ejecutivo(a) determinará cuales subcomités activará.
 1. El proceso de selección de los miembros del Comité Evaluador se realizará tomando en consideración los siguientes factores:
 2. Empleados, funcionarios y /o consultores de ASES:
 - a. Experiencia laboral y las funciones que desempeñan en la ASES
 3. Empleados, funcionarios y /o consultores designados de otras agencias del gobierno:
 - a. Trayectoria académica y laboral de acuerdo con su Curriculum Vitae.
- d) El(la) Director(a) Ejecutivo(a) notificará por escrito a los miembros designados para formar parte del Comité Evaluador, con expresión de la encomienda que se les asigna en virtud de dicha designación, la fecha, hora y lugar en que se reunirán por primera vez para llevar a cabo una orientación y/o entrenamiento sobre el proceso de evaluación que se llevará a cabo.
- e) El(la) Director(a) de ASES, o su representante autorizado, designará un(a) Líder para cada Subcomité quien tendrá, entre otras, las siguientes funciones y responsabilidades:
 - Velar por el fiel cumplimiento de este Procedimiento, durante todo el proceso de evaluación de propuestas.
 - Preparar el calendario y horario de reuniones y velar por la celebración de las mismas en los días y dentro del horario establecido.

- Dirigir los trabajos del Subcomité de forma eficiente y organizada, estableciendo el plan de trabajo para los mismos.
 - Dirigir las reuniones para discutir los resultados de las evaluaciones.
 - Requerir la intervención, a través del Gerente del Proceso (Procurement Contact), del(la) Director(a) Ejecutivo(a) o su representante autorizado en asuntos que entienda pueden afectar, demorar o lesionar el proceso de evaluación de las propuestas.
 - Supervisar que se cumpla con el requisito de registro de asistencia de cada reunión.
 - En ausencia del (la) Secretario(a), ejercer todas las funciones del (la) Secretario(a).
- f) El(la) Director(a) de ASES, o su representante autorizado, de así entenderlo necesario, designará un(a) Secretario(a) para cada Subcomité. El(la) Secretario(a) no tendrá voz ni voto en los procesos del Comité, salvo que sea miembro designado de dicho Subcomité. El(la) Secretario(a) tendrá, entre otras, las siguientes funciones y responsabilidades:
- Custodiar el registro de asistencia de cada reunión, las hojas de evaluación, documentos y expedientes relacionados a las propuestas y mantener actualizados y completos los mismos, durante todo el proceso de evaluación hasta que finalice la labor del Subcomité.
 - Tomar y transcribir las minutas de las reuniones del Subcomité utilizando el formato que se aneja a este Procedimiento,
 - Transcribir los informes del Subcomité y someterlos al(la) Líder para el trámite correspondiente de firma y entrega al Comité Ejecutivo Evaluador.
- g) De no haberse designado un(a) Secretario(a) por el(la) Director(a) Ejecutivo(a), en la primera reunión de cada Subcomité, los miembros designarán un(a) Secretario(a), de entenderlo necesario. Si no se designa un(a) Secretario(a), sus funciones serán ejecutadas por el(la) Líder del Subcomité.

SECCION IV – DESCRIPCIÓN, FUNCIONES Y RESPONSABILIDADES DEL COMITÉ EJECUTIVO Y SUBCOMITÉS

Los Comités y Subcomités descritos a continuación, tendrán las responsabilidades y funciones indicadas. Cada uno estará a cargo de evaluar exclusivamente los aspectos y/o secciones de la propuesta que se le asignen. Dicha evaluación deberán realizarla utilizando las herramientas estándares de evaluación que se le provean. La composición y las responsabilidades de los Comités y Subcomités descritos a continuación podrán variar según la aplicabilidad o necesidad del servicio a contratarse y el proceso competitivo a llevarse a cabo.

COMITÉ EJECUTIVO (EXECUTIVE COMMITTEE)

- a) Coordinará los procesos a seguir en la calificación y evaluación de propuestas.
- b) Revisará de forma integrada, los resultados contenidos en las hojas de puntuación sometidas por cada subcomité, las cuales recogen el consenso de los miembros de estos.
- c) Recibirá y analizará cualesquiera otros documentos producidos por los subcomités, durante el proceso de calificación y evaluación de las propuestas.
- d) Enmendará cuando proceda, cualquier puntuación sometida por los subcomités, siempre y cuando exprese y justifique por escrito las razones y alcance de dicha enmienda.
- e) Someterá a la Junta de Directores o al Director(a) Ejecutivo(a), según aplique, sus comentarios y/o recomendaciones, integrando en las mismas los resultados del proceso de evaluación y negociación para cada propuesta evaluada conforme a lo dispuesto en los pliegos del proceso competitivo correspondiente.

SUBCOMITÉ DE DOCUMENTOS (DOCUMENT REQUIREMENTS SUB-COMMITTEE):

- a) Responderá directamente al Comité Ejecutivo.
- b) Cada evaluador revisará independientemente cada propuesta asignada. La asignación de propuestas se hará de forma aleatoria al inicio del proceso.
- c) Para cada propuesta se validará que:
 - 1. Haya sido presentada en tiempo;
 - 2. El proponente haya cumplido con los requisitos de forma de los pliegos del proceso competitivo correspondiente;
 - 3. Contenga todos los documentos requeridos.
- d) El Subcomité de Documentos someterá al Subcomité de Requisitos Mandatorios, o su equivalente, el resultado de la revisión de las propuestas en el formato provisto para ello.
- e) Realizará cualquier otra encomienda que le requiera el Comité Ejecutivo.
- f) A discreción del Director(a) Ejecutivo(a), estas funciones podrán ser delegadas al Subcomité de Requisitos Mandatorios.

SUBCOMITÉ DE REQUISITOS MANDATORIOS (MANDATORY REQUIREMENTS SUBCOMMITTEE):

- a) Responderá directamente al Comité Ejecutivo.

- b) Validará que los proponentes hayan cumplido con los prerrequisitos de participación.
- c) Cotejará que las propuestas contengan los documentos financieros y de naturaleza legal que fueron requeridos en los pliegos del proceso competitivo.
- d) Evaluará el contenido y la suficiencia de los documentos financieros, de naturaleza legal y otros documentos sometidos con la propuesta en respuesta a los requisitos mandatorios establecidos en los pliegos del proceso competitivo.
- e) Preparará para cada propuesta un formulario que contendrá el resultado de la evaluación realizada a cada uno de los requisitos mandatorios, con la recomendación de pase o no pase, salvo que las instrucciones establecidas en los pliegos del proceso competitivo aplicable y/o la metodología de evaluación aprobada dispongan otra cosa.
- f) Documentará los comentarios, interrogantes o cuestionamientos que surjan durante el proceso de evaluación.
- g) Realizará un consenso entre sus miembros del resultado de todos los aspectos evaluados para recomendar al Comité Ejecutivo cuáles propuestas deben pasar o no a la evaluación técnica de los subcomités técnicos y al comité de propuestas económicas, o cualesquiera otro(s) comité(s) similares que se cree(n) para evaluar las propuestas.
- h) Someterá los informes que le sean requeridos y desempeñará las tareas aplicables conforme a lo establecido en los pliegos del proceso correspondiente.
- i) Realizará cualquier otra encomienda que le requiera el Comité Ejecutivo.

SUBCOMITÉS TÉCNICOS (TECHNICAL PROPOSAL SUBCOMMITTEES):

- a) Responderá directamente al Comité Ejecutivo.
- b) Evaluará lo relacionado a las áreas técnicas específicas que se le designen de los pliegos y especificaciones del proceso competitivo correspondiente.
- c) Realizará un consenso entre sus miembros del resultado de todos los aspectos evaluados para establecer la puntuación final total de cada área asignada. En este proceso, cada subcomité podrá estar asistido por un(a) facilitador(a) asignado por el(la) Director(a) Ejecutivo(a) a tales fines. Previo a su participación, dicho(a) facilitador(a) deberá haber firmado un Acuerdo de Confidencialidad y Certificación de No Conflicto de Interés.
- d) Documentará los comentarios, interrogantes o cuestionamientos que surjan durante el proceso de evaluación y consenso.

- e) Rendirá al Comité Ejecutivo informes precisos y detallados sobre los hallazgos resultantes del descargo de sus encomiendas, conjuntamente con sus recomendaciones.
- f) Realizará cualquier otra encomienda que le requiera el Comité Ejecutivo.

SUBCOMITÉ DE PROPUESTAS ECONÓMICAS (COST PROPOSAL SUBCOMMITTEE):

- a) Responderá directamente al Comité Ejecutivo.
- b) En los procesos competitivos para la selección de las organizaciones de manejo de cuidado de salud (Manage Care Organization o MCOs por sus siglas en inglés) del Plan de Salud del Gobierno de Puerto Rico, una vez concluya la evaluación del Comité de Requisitos Mandatorios, el Comité de Propuestas Económicas evaluará las propuestas económicas para determinar si están dentro de los márgenes actuariales razonables y si se cumplieron con las instrucciones específicas para la propuesta económica.
- c) En otros procesos competitivos, una vez concluya la evaluación del Comité de Requisitos Mandatorios, el Comité de Propuestas Económicas evaluará las propuestas económicas conforme a los criterios establecidos en los pliegos y determinará si se cumplieron con las instrucciones específicas para la propuesta económica.
- d) Asignará la puntuación correspondiente a cada propuesta económica, de conformidad con las instrucciones establecidas en los pliegos.
- e) Rendirá al Comité Ejecutivo informes precisos y detallados sobre los hallazgos resultantes del descargo de sus encomiendas, conjuntamente con sus recomendaciones.
- f) Realizará cualquier otra encomienda que le requiera el Comité Ejecutivo.

SUBCOMITÉ DE NEGOCIACIÓN:

- a) Responderá directamente al Comité Ejecutivo.
- b) En los procesos competitivos para la selección de las organizaciones de manejo de cuidado de salud (Manage Care Organization o MCOs por sus siglas en inglés) del Plan de Salud del Gobierno de Puerto Rico, podrá estar compuesto por Directores de Áreas u otros empleados y/o consultores de ASES y/o designados por otras agencias de gobierno que no formen parte del Comité Ejecutivo. En otros procesos competitivos, se activará este subcomité según la metodología de evaluación establecida para cada proceso o a discreción del(la) Director(a) Ejecutivo(a). En aquellos procesos donde en esencia el Comité Ejecutivo es el único cuerpo a cargo del proceso

- de evaluación, a discreción del(la) Director(a) Ejecutivo(a), el Comité Ejecutivo podrá llevar a cabo el proceso de negociación.
- c) Celebrarán reuniones de negociación de tarifas y/o precios, según aplique, con los proponentes que hayan pasado a esa ronda o fase del proceso competitivo.
 - d) Consignarán por escrito, a través del Gerente del Proceso (Procurement Contact), toda solicitud de documentos, compromisos y/o aclaraciones requeridos a los proponentes.
 - e) Rendirán un informe al Comité Ejecutivo con los resultados alcanzados en su gestión y las recomendaciones correspondientes.
 - f) Realizará cualquier otra encomienda que le requiera el Comité Ejecutivo.

SECCION V – NORMAS DE CONDUCTA Y DESEMPEÑO DE LOS MIEMBROS DE LOS COMITÉS

Todo miembro de los Comités designados por el(la) Director(a) Ejecutivo(a) de la ASES, en virtud de este Procedimiento, viene obligado a observar y cumplir las siguientes normas:

- a) Asistir puntualmente a todas las reuniones de evaluación y observar el horario y plan de trabajo establecido para ello. A estos efectos, deberán registrar diariamente sus horas de entrada y salida en el registro de asistencia diaria.
- b) Firmar un Acuerdo de Confidencialidad y Certificación de No Conflicto de Interés donde se obligue a mantener de forma totalmente confidencial todo el proceso de evaluación, contraseña de acceso al sistema de información, contenido de las propuestas, documentos, así como la información de la que advenga en conocimiento durante el proceso de evaluación de propuestas. La firma de dicho acuerdo es un requisito que deberá llevarse a cabo antes de que el miembro del Comité entre en contacto con documentación alguna relacionada a las propuestas y a detalles sobre el proceso evaluativo de las mismas.
- c) De ser necesario interrumpir la jornada diaria de evaluación, mientras evalúa o antes de finalizar de evaluar una propuesta, deberá notificar al Líder, registrar su hora de salida, y explicar por escrito la razón de la misma. De regresar al salón de evaluación y/o plataforma electrónica creada para la evaluación, deberá registrar la hora de regreso.
- d) Mantener en todo momento la custodia de los documentos y materiales con los que está trabajando. De ser necesario ausentarse del salón de evaluación y/o plataforma electrónica de evaluación, antes deberá asegurarse de que los materiales y documentos con los que está trabajando quedan debidamente guardados y proteger el acceso a la información electrónica que está utilizando. Previo a la culminación de los trabajos de evaluación asignados, los documentos y

materiales de trabajo no podrán salir o sacarse fuera del salón de evaluación y/o plataforma electrónica creada por ASES para la evaluación de propuestas, salvo una autorización expresa del(la) Director(a) Ejecutivo(a) o su representante autorizado. Todos los documentos son confidenciales.

- e) Abstenerse de comunicación alguna relacionada con la propuesta con los oficiales, empleados y personal de las entidades proponentes, así como con cualquier tercero y/o persona que no sea miembro de su comité, excepto lo dispuesto en la Sección VI, inciso (n) de este Procedimiento. El incumplimiento con lo anterior tendrá como consecuencia la exclusión de la persona del comité y del proceso de evaluación. En el caso de empleados, podrá sujetarlo a sanciones disciplinarias. En el caso de consultores podrá considerarse como un incumplimiento contractual y sujetarlo a la imposición de remedios en daños contractuales, incluyendo, pero sin limitarse a la cancelación del contrato. En el caso de evaluadores que son empleados o consultores designados por otras agencias de gobierno, se referirá el asunto a la autoridad nominadora de la agencia concernida para el trámite correspondiente.
- f) Salvo por situaciones extraordinarias expresamente autorizadas por el(la) Director(a) Ejecutivo(a) o su representante autorizado, no se permitirá el uso de teléfonos celulares en los salones de evaluación.
- g) Para el proceso de evaluación, se utilizará la plataforma electrónica creada por ASES para la evaluación de las propuestas. Salvo por situaciones extraordinarias expresamente autorizadas por el(la) Director(a) Ejecutivo(a), no se permitirá el uso del correo electrónico durante el proceso de evaluación ni navegar por la Internet.
- h) Notificar al líder del Comité o persona designada para ello, al momento de finalizar su trabajo diario.
- i) Cumplir fielmente la obligación de firmar legiblemente y con expresión de fecha cierta, todos los documentos e instrumentos finales de evaluación, incluyendo las Hojas de Evaluación, Hojas de Cómputos y/u Hojas de Trabajo. En circunstancias excepcionales autorizadas por el(la) Director(a) Ejecutivo(a), se podrán utilizar firmas electrónicas.
- j) Cumplir con las normas de trabajo y planes de ejecución del Comité o Sub comité.

SECCION VI – PASOS DEL PROCEDIMIENTO DE EVALUACIÓN

Una vez los miembros de los comités firmen el Acuerdo de Confidencialidad y Certificación de no Conflicto de Interés, y hayan participado de la primera reunión de orientación y/o entrenamiento, el Procedimiento de evaluación se llevará a cabo como sigue:

- a) Diariamente y antes de comenzar su trabajo, los miembros de los comités registrarán su asistencia, con expresión de la hora.

- b) El(la) Líder le proveerá a cada miembro una Hoja de Evaluación de Propuestas y explicará cómo proceder con la adjudicación de la puntuación, para cada área de la propuesta que corresponda al subcomité evaluar, así como cualquier otro asunto respecto a dichos formularios que sea necesario explicar.
- c) El orden de evaluación de propuestas para cada subcomité estará predeterminado de forma aleatoria por el Gerente del Proceso (Procurement Contact) y no deberá ser el mismo orden en que todos los subcomités evaluarán las propuestas.
- d) Una vez recibidos los formularios indicados en el inciso (b), cada miembro del Comité escribirá en el mismo su nombre, así como la letra o número previamente asignado de forma aleatoria a la entidad a evaluar.
- e) Utilizando como guía la Hoja de Evaluación, el evaluador examinará detalladamente la sección de la propuesta que corresponda al subcomité y constatará el cumplimiento de cada uno de los requisitos y factores indicados en la Hoja de Evaluación.
- f) El evaluador hará las anotaciones correspondientes que reflejen el cumplimiento o incumplimiento con dichos requisitos o factores. Asimismo, podrá hacer comentarios pertinentes a su evaluación en la Hoja de Evaluación.
- g) Al finalizar el proceso evaluativo de la propuesta el evaluador procederá a firmar la Hoja de Evaluación, con expresión de fecha y hora de ello.
- h) Una vez terminado el proceso de evaluación de una propuesta, el evaluador informará al Líder o persona designada, y éste determinará la tarea a serle asignada,
- i) El hecho de que un evaluador haya concluido que un proponente no cumple con un requisito del área técnica de la propuesta que le correspondió evaluar, no significa que se dejará sin evaluar el resto de la propuesta técnica. Por el contrario, todos los evaluadores tienen la obligación de evaluar todos los requisitos técnicos que le corresponda evaluar sobre una propuesta.
- j) Al finalizar los trabajos de cada día, el(la) Secretario(a) verificará que los miembros del Subcomité registraron su asistencia.
- k) Al finalizar los trabajos de cada día, el(la) Líder se asegurará de que las computadoras utilizadas para la evaluación de las propuestas estén apagadas y debidamente aseguradas. En caso de evaluación a distancia por circunstancias extraordinarias autorizadas por el(la) Director(a) Ejecutivo(a), cada evaluador será responsable de cerrar los accesos al repositorio electrónico provisto para el proceso de evaluación cuando no esté haciendo uso de la computadora o dispositivo electrónico utilizado para la evaluación, de forma y manera que ninguna persona no autorizada tenga acceso a los materiales de evaluación y a las propuestas.
- l) Finalizada la evaluación de todas las propuestas asignadas a un subcomité técnico sus miembros se reunirán en la fecha autorizada por el Gerente del Proceso para

discutir los hallazgos y recomendaciones de cada uno de los miembros y levantarán un Informe Final de Evaluación de cada propuesta, de conformidad con lo establecido en los pliegos de la solicitud correspondiente. En dicho Informe, expresarán si, conforme a su juicio y criterio, la propuesta cumple los requisitos indispensables, si el cumplimiento es parcial, si no cumple los requisitos y cuáles son los requisitos incumplidos.

- m) La decisión final sobre los asuntos ventilados, debatidos y discutidos en el Subcomité se decidirá por consenso entre los miembros del mismo. No se aceptará la participación por vía telefónica ni por medios electrónicos, salvo, circunstancias extraordinarias autorizadas por el(la) Director(a) Ejecutivo(a). Se levantará una minuta de la reunión de consenso y de los asuntos discutidos en la misma.
- n) Se permitirá realizar consultorías telefónicas con empleados, funcionarios y/o consultores externos de la ASES autorizados para ello por el(la) Director(a) Ejecutivo(a) o su representante autorizado, con el propósito de aclarar dudas. Estas se canalizarán a través del Líder y éste, a su vez, a través del Gerente del Proceso/Procurement Contact. De ser necesario que algún empleado, funcionario y/o consultor externo de la ASES revise algún aspecto de la propuesta, este deberá personarse al salón de evaluación para examinar y discutir el asunto consultado. Lo anterior podrá efectuarse mediante una videoconferencia tomando todas las medidas necesarias para garantizar la confidencialidad del proceso. En la medida posible la consulta debe ser general para evitar identificar a los proponentes, el proceso deliberativo del Subcomité ni asuntos que deben mantenerse bajo estricta confidencialidad. El empleado, funcionario y/o consultor externo de la ASES consultado deberá observar todas las normas de conducta y desempeño incluidas en este Procedimiento y que son aplicables a los miembros del subcomité, incluyendo la obligación de mantener la confidencialidad de los asuntos que examine. De conformidad, previo a ser consultado deberá suscribir un Acuerdo de Confidencialidad y Certificación de No Conflicto de Interés.
- o) Los miembros de los Comités tienen total y absolutamente prohibido comunicarse con los proponentes, salvo en situaciones extraordinarias expresamente autorizadas por el(la) Director(a) Ejecutivo(a) y solamente para propósitos no relacionados al proceso competitivo pero relacionadas a sus labores ordinarias en ASES. Esta prohibición excluye al Comité de Negociación o evaluadores a cargo de esa tarea durante dicha fase del proceso, quienes podrán sostener reuniones con los proponentes para fines de negociación. Toda otra comunicación será única y exclusivamente a través del Gerente del Proceso y/o "Procurement Contact".
- p) El Gerente del Proceso/ "Procurement Contact" es la única persona, excepto por lo indicado en el inciso anterior, que puede iniciar una comunicación o discusión con un proponente que haya sometido una propuesta responsiva o

potencialmente responsiva. Ello con el propósito de aclarar aspectos de las propuestas sometidas. Entendiéndose que ningún proponente podrá comunicarse con este, ni con cualquier miembro de los Comités Evaluadores, salvo lo indicado en el inciso anterior.

SECCION VII – INFORMES DE LOS SUBCOMITÉS Y EVALUACIÓN DEL COMITÉ EJECUTIVO:

- a. En los procesos competitivos para la selección de las organizaciones de manejo de cuidado de salud (Manage Care Organization o MCOs por sus siglas en inglés) y para los servicios del Manejador de Beneficio de Farmacia ("Pharmacy Benefit Manager" o "PBM") y Manejador del Programa de Rebates ("Rebate Aggregator" y/o "MDRP") del Plan de Salud del Gobierno de Puerto Rico, el Comité Ejecutivo recibirá toda información del proceso, incluyendo, los informes y recomendaciones de los demás subcomités sin hacerse referencia al nombre de los proponentes. Solo se identificarán los proponentes por el número o letra asignado al inicio del proceso.
- b. En otros procesos competitivos donde no hay subcomités y en esencia el Comité Ejecutivo es el único cuerpo a cargo del proceso de evaluación, dicho Comité recibirá las propuestas tal como recibidas, pero en su informe y recomendaciones para adjudicación el Comité no hará referencia al nombre de los proponentes. Solo se identificará allí a los proponentes por el número o letra asignado al inicio del proceso.
- c. El Comité Ejecutivo hará su evaluación conforme a lo establecido en los pliegos de la solicitud del proceso competitivo correspondiente y este Procedimiento.

SECCION VIII - GERENTE DEL PROCESO (PROCUREMENT CONTACT)

a. DESIGNACIÓN:

El(la) Director(a) Ejecutivo(a) designará al Gerente del Proceso (Procurement Contact) lo cual hará constar en los pliegos del proceso competitivo correspondiente.

b. FUNCIONES Y RESPONSABILIDADES:

1. Tendrá a su cargo la administración general de cada proceso competitivo asignado.
2. Custodiará el expediente administrativo del proceso competitivo.
3. Será la única persona autorizada a comunicarse con los potenciales proponentes y proponentes, excepto lo dispuesto en la Sección VI (o).

4. Administrará el calendario general del proceso competitivo.
5. Entrenará y/o coordinará las sesiones de orientación y entrenamiento de los evaluadores, líderes y secretarios(as).
6. Establecerá el orden de evaluación de las propuestas.
7. Proveerá a los líderes las hojas de evaluación a ser utilizadas en cada proceso competitivo.
8. Proveerá a los subcomités los accesos necesarios a las propuestas a ser evaluadas.
9. Será el(la) *liaison* entre los Subcomités y el Comité Ejecutivo.
10. Velará por el trámite ordenado de los procesos de evaluación.
11. Proveerá todo el apoyo necesario a los equipos de trabajo de los comités de evaluación.
12. Preparará el Aviso de Adjudicación y/o Cancelación, para la firma de los funcionarios correspondientes.
13. Investigará cualquier irregularidad del proceso de evaluación y adjudicación que se lleve a su atención.
14. Ejecutará todas las tareas requeridas bajo este Procedimiento.
15. Ejecutará cualquier otra tarea asignada por el(la) Director(a) Ejecutivo(a) o su representante autorizado y/o por el Comité Ejecutivo y/o la Junta de Directores.

SECCION IX --SELECCIÓN Y ADJUDICACIÓN

- a. La selección y adjudicación de las propuestas agraciadas para el Plan de Salud del Gobierno las llevará a cabo la Junta de Directores de la ASES. La selección y adjudicación de las propuestas agraciadas en otros procesos competitivos serán adjudicadas por la Junta o el(la) Director(a) Ejecutivo(a), según aplique.
- b. Tanto los miembros de la Junta de Directores que vayan a participar del proceso de adjudicación, como el(la) Director(a) Ejecutivo(a) en los casos que sea el adjudicador del proceso competitivo, previo a recibir cualquier información sobre las propuestas, deberán suscribir un Acuerdo de Confidencialidad y Certificación de No Conflicto de Interés. Dicho acuerdo deberá incluir lenguaje a los efectos de que:
 - i. Reconoce el deber que le impone la Ley de Ética Gubernamental de no llevar a cabo ninguna acción que ponga en duda la imparcialidad e integridad de la función gubernamental.
 - ii. Reconoce que cualquier incumplimiento de su parte con sus deberes bajo el acuerdo, puede sujetarle a ser removido del

proceso de adjudicación y/o a cualquier sanción dispuesta en las leyes y reglamentos aplicables.

c. Si el(la) adjudicador(a) es el(la) Director(a) Ejecutivo(a), éste(a) adjudicará sin conocer la identidad de los proponentes, solo el número o letra asignado al inicio del proceso.

d. Si el adjudicador es la Junta de Directores, dicho cuerpo determinará, como cuestión de umbral, en la reunión de adjudicación o en la primera reunión en que se reciba el primer informe sobre resultados del proceso competitivo, lo que ocurra primero, si conocerá la identidad de los proponentes previo a su determinación de adjudicación o si adjudicará solo conociendo el número o letra asignado a los proponentes al inicio del proceso.

e. La notificación de adjudicación se hará por correo electrónico o por otro método de comunicación efectiva que determine el(la) Director(a) Ejecutivo(a) de la ASES, donde conste claramente la fecha de su envío y que cumpla con los requerimientos legales aplicables.

f. El contenido de la notificación de adjudicación cumplirá con todos y cada uno de los requisitos establecidos por la Ley de Procedimiento Administrativo Uniforme y su jurisprudencia interpretativa y apercibirá a todos los proponentes en cuanto a, entre otras cosas, los fundamentos y bases para la adjudicación, los remedios de los proponentes sobre reconsideración y revisión judicial, incluyendo los términos y procedimientos para ejercer los mismos.

SECCION X - FORMULARIOS

Se anejan a este Procedimiento los siguientes formularios generales a ser utilizados en los procesos competitivos objeto de este Procedimiento. Los mismos contienen la información mínima requerida.

- a. Cartas de Designación:
 - i Evaluador
 - ii Secretario(a)
 - iii Facilitador del Proceso de Consenso

b. Acuerdo de Confidencialidad y/o Certificación de No Conflicto de Interés:

- i Junta de Directores;
- ii Evaluador:
 - a. Empleado de ASES
 - b. Consultor de ASES
 - c. Empleado de gobierno
- iii. Facilitador del Proceso de Consenso
- iv Secretario(a)

c. Minutas

SECCION XI – VIGENCIA Y CONFLICTO CON OTRAS NORMAS VIGENTES

- a) Este Procedimiento tiene vigencia inmediata para el proceso de calificación y evaluación a llevarse a cabo para las propuestas sometidas por las entidades proponentes para los contratos del Plan de Salud del Gobierno de Puerto Rico y cualesquiera otros procesos de calificación y evaluación de propuestas.
- b) Este Procedimiento sustituye y deja sin efecto cualquier otro procedimiento, norma u orden administrativa existente sobre este mismo asunto, incluyendo la Orden Administrativa 18-03-15 de 15 de marzo de 2018, según enmendada.

En San Juan, Puerto Rico, al 9 de julio de 2021.

Jorge E. Galva, JD, MHA
Director Ejecutivo



November 29, 2021

**VIA EMAIL AND CERTIFIED
MAIL RETURN RECEIPT**

TO: PHARMPPIX CORP.
ABARCA HEALTH LLC
MC-21 LLC
MEDIMPACT HEALTHCARE SYSTEMS, INC.
CONDUENT BUSINESS SOLUTIONS OF PUERTO RICO, INC.
OPTUMRX. INC.

**NOTICE OF INTENT TO AWARD CONTRACT UNDER THE RFP #Pharmacy-2022;
REQUEST FOR PROPOSALS FOR THE PHARMACY BENEFIT MANAGER (PBM) AND
REBATE AGGREGATOR (RA) SERVICES FOR THE GOVERNMENT HEALTH PLAN**

I. Request for Proposal¹:

On March 31, 2021, the Puerto Rico Health Insurance Administration (“ASES” for its acronym in Spanish) issued its Request for Proposals, RFP# Pharmacy 2022 (herein after the “RFP”), for the selection of a qualified entity(ies) to serve as the Pharmacy Benefit Management (herein after PBM) and/or Rebate Aggregator Provider (herein after RA) for the Government Health Plan (GHP). This document suffered seven (7) amendments.

As a result of this process, ASES will award at this time a three-year contract for only the PBM Services and the RA Services to the most responsive and responsible entity or entities that demonstrate the ability to meet the requirements of the RFP at the most competitive price. In the RFP, ASES stated its preference for the best Combined Services contract but would consider separate RA and PBM Services contracts if in the best interest for Puerto Rico based on quality and value. See Sections 1.1, & 5.6.2 of the RFP, as amended.

The main scope of work and deliverables requested under the RFP are the following services:

Developing, implementing and offering to ASES and the MCOs a comprehensive PBM program including but not limited to the following programs and services:

- Managing and credentialing the Pharmacy Network that covers the whole jurisdiction of Puerto Rico and performing Pharmacy Audits;
- Maintaining a Pharmacy Call Center for the Pharmacy Network;

¹ Capitalized terms used herein and not otherwise defined, shall have the meaning ascribed to them in the RFP.

- Adjudicating and accurately processing Pharmacy Claims and payment including handling Coordination of Benefits (“COB”) with other health insurance plans, including Medicare;
- Developing, maintaining and updating the Maximum Allowable Cost (“MAC”) list for Pharmacy reimbursement for Generic Drugs and multi-source Brand Drugs and providing an electronic platform to Pharmacies desiring to appeal MAC pricing, and if requested by ASES, coordinating with Puerto Rico’s Department of Consumer Affairs (“DACO”) to provide drug price information for DACO’s drug price control list, as amended from time to time;
- Providing a comprehensive Drug Utilization Review (“DUR”) program, including capabilities to identify potential opioid abuse and suspect prescribing and dispensing patterns, and to track drug utilization for specific prescription drugs identified by ASES for special monitoring;
- Supporting ASES and the contracted MCOs with the High Cost High Need (HCHN) Program and other care management programs;
- Developing and implementing a compliance plan and Fraud, Waste and Abuse detection initiatives;
- Assisting in the support and operation of formulary management through the Pharmacy & Therapeutics Committee and Pharmacy Financial Committee;
- Managing the Academic Detailing program;
- Updating and maintaining standard operating procedure manual(s) for PBM services;
- Maintaining an Information System, Information management processes and technical support to meet the GHP requirements;
- Providing robust reporting and online reporting tool as described in the Contract;
- Retaining and storing data as required under the Contract;
- Developing strategies to promote an active participation of the MCOs in the development of Enrollee and prescribing Provider educational activities.

Providing comprehensive management of the RA Services for all GHP populations, which includes:

- Rebate Services for populations not eligible for MDRP rebate, and
- MDRP Rebate Services for Medicaid and CHIP Eligibles’ covered outpatient drugs in accordance with Section 1927(b)(1) of the Social Security Act and the terms of the Medicaid National Drug Rebate Agreement (NDRA).

The RA Services shall include but are not limited to:

- Producing drug rebate invoices for pharmaceutical manufacturers according to federal schedule requirements for the MDRP and ASES’ schedule requirements for non-MDRP rebates;
- Processing and submitting to the Medicaid Program the CMS drug utilization and information necessary for CMS-64 reporting;
- Providing Rebate program reports for retail Pharmacy drugs and PADs to ASES and its designees on a quarterly basis;
- Reconciling and resolving drug rebate disputes with pharmaceutical manufacturers;
- Ensuring quality control to validate accuracy of drug Rebate Data;
- Maintaining administrative, physical and technical safeguards to ensure security and confidentiality of all drug Rebate Information according to Puerto Rico and federal laws and industry standards;
- Updating and maintaining standard operating procedure manual(s) for Rebate program administration;
- Maintaining a Data repository system that interfaces with multiple Data sources;
- Maintaining a reporting database that can be accessed in real time by ASES to review and analyze rebate information and produce ad hoc reporting;
- Creating and maintaining a secure web portal for Data sharing with pharmaceutical manufacturers;

- Coordinating and assisting in the support and operation of ASES's Pharmacy Financial Committee.

Additional Rebate Aggregator (herein after "ARA") Services, although an element of the RA scope of work, may include any of the following services:

- ✓ Supplemental rebate purchasing pool support
- ✓ Single entity supplemental rebate program development and maintenance
- ✓ Value Based Purchasing (VBP) agreement program development and maintenance
- ✓ State Plan Amendment support for supplemental rebates and/or Value Based Purchasing agreements

The ARA Services may be implemented after joining the MDRP and as finally directed by ASES, who may choose to implement one, a combination or all these services. For this reason, ARA Services were reviewed but not included in the Cost Proposal Evaluation calculation for Cost Proposal Points, as these services may be further negotiated upon ASES finalizing the scope of services and exercising these options. See, Sections 2.2, 5.5.2 and 8.1 of the RFP, as amended. In sum, the present adjudication is for the PBM and RA services only. The final scope and terms of those ARA services that will be eventually selected and notified by ASES to the RA contractor, are not part of the current adjudication.

II. Participating Offerors:

In response to the RFP, the entities herein identified (collectively, "Offerors"), submitted their respective proposals on or before 2:00 PM (AST) on July 12, 2021. Said proposals were submitted electronically to the secure repository of documents created for this purpose. The procurement process under this RFP was designed to promote fair competition and protect the identity of the Offerors from the Executive Committee of the Evaluation Committee of this RFP (herein after "Executive Committee"). For this reason, the Executive Committee evaluated the results of all evaluations without knowing the identity of the Offerors. Likewise, the Board of Directors of ASES (herein after the "BOD") determined at the first meeting and before receiving any information on the submitted proposals to remain blind throughout the entire evaluation and adjudication process.

To instrument this safeguard, the Document Subcommittee of the Evaluation Committee of this RFP (herein after the "Document Subcommittee") selected letters from an envelope and randomly assigning them to each Offeror as the only identifier for the evaluations. Accordingly, the Offerors were identified with the letters A - F, as set below. Their respective representatives, the letter assigned to each Offeror, and their addresses are the following:

A. PharmPix Corp.

Mr. Jaime Figueroa Torres
CEO
Metro Office Park
Bldg.2, Ste. 500
Guaynabo, PR 00968
jaime@pharmpix.com

B. Abarca Health LLC

Mr. Jason Borschow
President & CEO
650 Avenida Muñoz Rivera
Suite 701
San Juan, PR 00918
Jason.Borschow@AbarcaHealth.com

C. MC-21 LLC

Mrs. Marileny Lugo
COO
Call Box 4908
Caguas, PR 00726
MLugo@mc-21.com

D. MedImpact Healthcare Systems, Inc.

Mr. James Gollaher
CFO
10181 Scripps Gateway Ct.
San Diego, CA 92131
James.Gollaher@medimpact.com

E. Conduent Business Solutions of Puerto Rico, Inc.

Mrs. Kelley Carson
Vice President
300 Calle C, Suite 300
Guaynabo, PR 00968-8061
Kelley.Carson@conduent.com

F. OptumRx, Inc.

John Prince
President & CEO
1600 McConnor Parkway
Schaumburg, IL 60173-6801
jeff.gottlieb@optum.com

III. Procedural Background:

ASES published the Notice of RFP in the “Registro Unico de Subastas” of the Management and Budget Office of the Government of Puerto Rico (“OGP” for its acronym in Spanish), two (2) newspapers of general circulation in Puerto Rico and ASES’ webpage. On March 31, 2021, ASES also issued invitations to twenty (20) companies to submit proposals for the provision of PBM and RA services. From April 1-13, 2021, RFP documents were provided to nine (9) companies that acquired the same. A Preproposal Conference was held on April 15, 2021.

The initial proposal submission date was May 5, 2021 and the Go Live date was February 1, 2022. As part of the Question and Answers process, upon review of the Offerors’ request and with the benefit of ASES subject matter consultant’s recommendations, and an open dialogue with personnel

from CMS, the Go Live date was moved to July 1, 2022 to provide a 9-month implementation period. The date for the submission of the Proposal was also moved to June 2, 2021.

On May 28, 2021, CMS issued a proposed ruling moving the date for the inclusion of the US Territories in the MDRP to April 1, 2024 or in the alternative to a date not sooner than January 1, 2023. This situation prompted ASES to once more, move both the proposal submission and Go Live dates to July 12, 2021 and September 1, 2022, respectively. Final scope of work was based on an assumption of a September 1, 2022 start for operations of PBM services and RA services “as is” depending on what start period for MDRP was finally announced by CMS. Accordingly, the cost bids that included RA services needed to consider three (3) different scenarios:

- A. MDRP implementation on the Go Live Date of September 1, 2022;
- B. MDRP implementation on January 1, 2023; or
- C. MDRP implementation on April 1, 2024

Proposals were received on July 12, 2021 from the six (6) Offerors previously mentioned. All Offerors bid for the combined services of PBM and RA. No Offeror bid for only one of these services.

Access to the electronic repository was closed at 2:00 PM (AST) on July 12, 2021. The evaluation process initiated on July 12, 2021 with the Document Subcommittee validating that the Offerors: (i) submitted the Proposals on time, (ii) provided evidence of the Proposal Bond, (iii) submitted the financial and legal documents required in Section 6 of the RFP, as well as a Technical Proposal pursuant to Section 7 of the RFP and a Cost Proposal pursuant to Section 8, and (iv) complied with the format required by Section 4 of the RFP. Therefore, the findings of the Document Subcommittee were shared with the Mandatory Requirements Subcommittee of the Evaluation Committee of this RFP (herein after “MRS”).

The results of the Document Committee’s evaluation were submitted to the MRS who commenced their evaluation on July 14, 2021. On July 23, 2021, the MRS submitted to the Executive Committee a list of deficiencies or compliance issues that all Offerors had in their Mandatory Requirements Proposals. All six (6) Offerors had one (1) or more deficiency. On July 26, 2021, the Executive Committee concluded its evaluation of this issue and determined that the compliance issues of PharmPix, Abarca, MC-21, MedImpact and Optum were rectifiable and denoted an intention to comply with the requirements of the RFP. For that reason, these Offerors were given an equal opportunity to rectify the deficiencies or further explain and clarify the situation. Having done so in the time provided, that is, on or before 5:00 PM (AST) on August 3, 2021, they were deemed in compliance. See Executive Committee’s Report and Recommendation to the BOD of September 15, 2021.

In marked contrast, the deficiencies and omissions of Conduent, which as will be shown under Section V of this Notice, were deemed as an intentional and deliberate refusal to comply with the RFP instructions and mandatory requirements of the RFP. Accordingly, the Executive Committee determined that having failed the Mandatory Requirements Evaluation, no further evaluation of that Offeror’s Proposal was required.

After conclusion of the Mandatory Requirements Evaluation of PharmPix, Abarca, MC-21, MedImpact and Optum, the MRS recommended the Executive Committee that each of these five (5) Offerors pass to the Technical and Cost Proposal Evaluation. After a thorough evaluation of the MRS' evaluations, the Executive Committee reached the same conclusions. Consequently, these Offerors were passed to the four (4) Technical Subcommittees and the Cost Proposal Subcommittee (herein after the "CPS") for further evaluation.

The Individual Technical Evaluation commenced on August 3, 2021 and Consensus on August 12, 2021. On the other hand, CPS initiated its separate evaluation of cost on August 5, 2021. Bids were scored on the basis of a total 3-year cost including implementation costs under Scenarios A & B, MDRP Go Live of September 1, 2022 or January 1, 2023, respectively. ASES also requested cost proposals for years 4 and 5 of the contract and cost proposals for Additional Rebate Services which would include supplemental rebates. These elements were not scored but they were reviewed by the CPS given that they may be further negotiated upon ASES' determination to further extend the contract or exercise these services. A round of clarification questions as to cost bids was held with all five (5) Offerors, who were given until August 19, 2021. Finally, on August 25, 2021 the CPS submitted their evaluation.

On August 26, 2021, the Executive Committee reviewed the Technical Scores and accepted the same. On August 27, 2021, the Executive Committee reviewed the cost evaluation. Based on the information provided with the CPS' evaluation and the technical scores, final scoring and ranking was obtained to reach the Top Three Offerors who would move to the Best and Final Offer ("BAFO") Evaluation.

Abarca, Optum and MC-21 had the highest combined scores (technical and cost) for both individual services and combined services, hence they were the Offerors that moved to the BAFO, both for individual bids as well as for the combined services bid. Therefore, on August 30, 2021, they were requested to submit on or before September 6, 2021 their BAFO, as well as to further clarify several aspects of their original bid. Upon timely submission of the BAFO, the CPS evaluated the BAFO and responses provide and on September 8, 2021 submitted their final evaluation to the Executive Committee.

After receiving the BAFO submission, final cost points changed slightly but the rankings among the BAFO Offerors remained the same. After a thorough, holistic and all-encompassing evaluation, on September 10, 2021 the Executive Committee reached the conclusions and formulated the recommendations included in their September 15, 2021 report to the BOD.

During the initial Extraordinary Meeting on September 16, 2021, the BOD discussed, accepted and ratified the Executive Committee's decision not to pass Conduent for further evaluation, thus it was disqualified as an Offeror. The BOD requested additional information regarding the recommendation to award one contract for combined services *vis a vis* two contracts for individual services. Accordingly, on October 1, 2021 the Executive Committee submitted additional clarifying information to the BOD.

At the Extraordinary BOD Meeting held on October 20, 2021 for discussion of the requested additional information, Jorge Galva, Executive Director of ASES and Leader of the Executive

Committee announced to the BOD that, as a prophylactic measure to provide more transparency to the process considering one of the five (5) Offeror’s unfounded allegations of bias, he had decided to recuse himself from further participation in the Executive Committee. In turn, the Deputy Director of ASES, Roxanna K. Rosario-Serrano, was designated as a member of said Committee. During that meeting the BOD determined to be in the best interest of the Government Health Plan of Puerto Rico to request a second BAFO to the Top 3 Offerors. Accordingly, on October 21, 2021 Abarca, Optum and MC-21 were given until October 25, 2021 to submit a second BAFO or BAFO BOD.

The CPS reviewed the BAFO BOD and submitted its findings to the Executive Committee on October 27, 2021. The Top 3 Offerors only submitted changes to the PBM services bid. No changes were made to the RA or Additional RA (ARA) services bid. The reranking of the Top Three Offerors was then performed adding the technical points previously awarded to these Offerors and adding the new cost proposal points based on the new submission. On November 3, 2021, the Executive Committee submitted to the BOD the results of the second BAFO which showed that, although total cost proposal points changed, the final rankings did not vary. On November 16, the BOD concluded its comprehensive evaluation of the process and new BAFO results. The BOD determined to accept the Executive Committee’s recommendation to award a single contract for combined services to the Offeror with the highest total score contingent upon the result of a final clarifying question to said Offeror. Having provided an answer that was satisfactory to the BOD, the adjudication of the contract was then final.

IV. Offers and Scoring:

A. Original Offers and Scoring Results:

Herein below, are the original scoring tables for all five (5) Offerors who passed the Mandatory Requirements evaluation.

1. Table 1 shows the total technical scores per section of each Offeror, with the highest score per section highlighted:

Table 1

| Section | Subject | Section Points | Section Weight | PharmPix | Abarca | MC-21 | MedImpact | Optum |
|---------|-------------------------------|----------------|----------------|----------|--------|--------|-----------|-------|
| 7.1 | Implementation | 40 | 3% | 27.50 | 30.00 | 12.50 | 17.50 | 22.50 |
| 7.2 | Pharmacy Network | 50 | 4% | 17.50 | 30.00 | 17.50 | 15.00 | 30.00 |
| 7.3 | Claims Processing and Payment | 280 | 23% | 52.50 | 122.50 | 113.75 | 35.00 | 96.25 |
| 7.4 | P&T Committee | 60 | 5% | 18.75 | 41.25 | 30.00 | 26.25 | 56.25 |
| 7.5 | Pharmacy Financial Committee | 30 | 2% | 12.50 | 15.00 | 12.50 | 7.50 | 30.00 |
| 7.6 | Formulary Management | 30 | 2% | 15.00 | 22.50 | 12.50 | 12.50 | 30.00 |

| | | | | | | | | |
|------|--|-----|-----|-------|--------|--------|-------|--------|
| 7.7 | Drug Utilization Review and Evaluation | 20 | 2% | 10.00 | 18.00 | 10.00 | 8.00 | 19.00 |
| 7.8 | Care Management and High Cost High Needs Program | 20 | 2% | 2.50 | 15.00 | 8.75 | 6.25 | 20.00 |
| 7.9 | Fraud, Waste, and Abuse | 30 | 2% | 10.00 | 30.00 | 17.50 | 12.50 | 30.00 |
| 7.10 | Other Enrollee Rebate Invoicing and Processing | 100 | 8% | 20.00 | 65.00 | 55.00 | 40.00 | 50.00 |
| 7.11 | MDRP Invoicing & Processing | 240 | 20% | 15.00 | 180.00 | 120.00 | 75.00 | 120.00 |
| 7.12 | Additional Rebate I Services: Supplemental Rebates and Value Based Purchasing Agreements | 30 | 2% | 0 | 22.50 | 22.50 | 22.50 | 22.50 |
| 7.13 | Information System & Management | 80 | 7% | 55.00 | 55.00 | 52.50 | 40.00 | 55.00 |
| 7.14 | Staffing and Key Personnel | 150 | 12% | 75.00 | 87.50 | 50.00 | 12.50 | 50.00 |
| 7.15 | Reporting | 60 | 5% | 11.25 | 15.00 | 30.00 | 22.50 | 26.25 |

2. Table 2 includes the Technical Evaluation Total Scoring, in descending ranking order, per Combined Services, PBM services only and RA services only, as follows:

Table 2

| Offeror (In ranked Order) | Combined Technical Points | PBM Technical Points | RA Technical Points |
|---------------------------|---------------------------|----------------------|---------------------|
| Abarca | 749 | 448 | 461 |
| Optum | 658 | 409 | 373 |
| MC-21 | 565 | 340 | 345 |
| MedImpact | 353 | 197 | 226 |
| PharmPix | 343 | 284 | 203 |

3. Table 3 contains the original Cost Proposal bids for years 1-3 for Combined Services (PBM and RA), PBM only and RA only, for the services and the two Go Live scenarios considered for scoring purposes (See Section 5.5.2 of the RFP, as amended), as follows:

Table 3

| Combined Cost Proposal | | | | | |
|--------------------------------------|------------------|----------------|-----------------|----------------|-----------------|
| Worksheet: 2A. PBM & RA Wksht 9-1-22 | PharmPix | Abarca | MC-21 | MedImpact | Optum |
| Contract Year 1 | \$ 12,385,652.70 | \$7,962,909.67 | \$14,504,263.82 | \$8,999,147.26 | \$11,607,581.28 |
| Contract Year 2 | \$ 11,995,978.40 | \$7,962,909.67 | \$14,504,263.82 | \$9,224,428.84 | \$9,737,924.78 |
| Contract Year 3 | \$ 11,607,828.91 | \$8,132,333.28 | \$14,504,263.82 | \$9,534,641.96 | \$9,974,014.67 |

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| | | | | | |
|-----------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| Subtotal | \$ 35,989,460.01 | \$ 24,058,152.62 | \$ 43,512,791.46 | \$ 27,758,218.06 | \$ 31,319,520.73 |
|-----------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|

Worksheet: 2B. PBM & RA Wksht 1-1-23

| | | | | | |
|------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| Contract Year 1 | \$ 12,385,652.70 | \$7,962,909.67 | \$13,970,930.49 | \$8,777,557.11 | \$11,494,549.55 |
| Contract Year 2: | \$ 11,995,978.40 | \$7,962,909.67 | \$14,504,263.82 | \$9,224,428.84 | \$9,737,924.78 |
| Contract Year 3 | \$ 11,607,828.91 | \$8,132,333.18 | \$14,504,263.82 | \$9,534,641.96 | \$9,974,014.67 |
| Subtotal | \$ 35,989,460.01 | \$ 24,058,152.52 | \$ 42,979,458.13 | \$ 27,536,627.91 | \$ 31,206,489.00 |

PBM Cost Proposal

Worksheet: 3. PBM Worksheet

| | PharmPix | Abarca | MC-21 | MedImpact | Optum |
|-----------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| Contract Year 1 | \$ 11,181,958.26 | \$7,115,791.62 | \$10,504,263.82 | \$6,590,578.43 | \$8,555,707.39 |
| Contract Year 2 | \$ 10,843,111.04 | \$7,115,791.62 | \$10,504,263.82 | \$6,793,886.76 | \$7,962,909.67 |
| Contract Year 3 | \$ 10,504,263.82 | \$7,285,215.23 | \$10,504,263.82 | \$7,081,906.90 | \$8,132,333.28 |
| Subtotal | \$ 32,529,333.12 | \$ 21,516,798.47 | \$ 31,512,791.46 | \$ 20,466,372.09 | \$ 24,650,950.34 |

RA Cost Proposal

Worksheet: 4A. RA Wksht 9-1-22

| | PharmPix | Abarca | MC-21 | MedImpact | Optum |
|-----------------|------------------------|-------------------------|-------------------------|------------------------|------------------------|
| Contract Year 1 | \$ 2,570,236.10 | \$4,525,090.25 | \$4,000,000.00 | \$2,622,441.79 | \$3,051,873.89 |
| Contract Year 2 | \$ 2,519,409.02 | \$4,525,090.25 | \$4,000,000.00 | \$2,646,612.39 | \$1,775,015.11 |
| Contract Year 3 | \$ 2,470,106.75 | \$4,525,090.25 | \$4,000,000.00 | \$2,671,024.65 | \$1,841,681.39 |
| Subtotal | \$ 7,559,751.87 | \$ 13,575,270.75 | \$ 12,000,000.00 | \$ 7,940,078.83 | \$ 6,668,570.39 |

Worksheet: 4B. RA Wksht 1-1-23

| | | | | | |
|---|------------------------|-------------------------|-------------------------|------------------------|------------------------|
| Contract Year 1: 9/1/2022-12/31/2022 | \$ 856,745.37 | \$3,176,692.69 | \$800,000.00 | \$622,341.26 | \$1,681,937.84 |
| Contract Year 1: 1/1/2023-8/31/2023 | \$ 1,713,490.73 | \$1,853,070.74 | \$2,666,666.67 | \$1,756,351.39 | \$1,341,431.21 |
| Contract Year 2 | \$ 2,519,409.02 | \$2,191,924.71 | \$4,000,000.00 | \$2,646,612.39 | \$1,775,015.11 |
| Contract Year 3 | \$ 2,470,106.75 | \$4,659,156.03 | \$4,000,000.00 | \$2,671,024.65 | \$1,841,681.39 |
| Subtotal | \$ 7,559,751.87 | \$ 11,880,844.17 | \$ 11,466,666.67 | \$ 7,696,329.69 | \$ 6,640,065.55 |

4. Tables 4-1 through 4-3 show the total points, in descending ranking order, after adding the Technical and Cost points in the three different bid scenarios, as follows:

Table 4-1 Combined Services

| Offeror (In ranked Order) | Technical Points | Cost Points | Total Points |
|----------------------------------|-------------------------|--------------------|---------------------|
| Abarca | 749 | 306 | 1055 |
| Optum | 658 | 214 | 872 |
| MC-21 | 565 | 62 | 627 |
| MedImpact | 353 | 260 | 613 |
| PharmPix | 343 | 154 | 497 |

Table 4-2 PBM Services only

| Offeror (In ranked Order) | Technical Points | Cost Points | Total Points |
|---------------------------|------------------|-------------|--------------|
| Abarca | 448 | 184 | 632 |
| Optum | 409 | 154 | 563 |
| MC-21 | 340 | 89 | 429 |
| MedImpact | 197 | 194 | 391 |
| PharmPix | 284 | 80 | 364 |

Table 4-3 RA services only:

| Offeror (In ranked Order) | Technical Points | Cost Points | Total Points |
|---------------------------|------------------|-------------|--------------|
| Optum | 373 | 185 | 558 |
| Abarca | 461 | 16 | 477 |
| MC-21 | 345 | 44 | 389 |
| MedImpact | 226 | 153 | 379 |
| PharmPix | 203 | 160 | 363 |

Abarca, Optum and MC-21 had the highest combined scores (technical and cost) for both individual services and combined services. In view of the above, the Top Three Offerors that moved to the BAFO were these Offerors, both for individual bids as well as for the combined services bid.

B. BAFO #1 Cost Offer, Scoring & Ranking Results:

After receiving the BAFO submission, although the final cost points changed slightly, the ranking among the BAFO Offerors remained the same. See the following tables.

1. Table 6 – BAFO #1 Cost Proposal Offers for Scoring purposes

| Offeror | Abarca | MC-21 | Optum |
|---|------------------------|------------------------|------------------------|
| Combined Cost Proposal | | | |
| Worksheet: 2A. PBM & Rebate Wksht 9-1-22 | | | |
| Contract Year 1: Cell D101 | \$5,929,826.35 | \$12,818,298.55 | \$11,202,618.78 |
| Contract Year 2: Cell E101 | \$5,929,826.35 | \$12,818,298.55 | \$9,535,443.53 |
| Contract Year 3: Cell F101 | \$5,929,826.35 | \$12,818,298.55 | \$9,619,879.26 |
| Subtotal | \$17,789,479.05 | \$38,454,895.65 | \$30,357,941.57 |

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| Worksheet: 2B. PBM & Rebate Wksht 1-1-23 | Abarca | MC-21 | Optum |
|---|------------------------|------------------------|------------------------|
| Contract Year 1: Cell E110 | \$5,887,470.45 | \$12,784,965.22 | \$11,174,113.94 |
| Contract Year 2: Cell F110 | \$5,951,004.30 | \$12,818,298.55 | \$9,535,443.53 |
| Contract Year 3: Cell G110 | \$5,951,004.30 | \$12,818,298.55 | \$9,619,879.26 |
| Subtotal | \$17,789,479.05 | \$38,421,562.32 | \$30,329,436.73 |
| PBM Cost Proposal | | | |
| Worksheet: 3. PBM Worksheet | Abarca | MC-21 | Optum |
| Contract Year 1: Cell D62 | \$4,913,284.69 | \$9,318,298.55 | \$8,250,744.89 |
| Contract Year 2: Cell E62 | \$4,913,284.69 | \$9,318,298.55 | \$7,810,428.42 |
| Contract Year 3: Cell F62 | \$4,913,284.69 | \$9,318,298.55 | \$7,878,197.87 |
| Subtotal | \$14,739,854.07 | \$27,954,895.65 | \$23,939,371.18 |
| RA Cost Proposal | | | |
| Worksheet: 4A. Rebate Wksht 9-1-22 | Abarca | MC-21 | Optum |
| Contract Year 1: Cell D73 | \$4,525,090.25 | \$3,500,000.00 | \$2,951,873.89 |
| Contract Year 2: Cell E73 | \$4,525,090.25 | \$3,500,000.00 | \$1,725,015.11 |
| Contract Year 3: Cell F73 | \$4,525,090.25 | \$3,500,000.00 | \$1,741,681.39 |
| Subtotal | \$13,575,270.75 | \$10,500,000.00 | \$6,418,570.39 |
| Worksheet: 4B. Rebate Wksht 1-1-23 | Abarca | MC-21 | Optum |
| Contract Year 1: 9/1/2022-12/31/2022: Cell D82 | \$1,058,897.55 | \$800,000.00 | \$1,649,734.45 |
| Contract Year 1: 1/1/2023-8/31/2023: Cell E82 | \$3,393,817.66 | \$2,666,666.67 | \$1,273,634.60 |
| Contract Year 2: Cell F82 | \$4,561,277.75 | \$3,500,000.00 | \$1,725,015.11 |
| Contract Year 3: Cell G82 | \$4,561,277.75 | \$3,500,000.00 | \$1,741,681.39 |
| Subtotal | \$13,575,270.71 | \$10,466,666.67 | \$6,390,065.55 |

2. Tables 6-1 through 6-3 capture the BAFO #1 rankings in descending order per bid option, as follows:

Table 6-1: Combined Services

| Offeror (In ranked Order) | Technical Points | Cost Points | Total Points |
|----------------------------------|-------------------------|--------------------|---------------------|
| Abarca | 749 | 306 | 1055 |
| Optum | 658 | 90 | 748 |
| MC-21 | 565 | 0 | 565 |

Table 6-2: PBM only

| Offeror (In ranked Order) | Technical Points | Cost Points | Total Points |
|----------------------------------|-------------------------|--------------------|---------------------|
| Abarca | 448 | 194 | 642 |
| Optum | 409 | 73 | 482 |
| MC-21 | 340 | 20 | 360 |

Table 6-3: RA Only

| Offeror (In ranked Order) | Technical Points | Cost Points | Total Points |
|---------------------------|------------------|-------------|--------------|
| Optum | 373 | 185 | 558 |
| Abarca | 461 | 0 | 461 |
| MC-21 | 345 | 67 | 412 |

C. BAFO #2 Results:

Table 7 - BAFO #2 Cost Proposal Offers for Scoring purposes

| Offeror | Abarca | MC-21 | Optum |
|---|------------------------|------------------------|------------------------|
| Combined Cost Proposal | | | |
| Worksheet: 2A. PBM & Rebate Wksht 9-1-22 | | | |
| Contract Year 1: Cell D101 | \$5,590,979.13 | \$11,124,062.45 | \$10,952,210.69 |
| Contract Year 2: Cell E101 | \$5,590,979.13 | \$11,124,062.45 | \$9,435,144.75 |
| Contract Year 3: Cell F101 | \$5,590,979.13 | \$11,124,062.45 | \$9,469,939.36 |
| Subtotal | \$16,772,937.39 | \$33,372,187.35 | \$29,857,294.80 |
| Worksheet: 2B. PBM & Rebate Wksht 1-1-23 | | | |
| | Abarca | MC-21 | Optum |
| Contract Year 1: Cell E110 | \$5,548,623.23 | \$11,090,729.12 | \$10,923,705.84 |
| Contract Year 2: Cell F110 | \$5,612,157.08 | \$11,124,062.45 | \$9,435,144.75 |
| Contract Year 3: Cell G110 | \$5,612,157.08 | \$11,124,062.45 | \$9,469,939.36 |
| Subtotal | \$16,772,937.39 | \$33,338,854.02 | \$29,828,789.95 |
| PBM Cost Proposal | | | |
| Worksheet: 3. PBM Worksheet | | | |
| | Abarca | MC-21 | Optum |
| Contract Year 1: Cell D62 | \$4,574,437.47 | \$7,624,062.45 | \$8,000,336.80 |
| Contract Year 2: Cell E62 | \$4,574,437.47 | \$7,624,062.45 | \$7,710,129.64 |
| Contract Year 3: Cell F62 | \$4,574,437.47 | \$7,624,062.45 | \$7,728,257.97 |
| Subtotal | \$13,723,312.41 | \$22,872,187.35 | \$23,438,724.41 |
| RA Cost Proposal | | | |
| Worksheet: 4A. Rebate Wksht 9-1-22 | | | |
| | Abarca | MC-21 | Optum |
| Contract Year 1: Cell D73 | \$4,525,090.25 | \$3,500,000.00 | \$2,951,873.89 |
| Contract Year 2: Cell E73 | \$4,525,090.25 | \$3,500,000.00 | \$1,725,015.11 |
| Contract Year 3: Cell F73 | \$4,525,090.25 | \$3,500,000.00 | \$1,741,681.39 |
| Subtotal | \$13,575,270.75 | \$10,500,000.00 | \$6,418,570.39 |
| Worksheet: 4B. Rebate Wksht 1-1-23 | | | |
| | Abarca | MC-21 | Optum |
| Contract Year 1: 9/1/2022-12/31/2022: Cell D82 | \$1,058,897.55 | \$800,000.00 | \$1,649,734.45 |
| Contract Year 1: 1/1/2023-8/31/2023: Cell E82 | \$3,393,817.66 | \$2,666,666.67 | \$1,273,634.60 |
| Contract Year 2: Cell F82 | \$4,561,277.75 | \$3,500,000.00 | \$1,725,015.11 |
| Contract Year 3: Cell G82 | \$4,561,277.75 | \$3,500,000.00 | \$1,741,681.39 |
| Subtotal | \$13,575,270.71 | \$10,466,666.67 | \$6,390,065.55 |

Tables 7-1 through 7-3 capture the prior BAFO scoring in descending order, the new BAFO scoring and the change in points for each bid scenario.

Table 7-1 Combined Services

| Offeror (In Ranked Order) | Technical Points | BAFO 1 | | BAFO 2 | | Change in Total Points |
|------------------------------------|---------------------|----------------|-----------------|----------------|-----------------|------------------------------|
| | | Cost Points | Total Points | Cost Points | Total Points | |
| Abarca | 749 | 306 | 1055 | 306 | 1055 | No change |
| Optum | 658 | 90 | 748 | 68 | 726 | - 22 |
| MC-21 | 565 | 0 | 565 | 3 | 568 | + 3 |

Table 7-2 PBM Only

| Offeror (In Ranked Order) | Technical Points | BAFO 1 | | BAFO 2 | | Change in Total Points |
|------------------------------------|---------------------|----------------|-----------------|----------------|-----------------|------------------------------|
| | | Cost Points | Total Points | Cost Points | Total Points | |
| Abarca | 448 | 194 | 642 | 194 | 642 | No change |
| Optum | 409 | 73 | 482 | 57 | 466 | - 16 |
| MC-21 | 340 | 20 | 360 | 65 | 405 | + 45 |

Table 7-3 RA Only

| Offeror (In Ranked Order) | Technical Points | BAFO 1 | | BAFO 2 | | Change in Total Points |
|------------------------------------|---------------------|----------------|-----------------|----------------|-----------------|------------------------------|
| | | Cost Points | Total Points | Cost Points | Total Points | |
| Optum | 373 | 185 | 558 | 185 | 558 | No change |
| Abarca | 461 | 0 | 461 | 0 | 461 | No change |
| MC-21 | 345 | 67 | 412 | 67 | 412 | No change |

V. **Principal factors and criteria taken into consideration for the adjudication including the reasons for disqualification of the nonresponding Offeror and the non-selection of the unsuccessful Offerors:**

Table 8 shows the award status of each Offeror, as follows:

Table 8

| OFFEROR | Award Status |
|--|---|
| Conduent Business Solutions of Puerto Rico, Inc. | Disqualified |
| PharmPix Corp. | Not within the Top 3 Offerors, not selected |
| MedImpact Healthcare Systems, Inc. | Not within the Top 3 Offerors, not selected |
| MC-21 LLC | Within the Top 3 Offerors, not selected |
| OptumRx, Inc. | Within the Top 3 Offerors, not selected |
| Abarca Healthcare, LLC | Selected |

A. Reasons for the Disqualification of Conduent Business Solutions of PR, Inc.

Section 5.3 of the RFP establishes that:

Each Proposal shall be evaluated to determine whether the requirements as specified in this RFP have been met. Failure to adequately meet any Mandatory submission requirement may cause the entire Proposal to be deemed non-responsive and be rejected from further consideration. However, ASES reserves the right to waive minor irregularities and minor instances of non-compliance. See, Section 5.1.3.

In turn, Section 5.1.3 of the RFP provides that failure of the Offeror to comply with the instructions of the RFP and failure to submit a complete Proposal shall be grounds to disqualify the Offeror's Proposal. However, ASES reserves the right to waive minor irregularities and minor instances of non-compliance. ASES reserves the right to use its best judgment to determine what constitutes a minor irregularity and a minor instance of non-compliance.

For the contracting of professional services in the Government of Puerto Rico, it is a mandatory requirement that the professional service provider be registered in the Single Registry of Professional Service Providers (RUP for its Spanish acronym), under the corresponding category and that it has the corresponding certification of registry issued by the Puerto Rico General Services Administration ("Administración de Servicios Generales" or "ASG" for its Spanish acronym). See section 1.5.15 of the RFP. Accordingly, it was required in this RFP that both the Offeror and any subcontractor complied with this requirement. See Sections 6.7.3 & 6.12. If at the time of the submission of the Proposal the Offeror was not registered in the RUP, it had to submit with the Proposal all the

certifications required by ASG, and within a non-extendable term of five (5) business days, from the date of the submission of the Proposal, submit the RUP Certification. If at the term of the five (5) business days, the Offeror did not have the certification, it had to comply with the requirements of Section 6.7.3.1.1 of the RFP. Failure to comply with Section 6.7.3.1.1 and/or Section 6.7.3.1.2, as the case may be, would cause the disqualification of the Offeror.

Conduent informed in the Proposal that it was in the process of requesting the RUP certification to ASG. However, said certification was not submitted to ASES, neither proof that it was requested to ASG. In addition, Conduent failed to submit a Sworn Statement certifying that it has no debts with the Government of Puerto Rico or other state agencies that provide or are related to the provision of health services, instead it provided Form 6096.1 of the Department of the Treasury certifying that it has no debts with said Department. The Certification on HIPAA was not signed and failed to provide the Offeror's Systems Audit.

As to the subcontractor, the Offeror also failed to submit several critical mandatory requirements stating in response for said failure the following:

Table 9

| Requirement | Response |
|---|--|
| A sworn statement certifying that it has no debts with the government of Puerto Rico, or with any state agencies, corporations or instrumentalities that provide or are related to the provision of health services. | Will attempt to obtain after the contract is signed. |
| Certification from the Puerto Rico Administration of Medical Services ("ASEM", its Spanish acronym) certifying that there is no outstanding debt. | Will attempt to obtain after the contract is signed. |
| Corporate Resolution identifying the person authorized to represent and legally bind the entity. In case of a Limited Liability Company, the Offeror must submit evidence of the designation as Administrator or as authorized voting member. | Will attempt to obtain after the contract is signed. |
| Letter to indicate the agencies or government agencies with which has or is in contract negotiation process | Will attempt to obtain after the contract is signed. |
| Current Certification of the Single Registry of Professional Service Providers (RUP-ASG). | Both the Offeror and the Subcontractor have reviewed the various requirements to obtain certifications required under Section 6.7.3 of this RFP, including a RUP Certification. Neither anticipates any impediment to the issuance of the certificates or RUP Certification to the subcontractor after the Contract is signed. |

| | |
|---|---|
| <p>Copy of insurance policies mentioned in Section 6.9 of this RFP that apply to services to be provided. Section 6.9: Provide a copy of insurance policies If presently do not possess the insurance policies or with the limits mentioned, explain the reason and submit a Certification that, if awarded a contract, will fully comply with these requirements.</p> | <p>Our proposed subcontractors will provide their policies/certificates of insurance within two (2) weeks of the contract effective date that align with the services they will be providing.</p> |
|---|---|

It stems from the above that Conduent failed to comply with the instructions of the RFP and to submit a complete responsive proposal. The Offeror and the sub-contractor failed to submit relevant and pertinent documentation and information that was specifically requested in the RFP and this constitutes a clear violation of Section 5.1.3. More so, as to the sub-contractor, the Offeror specifically refused to submit the documentation and stated that it “will attempt” to obtain it, after the contract is signed. This is not acceptable since these omissions are not minor irregularities or minor instances of non-compliance. On the contrary and in marked contrast with the deficiencies of the other Offerors², they denote an intentional and deliberate refusal to comply with clear and

² The deficiencies of the other Offerors are as follows:

A. PharmPix:

1. Unable to identify a Directors and Officers Professional Responsibility Insurance Policy;
2. The Single Registry of Professional Service Providers (RUP for its Spanish acronym), certification issued by ASG submitted for the proposed subcontractor was issued on April 27, 2021 and expired on June 30, 2021.
3. Municipal Patent submitted for the proposed subcontractor expired on June 30, 2021

B. Abarca:

1. RUP certification submitted for the proposed subcontractor was issued on April 27, 2021 and expired on June 30, 2021.
2. Municipal Patent submitted for the proposed subcontractor expired on June 30, 2021

C. MC-21:

1. Appendix D (Suspension and Debarment Form) submitted was signed and dated. However, answers to questions A-F of the Appendix were not provided.
2. The Workmen Compensation Policy Certification from the CFSE had expired on June 30, 2021.

D. MedImpact:

1. All insurance policies submitted had expired on April 30, 2021.
2. No Directors and Officers Professional Responsibility Insurance Policy was included and the Errors and Omissions Policy did not state whether it included Electronic Data Processes E&O Policy.

E. Optum:

specific RFP instructions and mandatory requirements, thus entailing its disqualification from the process for having failed the Mandatory Requirements Evaluation.

B. Reasons for the non-selection of MedImpact and PharmPix:

Section 5.6.2 of the RFP states that from the Top 5 Technical Score selections in each category, the Evaluation Committee will add the Cost Proposal Evaluation Scores to narrow the selection to determine the Offerors to be considered for BAFO negotiations. Likewise, Section 5.6.3 of the RFP established that the Evaluation Committee would add the Cost Proposal Points to the Top 5 Technical Proposal Offers. Subsequently, the Offerors' Combined Technical and Cost Proposal Scores would be re ranked to determine the Top 3 Offerors for Combined Services and/or the Top 3 Offerors for separate PBM Services and RA Services that would move onto the BAFO Evaluation.

As shown in Tables 4-1 through 4-3 of Section IV, above, MedImpact ranked #4 and PharmPix ranked #5 in Combined services, PBM only and RA Only. In the case of MedImpact, their technical score points were far away from the top third offeror's score, so there was no basis to expand the Top 3 to the Top 4. See Section 5.6.3 of the RFP. Hence, neither MedImpact nor PharmPix complied with the requirements to move on to the BAFO. For this reason, they were not selected to continue in the process.

C. Reasons for the non-selection of MC-21:

Table 10-1 captures the new total amounts for all services to be awarded under each type of bid (combined, PBM only and RA only) for contract years 1-3. Highlighted are the lower bids for each

-
1. Worker's Compensation & Employer's Liability Insurance Policy and the Umbrella Policy expired on May, 2021.
 2. No evidence of Unemployment Insurance Policy was found.
 3. It was informed in the Proposal that the SAM registration was requested on May 20, 2021 but there was no current status information.
 4. The Certification on HIPAA was not signed.
 5. Appendix D (Suspension and Debarment Form) submitted did not answer questions B & C either in the affirmative or negative, only provided general information.
 6. The Proposal Bond did not include language stating that it will be valid beginning on the proposal due date for 180 calendar days, as required in the RFP. Instead, the bond included a clause stating that any suits must be brought against surety within 90 days of acceptance of bid.
 7. RUP certification was requested to ASG on May 26, 2021, there was no update on the status and some documents were missing:
 - A. Certificate of Incorporation, Certification of current insurance policy with the Commonwealth of Puerto Rico Workmen's Compensation fund, the Certificate of Criminal Record of the CEO or President of the Offeror issued by the Puerto Rico Police Department, Certificate of Merchant's Registry
 - B. The certification of no debt and registration as employer under the Chauffeur Insurance Act was expired, did not have the name of the Offeror and the tax ID number was not that of the Offeror.

All the deficiencies were corrected on a timely fashion upon notice.

category and in parenthesis the corresponding rank in accordance with total points. Table 10-2 captures the final rankings per bid category and highlighted are the Rank #1 Offeror's points.

TABLE 10-1

| Offeror | Average PBM per Rx fee | Combined Services | | Total Combined Bid | PBM Only Bid | RA Only Bid |
|---------|------------------------|-------------------|--------------|---------------------------|---------------------------|---------------------------|
| | | PBM | RA | | | |
| Abarca | .27 | \$13,723,312 | \$ 3,049,625 | \$16,772,937 (Rank #1) | \$13,723,312 (Rank #1) | \$13,575,271 (Rank #2) |
| Optum | .46 | \$23,438,724 | \$ 6,390,066 | \$29,828,790 (Rank #2) | \$23,438,724 (Rank #2) | \$ 6,390,066 (Rank #1) |
| MC-21 | .45 | \$22,872,187 | \$10,466,667 | \$33,338,854 (Rank #3) | \$22,872,187 (Rank #3) | \$10,466,667 (Rank #3) |

Table 10-2

| Offeror | Combined Total Points | PBM Total Points | RA Total Points |
|---------|-----------------------|------------------|-----------------|
| Abarca | 1055 | 642 | 461 |
| Optum | 726 | 466 | 558 |
| MC-21 | 568 | 405 | 412 |

MC-21's total points never placed it in a 1st ranking position for any of the award options. The ample gap between MC-21's Total Score Points both in the Combined Services bid as well as in the PBM Services Only bid and RA Services Only bid, in comparison with Abarca's & Optum's Total Points, clearly did not place this Offeror as an award option. For this reason, it was not selected for a contract.

D. Reasons for the non-selection of Optum:

The RFP allows for the selection of either one contractor for the provision of combined services or two contractors, one for PBM and another for RA services. Sections 1.1 and 5.6.2 of the RFP clearly state that ASES' preference is for the best Combined Services contract but that it will consider separate RA and PBM Services contracts if it is in the best interest for Puerto Rico based on quality and value.

Table 11 captures the monetary amounts of the combined versus separate contract award options.

Table 11

3-Year Totals: Combined Versus Separate Contracts

| | Average PBM per Rx fee | PBM 3 Year Total based on an estimate of 16,942,361 annual final paid claims | RA 3 Year Total | Grand Total (PBM + RA) 3 Year Total |
|---------------------------|------------------------|--|-----------------|-------------------------------------|
| Abarca Combined - rank #1 | 0.27 | \$13,723,312 | \$ 3,049,625 | \$ 16,772,937 |
| Optum Combined - rank #2 | 0.46 | \$23,438,724 | \$ 6,390,066 | \$ 29,828,790 |
| Separate: | | | | |
| Abarca - PBM (rank #1) | 0.27 | \$13,723,312 | | |
| Optum - RA (rank #1) | | | \$ 6,390,066 | |
| Total | | | | \$ 20,113,378 |

Optum has the second ranking in the combined services bid option with a cost of .19 cents more per final paid claim than Abarca’s offer or \$13M more in a three-year period based on an annual estimated number of 16,942,361 final paid claims. Not only is Optum’s offer more expensive but in terms of technical quality is also inferior as its technical score is 91 points inferior to Abarca’s.

Although Optum has the rank #1 in RA services only option, the total amount of awarding the separate services bid option of PBM to Abarca and RA to Optum, still represents an increase of over \$3.3M from the combined services bid of Abarca.

In addition to the approximate \$3.3 M difference in costs over three (3) years between awarding a single contract to Abarca *versus* individual contracts to Abarca and Optum there are other important operational impacts and considerations that weigh in favor of awarding a single contract. Two areas of operational efficiencies of selecting a single vendor are administrative simplicity and communication and data sharing.

- ASES has limited resources with regard to staffing levels and expertise in the pharmacy business. Staff resources will be needed for readiness review, implementation oversight and ongoing management of the contract. These oversight concerns will be exacerbated, especially considering the expanded scope of the additional MDRP requirements. Examples of impact include the volume and content of reports and meetings and the necessity to review and validate data coming from multiple sources. Selecting a single Contractor reduces the impact on already strained resources and allows for a more optimal oversight of the contract performance.
- The pharmacy services and particularly the administration of the MDRP require high quality data and communication. A single contract reduces the risk of inaccurate data and resource stress due to ASES been required to act as referee between competitor contractors in issues related to sharing information critical to business functions.

For these reasons Optum was not selected.

E. Reasons for the selection of the successful Offeror:

Abarca has the highest technical score in the 5 technical areas with the highest weight. Even in the RA only option, where Optum ranked #1, Abarca has 88 technical points more than Optum. Its cost offer is \$13 M less than Optum’s Combined Services offer and \$3.3 M less than awarding separate contracts for PBM and RA services. As mentioned before, there are ample operational benefits in awarding a single contract.

ASES is cognizant that the cost savings advantage (\$3.3 M) that Abarca’s combined services bid has over the two contracts option could be diminished to some degree due to the differences in the Additional Rebate Services’ cost estimates between Abarca and Optum.³ However, ARA services are not being awarded at this time and the real cost of these services is uncertain, as the costs will depend on the final scope of services determined by ASES, the final negotiation of their terms and when they are implemented. Therefore, the maximum possible uncertainty of approximately \$2.9 million dollars of additional funds contrasted with the certainty of a \$3.3 million dollars savings of a single contract plus the additional operational benefits that said option affords ASES in the oversight of contract performance, communication, and data transfers, among others, outweigh the possibility of a reduction in the initial savings. In other words, the certain benefits of a single contract award tip the balance in its favor.

In sum, Abarca meets all the requirements of this RFP, is financially stable and in terms of technical quality, value and cost, is the best option for the Government Health Plan. For all these reasons it was selected as the successful Offeror.

VI. Notice of Final Determination:

3

| | | PBM 3 Year Total | RA 3 Year Total | Grand Total (PBM + RA) 3 Year Total | OPTIONAL: Additional RA Services 3 Year Total | PBM + RA + Maximum Cost of Optional ARA for a total of 3 years if ASES were to acquire all ARA services after January 1, 2023 |
|----------|------------------------------|---------------------|--------------------------------|---|--|---|
| Option 1 | Offeror B Combined - rank #1 | \$ 13,723,312 | \$ 3,049,625 | \$ 16,772,937 | \$ 6,839,596 | \$ 23,612,533 |
| Option 2 | Separate: | | | | | |
| | Offeror B - PBM (rank #1) | \$ 13,723,312 | | | | |
| | Offeror F - RA (rank #1) | | \$ 6,390,066 | | | |
| | Total | | | \$ 20,113,378 | | |
| | | | | | \$ 626,667 | \$ 20,740,045 |
| | | | Certain savings of Option 1 | \$ 3,340,441 | Uncertain savings of Option 2 | \$ 2,872,488 |

In consideration of the delays in the schedule of events of this RFP process and in order to maintain the 9-month implementation period, ASES determined to move the Go Live date of this RFP for January 1, 2023. Hence, the term of the Contract Years 1-3 will now run from January 1, 2023 until December 31, 2025.

On November 19, 2021 CMS announced that it will delay the effective date of the inclusion of the five U.S. territories in the regulatory definitions of “States” and “United States” for purposes of participating the MDRP until January 1, 2023.

In view of all of the above, and pursuant to Sections 3.3.8 and 5.10.1 of the RFP, you are hereby notified of ASES’ determination to:

1. Disqualify Conduent Business Solutions of PR, Inc.; and
2. Award one (1) single contract for the combined services of PBM and RA services to Abarca Healthcare LLC under the terms of its BAFO #2 Cost Proposal, as clarified on November 18, 2022, as follows:

| Contract Year | Per final paid claim PBM Fee | RA Services | Term |
|----------------------|-------------------------------------|--------------------|-------------------------------------|
| 1 | .27 | \$1,016,541.66 | January 1, 2023 – December 31, 2023 |
| 2 | .27 | \$1,016,541.66 | January 1, 2024 – December 31, 2024 |
| 3 | .27 | \$1,016,541.66 | January 1, 2025 – December 31, 2025 |

WARNINGS REGARDING RECONSIDERATION AND JUDICIAL REVIEW:

Any Offeror who understands that it has been affected by the final determination of ASES in the adjudication of this RFP may submit to the ASES’ Board of Directors a Petition for Reconsideration within twenty (20) calendar days from the date of the mailing of this notice. This is a jurisdictional term. The petition must comply with the requirements stated in Section 3.3.9.5 of the RFP and be filed at the following addresses:

**Attention of: ASES Board of Directors
Urb. Caribe Sector El Cinco
1549 Calle Alda
San Juan, PR 00926-2712**

Or

pharmacyrfp2022@asespr.org

The Offeror seeking the reconsideration of this decision must notify all other Offerors who participated in the RFP with a copy of the Petition of Reconsideration within the same twenty (20) day term to file the petition. This is a requirement of strict compliance. ASES shall consider the Petition for Reconsideration within thirty (30) calendar days of the filing of the petition. ASES may extend said term only once, for an additional term of fifteen (15) calendar days. Failure to consider the Petition for Reconsideration shall be deemed as an outright rejection of the petition and thereafter, shall run the twenty (20) calendar day's term to request a judicial review before the Court of Appeals. If a determination is made in its consideration, the term for requesting judicial review will begin from the date on which a copy of the notification of the decision of ASES was deposited in the mail, resolving the petition.

Likewise, the party adversely affected by a decision on reconsideration filed before ASES, may request judicial review before the Court of Appeals within a jurisdictional period of twenty (20) calendar days from the date of the mailing of notice of the final order or resolution on reconsideration.

REGISTER AND NOTIFY



Roxanna K. Rosario-Serrano, MS
Deputy Director

NOTIFICATION

I CERTIFY that today this Notice of Award was registered and filed in the administrative file of this process and a true and exact copy was sent and notified by federal certified mail and email to all parties in this process, as noted below:

A. PharmPix Corp.

Mr. Jaime Figueroa Torres
CEO
Metro Office Park
Bldg.2, Ste. 500
Guaynabo, PR 00968
jaime@pharmpix.com

B. Abarca Health LLC

Mr. Jason Borschow
President & CEO
650 Avenida Muñoz Rivera
Suite 701
San Juan, PR 00918
Jason.Borschow@AbarcaHealth.com

C. MC-21 LLC

Mrs. Marileny Lugo
COO
Call Box 4908
Caguas, PR 00726
MLugo@mc-21.com

D. MedImpact Healthcare Systems, Inc.

Mr. James Gollaher
CFO
10181 Scripps Gateway Ct.
San Diego, CA 92131
James.Gollaher@medimpact.com

E. Conduent Business Solutions of Puerto Rico, Inc.

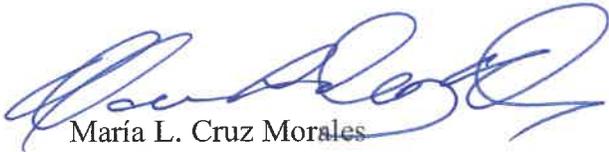
Mrs. Kelley Carson
Vice President
300 Calle C, Suite 300
Guaynabo, PR 00968-8061
Kelley.Carson@conduent.com

Notice of Award
RFP #Pharmacy 2022

F. OptumRx. Inc.

John Prince
President & CEO
1600 McConnor Parkway
Schaumburg, IL 60173-6801
jeff.gottlieb@optum.com

In San Juan, Puerto Rico, on November 29, 2022.



María L. Cruz Morales
Managerial Affairs Assistant
Executive Office
Puerto Rico Health Insurance Administration (PRHIA)



Gobierno de Puerto Rico
Administración de Servicios Generales
Registro Único de Proveedores de
Servicios Profesionales

CERTIFICADO ÚNICO DE PROVEEDORES

FECHA DE EXPEDICIÓN

12 de abril de 2021

NÚMERO DE CERTIFICACIÓN

202100691

FECHA DE VENCIMIENTO

12 de abril de 2022

Nombre: MC-21 LLC

Número de Proveedor: 3069

Dirección Postal: Call Box 4908, Caguas, PR, 00726

Teléfono: (787) 286-6032

Correo Electrónico: cdelgado@mc-rx.com

PERSONAS AUTORIZADAS A FIRMAR

| NOMBRE Y APELLIDOS | TÍTULO QUE OSTENTA |
|--------------------|----------------------|
| Marileny Lugo | Authorized Signature |

Será responsabilidad de cada Agencia Ejecutiva, Corporación Pública o Municipio validar la elegibilidad del proveedor antes de adjudicar cualquier procedimiento de adquisición, órdenes de compra u otorgar contratos. Así como el de garantizar que el proveedor puede proveer los bienes y servicios no profesionales conforme las normas que lo regulan.

ADVERTENCIA: Cualquier alteración anula este certificado y podría ser sancionado criminalmente conforme a las disposiciones aplicables del Código Penal de Puerto Rico.



Validación: <https://serviciosonline.gobierno.pr/validacionelectronica/>, debe usar el número de certificado como código de validación

**PUERTO RICO HEALTH INSURANCE ADMINISTRATION
GOVERNMENT OF PUERTO RICO**

| | |
|---|--|
| MC-21 LLC Petitioner | NO.: 2022 RFP 01-001 |
| Vs. | Resolution No. 2022-001 |
| Puerto Rico Health Insurance Administration Agency | RE: Request for Reconsideration to Notice of Award for Request for Proposal - RFP # Pharmacy -2022 |

RESOLUTION

On December 20, 2022, MC-21, LLC (“MC-21”), filed a Request for Reconsideration of the Notice of Award (“Request for Reconsideration”) issued in the Request for Proposals #Pharmacy - 2022 for the selection of the PBM and Rebate Aggregator services for the Puerto Rico Government Health Plan – Vital (“RFP”) in favor of Abarca Health, LLC.

On January 5, 2022, Ms. Roxanna K. Rosario, Deputy Director of the Puerto Rico Health Insurance Administration (“ASES” for its Spanish acronym) submitted to the ASES’ Board of Directors (“BOD”) the Report and Recommendation of the Executive Committee on MC-21’s Request for Reconsideration (“the Report”) recommending this BOD to deny MC-21’s Request for Reconsideration for lack of merit.

On January 11, 2022, MC-21 submitted an Informative Motion requesting that the BOD take notice that, on January 10, 2022, it had requested the General Services Office of the Government of Puerto Rico (“ASG” for its Spanish acronym) to intervene in this process.

During the BOD’s Extraordinary Meeting - held virtually via the platform known as MS Teams - on January 12, 2022, the BOD evaluated and discussed MC-21’s Request for Reconsideration and Informative Motion. There it also evaluated and discussed the Executive Committee’s Report on MC-21’s reconsideration request. The BOD took notice of MC-21’s Informative Motion. Nevertheless, the BOD unanimously approved and accepted the Executive Committee’s Report and Recommendation, and consequently denied MC-21’s Request for Reconsideration. Thus, the members of the BOD, duly constituted, resolved to maintain in full force and effect its determination as contained in the Notice of Award of RFP #Pharmacy-2022 in favor of Abarca Health, LLC.

WHEREFORE, in view of the above, as is the final determination of this Board of Directors, MC-21’s Reconsideration is hereby **DENIED** and the Notice of Award of November 29, 2021 in RFP #Pharmacy - 2022 continues to remain in full force and effect.

WARNINGS REGARDING JUDICIAL REVIEW

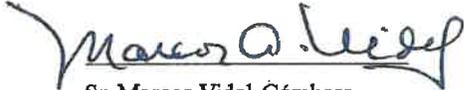
Pursuant to Section 4.2 of Law No. 38 of June 30, 2017, as amended, any party adversely affected by a final decision on reconsideration filed before ASES, may request judicial review before the Puerto Rico Court of Appeals within the jurisdictional period of twenty (20) calendar days from the date of the registry and filing, and mailing of the notice of the final order or resolution on reconsideration. The recurring party shall notify the submission of the request for

review to ASES and to all parties in this process within the same term to request such review. The notification must be made by federal postal mail, in accordance with the provisions of the rules that the Supreme Court of Puerto Rico has adopted to regulate judicial review procedures.

The mere submission of a request for review before the Court of Appeals will not have the effect of stopping the effects of the contested decision.

REGISTER AND NOTIFY.

In San Juan, Puerto Rico, on January 14, 2022.



Sr. Marcos Vidal-Gámbaro
Vice-President of ASES' BOD



Dr. Sara López
Secretary of ASES' BOD

NOTIFICATION

I CERTIFY that today this Resolution was registered and filed in the administrative file of this process and a true and exact copy was sent and notified by federal certified mail and email to all parties in this process, as noted below:

A. MC-21 LLC - Petitioner

Grace M. Santana-Balado, Esq.
PO Box 361640
San Juan, PR 00936-1640

gsantana@gmaspr.com

Mrs. Marileny Lugo
COO
Call Box 4908
Caguas, PR 00726

mlugo@mc-21.com

B. PharmPix Corp.

Mr. Jaime Figueroa Torres
CEO
Metro Office Park
Bldg. 2, Ste. 500
Guaynabo, PR 00968

jaime@pharmpix.com

C. Abarca Health LLC

Mr. Jason Borschow
President & CEO
650 Avenida Muñoz Rivera
Suite 701

San Juan, PR 00918
Jason.Borschow@AbarcaHealth.com

Ana C. Rivera, Esq.
AVP, Legal & Compliance
Abarca Health LLC
650 Avenida Muñoz Rivera
Suite 701
San Juan, PR 00918
ana.cristina@abarcahealth.com

D. MedImpact Healthcare Systems, Inc.

Mr. James Gollaher
CFO
10181 Scripps Gateway Ct.
San Diego, CA 92131
James.Gollaher@medimpact.com

E. Conduent Business Solutions of Puerto Rico, Inc.

Mrs. Kelley Carson
Vice President
300 Calle C, Suite 300
Guaynabo, PR 00968-8061
Kelley.Carson@conduent.com

F. OptumRx, Inc.

John Prince
President & CEO
1600 McConnor Parkway
Schaumburg, IL 60173-6801
pbmsales@optum.com
Jeff.Gottlieb@optum.com

María C. Cartagena-Cancel, Esq.
Income Member
McConnell Valdes, LLC
PO Box 364225
San Juan, PR 00936
mcc@mcvpr.com

In San Juan, Puerto Rico, on January 14, 2022.



Maria L. Cruz Morales
Managerial Affairs Assistant
Executive Office

Puerto Rico Health Insurance Administration (PRHIA)



5 de enero de 2022

Dr. Carlos Mellado López
Presidente
Junta de Directores

Roxanna K. Rosario Serrano
Subdirectora Ejecutiva
Miembro Comité Ejecutivo

REUNIÓN EXTRAORDINARIA MEDIANTE VIDEOCONFERENCIA

Honorables miembros de la Junta de Directores de la ASES, bienvenidos sean.

Para iniciar la reunión, solicito al Dr. Carlos Mellado López, Presidente de la Junta que proceda con los siguientes temas:

1. **Confirmación de Quorum**
2. **Discusión de la *Solicitud de Reconsideración* con relación a la *Notificación de Adjudicación* en el proceso de Requerimiento de Propuestas (“RFP”, por sus siglas en inglés) # Pharmacy 2022 para los servicios de Manejador de Beneficios de Farmacia (“PBM”, por sus siglas en inglés) y Administrador de Reembolsos (“RA”, por sus siglas en inglés) (“RFP PBM”)**

El 31 de marzo de 2021, la ASES emitió un aviso de RFP, el cual se publicó en dos (2) periódicos de circulación general, en la página web de la ASES y en el Registro Único de Subastas (“RUS”) del Gobierno de Puerto Rico. Con dicha publicación comenzó el proceso del RFP PBM.

Tras el recibo y evaluación de las propuestas recibidas, el 29 de noviembre de 2021, la ASES emitió una *Notificación de Adjudicación* del RFP PBM. La Sección 3.3.9 del Pliego del RFP PBM (“*Pliego*”) establece, en lo pertinente, que:

3.3.9 Reconsideration/Request for Administrative and Judicial Review



[...]

3.3.9.2 Any Offeror who understands that it has been affected by the final determination of ASES in the adjudication of this RFP may submit a written Petition for Reconsideration within twenty (20) Calendar Days from the date of the mailing of the Notice of Award of this RFP. This is a jurisdictional term, that is, it is not subject to extension of time. Failure to timely present the petition will preclude ASES from considering the same.

[...]

3.3.9.6 The Board of Directors of ASES shall consider the request for reconsideration within thirty (30) Calendar Days of the filing of the petition. ASES may extend said Term only once, for an additional Term of fifteen (15) Calendar Days. Failure to do so shall be deemed as an outright rejection of the petition and thereafter, shall run the twenty (20) Calendar Day's term to request a judicial review before the Court of Appeals.

3.3.9.7 If a determination is made in its consideration, the Term for requesting judicial review will begin from the date on which a copy of the notification of the decision of the Board of Directors of ASES was deposited in the mail, resolving the request.

3.3.9.8 Likewise, the party adversely affected by a decision on reconsideration filed before ASES, may request judicial review before the Court of Appeals within a jurisdictional period of twenty (20) Calendar Days from the date of the mailing of notice of the final order or resolution.

En atención a lo anterior, el término para que los proponentes interesados radicarán sus respectivas solicitudes de reconsideración venció el pasado 20 de diciembre de 2021.

Expirado dicho término, la ASES solamente recibió una *Solicitud de Reconsideración* ("*Solicitud*"), la cual fue presentada por la compañía MC-21, LLC ("*petionario*" o "*MC-21*").¹ En su *Solicitud*, MC-21 solicita como remedio que la Junta de Directores de la ASES ("*Junta*") "revoque la determinación emitida y requiera a la ASES que acuda ante la [Administración de Servicios Generales ("*ASG*")]" a solicitar que inicie el proceso de selección en cumplimiento con los parámetros de la Ley [Núm. 73-2019, según enmendada, conocida como *Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de*

¹ Véase Anejo 1 del Informe, *Solicitud de Reconsideración*



Puerto Rico de 2019 (“Ley 73”)]; en la alternativa, respetuosamente se solicita que se revoque la determinación emitida y se ordene un nuevo procedimiento, con las debidas salvaguardas para prevenir la parcialidad y el abuso de discreción en el proceso de evaluación y selección de licitadores; con cualquier otro pronunciamiento que en derecho proceda.”

Así las cosas, corresponde a la Junta pasar juicio sobre la *Solicitud* y determinar cómo se dispondrá de ella. Según surge de las porciones del *Pliego* antes transcritas, la Junta tiene treinta (30) días calendario – contados a partir de la fecha de la presentación de la petición – para considerar y decidir sobre la misma. Ello significa que la Junta debe emitir su determinación al respecto en o antes del 19 de enero de 2022, excepto que – mediante votación – opte por extender el término por quince (15) días adicionales.

Para facilitar el análisis de las controversias planteadas por el peticionario, procedemos a discutir las mismas, así como otros aspectos del proceso que inciden en la determinación que la Junta deberá tomar en su momento. Además, adelantamos la recomendación del Comité Ejecutivo a los efectos de que se debe declarar No Ha Lugar la *Solicitud* presentada. Veamos.

DISCUSIÓN

A. Asuntos de Umbral

Como parte del análisis de la *Solicitud*, es pertinente hacerse ciertas preguntas para poner en perspectiva el recurso presentado. A estos efectos, resulta necesario considerar en qué posición quedó la propuesta del peticionario en comparación con la de los demás proponentes y las probabilidades reales que éste tiene de lograr obtener la buena pro del proceso. También es importante considerar quién es el peticionario y la motivación que éste puede tener para presentar su *Solicitud*. Finalmente, es importante discutir cómo evalúan los tribunales revisores las determinaciones de las agencias administrativas de manera que esta Junta pueda analizar la petición a la luz de dichos parámetros.

a. La probabilidad del peticionario de obtener la buena pro en el RFP PBM

Es necesario recordar que, tras la evaluación técnica y de costo realizada a las propuestas recibidas por parte de subcomités técnicos, el peticionario quedó en tercer lugar en puntuación. Esto es, aún si se hubiera determinado no adjudicar a Abarca y adjudicar al siguiente proponente con la puntuación más alta, el peticionario no hubiera obtenido la buena pro. En otras palabras, aun cuando se reconsiderara la decisión emitida, el peticionario no tendría oportunidad de prevalecer y obtener la buena pro del proceso.



En este sentido, también resulta pertinente señalar que el postor que tuvo la segunda puntuación más alta no compareció ante esta Junta para solicitar reconsideración. Ello es indicativo de que dicho postor está conforme con la determinación tomada por esta Junta.

b. Las motivaciones del peticionario para presentar su Solicitud de Reconsideración

Por otro lado, es importante considerar quién es el peticionario y su motivación para presentar su *Solicitud*. El peticionario, MC-21, es la empresa que actualmente mantiene contrato con la ASES para prestar los servicios de PBM. Así pues, la *Notificación de Adjudicación* tiene el efecto de que, a partir de la fecha de efectividad del contrato con el postor agraciado, MC-21 pierde un contrato que le generaba millones de dólares anuales y ha sostenido por un término no menor de dieciséis (16) años.

De hecho, incluso el retraso de los procesos opera en favor del peticionario. Esto es así ya que cualquier retraso en la adjudicación mantiene a la ASES atada a un contrato existente en el cual los servicios provistos son más costosos que los negociados como resultado del proceso de RFP PBM. Nótese que ambas alternativas de remedio solicitadas por el peticionario pretenden que se vuelva a comenzar el proceso de anuncio, recibo, evaluación y adjudicación de las propuestas. Este proceso tomó ocho (8) meses desde el 31 de marzo de 2021, cuando se publicó el aviso en los periódicos de circulación general, hasta el 29 de noviembre de 2021, cuando se emitió la *Notificación de Adjudicación*. El peticionario sería el único que saldría beneficiado de volver a comenzar el proceso porque podría presentar unas ofertas más agresivas sabiendo donde están parados sus competidores. Pero, aun si no resultara agraciado en el nuevo proceso, continuaría vigente su contrato actual con la ASES por un mínimo de ocho (8) meses adicionales obteniendo millones de dólares como resultado.

Por el contrario, la ASES – y, por consiguiente, los beneficiarios del Plan de Salud del Gobierno (“PSG”) – serían los afectados ya que, además del costo adicional que conlleva la extensión del contrato actual, se retrasaría la implantación del Medicaid Drug Rebate Program (“MDRP”), el cual – por disposición de ley federal – debe comenzar en Puerto Rico para el 1 de enero de 2023. Recordemos que el período de implementación del contrato que se suscriba como resultado del RFP PBM es de nueve (9) meses. Así pues, si el mismo no se firma antes del 1 de marzo de 2022, la ASES no estará en posición de comenzar el MDRP el 1 de enero de 2023, según requerido, con las consecuencias que ello tenga.

c. La revisión judicial de decisiones administrativas

En nuestro ordenamiento jurídico, la función principal de la revisión judicial es asegurarse de que las agencias actúan dentro del marco del poder delegado y consistente con la política legislativa. Es norma reiterada que los tribunales apelativos deben conceder deferencia a las decisiones de las



agencias administrativas, ello debido a la experiencia y el conocimiento especializado que éstas poseen sobre los asuntos que se les han delegado. Por ello, dichas determinaciones poseen una presunción de legalidad y corrección que los tribunales deben respetar mientras la parte que las impugna no presente la evidencia suficiente para derrotarlas. (Citas omitidas). Torres Rivera v. Policía de PR, 196 DPR 606, 625-626 (2016).

De esa forma, la Sec. 4.5 de la Ley Núm. 38-2017, según enmendada, conocida como la *Ley de Procedimiento Administrativo Uniforme del Gobierno de Puerto Rico* (“LPAU”), estableció el marco de revisión judicial de las determinaciones de las agencias administrativas. Ese marco está fundamentado en el principio rector de la razonabilidad, es decir, se examina que no se haya actuado de manera arbitraria o ilegal, o de forma tan irrazonable que sea considerado un abuso de discreción. Torres Rivera v. Policía de PR, *supra*, pág. 626; Mun. San Juan v. Plaza Las Américas, 169 DPR 310, 323 (2006). Se dispone para ello de tres criterios, a saber: (1) si el remedio concedido por la agencia fue apropiado; (2) si las determinaciones de hecho que realizó la agencia están sostenidas por evidencia sustancial que obra en el expediente administrativo visto en su totalidad, y (3) si, mediante una revisión completa y absoluta, las conclusiones de derecho del ente administrativo fueron correctas. Pagán Santiago et al. v. ASR, 185 DPR 341, 358 (2012); Rolón Martínez v. Superintendente, 201 DPR 26, 35-36 (2018).

En cuanto a las determinaciones de hecho de una agencia administrativa, conforme a la Sec. 4.5 de la LPAU, éstas se sostendrán si se fundamentan en evidencia sustancial que conste en el expediente administrativo considerado en su totalidad. Esta regla de la evidencia sustancial es para “evitar la sustitución del criterio del organismo administrativo en materia especializada por el criterio del tribunal revisor”. (Citas omitidas). Torres Rivera v. Policía de PR, *supra*, pág. 627.

B. Planteamientos de MC-21

a. Jurisdicción de la ASES para emitir el RFP PBM

Obviamente esta es la alegación que el peticionario considera más contundente, ya que, de las trece (13) páginas de análisis que tiene la *Solicitud*, éste dedica diez (10) páginas a la discusión de esta controversia.

MC-21 sostiene que la ASES no tiene jurisdicción para adjudicar el RFP PBM y que corresponde a la ASG el adjudicar el mismo. Para llegar a esta conclusión el peticionario alega, en síntesis, que los servicios a contratarse no son servicios profesionales, por lo que – a la luz de las disposiciones de la Ley 73, la entidad facultada a llevar a cabo el proceso de adquisición de los servicios de PBM y RA es la ASG. Sin embargo, como veremos, el peticionario se equivoca en su conclusión.



i. La Ley 73

La Ley 73 “persigue la optimización del nivel de efectividad y eficiencia de la gestión gubernamental, la agilización de los procesos de adquisición de bienes y servicios mediante el uso de avances tecnológicos, la reducción del gasto público, la asignación estratégica de recursos y la simplificación de los reglamentos que regulan las adquisiciones del Gobierno de Puerto Rico.” Véase, Art. 2 de la Ley 73. Nunca ha estado en controversia, ya que la propia ASG así lo ha admitido, que ésta solo está facultada para intervenir en los procesos de adquisición de bienes, obras y servicios no profesionales.² De hecho, sobre la adquisición de servicios profesionales, la Ley 73 solo establece que “será requisito mandatorio que el proveedor de servicios profesionales esté registrado en el Registro Único de Proveedores de Servicios Profesionales [“RUP”], bajo la categoría correspondiente y que cuente con la Certificación emitida por el Administrador.” Véase, Art. 35 de la Ley 73. Así pues, **corresponde a cada agencia el llevar a cabo los procesos para la adquisición de servicios profesionales.**

ii. La intención de la Ley Núm. 72-1993, según enmendada, conocida como la Ley de la Administración de Seguros de Salud de Puerto Rico (“Ley 72”)

La ASES es una corporación pública creada al amparo de la Ley 72, la cual tiene personalidad jurídica independiente y está regida por una Junta de Directores. Véase, Art. IV, Sec. 1 de la Ley 72. Mediante esta legislación se propició una reforma radical de los servicios de salud en Puerto Rico y se delegó en la ASES la administración de la misma. Sobre la cubierta del PSG, el Art. VI, Sec. 8 de la Ley 72, establece en lo pertinente:

Los planes de salud tendrán una cubierta amplia, con un mínimo de exclusiones. No habrá exclusiones por condiciones preexistentes, como tampoco períodos de espera, al momento de otorgarse la cubierta al beneficiario.

- (a) Cubierta A.— La [ASES] establecerá una cubierta de beneficios a ser brindados por los aseguradores contratados o proveedores participantes. La cubierta comprenderá, entre otros beneficios, los siguientes: servicios ambulatorios, hospitalizaciones, salud dental, salud mental, vacunaciones y tratamientos para el virus del Papiloma Humano, estudios, pruebas y equipos para beneficiarios que requieran el uso de un ventilador para mantenerse con vida, un mínimo de un (1) turno diario de ocho (8) horas por paciente, de servicios de enfermeras(os) diestros con conocimientos en terapia respiratoria o especialistas en terapia respiratoria con conocimientos en enfermería, los

² Véase, a manera de ejemplo, los Artículos 2, 3 y 5 de la Ley 73 que específicamente limitan la facultad de la ASG a la compra de bienes, obras y servicios no profesionales.



suplidos que conllevan el manejo de los equipos tecnológicos, terapia física y ocupacional necesaria para el desarrollo motor de éstos pacientes, laboratorios, rayos X, **así como medicamentos mediante prescripción médica, los cuales deberán ser despachados en una farmacia participante, libremente seleccionada por el asegurado, y autorizada bajo las leyes de Puerto Rico.** La cubierta dispondrá para que cada beneficiario tenga a su alcance anualmente los exámenes de laboratorio e inmunización apropiados para su edad, sexo y condición física. [...] (Énfasis nuestro.)

El Art. IV, Sec. 2, de la Ley 72 establece en lo pertinente:

La [ASES] será el organismo gubernamental encargado de la implantación de las disposiciones de este capítulo. A estos fines, tendrá los siguientes poderes y funciones, que radicarán en su Junta de Directores:

- (a) Implantar planes de servicios médico-hospitalarios basados en seguros de salud.
- (b) Negociar y contratar con aseguradores públicos y privados, y organizaciones de servicios de salud, cubiertas de seguros médico-hospitalarios, según se definen y establecen éstos en las secs. 7025 a 7036 de este título.

[...]

- (k) Negociar y otorgar toda clase de contratos, documentos y otros instrumentos públicos con personas y entidades jurídicas.

[...]

- (m) Realizar todos los actos necesarios y convenientes para llevar a cabo los propósitos de este capítulo, excepto que la Administración no tendrá facultad para empeñar el crédito del Estado Libre Asociado de Puerto Rico, ni de ninguna de sus subdivisiones políticas.

[...]

Por su parte, el Art. VI, Sec. 14 de la Ley 72 establece el derecho de los beneficiarios del PSG de escoger la farmacia de su predilección, entre otros derechos. Además, el Art. VII, Sec. 2, de la Ley 72 incluye entre los informes que las Organizaciones de Cuidado Coordinado (“MCOs”, por sus siglas en inglés) deben proveer a la ASES los “[d]atos estadísticos sobre medicación, los cuales deberán incluir todos los medicamentos recetados y una relación de costos de los mismos.” Así



pues, resulta evidente que la cubierta de farmacia y los servicios provistos a través de ella son una parte integral de la cubierta del PSG.

iii. Los servicios a prestarse bajo el contrato de PBM/RA son profesionales

En Puerto Rico se aprobó la Ley Núm. 82-2019, conocida como *Ley Reguladora de los Administradores de Beneficios y Servicios de Farmacia* (“Ley 82”). Dicha ley fue impugnada por la Junta de Supervisión Fiscal ante el Tribunal de Distrito Federal que atiende la reestructuración de la Deuda de Puerto Rico bajo el *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”, por sus siglas en inglés). Como resultado de dicha impugnación se ordenó que no se implementara la Ley 82, concluyendo que ésta no era compatible con el Plan Fiscal. Independientemente de este hecho, el cual sólo tuvo que ver con aspectos fiscales, la Ley 82 establece la intención del legislador sobre los servicios que proveen los PBMs en Puerto Rico.

A estos efectos, la exposición de motivos de la Ley 82 establece que “[l]os [PBMs] y Administradores de Beneficios de Farmacia (Pharmacy Benefit Administrators “PBA”, por sus siglas en inglés) son intermediarios que negocian los servicios y los costos de medicamentos entre las empresas farmacéuticas y los terceros pagadores, tales como el Gobierno, compañías de seguros, las empresas y los clientes que pagan directamente. Estas entidades tienen relación con la mayoría de los aspectos relacionados a medicamentos recetados, como por ejemplo, el procesamiento de reclamaciones a las farmacias, la revisión de la utilización de medicamentos, el desarrollo y la gestión de formularios, la negociación con los fabricantes para los descuentos (rebates) de los medicamentos recetados, la operación de pedidos de medicamentos por correo, la sustitución de medicamentos y el reembolso a los proveedores y los pacientes.”

La Ley 82 define PBM como “una persona, persona jurídica, ente u organización dedicada a proveer servicios de manejo, administración, revisión, asesoría de beneficios de medicamentos recetados para auspiciadores (“plan sponsors”) como los patronos, patronos autoasegurados, organizaciones de servicios de salud, planes de salud, administradores de terceros, grupos sindicales y otras personas que contratan dichos servicios para realizar alguna o varias de las siguientes actividades, entre otras: administrar servicios o cubierta de farmacia del auspiciador, procesamiento de recetas y reclamaciones, manejo de beneficios de servicios de medicamentos, programas de adhesión al uso de medicamentos (“drug adherence management”), programa de interacción de medicamentos, programa de utilización de medicamentos, formulario de medicamentos, comité y asesoría de formularios de medicamentos y su manejo, programas de utilización de genéricos e incentivos; análisis de datos médicos y de medicamentos, servicios de revisión de la utilización de medicamentos (“drug utilization review”), servicios de pre-autorización de medicamentos, manejo de programas de repeticiones de medicamentos, manejo de terapia médica (“medical therapy management o MTM”), manejo de bienestar, contratación de red



de proveedores de servicios de farmacia, centros de servicio al cliente y de llamadas, manejo de servicios de farmacia por correo, contrataciones con manufactureros de medicamentos y terceros relacionados a sus servicios, informes, servicios actuariales, servicios de informática y procesamiento, manejo de la terapia de medicamentos de enfermedades y asesoría y utilización de farmacéuticos clínicos. Se podrá hacer referencia en esta Ley como PBMs e incluyen entidades afines que no se hagan llamar o se identifiquen como PBMs. La definición también incluye a cualquier persona o entidad ofreciendo los servicios y productos que el PBM contrató con la farmacia.”

Finalmente, el Art. 5 de la Ley 82 establece que, para poder operar en Puerto Rico, los PBM estaban obligados a mantener una licencia emitida por el ente regulador que se creaba bajo la ley.

Por otra parte, los incisos (hh) e (ii) del Art. 4 de la Ley 73 definen los términos servicios no profesionales y servicios profesionales de la siguiente manera:

(hh) Servicios no profesionales.— Aquellos servicios que no son ofrecidos por una persona natural o jurídica con conocimientos o habilidades especializadas a quien se le requiere poseer un título universitario o licencia que lo acredite como profesional especializado.

(ii) Servicios profesionales.— Aquellos servicios que son ofrecidos por una persona natural o jurídica con conocimientos o habilidades especializadas a quien se le requiere poseer un título universitario o licencia que lo acredite como profesional especializado; **o cuya prestación principal consiste en el producto de la labor intelectual, creativa o artística, o en el manejo de destrezas altamente técnicas o especializadas.** (Énfasis nuestro.)

En su *Solicitud*, el peticionario descansa en y adopta como suyas las conclusiones contenidas en un documento titulado *Informe de Investigación ASG-I-21-006* (“Informe”) que alegan fue emitido por la ASG.³ En el *Informe* se concluye que la ASES no tiene jurisdicción para atender el RFP PBM. Sin embargo, el informe que el peticionario pretende utilizar como base para su argumentación es meramente el informe presentado por la Oficina de Investigaciones Especiales de la ASG (“OIE”), el cual no ha sido adoptado por la agencia. Así pues, sus conclusiones son una recomendación de una oficina dentro de la estructura de la ASG a la Directora Ejecutiva y no constituyen la política pública de la ASG como agencia al respecto.

Por otro lado, independientemente de la validez del *Informe* como política pública de la ASG, los argumentos presentados por el peticionario son incorrectos en derecho, ya que parecen indicar que

³ Véase, Anejo 9 de la *Solicitud*.



el único criterio para determinar si un servicio es o no profesional para propósitos de la Ley 73 es, si se requiere o no profesionales licenciados para ejecutar las tareas a ser contratadas. Aun cuando ese es uno de los elementos de la definición de servicios profesionales bajo la Ley 73, éste no es el único criterio. La definición establecida en la propia Ley 73 también incluye como criterio alternativo que la “prestación principal consiste en el **producto de la labor intelectual**, creativa o artística, **o en el manejo de destrezas altamente técnicas o especializadas**”.

El *Pliego* establece que los servicios a contratarse son los siguientes:

PBM Services:

Developing, implementing and offering to ASES and the MCOs a comprehensive Pharmacy Benefit Management program including but not limited to the following programs and services:

- Managing and credentialing the Pharmacy Network that covers the whole jurisdiction of Puerto Rico and performing Pharmacy Audits;
- Maintaining a Pharmacy Call Center for the Pharmacy Network;
- Adjudicating and accurately processing Pharmacy Claims and payment including handling Coordination of Benefits (“COB”) with other health insurance plans, including Medicare;
- Developing, maintaining and updating the Maximum Allowable Cost (“MAC”) list for Pharmacy reimbursement for Generic Drugs and multi-source Brand Drugs and providing an electronic platform to Pharmacies desiring to appeal MAC pricing, and if requested by ASES, coordinating with Puerto Rico's Department of Consumer Affairs ("DACO") to provide drug price information for DACO's drug price control list, as amended from time to time;
- Providing a comprehensive Drug Utilization Review (“DUR”) program, including capabilities to identify potential opioid abuse and suspect prescribing and dispensing patterns, and to track drug utilization for specific prescription drugs identified by ASES for special monitoring;
- Supporting ASES and the contracted MCOs with the High Cost High Need (“HCHN”) Program and other care management programs;
- Developing and implementing a compliance plan and Fraud, Waste and Abuse detection initiatives;
- Assisting in the support and operation of formulary management through the Pharmacy & Therapeutics Committee and Pharmacy Financial Committee;
- Managing the Academic Detailing program;



- Updating and maintaining standard operating procedure manual(s) for PBM services;
- Maintaining an Information System, Information management processes and technical support to meet the [PSG] requirements;
- Providing robust reporting and online reporting tool as described in the Contract;
- Retaining and storing data as required under the Contract;
- Developing strategies to promote an active participation of the MCOs in the development of Enrollee and prescribing Provider educational activities.

RA Services:

The RA Services shall include but are not limited to:

- Producing drug rebate invoices for pharmaceutical manufacturers according to federal schedule requirements for the MDRP and ASES's schedule requirements for non-MDRP rebates;
- Processing and submitting to the Medicaid Program the CMS drug utilization and information necessary for CMS-64 reporting;
- Providing Rebate program reports for retail Pharmacy drugs and PADs to ASES and its designees on a quarterly basis;
- Reconciling and resolving drug rebate disputes with pharmaceutical manufacturers;
- Ensuring quality control to validate accuracy of drug Rebate Data;
- Maintaining administrative, physical and technical safeguards to ensure security and confidentiality of all drug Rebate Information according to Puerto Rico and federal laws and industry standards;
- Updating and maintaining standard operating procedure manual(s) for Rebate program administration;
- Maintaining a Data repository system that interfaces with multiple Data sources;
- Maintaining a reporting database that can be accessed in real time by ASES to review and analyze rebate information and produce ad hoc reporting;
- Creating and maintaining a secure web portal for Data sharing with pharmaceutical manufacturers.
- Coordinating and assisting in the support and operation of ASES's Pharmacy Financial Committee.



Aun cuando la OIE concluye, y el peticionario repite – sin base o fundamento – que cada uno de estos servicios no son profesionales, la realidad es que **cada uno de los servicios que la ASES pretende contratar a través de RFP PBM son servicios altamente especializados que requieren una pericia en cubiertas de seguros, servicios de farmacia, desarrollo de sistemas de información, entre otros.** Específicamente, del PBM se requiere – a manera de ejemplo – administrar y dar las credenciales a la red de farmacia, así como auditar las mismas; adjudicar y procesar las reclamaciones de farmacia, incluyendo la coordinación de beneficios; desarrollar, mantener y actualizar la lista de precios máximos permitidos de los medicamentos; proveer un programa de revisión de utilización de medicamentos; etc. Por su parte, del RA se requiere – a manera de ejemplo – procesar y someter la información de utilización al Programa Medicaid cumpliendo con los requisitos impuestos por éste; resolver y reconciliar disputas con los manufactureros con relación a los reembolsos; asegurar el control de calidad en los rebates; asegurar la protección de los datos relacionados con los reembolsos; etc.

De las funciones descritas surge claramente que las tareas que realizará el PBM y el RA son altamente técnicas y especializadas. Pero también, muchas de ellas deben ser realizadas por personal adiestrado en farmacia, ingeniería, sistemas de información, etc.- algunas de cuyas profesiones requieren licenciamiento profesional. Otras tantas requieren la supervisión de personal adiestrado en farmacia o en medicina para poder realizar las mismas. A manera de ejemplo, la tarea de administrar, dar las credenciales y auditar las farmacias requiere validar que las farmacias que habrán de pertenecer a la red cumplen con todos los requisitos para operar, incluyendo la correcta dispensación de los medicamentos recetados. En muchas instancias, las auditorías requieren que los farmacéuticos del PBM discutan aspectos clínicos con el personal de la farmacia auditada antes de emitir las determinaciones, conclusiones y hallazgos.⁴ Las demás auditorías requieren personal con la preparación adecuada en auditoría para poder llevar a cabo las mismas siguiendo los principios generales aceptados para estos procesos.

Un análisis similar de cada uno de los servicios requeridos en el RFP PBM, en el contexto de la industria que representan y de la manera en que se requiere que se desempeñen los mismos, es suficiente para establecer que los servicios son claramente profesionales. Cualquier conclusión en contrario refleja un claro desconocimiento del servicio a ser contratado y un pobre análisis de los documentos provistos. **A pesar de lo anterior y de que MC-21 lleva más de dieciséis (16) años realizando las funciones de PBM bajo contrato con la ASES, parece negar ahora el nivel**

⁴ Véase, Art. 10(d) de la Ley 82 que establece que “[e]n la eventualidad que la auditoría requiera de conocimiento profesional, tanto los PBMs, PBAs o entidades afines, así como la farmacia, **se deberá nombrar un farmacéutico debidamente licenciado en Puerto Rico**, para que dichos profesionales puedan discutir los asuntos relacionados a la auditoría.” (Énfasis suplido.)



técnico y especializado de las destrezas requeridas para llevar a cabo las funciones que se quieren contratar.

Por otro lado, el peticionario también alega que múltiples agencias que “operan bajo supuestos de alta especialización y destrezas en los servicios que ofrecen” no están exentas de cumplir con la Ley 73. Estamos de acuerdo con el peticionario y ello aplica también a la ASES. La diferencia es que aquellos servicios especializados que tanto la ASES como otras agencias pretenden contratar se hacen mediante contratos de servicios profesionales, para los cuales la ASG, por su propia admisión, no tiene facultad de intervenir. Dicho de otra manera, no cabe duda de que, cuando la ASES – o cualquier otra agencia de gobierno que no esté exenta de los procesos de compras bajo la ASG – van a adquirir bienes, obras o servicios no profesionales, deben hacer una petición a ASG, quien se encargará del proceso de adquisición. Ejemplo de estos casos podría ser, la adquisición de efectos de oficina, computadoras, carros, el mantenimiento de aires acondicionados, o incluso la construcción de un edificio. Por el contrario, cuando se van a adquirir servicios altamente técnicos y especializados, por tratarse de servicios profesionales, se adquieren directamente por la agencia. Este sería el caso de los MCOs, los PBMs, servicios actuariales, servicios legales, de contabilidad, auditores, e incluso la adquisición de obras de arte.

De otra parte, el peticionario también alega que una carta enviada por la ASES al Gobernador y a los presidentes legislativos demuestra un alegado reconocimiento por parte de la agencia de que no tiene facultad para emitir y adjudicar el RFP PBM. La carta, incluida como Anejo 10 de la *Solicitud*, es una comunicación interagencial en la que se discute la situación de intromisión indebida de la ASG en los procesos de la ASES y en la que, además, se solicita que se enmiende la Ley 73 para eximir a la ASES de todos los procesos de compra a través de la ASG. La petición de exclusión expresa que se hace en la carta tiene el propósito de evitar que la ASG continúe interfiriendo indebidamente con las actuaciones legales y válidas de la ASES. Al hacerse la solicitud se reconoce que, como mencionamos anteriormente, la ASES tiene que recurrir a la ASG para la adquisición de bienes, obras y servicios no profesionales. Sin embargo, a la luz de todas las controversias que han surgido entre las agencias, nos parece claro que la ASG no entiende las limitaciones en sus facultades ni el alcance de los servicios profesionales a ser contratados por la ASES. Ante ese escenario y para evitar confusiones adicionales cada vez que se emita un RFP para servicios altamente técnicos y especializados referentes a la administración del PSG, se solicitó una exclusión total y expresa de todas las compras a través de la ASG.

En esta coyuntura es preciso señalar que nos parece altamente cuestionable que un proponente – que por definición no es parte de ninguna de las entidades envueltas – haya tenido acceso a documentos internos de la ASG (como lo es el *Informe*, el cual según mencionamos, no ha sido acogido por la Directora Ejecutiva de la agencia, por lo que no es un documento público) y a comunicaciones interagenciales (como lo es la carta al Gobernador, los presidentes legislativos y



otros funcionarios gubernamentales). Estos documentos están protegidos por el privilegio de procesos deliberativos, el cual busca “promover la más franca comunicación entre los funcionarios gubernamentales encargados de decidir y hacer valer la política pública del Estado”. Chiesa Aponte, *Tratado de Derecho Probatorio*, op. cit., pág. 293; 6 Moore’s Federal Practice Sec. 26.52 (3ra ed. 2016) y 26A Wright & Graham, *Federal Practice and Procedure: Evidence* Sec. 5680 (1992). Este privilegio se activa cuando el documento en cuestión es “deliberativo” y “pre-decisional”. *Moore’s Federal Practice*, supra, pág. 26-412.8. Una información es deliberativa cuando se relaciona a un proceso en el que se desarrolla o formula política pública. *Moore’s Federal Practice*, supra, pág. 26-412.9. Un documento es “pre-decisional” cuando es preparado para asistir en la toma de decisiones del gobierno, es decir, previo a tomar las mismas. *Moore’s Federal Practice*, supra, págs. 26-412.8 y 26-412.9. Así pues, el hecho de que un contratista gubernamental haya tenido acceso a estos documentos altamente confidenciales arroja dudas sobre cómo tuvo acceso a los mismos y el alcance de las conexiones que lograron dicho acceso.

Finalmente, sobre este particular y en un intento descabellado de tratar de inducir a error a esta Junta, el peticionario recurre a argumentar que la corporación agraciada, la cual es una corporación de responsabilidad limitada (“LLC”, por sus siglas en inglés) no puede prestar servicios profesionales por no cumplir con los requisitos que establece la Ley Núm. 164-2009, según enmendada, conocida como la *Ley General de Corporaciones de 2009* (“Ley 164”) para ello. Alega el peticionario que “es ilegal en Puerto Rico dar servicios profesionales a través de una corporación que no cumpla con los requisitos [establecidos para las corporaciones de servicios profesionales]” y que, en el caso de las LLCs, para prestar servicios profesionales, éstas también tienen que cumplir con dichos requisitos. El peticionario se equivoca en su interpretación de cómo las disposiciones de la Ley 164 aplican a esta controversia.

Sobre la naturaleza de los negocios que están permitidos a las LLCs, el Art. 19.06 de la Ley 164 establece, en lo pertinente, que:

- (a) Una compañía de responsabilidad limitada podrá establecerse al amparo de este capítulo **para la realización o promoción de cualquier negocio o propósito lícito, con o sin fines de lucro**, excepto los proscritos por la Constitución y las leyes del Estado Libre Asociado. Igualmente, una compañía de responsabilidad limitada y sus miembros podrán ejercer los poderes enumerados en el Capítulo 222 de este subtítulo [sobre corporaciones en general]. Igualmente, **una compañía de responsabilidad limitada y sus miembros podrán rendir los servicios enumerados en las secs. 3921 y 3922 de este título** [sobre corporaciones de servicios profesionales], sujeto a las limitaciones de las secs. 3925 y 3926 de este título. Igualmente, **toda compañía de responsabilidad limitada y sus miembros poseerán y podrán ejercer todas las facultades y**



privilegios concedidos por este subtítulo o por cualquier otra ley o por el contrato de compañía de responsabilidad limitada, además de aquellas otras facultades incidentales a éstas, siempre y cuando dichas facultades y privilegios sean necesarios o convenientes para la realización o promoción de los negocios o propósito, descritos en el certificado de incorporación. [...] (Énfasis nuestro.)

Sobre las corporaciones de servicios profesionales, los Art. 18.01 y 18.02 de la Ley 164 establecen que:

Art. 18.01. Intención legislativa

Es el propósito de este capítulo proveer para la incorporación de un individuo o grupo de individuos **que le rindan un mismo servicio profesional al público**, para lo cual la ley le requiere a dichos individuos que obtengan una licencia u otra autorización legal.

Art. 18.02 Definiciones

A los fines de este capítulo, los siguientes términos y frases tendrán el significado que a continuación se expresa:

- (a) Servicio profesional.— **Significará cualquier tipo de servicio profesional al público que por disposición de ley, reglamento o jurisprudencia no podía ser efectuado por una corporación antes de la fecha de efectividad de esta ley, y para el cual se requiera la obtención de una licencia y otra autorización legal como condición previa para la presentación del servicio.** Además, y a modo de ejemplo sin limitar la generalidad de este término, los servicios profesionales incluidos bajo este capítulo son aquellos provistos por arquitectos, contadores públicos certificados o de otro tipo, podiatras, quiroprácticos, dentistas, doctores en medicina, optómetras, osteópatas, ingenieros profesionales, veterinarios y abogados, sujeto a las Reglas del Tribunal Supremo.
- (b) Corporación profesional.— Significa una corporación que está organizada bajo este capítulo, **con el propósito único y exclusivo de prestar un servicio profesional y los servicios auxiliares o complementarios a este servicio profesional, y que tiene como accionistas únicamente a individuos que estén debidamente licenciados en el Estado Libre Asociado para ofrecer el mismo servicio profesional que la corporación.** (Énfasis y subrayado nuestro.)



Como puede observarse, aquí no se trata de una LLC llevando a cabo servicios que corresponden a una corporación de servicios profesionales. Ello sólo aplica cuando se crea una corporación “con el propósito único y exclusivo de prestar un servicio profesional”, según lo define la Ley 164. Como vimos, los PBMs prestan una variedad de servicios, algunos de los cuales deben ser prestados por profesionales licenciados y otros no.

Nótese que la definición del término “servicios profesionales” en la Ley 73 es diferente a la de la Ley 164. La definición en la Ley 73 es mucho más amplia y no se limita a requerir una licencia para llevar a cabo el servicio. La ley 73 incluye también en su definición aquellos servicios cuya “prestación principal consiste en el **producto de la labor intelectual**, creativa o artística, **o en el manejo de destrezas altamente técnicas o especializadas**”. Como vimos, los servicios que prestan los PBMs son profesionales porque son altamente especializados y técnicos y muchos de ellos deben ser realizados por profesionales licenciados.

En otras palabras, no estamos ante un escenario de una corporación que se creó exclusivamente para prestar un servicio que debe ser prestado por una persona que tiene que tener una licencia, **sino ante una corporación que se creó para prestar una multiplicidad de servicios, todos altamente especializados y algunos de los cuales requieren licencia para ser prestados**. Así pues, para propósitos de la contratación de servicios profesionales en el Gobierno, el enfoque no es en la corporación que presta los servicios, sino en el servicio provisto.

iv. La ASES es la entidad llamada a realizar el RFP PBM

Además de tratarse de un servicio profesional, por el tipo de servicios a contratarse, resulta evidente que es la ASES la entidad sobre la que recae la responsabilidad de emitir y adjudicar el RFP PBM. Según surge del detalle de los servicios incluidos en el Contrato Modelo,⁵ el PBM es el responsable de recibir, adjudicar y pagar las reclamaciones de pago por los medicamentos dispensados por las farmacias en la red. En otras palabras, conceptualmente, en términos del pago a las farmacias, el PBM opera de forma similar a como lo hacen los MCOs con relación al pago de los demás proveedores de servicios médicos bajo el PSG. Lo mismo aplica para otras áreas del servicio a ser contratado, tales como la resolución de disputas.

Sobre la contratación de los MCOs, el Art. IV, Sec. 2, de la Ley 72 delega en la ASES la negociación y contratación de estos servicios. Es razonable concluir que la intención del legislador era delegar en la ASES, que es la única agencia del Gobierno de Puerto Rico con la pericia requerida para ello, el proceso de negociación y administración de los contratos con las entidades que habrán de viabilizar el servicio y el pago a los proveedores de todas facetas de la cubierta del

⁵ Véase, Apéndice K del *Pliego*.



PSG. Así pues, lo que se busca con el RFP PBM es contratar un servicio similar al de los MCOs dirigido a la parte de la cubierta que tiene que ver con la cubierta de farmacia.

Por lo tanto, la negociación y contratación de este servicio, al igual que la contratación de los MCOs debe recaer enteramente en la única agencia con la pericia para ello; esto es, la ASES. Concluir lo contrario equivaldría a que en el día de mañana se pueda alegar que es a la ASG a quien le corresponde emitir, evaluar y adjudicar el RFP para la contratación de los MCOs, lo que claramente choca con la política pública del Gobierno de Puerto Rico y la intención de la Ley 72.

Como argumento final sobre este asunto, es importante señalar que todos y cada uno de los planteamientos del peticionario en cuanto a esta controversia van en contra de sus propios actos, lo que demuestra que viene a este foro con las manos sucias y de mala fe. En primer lugar, como mencionamos, MC-21 es la empresa que lleva sobre dieciséis (16) años prestando los servicios de PBM bajo contrato con la ASES. Así pues, conoce el alcance del servicio y las destrezas altamente especializadas y técnicas que se requieren para realizar los mismos. Segundo, de la propia página web del peticionario surge que ellos catalogan sus servicios como profesionales⁶ y que clasifican muchos de los servicios a ser contratados como servicios clínicos⁷. Finalmente, y más contundente aún, aunque MC-21 alega que no es a la ASES a quien le corresponde emitir el RFP, ésta cumplió en el mismo, cumplió con todos los requisitos mandatorios – incluyendo al proveer la evidencia de estar registrados en el RUP – y desde la aprobación de la Ley 73 se ha beneficiado de al menos tres (3) enmiendas a su contrato como PBM para extender la vigencia del mismo. Todo lo anterior denota que los planteamientos sobre la autoridad de la ASES para emitir estos contratos sólo son válidos cuando se pretende contratar a otra entidad y no para otorgar los contratos de los que MC-21 se beneficia en la actualidad.

b. El récord administrativo no releja la presencia de prejuicio o parcialidad

En su *Solicitud*, el peticionario dedica menos de una (1) página para tratar de desarrollar un argumento de perjuicio y parcialidad en el proceso de adjudicación del RFP PBM por parte del

⁶ Véase, sección titulada “Quiénes somos” en la página web de MC-21 (<https://mc-21.com/quienes-somos/>) en la que expresan que “[c]ontamos con reputados profesionales especializados en salud, sistemas de información, gerencia de procesos, servicios clínicos, técnicos y administrativos. Servimos a las principales aseguradoras, empresas privadas y al sistema de salud del gobierno de Puerto Rico.”

⁷ Véase, sección titulada “Programas y servicios” en la página web de MC-21 (<https://mc-21.com/programas-y-servicios/>) en la que catalogan los siguientes servicios como clínicos: Desarrollo y Administración de formularios de medicamentos; Administración Comités de Farmacia y Terapéutica; Desarrollo de Protocolos Clínicos; Análisis de Utilización de Medicamentos; Informes de Tendencias de Utilización y Consultoría; Diseño de Planes de Beneficios de Medicamentos; Programa de Manejo de Medicamentos Especializados; Manejo de Autorizaciones Previas; Programa de Mejoramiento de Calidad Clínica; Programa de Manejo de Terapia de Medicamentos; Programa de Adherencia a Medicamentos; Manejo de Querellas y Apelaciones.



Lcdo. Jorge Galva, Director Ejecutivo de la ASES. Alega MC-21 que ciertas expresiones de este funcionario denotan parcialidad y perjuicio hacia ésta y que su inhibición más tarde en el proceso no curó dicho defecto. En específico, MC-21 se refiere a unas expresiones que realizó el Director Ejecutivo en una entrevista radial.⁸ Posteriormente, el peticionario envió una comunicación a la ASES pidiendo que se retractaran de las expresiones hechas.⁹ La ASES respondió a la comunicación aclarando el alcance de las expresiones.¹⁰ Además, se negó enfáticamente que las expresiones en cuestión fueron hechas con el propósito de influenciar el proceso de adjudicación de la licitación.¹¹ Finalmente, se explicó que el proceso de evaluación y adjudicación del RFP se hizo de manera ciega, por lo que ni la Junta ni el Director Ejecutivo tenían conocimiento de la identidad de los licitadores. MC-21 respondió nuevamente reiterando su posición.¹² MC-21 sometió, como Anejo 8 de su *Solicitud*, un alegado intercambio de mensajes de texto entre el Lcdo. Galva y algún funcionario de la empresa. Sin embargo, el mismo carece de garantías de confiabilidad ya que no se identifica de qué dispositivo de obtuvieron los mensajes, las fechas de los mismos ni los mensajes previos o posteriores. Tampoco sabemos de qué manera los mismos fueron o no alterados. En cualquier caso, aún si fueran ciertos y si hubieran sido presentados en el contexto correcto, los mismos sólo expresan la posición del funcionario de la ASES de que se discuta el asunto en una reunión en lugar de continuar intercambiando comunicaciones escritas. De los mismos no se puede inferir un “tono beligerante¹³ y destemplado¹⁴” como alega el peticionario.

Sin embargo, más allá de meras conjeturas sobre la supuesta animosidad del Lcdo. Galva hacia el peticionario, las cuales solo se sustentan en lo antes discutido, el récord está totalmente desprovisto de evidencia concreta que sustente un perjuicio y parcialidad real y, mucho menos sustancial. No basta con alegar que “el Director Ejecutivo [Galva] **pudo haber influenciado** el proceso con ideas preconcebidas sobre el pobre desempeño de MC-21”. (Énfasis nuestro.) “[Q]uien señale que el juzgador actuó mediando pasión, prejuicio o parcialidad **debe sustentar sus alegaciones con evidencia suficiente**, pues éstas no deben convertirse en un instrumento para ejercer presión contra

⁸ Véase, Anejo 3 de la *Solicitud*. La validez de la transcripción no se estipula, ya que la misma no fue hecha por un taquígrafo certificado, sino por una empresa de medios. Más aún, de la propia transcripción surgen de manera evidente errores que, en ocasiones, dificultan entender el contexto de lo expresado.

⁹ Véase, Anejo 5 de la *Solicitud*.

¹⁰ Véase, Anejo 6 de la *Solicitud de Reconsideración*.

¹¹ *Id.*

¹² Véase, Anejo 7 de la *Solicitud de Reconsideración*.

¹³ La Real Academia de la Lengua Española define “beligerante” como “que está en guerra; combativo”. Véase, <https://dle.rae.es/beligerante>

¹⁴ La Real Academia de la Lengua Española define “destemplado” como “falto de temple o mesura”. Véase, <https://dle.rae.es/destemplado>



el tribunal de primera instancia”. Dávila Nieves v. Meléndez Marín, 187 DPR 750, 775 (2013). (Énfasis nuestro.)

Más aún, en Com. Seg. v. Real Legacy Assurance, 179 D.P.R. 692, 714-717 (2010), el Tribunal Supremo resolvió que:

En vista de que no es un solo funcionario el que interviene en el proceso adjudicativo, para que se consiga revertir la determinación final de la agencia, es necesario demostrar que la parcialidad demostrada por el oficial examinador influyó lo suficiente como para subvertir la integridad del proceso adjudicativo. En otras palabras, tiene que haber incurrido en un comportamiento de un grado tan alto de favoritismo o antagonismo que hace imposible la solución justa del caso. Expresiones de irritación, impaciencia, insatisfacción, molestia e incluso enfado por parte del funcionario que preside la audiencia, se ajustan a lo que en ocasiones muestra un hombre o una mujer normal; ello no configura parcialidad legal.

La objetividad e imparcialidad del oficial examinador puede ser cuestionada con éxito si se demuestra que el prejuicio del oficial examinador contamina el proceso a tal grado que acarrea consecuencias fatales en la determinación final que en su día emita la agencia. La parte perjudicada podrá solicitar la descalificación del funcionario que preside la vista cuando éste se aparta de su función de juzgador de los hechos y actúa como acusador; cuando dirige los procedimientos de un modo que subvierte la integridad del proceso; o cuando se evidencia que ha prejuzgado cuestiones fácticas específicas. Ante tal solicitud, el oficial examinador puede optar por descalificarse a sí mismo en vista de la seriedad de los fundamentos argüidos. De no recusarse de los procedimientos, le corresponde a la agencia evaluar si los fundamentos mediante los cuales se solicita la descalificación son meritorios o procede desestimar la petición. La decisión que tome la agencia tiene que formar parte del expediente administrativo, pues la negativa de ésta para conceder la descalificación no detendrá los procedimientos.

La revisión judicial sobre esa denegatoria procederá únicamente una vez la agencia adjudique el caso en sus méritos. El tribunal examinará si la alegada parcialidad del oficial examinador lo hacía descalificable. Como hemos establecido, ello dependerá de la gravedad y el tipo de parcialidad acaecida en el proceso, esto es, si ésta tuvo el efecto de socavar la integridad del procedimiento adjudicativo. Tras determinar que era descalificable, se examinará integralmente el récord administrativo para concluir si la parte que la petición se perjudicó por ese error al no poder consignar adecuadamente su postura respecto a los méritos del



procedimiento adjudicativo. De esta forma, la revocación de la decisión administrativa procederá exclusivamente en los casos en que la agencia erra al no descalificar al funcionario que presida la vista, y a su vez ello sea la causa de que, en perjuicio del solicitante, la agencia haya adjudicado erróneamente el caso ante su consideración.

Téngase presente que "debemos otorgarle deferencia a las determinaciones de los organismos [administrativos] si están sostenidas por evidencia sustancial que conste en el expediente administrativo". Y es que "[l]as determinaciones realizadas por las agencias administrativas merecen gran consideración y respeto". De hecho, "los procedimientos y decisiones de un organismo administrativo tienen a su favor una presunción de corrección y regularidad".

En este caso, operan varios factores en contra de la alegación de perjuicio y parcialidad hecha por el peticionario.

Primero, el proceso de evaluación y adjudicación fue uno ciego, en el cual ni el Comité Ejecutivo ni la Junta conocían la identidad de los proponentes, los cuales estaban identificados por letras. Dicho de otra manera, al recibir los resultados de las evaluaciones, el Comité Ejecutivo se limitó a evaluar las puntuaciones obtenidas por los licitadores, sin consideraciones externas por no conocer la identidad de cada proponente.

Segundo, la recomendación a la Junta provino del Comité Ejecutivo como entidad colegiada, no del Director Ejecutivo. Así pues, el peticionario no ha presentado evidencia de que todos los miembros del Comité Ejecutivo tenían perjuicio o parcialidad contra MC-21. Tampoco surge razón alguna para concluir razonablemente que cualquier perjuicio o parcialidad por parte del Lcdo. Galva – si es que existiera alguno – influyó la decisión del Comité Ejecutivo para recomendar a otro proponente. Mucho menos se presentó evidencia de que el perjuicio y parcialidad alegado influyó también a los miembros de la Junta que votaron de manera unánime para adjudicar el RFP. El récord no sustenta nada de lo anterior.

Finalmente, aun cuando el Lcdo. Galva rechazó cualquier imputación de perjuicio o parcialidad, para evitar incluso la apariencia de conflicto de interés, éste se inhibió de los procesos deliberativos de la Junta y delegó en la Subdirectora, Srta. Roxanna Rosario Serrano, el ocupar la posición vacante en el Comité Ejecutivo. Lo anterior significa que el Lcdo. Galva no estuvo presente en los procesos en los que se discutieron los resultados de la petición del segundo *Best and Final Offer* ("BAFO"), así como en la reunión donde se votó finalmente para adjudicar el RFP. Además, como vimos en el caso antes discutido, el remedio para atender una alegación de perjuicio y parcialidad es la descalificación del oficial. Habiéndose éste inhibido voluntariamente antes de los procesos



deliberativos de la entidad con facultad para decidir, no existe riesgo a la integridad del proceso adjudicativo.

A la luz de lo anterior, resulta evidente que es prácticamente imposible que cualquier opinión del Lcdo. Galva con respecto a cualquier proponente en este proceso haya podido influenciar de manera indebida la decisión que tomó el organismo con facultad para adjudicar el RFP, que es esta Junta. Así pues, este planteamiento resulta igualmente improcedente.

c. No hay razón para pensar que existió “underbidding” por parte del proponente agraciado o que haya riesgo de incumplimiento

El peticionario dedica página y media de su escrito al único argumento que realmente entra a atacar la razonabilidad de la evaluación y la adjudicación de las propuestas recibidas. Nótese que MC-21 no cuestionó las puntuaciones que los comités técnicos le adjudicaron en cada una de las categorías para su propuesta. Tampoco cuestionó las puntuaciones adjudicadas a las propuestas de los otros contendientes. Así pues, es forzoso concluir que el peticionario está de acuerdo con que las puntuaciones adjudicadas son correctas a la luz del contenido de cada propuesta.

Ahora bien, MC-21 tampoco contiene el hecho de que la propuesta de Abarca era la que ofrecía el precio más bajo. Por el contrario, lo que hace es argumentar que la oferta de Abarca es tan baja que pudiera constituir un precio falso (lo que se conoce también como “underbidding”) con el propósito de llevarse la buena pro del RFP PBM y luego tratar de negociar un precio más alto o, en la alternativa, presentar un riesgo de no poder prestar el servicio contratado. Para sustentar su alegación, el peticionario descansa en una Minuta de la reunión del Comité Ejecutivo de 9 de septiembre de 2021 – incluida como Anejo 12 de la *Solicitud* – en la cual la Sra. Jessica Osborne, consultora de Mercer, indicó lo siguiente:

Ms. Osborne made the observation that based on Offeror’s B bid, its approximately .35 cents / per claim, which is very low for a Medicaid program and more relevant in a commercial program, and it may not be sustainable over time. The concern is that this may be an underbid. This lower cost / per claim for the PBM services may be a risk when they are renegotiating, because they might want to cover what they have lost in the other services on years 4 & 5.

El peticionario utiliza esta expresión para sustentar dos (2) alegaciones que son incorrectas en hecho y en derecho. En síntesis, alegan, por una parte, que este alegado “underbidding” pudiera violar el *False Claims Act* (“FCA”), 31 U.S.C. §§ 3729 – 3733, y, por otra parte, que “el récord está huérfano en la respuesta que ASES le brindara al consejo del experto contratado por éstos, referente al precio de la propuesta del licitador agraciado”. El peticionario se equivoca en las dos (2) instancias.



El FCA fue promulgado en 1863 para prevenir que los proveedores de bienes defraudaran al Ejército de la Unión durante la Guerra Civil. Éste dispone que cualquier persona que **a sabiendas** presente reclamaciones falsas al gobierno es responsable del doble de los daños del gobierno más una multa por cada reclamación falsa. La cantidad de la multa y otros aspectos de la FCA han sido modificados con el tiempo.

El Departamento de Justicia de los Estados Unidos, quien es la entidad que hacer valer el FCA, emitió un artículo que explica el alcance de dicho estatuto y los requisitos para una causa de acción bajo el mismo.¹⁵ Con respecto a la responsabilidad, se establece esta puede ser impuesta a “cualquier persona que, a sabiendas, presente una reclamación falsa al gobierno o haga que otro presente una reclamación falsa al gobierno o que, a sabiendas, haga un registro o declaración falsa para que el gobierno pague una reclamación falsa.” Además, dispone para aquellos que actúan para falsamente evitar pagar dinero al gobierno y para aquellos que conspiran para recibir del o evitar pagar al gobierno por reclamaciones falsas.

Específicamente se ha establecido que una persona no viola el FCA con la mera presentación de una reclamación falsa al gobierno. Para violar el FCA, una persona debe haber presentado, o haber provocado la presentación de, el reclamo falso **con conocimiento de la falsedad**. En la § 3729(b)(1), el conocimiento de información falsa se define como (1) conocimiento real, (2) ignorancia deliberada de la verdad o falsedad de la información, o (3) grave menosprecio sobre la verdad o falsedad de la información.

Así pues, para que prospere una acción bajo el FCA es indispensable poder evidenciar que la persona a sabiendas (esto es con conocimiento real, ignorancia deliberada o grave menosprecio de la verdad) sometió o conspiró para someter información falsa al gobierno con la intención de obtener fondos a los que, de otro modo, no tendría derecho. Esa, claramente no es la situación en este caso, ya que – como veremos en los próximos párrafos – no hay razón para pensar que la oferta de Abarca es una falsa.

Como mencionamos, el peticionario limitó su argumentación al contenido de la minuta de la reunión del Comité Ejecutivo de 9 de septiembre de 2021 y, solo descansando en dicha información, llegó a la conclusión que la preocupación de la Sra. Osborne no fue atendida. Esto es falso. Este asunto fue discutido nuevamente por el Comité Ejecutivo tan pronto como al siguiente día, esta vez contando con la presencia de la Sra. Kristin Coyle, de Mercer. Es preciso aclarar que, a diferencia de la Sra. Osborne, la Sra. Coyle es el recurso de Mercer con especialidad en farmacia. Sin embargo, ella no estuvo presente al momento en que se discutió este asunto anteriormente

¹⁵ Véase, https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf.



porque tuvo que excusarse temprano de la reunión del 9 de septiembre de 2021. En la reunión de 10 de septiembre de 2021, se concluyó que:

At Mr. Galva's request, Mrs. Coyle explained that Offeror B's bid is of .35/Rx and the current rate is .66/claim. This is what ASES pays now to the PBM. Mrs. Coyle explains that she has never seen a per/rx so low for a Medicaid business, that rate is currently used in commercial products where there are other opportunities to leverage [*sic*] the spread and increase revenue but that is not the situation in Medicaid. Offeror F bid is of .60/Rx.

The Committee [*sic*] agrees that Offeror B is the stronger offer overall but recognizes that the .35/rx rate is an important underpricing issue. The Committee [*sic*] revised the financial ratios and it was noted that Offeror B is very profitable and has grown more over time, that it looks better in financial position than F.

In sum, after a thorough analysis of the Offeror's experience, overall scoring, financial condition and cost bids, the Committee agreed that the best and stronger option is Offeror B but making clear to the Board their concerns about the pricing so they can make a well informed [*sic*] decision.

Este asunto fue traído a la atención de la Junta como parte de las discusiones y deliberaciones sobre este tema desde el inicio del proceso de adjudicación. Véase Anejo 2 del Informe, página 15 del Informe del Comité Ejecutivo a la Junta de 15 de septiembre de 2021 y Anejo 3 del Informe, slide #35 de la Presentación a la Junta. Además, el 20 de octubre de 2021, se discutió lo siguiente:¹⁶

Tanto la Lcda. Martha Vélez como el equipo de Mercer tuvieron la oportunidad de discutir el informe del 1 de octubre con la Junta, repasar los elementos de puntuación y adjudicación y aclarar las dudas de los miembros. Se discutió el aspecto de sustentabilidad y posible “underbidding” del costo de PBM y “overbidding” del costo de Additional RA services de la oferta de B. La Sra. Coyle, de Mercer, indicó que no puede decir categóricamente que es un “underbid”, aclaró que no se tiene mayor información de por qué son tan agresivos en su oferta, pero que han mostrado que quieren ganar el negocio. Discutió las posibles razones por las que podrían mantener una oferta tan baja. Mencionaron, por ejemplo, según habían descubierto cuando estaban haciendo el análisis de MDRP y estimando los costos continuos, que los costos y beneficios de los empleados son más significativos en los estados que en Puerto Rico. También mencionó, que, como ocurre en otros procesos de licitación, que quieren hacer una inversión en Puerto

¹⁶ Véase Anejo 4 del Informe, *Minuta de la Reunión de la Junta de 20 de octubre de 2021*.



Rico porque quieren el negocio y han reducido sus costos con la esperanza de que puedan recuperar algunos de esos costos en los próximos años o en otros negocios. Se aclaró que ASES tiene la opción en ese caso de negociar costos de Additional RA (ARA) y para los años 4 & 5 o volver a licitar los servicios y que ese es el riesgo que tendría el oferente que lo llevaría a ser cauteloso para no perder el negocio. Se explicó también la dificultad en este momento de saber con certeza los costos finales de los ARA services.

De igual manera, en la reunión de la Junta de 8 de noviembre de 2021, se discutió lo siguiente:¹⁷

El Lcdo. Mier trajo a discusión la inquietud de que la oferta original por afiliado del Oferente B sería insostenible por ser la mitad de la norma a nivel nacional, y ahora más pues se está ofreciendo aún menos por afiliado. Expresa también que tiene una pregunta sobre cuáles serían esos programas o funcionalidades futuras no especificadas en el modelo de contrato y qué podría implicar eso para los costos futuros que se negociarían o se incluirían bajo enmiendas en el contrato una vez esté terminado o enmendado, cómo se podía saber qué es lo que están ofreciendo en su oferta, si no se incluye en el RFP, si están obligados a incluir esos programas en el costo que están ofreciendo.

Se explicó que como parte de las instrucciones del RFP se advierte a los oferentes que, si tienen alguna duda respecto a algo, no asuman, no hagan suposiciones porque entonces no podrán negociar eso después; que utilicen el proceso de Q&A para aclarar cualquier asunto del RFP que necesite ser aclarado. Una de las preguntas hechas por un oferente en el Q & A fue si se mantendrían los programas que a lo largo de los años ASES ha desarrollado para proporcionar acceso a grupos de pacientes con necesidades especiales, o para satisfacer las necesidades de los beneficiarios de ASES, programas actuales que requieren una programación especial para procesar las reclamaciones de farmacia, pero que no se mencionaban en el RFP. La respuesta que se dio a la pregunta y que se compartió con todos los oferentes alrededor de abril 26, 2021, antes de la fecha de someter las propuestas, fue que ASES tenía la intención de continuar con algunos de esos programas existentes bajo el Plan Vital y que se esperaba que el contratista coordinara con otras agencias según fuera necesario y que su transición se atendería en el proceso de implementación. En otras palabras, que los programas actuales deberían haber sido incluidos en la oferta. Se discutieron las reglas del RFP sobre cotización de costos, el concepto de “Total Ownership Cost Method”, que las tarifas a ser

¹⁷ Véase Anejo 5 del Informe, *Minuta de la Reunión de la Junta de 8 de noviembre de 2021*.



ofertadas son “todo incluido”. Se discutieron cláusulas contractuales que protegen contra la renegociación de tarifas basado en programas actuales/existentes como las mencionadas en la pregunta del Q&A, versus programas nuevos o futuros como lo que menciona el oferente en su comentario que sí pueden estar sujetos a cambios en la cuantía del contrato. Se aclaró que los Oferentes C y F no hicieron comentarios similares a los del Oferente B y que tampoco había explicación de por qué se incluyeron dichos comentarios.

Finalmente, el 10 de noviembre de 2021, se le proveyó a la Junta una serie de tablas sobre el BAFO II.¹⁸ Para un mejor análisis de los costos provistos, se incluyó en la última de estas tablas información sobre el costo promedio combinado por beneficiario a nivel nacional. De la data provista surge que, aunque el promedio nacional es \$10.00 y Abarca ofreció \$4.86, la fluctuación nacional es entre \$2.20 y \$27.40. Así pues, la oferta de Abarca está dentro de los parámetros nacionales de costo por paciente. Además, como vimos, Puerto Rico tiene distinciones con los estados que pueden explicar costos más bajos.

Sin embargo, lo más importante a este respecto es que la Junta tuvo amplia oportunidad de examinar, cuestionar y analizar los datos con relación a la oferta provista por Abarca. Luego de un análisis ponderado y de haber aclarado sus dudas al respecto, la Junta concluyó que la oferta de Abarca era la que ofrecía mejores condiciones para el Gobierno de Puerto Rico. Su decisión estuvo fundamentada en bases racionales y ausente de cualquier pasión o prejuicio, por lo que la misma debe ser confirmada.

CONCLUSIÓN

Después de un análisis completo, justo e imparcial de los planteamientos de MC-21, a la luz de la totalidad del expediente administrativo de este caso y con base en la discusión anterior, entendemos que los mismos no deben mover a la Junta a reconsiderar su determinación con relación a la adjudicación del RFP PBM y que no procede la concesión de ninguno de los remedios solicitados.

RECOMENDACIÓN

En vista de todo lo anterior, se recomienda a la Junta Directiva de ASES rechazar la *Solicitud de Reconsideración* presentada por MC-21.

¹⁸ Véase Anejo 6 del Informe, tabla final sobre BAFO II titulada “Combined average per enrollee”.



3. Otros Asuntos

4. Cierre de la Reunión

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL DE PRIMERA INSTANCIA
SALA SUPERIOR DE SAN JUAN

ADMINISTRACIÓN DE SERVICIOS
GENERALES

Peticionaria

v.

ADMINISTRACIÓN DE SEGUROS DE
SALUD

Peticionada

Civil Núm.: SJ2021CV06557

Sala: 907

Sobre: Solicitud de Orden

MOCIÓN EN CUMPLIMIENTO DE ORDEN

Al Honorable Tribunal:

Comparece la parte peticionaria, la Administración de Servicios Generales del Gobierno de Puerto Rico (en adelante la “ASG” o la “Administración”) quien comparece a través de la representación legal que suscribe y muy respetuosamente, **EXPONE**, **ALEGA** y **SOLICITA**:

I. Introducción

“Los procedimientos de subastas no están regulados por una ley especial general”¹, insistía reiteradamente nuestra tercera instancia judicial.

Los problemas económicos que reflejaban las arcas del Estado, el mandato expreso del Plan Fiscal bajo PROMESA, la falta de uniformidad y la ausencia de garantías procesales en los procesos de subastas, así como los actos de corrupción ocurridos en el pasado en los procesos de subastas, provocaron que el Poder Legislativo actuara de manera contundente para llenar este vacío legislativo, mediante la Ley 73-2019, que creó la “Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019”.²

¹ Empresas Toledo, Inc., vs. Junta de Revisión y Apelación de Subastas de la Autoridad de Edificios Públicos y Autoridad de Edificios Públicos, 168 DPR 771, 779 (2006)

² Esta legislación, vino a atender, entre otros problemas, “la falta de uniformidad en los procesos de adquisición, evaluación y revisión de las compras hechas por las instrumentalidades del Gobierno de Puerto Rico, que amerita ser subsanada mediante la presente Ley.” Exposición de Motivos de la Ley Núm. 73-2019. Según se planteó en aquel momento, “[l]as compras gubernamentales descentralizadas han dejado al descubierto lo ineficaz y costoso que resulta la existencia de múltiples oficinas de compras que implementan procedimientos individualizados que no resultan en los mejores intereses del Gobierno. La descentralización del proceso de compras se traduce en compras de menor volumen, por lo que los costos

Dicha legislación dispuso que la “Administración será el único ente autorizado a realizar y negociar la adquisición de bienes, obras y servicios no profesionales” (Véase, 3 LPRA § 9834)

Desde entonces y en un tiempo récord, la ASG ha comenzado un proceso de reestructuración de su organización, el cual incluyó el traslado de todos los compradores del Estado hacia la Administración bajo este nuevo organismo administrativo. La Administración también ha adoptado reglas legislativas y no legislativas para canalizar el poder delegado e impartir vitalidad al mandato legislativo de uniformar los procesos de compras. Los poderes en lo que respecta a la adjudicación de bienes y servicios se ponen en vigor a través de la Administración Auxiliar de Adquisiciones, la Junta de Subastas y la Junta Revisora de Subastas, apoyados por peritos en las distintas áreas de compras gubernamentales.

Finalmente, la ASG ejerce su poder de investigación y fiscalización a través de los mecanismos que le otorga la Ley 73-2019. Sobre esta última facultad, gira esta controversia y la ASG no está dispuesta a ceder este poder delegado o a ejercerlo livianamente.

En este caso, la parte peticionada cuestiona el requerimiento de información y se niega a entregar la información y documentación solicitada, al descansar en tres argumentos principales, a saber: (1) que la ASG carece de jurisdicción tanto por ley como por reglamento para solicitar la información requerida al sostener que la ASES celebra un proceso de Solicitud de Propuesta o “Request For Proposal” (“RFP”) para la adjudicación de un contrato de servicios profesionales los cuales se escapan de la autoridad de la ASG; (2) que la OIE, oficina interna creada por una orden administrativa, carecía del poder de requerir documentos, pues no estaba organizada cuando se hizo el primer requerimiento, e; (3) invoca otros fundamentos de política pública para negarse a cumplir con lo ordenado.

Según esbozaremos en este escrito, la jurisdicción de la ASG para realizar procesos investigativos y requerir la información en controversia, resulta indubitada e incuestionable.

de los bienes adquiridos a menudo son mayores. Sin duda, esto desvirtúa el objetivo principal del Gobierno de lograr mayores economías presupuestarias”. Id.

El lenguaje claro del texto de la Ley 73-2019, *supra*, en su Artículo 82 señala que, “[e]l Administrador podrá expedir citaciones **requiriendo** [...] la presentación de datos o **información para llevar a cabo los propósitos de esta Ley.**” Añade, que “[n]inguna **persona podrá negarse a cumplir** una citación del Administrador **o de su representante**, o producir la evidencia requerida o **rehusar contestar cualquier pregunta** en relación con cualquier estudio o **investigación.**” [Énfasis Nuestro]

Por lo tanto, el poder de requerir documentos para cumplir con los amplios propósitos de esta legislación, impiden a cualquier persona negarse a suplir cualquier información que surja por medio de una investigación relacionada a los programas que administra la ASG.

Con relación al alcance de la Ley 73-2019, *supra*, la misma dispone que la ASG será el único ente autorizado a “realizar y negociar la adquisición de bienes, obras y servicios no profesionales”, 3 LPRA §9834. Por otro lado – sobre los servicios profesionales – el Artículo 43 de la Ley 73-2019, *supra*, exige a toda persona que desee contratar para la prestación de servicios profesionales con el Estado, inscribirse en el Registro Único de Proveedores de Servicios Profesionales. En torno a los servicios profesionales, el inciso (f) del Artículo 45 de la Ley, exige a la Administradora, “fiscalizar las gestiones contractuales de los licitadores y/o proveedores con el Gobierno para asegurarse de que las mismas cumplan con las formalidades, requisitos y obligaciones que en derecho sean exigibles.”

Asimismo, tal como señala la parte peticionada en la página 14 de su *Moción en Cumplimiento de Orden*, el Artículo 5.2 del Reglamento 9302,³ establece que “la Administración también podrá realizar auditorías internas **para verificar el cumplimiento de los proveedores y contratistas registrados en el Registro, así, como para asegurar las operaciones y procesos del RUP**”. [Énfasis suplido]

La contratación de servicios profesionales no escapa a la jurisdicción de la ASG como pretende establecer la parte peticionada. En ese sentido, el Art. 2.1 del Reglamento 9302, *supra*, establece, entre otras cosas, que la ASG evaluará bajo criterios objetivos a todo **proveedor de servicios profesionales** que procure vincularse contractualmente con el Gobierno de Puerto Rico, a los efectos de asegurarse de que las Entidades

³ Véase, Reglamento Núm. 9302 del 26 de agosto de 2021, conocido como “Reglamento del Registro Único de Proveedores de Servicios Profesionales para el Gobierno de Puerto Rico”

Gubernamentales, Entidades Exentas y los municipios participantes del Gobierno de Puerto Rico solamente contraten con personas naturales o jurídicas de probada solvencia moral y económica, que no hayan sido convictas o que se haya declarado culpable en el foro estatal o federal, o en cualquier otra jurisdicción de los Estados Unidos de América, de aquellos delitos constitutivos de fraude, malversación o apropiación ilegal de fondos públicos enumerados en la Ley Núm. 2-2018, según enmendada, conocida como “Código Anticorrupción para el Nuevo Puerto Rico”.

Por lo tanto, el alcance del poder de investigación de la ASG se extiende con jurisdicción exclusiva sobre los procesos de compras de bienes, obras y servicios no profesionales, y en torno a los servicios profesionales, sobre la fiscalización del cumplimiento de todo proveedor con el Registro Único de Proveedores de Servicios Profesionales y los requisitos de contratación gubernamental según establecidos en el Reglamento 9302, *supra*.

Por lo tanto, la ASG tiene la facultad de investigar y requerir información para fiscalizar la acción de ASES y conocer el tipo de servicio que pretende adjudicar a través del RFP objeto del requerimiento de epígrafe.

Por otro lado, ASES cuestiona, además, que los requerimientos de información se hicieron a través de la Oficina de Investigaciones Especiales, y, que cuando se realizó el primer requerimiento, la Orden Administrativa que creó la Oficina no existía. Sobre dicho particular, según citamos antes, el poder establecido en la Ley para requerir información puede ser ejercido por un “representante”, y según ha establecido el Tribunal Supremo en Oficina de la Procuradora del Paciente v. MCS, 163 DPR 21, 34 (2004) que para el ejercicio de un poder delegado por ley no es necesario la aprobación de un reglamento legislativo, menos aún se exigiría aprobar un reglamento no legislativo o una oficina administrativa para tales fines. Finalmente, la parte peticionada hace alusión a unos asuntos de política pública y secretos de negocios que resultan ajenos a la petición de información, y los cuales resultan altamente especulativos y prematuros a cualquier controversia.

En este caso, la ASG ha estado impedida de ejercer su función fiscalizadora y eventualmente, de ser aplicable, sus posibles funciones de adjudicación de subastas o de fiscalización de servicios profesionales y servicios no profesionales. La obstinación

de ASES de impedir a la ASG de conocer el tipo de servicio que se está licitando, imposibilita a la Administración ejercer sus funciones fiscalizadoras.

Solamente al entregar lo requerido se estaría en posición de conocer si el proceso de licitación se trata de una Solicitud de Propuestas o "RFP" que debe canalizarse a través de la ASG. Por el contrario, de tratarse de un servicio profesional, solamente al entregar lo requerido la ASG podría asegurarse de que los contratistas que deseen vincularse contractualmente con ASES cumplan con los requisitos de contratación gubernamental, según las condiciones, criterios y requisitos establecidos en el Reglamento 9302. Ambos preceptos, a saber, los servicios no profesionales y los servicios profesionales son gestiones de la clara competencia y jurisdicción de la ASG.

Lo único que conocemos con certeza es que ASES es: (i) una agencia administrativa bajo la jurisdicción de la ASG; (ii) que carece de miembros de una junta de subastas con el conocimiento especializado y las credenciales que exige la nueva legislación; (iii) que no tiene compradores; (iv) no cuenta con un reglamento de compras; (v) que tampoco cuenta con normas legislativas que guíen su discreción y donde se establezcan las garantías procesales del debido proceso de ley; (vi) que no se conoce la identidad de los funcionarios a cargo del proceso de licitación; (vii) así como tampoco el contenido de lo que se está licitando, y; (viii) que no quieren ser fiscalizados por la única agencia administrativa con el poder para ello, a saber, la ASG.

ASES no quiere cumplir con su deber ministerial de entregar la información solicitada y a ciegas, es decir, sin mostrar el contenido del Pliego de la Solicitud de Propuesta o "RFP" a nadie, le quiere asegurar tanto a la ASG como a este respetado Tribunal que la Administración no ostenta jurisdicción para solicitarlo.

Lo anterior, no tan solo se aleja del nuevo mandato legislativo sobre los procesos de adquisición uniforme de bienes y servicios del Gobierno de Puerto Rico, sino que también, minan el mandato constitucional sobre el mejor uso de los fondos del erario.⁴

Este ejercicio investigativo no es uno aislado ni dirigido exclusivamente a esta agencia administrativa. La ASG ha iniciado un proceso agresivo de fiscalización para asegurar el cumplimiento con la Ley 73-2019, *supra*, por parte de todas las agencias del Estado. Sin embargo, ASES ha sido la única agencia administrativa que hasta el

⁴ Sección 9 del Artículo VI de la Constitución del Estado Libre Asociado de Puerto Rico.

momento ha impedido que la ASG cumpla con su deber ministerial de uniformar los procesos de licitación pública para de esta manera lograr economías a escalas para el Estado. Ahí radica precisamente la importancia del reconocimiento hecho por esta primera instancia judicial en la Resolución y Orden del 7 de octubre de 2021 al vindicar la nueva política pública del Estado y los mecanismos legales conferidos al nuevo ente administrativo. Respetuosamente, solicitamos a este Honorable Tribunal mantener en efecto la Resolución y Orden del 7 de octubre de 2021.

II. Derecho Aplicable y Aplicación a los Hechos del Caso

Según hemos visto, el Artículo 82 de la Ley 73-2019, *supra*, delega a la ASG el poder de investigación para hacer cumplir los propósitos que persigue la legislación de compras y subastas del Gobierno de Puerto Rico. A tales fines, establece el precitado articulado lo siguiente:

La Administración podrá llevar a cabo y publicar toda clase de estudios o **investigaciones** y recopilación de estadísticas **sobre asuntos que le afecten** o que propendan al mejoramiento de, entre otras cosas, los programas y servicios de la Administración o las agencias o instrumentalidades a las que provee servicios. A tales fines, **podrá requerir la información que sea necesaria, apropiada y conveniente para lograr tales propósitos** y aprobar aquellas reglas y reglamentos necesarios y razonables para su efectivo funcionamiento en cumplimiento a lo dispuesto por esta Ley.

El Administrador podrá expedir citaciones requiriendo la comparecencia de testigos y la presentación de datos o información para llevar a cabo los propósitos de esta Ley. Podrá, además, por sí o mediante funcionario debidamente autorizado, tomar juramentos y recibir testimonios, datos o información. **Si una citación expedida por el Administrador no fuese debidamente cumplida, el Administrador podrá comparecer ante el Tribunal de Primera Instancia de Puerto Rico y solicitar se ordene el cumplimiento de la citación. El Tribunal de Primera Instancia dará preferencia al curso y despacho de dicha petición y podrá dictar órdenes haciendo obligatoria la comparecencia de testigos o la presentación de los datos o información requerida previamente por el Administrador.** El Tribunal de Primera Instancia tendrá facultad para castigar por desacato la desobediencia a esas órdenes.

Ninguna persona podrá negarse a cumplir una citación del Administrador o de su representante, o producir la evidencia requerida o rehusar contestar cualquier pregunta en relación con cualquier estudio o investigación o porque la evidencia que se le requiere podría incriminarle o le expondría a un proceso criminal o a que se le destituya o suspendiera de su empleo, profesión u ocupación; pero el testimonio o evidencia producida por dicha persona a requerimiento del Administrador o su representante, o en virtud de orden judicial, no podrá ser utilizada o presentada como prueba en su contra en ningún proceso criminal, o en procesos civiles o administrativos que puedan resultar en la destitución, o suspensión de empleo, profesión u ocupación, luego de haber reclamado su privilegio de no declarar en su contra, excepto que dicha persona que así declarase no estará exenta de procesamiento o castigo por perjurio al así declarar. [Énfasis suplido]

Este poder es similar al encomendado a decenas de agencias administrativas del Estado para hacer valer el propósito legislativo de la ley que las instituyó.⁵ De igual forma, es una facultad que ejerce el poder legislativo como corolario a su poder de legislar.⁶

La parte peticionada parece plantear que el documento y la información solicitada se escapa de la jurisdicción de la ASG, al entrar en el contenido del Pliego de la Solicitud de Propuesta o “RFP”, y concluye para sí mismo, sin entregar siquiera el Pliego de la Solicitud de Propuesta o “RFP”, que el proceso por el cual licita es un servicio profesional fuera del alcance de los procesos de licitación de la ASG. Es menester mencionar que ASES sólo publicó en el Registro Único de Subastas (“RUS”), portal donde se publican las subastas, el **Aviso** o **Invitación** para la Subasta o Solicitud de Propuesta en el caso que hoy traemos ante la consideración de este Honorable Tribunal. Sin embargo, de dicho **Aviso** o **Invitación** no surge el tipo de servicio que ASES licita. En esta etapa, la ASG sólo ha requerido el contenido del Pliego del RFP para indagar sobre el tipo de servicio que se está licitando. De igual manera, la ASG le ha solicitado a la peticionada lo siguiente:

- a) Copia del expediente de la solicitud de propuesta titulada en inglés “*Request For Proposal # Pharmacy 2022 – Pharmacy Benefit Manager (PMB) and Rebate Aggregator (RA) Services*”.
- b) Listado de los miembros de la Junta de Subastas y;
- c) copia fiel y exacta de sus respectivas cartas de nombramientos, renuncia, cese u otro, según aplique, desde el 3 de enero de 2021 hasta el presente.
- d) Listado de los compradores y; copia fiel y exacta de sus respectivas cartas de nombramientos, renuncia, cese u otro según aplique, desde el 3 de enero de 2021 hasta el presente.
- e) Copia fiel y exacta del Reglamento de compras y subastas de la ASES.

Según discutimos en la petición de epígrafe, mediante la Ley 73-2019, *supra*, la ASG se convirtió en “la única entidad gubernamental facultada para establecer y llevar a

⁵ Véase, a modo ilustrativo, 3 LPRA § 283n; 3 LPRA § 1855b; 5 LPRA § 1094; 10 LPRA § 778; 20 LPRA § 2961; 22 LPRA § 1054w; 23 LPRA § 2205; 25 LPRA § 585.

⁶ 2 LPRA §§ 151-152 y §§ 154-154-A. Véase, además, *Aponte Hernández v. Sánchez Ramos*, 173 DPR 776 (2008); *Banco Popular v. Corte*, 63 DPR 66 (1944).

cabo todo procedimiento de adquisición de bienes, obras y servicios del Gobierno de Puerto Rico”. (Véase, Exposición de Motivos de la Ley 73-2019, *supra*)

En el Artículo 2 de la mencionada Ley, el legislador enfatizó que “las nuevas herramientas que provee esta Ley redundarán en una **fiscalización más efectiva del proceso de compras**”. [Énfasis Suplido]

La facultad de la ASG sobre bienes y servicios no profesionales resulta incuestionable,⁷ por lo que la parte peticionada plantea que se trata de un servicio profesional fuera del alcance de la ASG. Sin embargo, los Artículos 42 y 43 de la Ley 73-2019, *supra*, exigen a cualquier persona que desee contratar **para la prestación de servicios profesionales** con el Estado inscribirse en el Registro Único de Proveedores de Servicios Profesionales.

La legislación también impone en la ASG el deber de establecer mediante reglamento los criterios para la evaluación y cualificación de las personas que vayan a ofrecer los servicios profesionales al Estado. El inciso (f) del Artículo 45 de la Ley, exige a la Administradora “fiscalizar las gestiones contractuales de los licitadores y/o proveedores con el Gobierno para asegurarse de que las mismas cumplan con las formalidades, requisitos y obligaciones que en derecho sean exigibles.”

Además, el Artículo 5.2 del Reglamento 9302, *supra*, establece que “la Administración también podrá realizar auditorías internas **para verificar el cumplimiento de los proveedores y contratistas registrados en el Registro, así como para asegurar las operaciones y procesos del RUP**”. [Énfasis suplido]

Asimismo, el Art. 2.1 del Reglamento 9302 – el cual rige los criterios y requisitos de todo proveedor de servicios profesionales – le impone a la ASG el deber de asegurarse de que las Entidades Gubernamentales, Entidades Exentas y los municipios participantes del Gobierno de Puerto Rico solamente contraten con: (1) personas naturales o jurídicas de probada solvencia moral y económica, y; (2) que no hayan sido convictas o que se haya declarado culpable en el foro estatal o federal, o en cualquier otra jurisdicción de los Estados Unidos de América, de aquellos delitos constitutivos de fraude, malversación o apropiación ilegal de fondos públicos enumerados en la Ley Núm.

⁷ 3 LPRA §9834

2-2018, según enmendada, conocida como “Código Anticorrupción para el Nuevo Puerto Rico”.

En este caso, la ASG no ha tenido acceso al contenido del Pliego de la Solicitud de Propuesta o “RFP”, lo que le impide ejercer su función fiscalizadora. No sabemos si efectivamente el “*Request For Proposal # Pharmacy 2022 – Pharmacy Benefit Manager (PMB) and Rebate Aggregator (RA) Services*”, trata de un servicio profesional o no. Es decir, para determinar cuál es el objeto principal del proceso de licitación que realiza la parte petitionada es necesario analizar el contenido del Pliego del RFP para así determinar y concluir que nos enfrentamos a un servicio no profesional, ya sea mediante la delegación de una función, como administrador del pago de beneficios o ante unos servicios de consultoría.

No obstante, la extensa explicación que ofrece la parte petitionada en su escrito sobre el “PBM” y “RA” como un servicio profesional según su propia y exclusiva conclusión, es una discusión hipotética sobre el tipo de servicio que la ASG no ha podido corroborar debido a que no ha tenido acceso al contenido del Pliego del RFP ni de la información requerida.

Por otro lado, la parte petitionada sostiene que el requerimiento de información e investigación promovida por la Oficina de Investigaciones Especiales (“OIE”) resulta improcedente, esto, pues dicha Oficina fue creada mediante una orden administrativa con posterioridad al primer envío del Requerimiento de Información.

Según adelantamos, el 20 de julio de 2021 mediante la Orden Administrativa ASG Núm. 2021-04, la Administradora de la ASG estableció la Oficina de Investigaciones Especiales adscrita a la Administración de Servicios Generales. La referida Oficina se creó mediante una regla no legislativa con el propósito de canalizar el poder de investigación de la Administradora. La existencia de esta Oficina no es un requisito *sine qua non* para el ejercicio de los poderes de investigación delegados a la ASG.

Sobre dicho particular, el Tribunal Supremo ha establecido que basta que los poderes y facultades sean delegados a una agencia administrativa por legislación para su ejercicio, sin ni siquiera exigir la aprobación de un reglamento legislativo a tales fines. En *Oficina de la Procuradora del Paciente v. MCS*, 163 D.PR 21, 34 (2004), el Tribunal Supremo señaló:

En el caso de autos, la Oficina de la Procuradora fue creada por ley y sus facultades, entre ellas la de investigación, fueron atribuidas a ésta

mediante legislación. Si bien dicha legislación provee para que se promulgue un reglamento, ello no es un requisito jurisdiccional para que ésta ejerza las funciones delegadas por la Legislatura. Sobre este particular, en Asociación de Farmacias de la Comunidad v. Departamento de Salud, 156 D.P.R. 105 (2002), éste Tribunal reiteró la importancia de la promulgación de reglamentos, sobre todo cuando la ley habilitadora es ambigua; sin embargo, en ningún momento hemos adjudicado carácter jurisdiccional a dicha promulgación.

En ese sentido, el requerimiento de información surge como resultado de los poderes delegados a la ASG y a su Administradora mediante legislación, por lo que la existencia o no de una oficina interna para su ejercicio o el “representante” mediante el cual se ejerció esa facultad resulta claramente irrelevante. Independientemente de que el requisito de información se hiciera por la OIE o no, el poder de requerir información podía ser canalizado a través de cualquier “representante”, funcionario u oficina del Departamento. De hecho, los requerimientos de información se realizaron citando como fuente sustantiva el poder delegado en la Ley 73-2019, *supra*, sin sujeción a ninguna otra regla no legislativa.

La teoría en torno al ejercicio del poder de la agencia, por la existencia o no de una oficina interna, es un asunto baladí.

Por otro lado, aunque el poder de la ASG para requerir los documentos es tan fundamental para viabilizar su ley habilitadora, que el legislador determinó incluirle de manera específica en la Ley, según expusimos en la petición de marras. Este poder también está consagrado en la Sección 6.2 de la Ley Núm. 38-2017, conocida como “Ley de Procedimiento Administrativo Uniforme del Gobierno de Puerto Rico”. La parte peticionada invoca los requisitos esgrimidos por el Tribunal Supremo en H.M.C.A., Inc. v. Contralor, 133 DPR 945 (1993), sin embargo, el citado caso trata sobre un registro a una entidad privada al palio de la Sección 6.1 de la Ley de Procedimiento Administrativo Uniforme, *supra*. *A contrario sensu*, el presente caso trata de una solicitud de información bajo la Sección 6.2 de la referida Ley. Aunque la Ley 73-2019, *supra*, concede poderes específicos, el requerimiento de información también encuentra respaldo jurídico en la Ley de Procedimiento Administrativo Uniforme.

Finalmente, la parte peticionada hace unos planteamientos sobre política pública en la que alega que remitir la información a la agencia con poder para fiscalizar las compras del Estado, afectaría el interés público al entregar información interna del

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proceso y alude a una posible violación del privilegio sobre secretos de negocios. Ante dicha alegación, resulta preciso establecer que la ASG no requirió información relativa a los licitadores⁸, sino aquella relativa al contenido del Pliego del RFP para conocer si lo que se está licitado y el proceso que se celebra cumple con lo que exige la Ley 73-2019, *supra*. Los planteamientos sobre secretos de negocios y las negociaciones con los licitadores, resultan prematuros, especulativos y fuera del alcance de la información solicitada.

III. Súplica

POR TODO LO CUAL se solicita muy respetuosamente del Honorable Tribunal que declare **Ha Lugar** la presente moción en cumplimiento de orden, confirme la determinación de la Resolución y Orden del 7 de octubre de 2021 y ordene a la parte demandada ASES a entregar la información requerida.

Respetuosamente sometida.

En San Juan, Puerto Rico, a 25 de octubre de 2021.

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⁸ Se adopta por referencia párrafo siete (7) de la Petición del 6 de octubre de 2021

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL GENERAL DE JUSTICIA
TRIBUNAL DE PRIMERA INSTANCIA
CENTRO JUDICIAL DE San Juan
SALA SUPERIOR DE San Juan

ADMINISTRACIÓN DE SERVICIOS
GENERALES

CASO NÚM. SJ2021CV06557 (SALÓN 907)

VS

ADMINISTRACIÓN DE SEGUROS DE SALUD

SOBRE: MANDAMUS

NOTIFICACIÓN

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El (La) Secretario(a) que suscribe certifica y notifica a usted que con relación al (a la) MOCIÓN DE MOCIÓN DE DESISTIMIENTO [21] este Tribunal emitió una RESOLUCIÓN el 03 de noviembre de 2021.

Se transcribe la determinación a continuación:

A LA LUZ DE LO INFORMADO POR AMBAS PARTES, SE DA POR CUMPLIDA Y SATISFECHA LA CITACIÓN Y REQUERIMIENTO DE INFORMACIÓN CURSADO A LA PARTE PETICIONADA, CUYO CUMPLIMIENTO SE ORDENÓ MEDIANTE LA RESOLUCIÓN ENMENDADA Y ORDEN EMITIDA POR ESTE TRIBUNAL EL 7 DE OCTUBRE DE 2021 (Y SEGÚN SU ALCANCE FUE DELIMITADO POSTERIORMENTE POR LA PARTE PETICIONARIA). EN CONSECUENCIA, SE DEJA SIN EFECTO EL SEÑALAMIENTO DE VISTA DEL 3 DE NOVIEMBRE DE 2021 Y SE ORDENA EL ARCHIVO DEL PRESENTE CASO. [22]

f/ALFONSO S. MARTÍNEZ PIOVANETTI

SE LE ADVIERTE que al ser una parte o su representante legal en el caso sujeto a esta RESOLUCIÓN, usted puede presentar un recurso de apelación, revisión o certiorari de conformidad con el procedimiento y en el término establecido por ley, regla o reglamento.

CERTIFICO que la determinación emitida por el Tribunal fue debidamente registrada y archivada hoy 03 de noviembre de 2021, y que se envió copia de esta notificación a las personas antes indicadas, a sus direcciones registradas en el caso conforme a la normativa aplicable. En esta misma fecha fue archivada en autos copia de esta notificación.

En San Juan, Puerto Rico, a 03 de noviembre de 2021.

GRISELDA RODRIGUEZ COLLADO
Nombre del (de la)
Secretario(a) Regional

Por: f/VANESSA NIEVES MORALES
Nombre y Firma del (de la)
Secretario(a) Auxiliar del Tribunal

Sheila Torres

From: Jorge Galva Rodriguez <jgalva@asespr.org>
Sent: Wednesday, December 1, 2021 12:11 PM
To: Sheila Torres; Edanit Torres Cotto; Martha Vélez González; Roxanna K. Rosario Serrano
Subject: FW: COPIA INFORME ASG-I-21-006
Attachments: 21.11.30_informe final_con anejos.pdf

Importance: High

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Hilda M. Rivera Colón <hrivera@asg.pr.gov>
Sent: Wednesday, December 1, 2021 12:05 PM
To: Jorge Galva Rodriguez <jgalva@asespr.org>
Cc: Joel Fontáñez González <jfontanez@asg.pr.gov>; Administración <administracion@asg.pr.gov>
Subject: COPIA INFORME ASG-I-21-006
Importance: High

1 de diciembre de 2021

Lcdo. Jorge E. Calva, JD, MHA
Director Ejecutivo
Administración de Seguros de Salud

Estimado Director Calva:

Reciba un saludo cordial de todos los que laboramos en la Oficina de Investigaciones Especiales de la Administración de Servicios Generales del Gobierno de Puerto Rico.

Adjunto a esta comunicación se adelanta copia del Informe de la Investigación ASG-I-21-006.

Cordialmente,



ADMINISTRACIÓN DE
SERVICIOS GENERALES
GOBIERNO DE PUERTO RICO

Hilda Marie Rivera Colón

Directora Administrativa

Oficina de Investigaciones Especiales

Administración de Servicios Generales

Lcda. Karla G. Mercado Rivera, Administradora

Aviso:

Este mensaje se dirige exclusivamente a su destinatario. Contiene información legal confidencial y privilegiada, cuya divulgación está prohibida por la ley. Si ha recibido este mensaje por error, debe saber que su lectura, copia y uso están prohibidos. Le rogamos que nos lo comunique inmediatamente por esta misma vía o por teléfono y proceda a su destrucción.



**ADMINISTRACIÓN DE
SERVICIOS GENERALES**
GOBIERNO DE PUERTO RICO

Informe de Investigación

ASG-I-21-006

Inicio: 1 de julio de 2021

Parcial: 23 de noviembre de 2021

OFICINA DE INVESTIGACIONES ESPECIALES

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RESUMEN

El 1 de julio de 2021, la Oficina de Investigaciones Especiales (en adelante, la “OIE”); adscrita a la Administración de Servicios Generales (en adelante, la “ASG” o la “Administración”), recibió mediante correo electrónico un referido de la Oficina de la Administradora de la ASG. Dicho referido vino acompañado de una carta anónima donde se señalan posibles violaciones a varios estatutos vigentes en cuanto a los procesos de contratación gubernamental bajo la Ley 73-2019.

Luego de haberse recibido el referido antes mencionado, la Oficina de Investigaciones Especiales de la ASG realizó el análisis correspondiente de la documentación recibida por lo que procedió a iniciar la investigación requiriendo información según las facultades concedidas en ley para el caso en referencia.

Así las cosas, oportunamente se le solicitó a la Administración de Seguros de Puerto Rico (en adelante, la “ASES”) toda la información relacionada al proceso de solicitud de propuesta titulada en inglés “*Request For Proposal # Pharmacy 2022 – Pharmacy Benefit Manager (PMB) and Rebate Aggregator (RA) Services*”.

A pesar de varios requerimientos de información en los cuales se le solicitó a la ASES, que sometiera la documentación requerida para poder evaluar el cumplimiento de la Ley 73-2019, la entidad se limitó a señalar que la ASG no tiene jurisdicción sobre el proceso de licitación toda vez que la adquisición en el caso que nos ocupa es para ofrecer un servicio profesional y **no para la adquisición de un bien o servicio no profesional**. (Subrayado nuestro). La acción de la agencia de no emitir la información o documentación requerida limitó sustancialmente la facultad de la OIE de evaluar, y a su vez concluir, si en esencia el servicio que pretende contratar la ASES representa un servicio profesional, o, por el contrario, si la adquisición representa un bien o un servicio no profesional. Ante esto, la OIE sometió un informe preliminar recomendando a la Administración recurrir al Tribunal de Primera Instancia (en adelante, “TPI”) para que ordene a ASES la entrega de la información solicitada. Así las cosas, ASG recurrió al TPI. Luego de varios procesos ASES sometió el pliego para el proceso de “*Request For Proposal # Pharmacy 2022 – Pharmacy Benefit Manager (PMB) and Rebate Aggregator (RA) Services*”.

Evaluado el pliego y otros documentos, según sometidos al TPI por ASES, la OIE procedió a someter el presente informe final de la investigación ASG-I-21-006.

BASE LEGAL

El presente informe se emite en virtud de los artículos 72, 73 y 82 de la Ley Núm. 73-2019, *supra*, cuyo poder fue delegado a la OIE. En lo pertinente, la OIE tiene la obligación delegada por la Administración de “[f]iscalizar las gestiones contractuales de los licitadores y/o proveedores con el Gobierno para asegurarse de que las mismas cumplan con las formalidades, requisitos y obligaciones que en derecho sean exigibles”¹.

Asimismo, la Administración podrá llevar a cabo toda clase de investigaciones y recopilación de estadísticas sobre asuntos que le afecten o que propendan al mejoramiento de, entre otras cosas, los programas y servicios de la Administración o las agencias o instrumentalidades a las que provee servicios.²

Queda prohibido que cualquier entidad gubernamental o entidad exenta que por disposición de la Ley 73-2019, *supra*, venga obligada a realizar sus procesos de compras a través de la Administración, desarrolle dentro de sus organismos programas similares a los que ofrece la ASG ni podrá suministrarse dichos servicios por entidad alguna que no sea la Administración a menos que medie autorización expresa del Administrador.³

A través de la OIE, se establece un andamiaje dentro de la ASG cuyo fin es identificar posibles fallas en los procesos de adquisición gubernamental y recomendar medidas correctivas para maximizar el desempeño de las funciones de la Administración en atención a los mejores intereses del Gobierno de Puerto Rico.⁴

¹ Véase, Art. 45 de la Ley 73-2019, *supra*.

² Véase, Art. 82 de la Ley 73-2019, *supra*.

³ Véase, Art. 15 de la Ley 73-2019, *supra*.

⁴ Véase, Orden Administrativa ASG Núm. -2021-004 y Carta Circular ASG Núm. 2021-08

OBJETIVOS

El presente informe tiene como objetivo evaluar y analizar si el proceso para la solicitud de propuesta titulada en inglés “*Request For Proposal # Pharmacy 2022 – Pharmacy Benefit Manager (PMB) and Rebate Aggregator (RA) Services*” cumple con lo establecido en la Ley 73-2019, *supra*, y la reglamentación aplicable.

HECHOS

1. El 30 de junio de 2021 se recibe por correo electrónico de la OIE, luego, el 1 de julio de 2021, se recibió en físico un referido de la Oficina de la Administradora de la ASG, sobre alegaciones de incumplimiento por parte de ASES a través de una carta anónima donde se señalan violaciones a varios estatutos vigentes en cuanto a los procesos de adquisición gubernamental.
2. El mismo 1 de julio de 2021, y luego de haberse recibido el referido antes mencionado, la OIE realizó el análisis correspondiente de la documentación recibida por lo que procedió a iniciar la investigación en el caso de referencia. Con en el propósito de evaluar si la contratación representa un bien, obra o servicio no profesional, la OIE le envió a la ASES un Primer Requerimiento de Información donde se les solicitó lo siguiente:
 - a. Expediente de la solicitud de propuesta titulada en inglés “*Request For Proposal # Pharmacy 2022 – Pharmacy Benefit Manager (PMB) and Rebate Aggregator (RA) Services*”.
 - b. Listado de los miembros de la Junta de Subastas y; copia fiel y exacta de sus respectivas cartas de nombramientos, renuncia, cese u otro según aplique, desde el 3 de enero de 2021 hasta el presente.
 - c. Listado de los compradores y; copia fiel y exacta de sus respectivas cartas de nombramientos, renuncia, cese u otro según aplique, desde el 3 de enero de 2021 hasta el presente.
 - d. Copia fiel y exacta del Reglamento de compras y subastas de la ASES.

3. En atención al Primer Requerimiento de Información, el 6 de julio de 2021 en la OIE se recibió una contestación a dicho primer requerimiento. Sin embargo, en dicha contestación ASES incluyó una carta donde objetó el tener que emitir el expediente requerido para el proceso de solicitud de propuesta “*Request For Proposal # Pharmacy 2022 – Pharmacy Benefit Manager (PMB) and Rebate Aggregator (RA) Services*” al entender que la adquisición es una que involucra servicios profesionales.
4. ASES también acompañó una certificación como parte de su contestación al Primer Requerimiento de Información, así como varios documentos de su Departamento de Recursos Humanos donde informó que no cuentan con nombramientos vigentes de compradores. Del mismo modo, ASES acompañó un documento titulado “Procedimiento operativo estándar sobre compras, suministros y contratación de servicios no profesionales según la Ley Número 73 del 2019, *supra*,”. Resulta importante destacar que dicho documento no está firmado ni tampoco contiene fecha alguna sobre su vigencia. (Anejo B).
5. En atención a la contestación al Primer Requerimiento de Información, el 7 de julio de 2021 la OIE emitió un *Segundo y Final Aviso de Requerimiento de Información* como paso previo a tener que recurrir al auxilio del Tribunal de Primera Instancia. (Anejo C).
6. Así las cosas, la ASES contestó que se sostenía en su objeción del 6 de julio de 2021 al reiterar que la adquisición objeto del requerimiento es para contratar un servicio profesional y no para adquirir un bien o contratar un servicio no profesional. (Anejo D)
7. El 30 de septiembre de 2021, la OIE emite un Informe Parcial recomendado a la ASG que recurra al TPI a solicitar la información según las facultades otorgadas en el Art. 82 de la Ley 73-2019, *supra*.
8. El 4 de noviembre de 2021 la OIE recibe por parte de la ASG el pliego y otros documentos sometidos por ASES al TPI. (ANEJO E- hoja de trámite del recibo)
9. El 5 de noviembre de 2021 se le cursó un requerimiento de información a la Oficina de Registros de la ASG, sobre las compañías participantes. Dicho requerimiento se contestó el mismo día.

10. El 9 de noviembre de 2021 se recibe el correspondiente informe del consultor asignado a la evaluación del pliego. (ANEJO E).

ALCANCE Y METODOLOGÍA

La investigación inició el 1 de julio de 2021 hasta el 23 de noviembre de 2021. La investigación utiliza, sin que se entienda como una limitación, la siguiente metodología:

- 1) Requerimiento de información a la ASES y a la Oficina de Registros de la ASG.
- 2) Análisis del pliego y otros documentos sometidos por la ASES al TPI y referidos a la OIE.
- 3) Análisis de los documentos obtenidos en la página oficial de la ASES.

HALLAZGOS

Se detallan a continuación los hallazgos encontrados para el presente informe, según surge del informe preparado para esta investigación:

Hallazgo # 1 – El servicio a ser requerido por ASES en el “Request For Proposal # Pharmacy 2022 – Pharmacy Benefit Manager (PMB) and Rebate Aggregator (RA) Services” es un servicio no profesional.

Situaciones:

- a. El 31 de marzo de 2021, ASES inició el proceso de “Request For Proposal # Pharmacy 2022 – Pharmacy Benefit Manager (PMB) and Rebate Aggregator (RA) Services”. celebra el proceso al entender que el servicio a adquirir es un servicio profesional.
- b. Se realizó un análisis de los documentos sometidos en la plataforma de la Oficina de Registros de ASG, obtenidos mediante un requerimiento de información sobre los licitadores o proveedores participantes y se encontró que, aunque todos están en el RUP

la mayoría de las actividades comerciales que realizan con otras agencias son de servicios no profesionales.

- c. La OIE por medio de un recurso asignado evaluó el pliego del RFP en el caso que nos ocupa y realizó una breve descripción de las características de lo que busca adquirir ASES y encontró lo siguiente:

I- Introducción

Los PBM son administradores externos contratados por planes de salud, empresas, sindicatos y entidades gubernamentales para gestionar los programas de beneficios de medicamentos recetados. Estos se crearon en la década de 1960 para procesar las reclamaciones de las compañías de seguros. En la década de los 70, los PBM actuaban como intermediarios fiscales que adjudicaban las reclamaciones de medicamentos con receta. En la actualidad, los PBM no sólo tramitan las reclamaciones, sino que también desarrollan y gestionan las redes de farmacias, determinan los formularios de medicamentos, fijan los copagos y establecen los criterios para las autorizaciones previas y la elección de farmacia por parte del paciente.⁵

Los PBM, a menudo son llamados "intermediarios invisibles" porque están ocultos entre la compañía de seguros del paciente, para la que trabaja el PBM, y la farmacia a la que el PBM reembolsa por dispensar la receta. En la actualidad en Estados Unidos hay tres empresas de gestión de medicamentos (PBM):

(a) CVS Caremark, (b) Express Scripts y (c) OptumRx (una división de United Healthcare). Estas tres compañías controlan casi el 80% del mercado de medicamentos con receta en Estados Unidos.⁶

A continuación, se incluye tabla ilustrativa de las funciones de un PBM.⁷

⁵ Pharmacist Society of the State of New York, Inc. PBM Basics

⁶ Pharmacist Society of the State of New York, Inc. PBM Basics

⁷ Pharmacist Society of the State of New York, Inc. PBM Basics

Luego de este análisis de las funciones y servicios que como intermediarios prestan los PBM y RA forzoso es concluir que estas compañías no se distinguen por la prestación de servicios profesionales. Mas aun, las compañías que licitaron en el RFP Pharmacy 2022 cuentan con la certificación del Registro Único de Licitadores y en el Registro Único de Proveedores de Servicios Profesionales, sus registros de comerciantes, así como sus patentes municipales fueron analizados en un reporte independiente. De dicho análisis se desprende que ninguna de las compañías que participaron se dedican a la prestación de servicios profesionales.

II. Discusión de Servicios de PBM y RA del RFP Pharmacy 2022 de ASES.

A continuación, una breve descripción de las características que ASES busca en los licitadores que participaran de la Subasta Pharmacy 2022.

A. El RFP Pharmacy 2022 de ASES interesa reclutar licitadores que:¹⁰

- "Demuestren una clara comprensión de las necesidades de ASES, los servicios solicitados y las responsabilidades del licitado". **(Esto no es un servicio profesional)**

- "Demuestre que el licitador entiende sus funciones como socio y asesor de ASES". **(Esto no es un servicio profesional)**

- "Demostrar la capacidad del licitador para la prestación de todos los servicios y cumplir con todos los requisitos del Contrato". **(Esto no es un servicio profesional)**

- "Demostrar cómo el licitador contribuirá en la consecución y avance de la meta y objetivos de ASES". **(Esto no es un servicio profesional)**

- "Demostrar la capacidad operativa para la fecha de implementación que será 1 de julio de 2022". **(Esto no es un servicio profesional)**

- "Demostrar solvencia y estabilidad financiera para realizar los servicios de este RFP". **(Esto no es un servicio profesional)**

De este listado de características, se desprende que ASES NO está solicitando compañías (licitadores) que se dediquen a la prestación de servicios profesionales para participar del RFP Pharmacy 2022.

¹⁰ RFP Pharmacy 2022 Pág. 2

B. A continuación, se provee un listado con la descripción de los servicios a ser prestados por el PBM según consta del RFP Pharmacy 2022.¹¹

Servicios PBM:

-Administración y acreditación de la Red de Farmacias que cubre toda la jurisdicción de Puerto Rico (servicio) y realización de auditorías de farmacia. **(Esto no es un servicio profesional)**

-Mantener un Centro de Llamadas de Farmacia para la Red de Farmacias. **(Esto no es un servicio profesional)**

-Adjudicar y procesar con precisión las Reclamaciones de Farmacia y el pago, incluyendo el manejo de la Coordinación de Beneficios ("COB") con otros planes de seguros de salud, incluyendo Medicare". **(Esto no es un servicio profesional)**

-Desarrollar (servicio), mantener (servicio) y actualizar (servicio) la lista de Costo Máximo Permitido ("MAC") de reembolso de Farmacia para Medicamentos Genéricos y Medicamentos de Marca de múltiples fuentes y proveer una plataforma electrónica (Bienes) a las Farmacias que deseen apelar los precios del MAC, y si es solicitado por ASES, coordinar (servicio) con el Departamento de Asuntos del Consumidor de Puerto Rico ("DACO") para proveer (servicio) la lista de control de precios de medicamentos, según sea enmendada de tiempo en tiempo. **(Esto no es un servicio profesional)**

-Proporcionar un programa (bien) integral de revisión de utilización de medicamentos que incluya capacidades para identificar (servicio) el potencial abuso de opioides y patrones sospechosos de prescripción y dispensación y para rastrear la utilización de medicamentos para prescripciones específicas identificadas por ASES para un monitoreo especial. **(Esto no es un servicio profesional)**

-Apojar a ASES y a las MCO contratadas con un programa de Alto Costo y Alta Necesidad y otros programas de administración. **(Esto no es un servicio profesional)**

-Desarrollar e implementar un plan de cumplimiento e iniciativas de detección de Fraude, Desperdicio y Abuso. **(Esto no es un servicio profesional)**

¹¹ RFP Pharmacy 2022 Págs. 2-3

-Asistir en el apoyo y funcionamiento de la administración de los formularios a través del Comité de Farmacia y Terapéutica y del Comité Financiero de Farmacia. **(Esto no es un servicio profesional)**

-Administrar el Programa de Detalle Académico. **(Esto no es un servicio profesional)**

-Actualizar y mantener el manual de procedimientos operativos estándar para los servicios de PBM. **(Esto no es un servicio profesional)**

-Mantenimiento de un sistema de información, procesos de gestión de la información y soporte técnico para cumplir con los requisitos de las BPA. **(Esto no es un servicio profesional)**

-Suministro de una herramienta sólida de información en línea, tal y como se describe en el contrato. **(Esto no es un servicio profesional)**

-Conservación y almacenamiento de los datos según lo exigido en el Contrato. **(Esto no es un servicio profesional)**

-Desarrollar estrategias para promover una participación activa de las MCO en el desarrollo de actividades educativas para los afiliados y los proveedores que prescriben. **(Esto no es un servicio profesional)**

***Conclusión:**

*Ninguno de los servicios de PBM descritos corresponde a un servicio profesional.

A. A continuación, se provee un listado con la descripción de los servicios a ser prestados por el RA según consta del RFP Pharmacy 2022.¹²

Servicios RA:

Los servicios de RA incluyen, pero no se limitan a:

-Producir facturas de reembolso de medicamentos (servicio) para los fabricantes farmacéuticos de acuerdo con los requisitos del programa federal para el MDRP y los requisitos del programa ASES para otros reembolsos a los afiliados." **(Esto no es un servicio profesional)**

¹² RFP Pharmacy 2022 Págs. 3-4

-Procesamiento y envío (servicio) al programa de Medicaid de la utilización de medicamentos de CMS y de la información necesaria para los informes de CMS 64." (servicio) **(Esto no es un servicio profesional)**

-Proporcionar trimestralmente a ASES y a sus designados los informes del Programa de Reembolsos para medicamentos de farmacia minorista y PAD". **(Esto no es un servicio profesional)**

-Reconciliación y resolución de conflictos de reembolsos de medicamentos con los fabricantes farmacéuticos." **(Esto no es un servicio profesional)**

-Asegurar el control de calidad para validar la exactitud de los datos de los reembolsos de medicamentos. **(Esto no es un servicio profesional)**

-Mantener las salvaguardas administrativas (servicio), físicas (servicio) y técnicas (bienes y/o servicios) para garantizar la seguridad y la confidencialidad de toda la información de reembolso de medicamentos de acuerdo con las leyes federales y de Puerto Rico y las normas de la industria. **(Esto no es un servicio profesional)**

-Actualizar y mantener los manuales de procedimientos operativos estándar para la administración del programa de Reembolsos". **(Esto no es un servicio profesional)**

-Mantener un sistema de repositorio de datos que se interconecte con múltiples fuentes de datos. **(Esto no es un servicio profesional)**

-Mantener una base de datos de informes a la que ASES pueda acceder en tiempo real para revisar y analizar la información de reembolsos y producir informes ad hoc. **(Esto no es un servicio profesional)**

-Creación y mantenimiento de un portal web seguro para compartir datos con los fabricantes farmacéuticos. **(Esto no es un servicio profesional)**

-Coordinar y ayudar en el funcionamiento del Comité Financiero de Farmacia de ASES. **(Esto no es un servicio profesional)**

***Conclusión:**

*Ninguno de los servicios de RA descritos corresponde a un servicio profesional.

B. Discusión Registro Único de Proveedor de Servicios Profesionales RUP de la Administración de Servicios Generales.

“Para la contratación de servicios profesionales con el Gobierno de Puerto Rico, es obligatorio que el proveedor de servicios profesionales esté inscrito en el Registro Único de Proveedores de Servicios Profesionales (RUP), bajo la categoría correspondiente y que cuente con la correspondiente certificación expedida por la Administración de Servicios Generales de Puerto Rico.”¹³

Este requisito del RFP Pharmacy 2022 se hace en virtud de la Ley 73-2019. De manera, que la ASES reconoce la jurisdicción de ASG de fiscalizar la contratación gubernamental de todas las compañías que formen parte del Registro Único de Proveedores de Servicios Profesionales.¹⁴ En apoyo a esto, por medio de la sección 6.7.3 del RFP se le requiere a todo licitador que cuente con una certificación vigente del RUP.

Más aun, el RFP indica que, en caso de no haber completado el proceso del registro en el RUP al momento de someter su propuesta, entonces tendrá que someter evidencia del pago para el proceso de inscripción en el RUP, evidencia del estado actual de proceso de certificación y todos los documentos sometidos al RUP con evidencia de haber sido sometidos.

Sin embargo, se le requiere una certificación que advierte que el licitador agraciado tendrá que contar con la certificación previo a que se otorgue el contrato. Más aun, reconoce que de no contar con la certificación del RUP será causa justificada para la confiscación del (proposal bond) a favor de ASES y la ASES tendrá la facultad de cancelar al licitador agraciado.¹⁵

Se puede observar que el requisito del RUP previo a la contratación con el Gobierno de Puerto Rico es indispensable. Nuevamente la facultad fiscalizadora de la ASG en la contratación gubernamental. Sin embargo, a pesar de que se requiere una certificación del RUP, del RFP Pharmacy 2022 ni de los anejos provistos, se desprende la necesidad de prestación de servicios profesionales.

Por otro lado, el RFP indica que ASES se reserva el derecho de adjudicar la licitación, aunque en el momento de la adjudicación el licitador agraciado no disponga de la Certificación del RUP, siempre que se haya dado a ASES prueba suficiente, fehaciente y convincente de que no existe impedimento para que la ASG emita la Certificación del RUP antes de la firma del Contrato.¹⁶

Esta actuación de parte de ASES es una ilegal y usurpa las funciones expresamente delegadas a la ASG por medio de la Ley 73-2019 y su Reglamento. Además, constituye una violación al Artículo 15 de la Ley 73-2019.

¹³ RFP Pharmacy 2022 Págs. 15-16

¹⁴ Véase Art. 45 de Ley 73-2019, *supra*.

¹⁵ RFP Pharmacy 2022 Págs. 52-53

¹⁶ RFP Pharmacy 2022 Págs.53

E. Discusión de ANEJO 7 del pliego – “Model Contract Between ASES and Contractor (APENDIX K)”

El Contrato Modelo entre ASES y el Contratista exige el cumplimiento con todas las leyes estatales y federales y sus reglamentos según se detallan en el (anejo 1) del Contrato. Sin embargo, a pesa de requerir el RUP, la Ley 73-2019 y su Reglamento no están en dicho listado.¹⁷

Por otro lado, el Contrato Modelo indica los requisitos del personal clave para la operación y servicios de PBM y RA. Del mismo, se desprende que no se requiere la prestación de servicios profesionales para ocupar y ejercer dichas funciones.¹⁸ A su vez se le requiere al Contratista que provea por escrito los nombres, puestos, información de contacto del personal clave. A continuación, se incluye un listado del personal clave según consta del Contrato Modelo.¹⁹

- Gestor de cuentas: sus funciones incluyen entre otras, tener la autoridad para gestionar todos los requisitos y servicios del Contrato, ser el principal contacto comercial durante la implementación y a lo largo de las operaciones en curso, y ser responsable de la entrega de todos los Productos requeridos por este Contrato. Este puesto deberá estar cubierto y activo noventa (90) días naturales antes de la fecha de ejecución del Contrato. **(Esto no es un servicio profesional)**

- Gerente de Implementación: proporcionará asistencia durante el proceso de transición/preimplementación e implementación. Este puesto deberá estar cubierto y activo noventa (90) días naturales antes de la fecha de ejecución del contrato. **(Esto no es un servicio profesional)**

- Farmacéutico clínico: con licencia de Puerto Rico y cuyas funciones apoyarán las actividades clínicas del Contrato. **(Esto podría ser un servicio profesional. Es preciso resaltar que este es el único puesto de personal clave que requiere de una licencia de Puerto Rico para ejercer sus funciones.)**

- Coordinador de Sistemas de Información: responsable de la supervisión de todos los sistemas de Datos y de la coordinación del intercambio de Datos entre ASES y otras partes identificadas en este Contrato. **(Esto no es un servicio profesional)**

- Analista de investigación de datos del programa: responsable de generar los informes diarios, semanales, mensuales, trimestrales y anuales

¹⁷ Model Contract Pág.22

¹⁸ Model Contract Art. 20 Pág.76

¹⁹ Model Contract Art. 20.2.4 Págs.78

requeridos por el Contrato y todas las solicitudes de informes ad hoc realizadas por ASES. **(Esto no es un servicio profesional)**

-Oficial de cumplimiento: responsable de todas las actividades de detección de fraudes y abusos para los programas de PBM. **(Esto no es un servicio profesional)**

-Director del centro de llamadas de farmacia: responsable de la supervisión del centro de llamadas de farmacia. **(Esto no es un servicio profesional)**

Crterios:

- a. El Art. 42 de la Ley 73-2019, *supra*, establece que;

Todas las Entidades Gubernamentales, Entidades Exentas y/o municipios participantes, estarán obligados a utilizar el Registro, como paso previo a la adquisición de bienes, obras y servicios no profesionales. ... Ninguna entidad Gubernamental, Entidad Exenta y/o municipio participante podrá crear un registro análogo al aquí dispuesto.

La Administración establecerá también un Registro Único de Proveedores de Servicios Profesionales. En dicho Registro, se inscribirán obligatoriamente los proveedores de servicios profesionales que deseen contratar con el Gobierno. Al inscribirse, serán debidamente cualificados por el Administrador mediante la reglamentación de ingreso al Registro que se establezca y tendrán la facilidad de contar con una certificación única que les acredite el cumplimiento con cualesquiera requisitos de documentación necesarios para la contratación con el Gobierno.

Toda Entidad Gubernamental, Entidad Exenta y/o municipio participante estará obligada a reconocer la validez de las certificaciones del Registro, vigentes, que se le presenten para la compra de bienes, construcción de obras y/o contratación de servicios no profesionales. ...

- b. El Art. 43 de la Ley 73-2019, *supra*, establece que;

Toda persona natural o jurídica interesada en participar en cualquier proceso de compra gubernamental mediante cualquier método de licitación y/o compras excepcionales, según dispuesto en esta Ley, estará obligada a estar inscrita en el Registro desde el momento que participa del proceso de licitación. La Administración publicará avisos para notificar el requisito de inscripción en el Registro. La

publicación de dichos avisos será mediante dos (2) de los siguientes medios: prensa escrita o radial y siempre en los portales cibernéticos de la Administración y del Gobierno de Puerto Rico.

Disponiéndose que será obligatorio para las personas naturales o jurídicas que deseen contratar para la prestación de servicios profesionales con las entidades gubernamentales, entidades exentas y municipios participantes del Gobierno de Puerto Rico inscribirse en el Registro”.

- c. El Art. 1 de la Ley 237-2004, *supra*, define los servicio profesionales o consultivos como aquellos cuya prestación principal consista del producto de la labor intelectual, creativa o artística, o en el manejo de destrezas altamente técnicas o especializadas.
- d. La mencionada Ley 73-2019, *supra*, dispone que todas las Entidades Gubernamentales, realizarán todas las compras y subastas de bienes, obras y servicios no profesionales a través de la Administración de Servicios Generales, **sin excepción alguna**.²⁰
- e. También dispone que cualquier entidad gubernamental que venga obligada a recibir servicios auxiliares, o que venga obligada a realizar sus procesos de compras a través de la Administración, no podrá desarrollar dentro de sus organismos, programas similares a los que ofrezca la Administración ni podrán suministrarse esos servicios por entidad alguna que no sea la Administración a menos que medie autorización expresa del Administrador.²¹
- f. En su Art. 24 la Ley 73-2019, *supra*, señala que:

En aras de lograr ahorros considerables en el proceso de compras se establece la centralización de las compras gubernamentales. La Administración será el único ente autorizado a realizar y negociar la adquisición de bienes, obras y servicios no profesionales para las Entidades Gubernamentales, según definidas en la presente Ley, conforme los métodos de licitación y compras excepcionales aquí establecidos. Todas las entidades gubernamentales, independientemente la fuente de fondos para la adquisición (estatales o federales), adquirirán todos los bienes, obras y servicios no profesionales a través de la Administración. En aquellas circunstancias donde la ley o reglamentación federal requiera otro procedimiento al esbozado en esta Ley,

²⁰ Véase, Art. 3 de la Ley 73-2019, *supra*.

²¹ Véase, Art. 15 de la Ley 73-2019, *supra*.

la Administración seguirá dicho procedimiento; si fuere el caso, la Administración emitirá una declaración escrita a la Junta de Subastas y/o Junta Revisora describiendo las leyes o reglamentos federales aplicables para la adquisición correspondiente.

Efecto:

- a. Las situaciones comentadas representan una violación a las disposiciones establecidas en la Ley 73-2019, *supra*, específicamente a los artículos 3, 15 y 24, pues la ASES es una entidad gubernamental obligada a realizar sus compras de bienes y servicios no profesionales por medio de la ASG.
- b. Señala el Art. 39 de la Ley 73-2019, *supra*, que “[s]erá nula cualquier compra o venta efectuada en contravención de las disposiciones de esta Ley y los reglamentos aprobados de conformidad con la misma. De haberse invertido fondos públicos, éstos podrán recobrase mediante acción civil correspondiente del Gobierno de Puerto Rico y cualquiera de sus agencias.

Causa:

- a. La legislación gubernamental en “lo pertinente a procesos de adquisiciones de bienes, obras y servicios no profesionales busca promover la sana administración y el buen uso de fondos públicos; así como promover una fiscalización adecuada. La situación comentada obedece a que la acción de ASES en celebrar procesos de licitación para adquirir servicios no profesionales es contraria a la Ley 73-2019, *supra*, pues no tiene autoridad para ello.

CONCLUSIÓN

En virtud de la Ley 73-2019, *supra*, la Asamblea Legislativa encomendó a la ASG la responsabilidad de establecer la política pública relacionada con las compras de bienes, obras y servicios no profesionales para todas las Entidades Gubernamentales y Entidades Exentas. De igual forma, la enunciada ley le delegó a la ASG la encomienda de fiscalizar a las agencias para que éstas realicen sus procesos de adquisición conforme a lo dispuesto en la Ley.

Por tal razón, a través de la Ley 73-2019, *supra*, se le otorgó a la ASG las herramientas necesarias para llevar a cabo toda clase de investigaciones sobre asuntos que le afecten o que propendan al mejoramiento de los programas y servicios obligada a implantar a la Administración o a las agencias o instrumentalidades a las que ésta provee servicios. A tales fines, la ASG podrá requerir la información que sea necesaria, apropiada y conveniente para lograr esos propósitos²².

Como parte de los objetivos antes esbozados, la Ley 73-2019, *supra*, provee para la creación y reestructuración de oficinas y departamentos dentro de la Administración.²³ Asimismo, y en atención a la implementación de la mencionada política pública, el Art. 82 de la Ley 73-2019, *supra*, permite a la ASG llevar a cabo toda clase de investigaciones sobre asuntos que afecten los programas y servicios que ésta ofrece o que provee a las demás entidades.

La Ley 73-2019, *supra*, establece un marco normativo relativo a las adquisiciones de bienes, obras y servicios no profesionales para las distintas entidades gubernamentales, y, además, le confirió a la Administración a través de la OIE las funciones fiscalizadoras relativas a los distintos procesos de adquisición de bienes, obras y servicios no profesionales.

Luego de los análisis correspondientes, el recurso asignado a la OIE concluyó que “[e]n esta investigación se analizaron todos los documentos sometidos por ASES en relación con la Subasta Pharmacy 2022. Luego de evaluado todos los servicios de PBM y RA que se desprenden del RFP, así como de los anejos acompañados, **es forzoso concluir que los servicios de PBM y RA que procura la ASES no son considerados servicios profesionales.** De igual manera se desprende de su personal clave que los PBM y RA no requieren de personal que provea servicios

²² Véase, Art. 82, Ley Núm. 73-2019 *supra*.

²³ Véase, Art. 8 de Ley 73-2019, *supra*.

profesionales. Por todo lo cual, todo servicio de PBM y RA que ASES pretenda obtener para la prestación de servicios de PBM y RA están sujetos a la aplicación de la Ley 73-2019, *supra*, y su Reglamento.”

La OIE recomienda a la Administración que tome las acciones correspondientes según las facultades otorgadas en la Ley 73-2019, *supra*, en lo referente a las adquisiciones de bienes y servicios por parte de entidades gubernamentales bajo su jurisdicción.

APROBACIÓN

El presente informe es aprobado en virtud de los poderes delegados por la Administradora de la ASG a la OIE, según sus facultades conferidas en la Ley 73-2019, *supra*. Emitido, hoy, 30 de noviembre de 2021, en San Juan, Puerto Rico.


Hilda Marie Rivera Colón
Directora Administrativa
Oficina de Investigaciones Especiales

ANEJOS

Anejo A- Copia del Primer Requerimiento de Información emitido por la OIE.

Anejo B- Copia de la contestación de ASES al Primer Requerimiento de Información.

Anejo C- Copia del Segundo y final requerimiento de información previo acudir al Tribunal emitido por la OIE.

Anejo D- Copia de la Contestación de ASES al segundo requerimiento.

Anejo E- Hoja de trámite sobre el recibo de los documentos sometidos ante el TPI.

ANEJO A



Hon. Pedro Pierluisi Urrutia
Gobernador

Lcda. Karla G. Mercado Rivera
Administradora y Principal Oficial de Compras

1 de julio de 2021

Hoja de Trámite

A:

Sr. Jorge E. Galva, JD, MHA
Director Ejecutivo
Administración de Seguros
de Puerto Rico
Urb. Caribe Calle Alda 1549
San Juan, P.R. 00926-2712

De:


Hilda Marie Rivera Colón
Directora Administrativa Interina
Oficina de Investigaciones Especiales
Administración de Servicios Generales



Asunto: Requerimiento de Información ASG-I-2021-006.

Recibido por:



Fecha: _____

Hora: _____

1:38 pm





Hon. Pedro Pierluisi Urrutia
Gobernador

Lcda. Karla G. Mercado Rivera
Administradora y Principal Oficial de Compras

ADMINISTRACIÓN DE SEGUROS DE
PUERTO RICO (ASES)

P/C: JORGE E. GALVA, JD, MHA
DIRECTOR EJECUTIVO

NÚM. ASG-I-21-006

SOBRE:

RFP # PHARMACY 2022- SERVICIOS
DE MANEJADOR DEL BENEFICIO DE
FARMACIA Y PROGRAMA DE
REEMBOLSOS

CONFIDENCIAL¹

A: Sr. Jorge E. Galva, JD, MHA
Director Ejecutivo
Administración de Seguros
de Puerto Rico
Urb. Caribe Calle Alda 1549
San Juan, P.R. 00926-2712

REQUERIMIENTO DE INFORMACIÓN

La Ley Núm. 73 de 19 de julio de 2019, según enmendada, conocida como “Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019” (en adelante, “Ley Núm. 73”) establece que la Administración de Servicios Generales (en adelante, la “Administración” o la “ASG”) es el organismo de la Rama Ejecutiva responsable de establecer la política pública relacionada con las compras de bienes, obras y servicios no profesionales para todas las Entidades Gubernamentales y Entidades Exentas, según definidas en la referida Ley. La ASG es responsable, además, de la implementación de la centralización de las compras gubernamentales. A su vez, la Administración tiene la encomienda de impartirle uniformidad a las distintas disposiciones reglamentarias que rijan los procesos de compras en el Gobierno de Puerto Rico.²

¹ AVISO: Esta comunicación es para uso exclusivo del destinatario. Si el lector no es destinatario ni ha sido autorizado por este a leerle, se le advierte que el contenido es confidencial y puede contener naturaleza privilegiada y protegida por ley. De recibir esta comunicación por error debe comunicarse inmediatamente con la Oficina de Investigaciones Especiales de la ASG.

² Exposición de Motivos, Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019, Ley Núm. 73 de 19 de julio de 2019.

La información entregada deberá estar acompañada de una **certificación emitida por el funcionario público con autoridad legal**, en la cual exprese que la información está completa y que la misma es correcta. De no contar con la información requerida, deberá emitir una certificación negativa.

ADVERTENCIAS

Este Requerimiento de Información, así como la información entregada, es confidencial. La infracción a la responsabilidad de asegurar la confidencialidad podrá dar paso a medidas correctivas que incluyen: sanciones civiles, administrativas y criminales. Por otro lado, el cumplimiento de este Requerimiento no es discrecional, en atención a ello el Artículo 82 de la Ley Núm. 73-2019, prescribe lo siguiente:

[Si un Requerimiento]. . . expedid[o] por el Administrador [o su representante autorizado], no fuese debidamente cumplid[o], el Administrador podrá comparecer ante el Tribunal de Primera Instancia de Puerto Rico y solicitar se ordene el cumplimiento de [lo requerido]. El Tribunal de Primera Instancia dará preferencia al curso y despacho de dicha petición y podrá dictar órdenes haciendo obligatoria la comparecencia de testigos o la presentación de los datos o información requerida previamente por el Administrador. El Tribunal de Primera Instancia tendrá facultad para castigar por desacato la desobediencia a esas órdenes. Ninguna persona podrá negarse a cumplir una citación [o requerimiento] del Administrador o de su representante, o producir la evidencia requerida o rehusar contestar cualquier pregunta en relación con cualquier estudio o investigación o porque la evidencia que se le requiere podría incriminarle o le expondría a un proceso criminal o a que se le destituya o suspendiera de su empleo, profesión u ocupación.

Expedido hoy, 1 de julio de 2021, en San Juan, Puerto Rico.

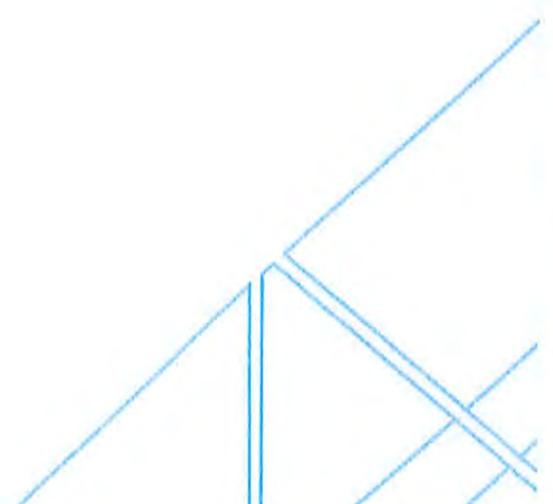
REGÍSTRESE y NOTIFÍQUESE.



Hilda Marie Rivera Colón
Directora Administrativa Interina
Oficina de Investigaciones Especiales



ADMINISTRACIÓN DE SERVICIOS GENERALES
Gobierno de Puerto Rico
PO Box 41249
San Juan, PR 00940
(787) 759-7676
administracion@ asg.pr.gov



Con el propósito de cumplir con la encomienda antes enunciada, establece el Artículo 82 de la Ley Núm. 73-2019 que la Administración “podrá requerir la información que sea necesaria, apropiada y conveniente para lograr tales propósitos”. Además, “[e]l Administrador podrá expedir citaciones requiriendo la comparecencia de testigos y la presentación de datos o información. . . ., [así como] por sí o mediante funcionario debidamente autorizado, tomar juramentos y recibir testimonios, datos o información”.³

Al amparo de las facultades que le concede la Ley Núm. 73-2019 al Administrador o su representante autorizado para emitir las ordenes que sean necesarias y convenientes para cumplir con las funciones, responsabilidades y deberes, se le requiere que provea la siguiente información:

1. Expediente hasta esta fecha del RFP # PHARMACY 2022- Servicios de manejador del beneficio de Farmacia (PMB, por sus siglas en inglés) y programa de reembolsos (RA, por sus siglas en inglés).
2. Listado de los miembros de la Junta de Subastas y copia de sus nombramientos, renuncia, cese u otro según aplique, desde 3 de enero de 2021 hasta el presente.
3. Listado de los compradores y copia de sus nombramientos, renuncia, cese u otro según aplique, desde 3 de enero de 2021 hasta el presente.
4. Copia del Reglamento de compras y subastas de ASES.

TÉRMINO PARA PROVEER LA INFORMACIÓN

La información solicitada en el presente requerimiento deberá ser entregada, **mediante diligenciamiento personal**, al funcionario(a) que emite este Requerimiento. Dicha información deberá ser enviada en formato digital, así como en formato físico, este último deberá ir en un sobre sellado y marcado como información confidencial, en la siguiente fecha, hora y lugar dirección:

martes, 6 de julio de 2021, a las 11:00 a.m.

Oficina de Investigaciones Especiales

Centro Gubernamental de Minillas, Torre Norte, piso 12

³ Artículo 82, Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019, Ley Núm. 73 de 19 de julio de 2019.



ADMINISTRACIÓN DE SERVICIOS GENERALES
Gobierno de Puerto Rico
PO Box 41249
San Juan, PR 00940
(787) 759-7676
administracion@ asg.pr.gov

ANEJO B



Oficina Ejecutiva

Hoja de Trámite

Fecha: 6 de julio de 2021

| | | | |
|-----------|-------------------------------|-------------|--------------------------|
| Para: | Sra. Hilda Marie Rivera Colón | De: | Carla Imbert, Secretaria |
| Dpto. | ASG | Dpto.: | Oficina Ejecutiva |
| Tel /Fax: | | Tel. / Fax: | 787-474-3344 |
| Re: | Varias Facturas | Núm. Pág.: | |

Saludos,

Se hace entrega de carta de requerimiento y sus dos Anejos sobre información solicitada, digital y física, en carta del 1 de julio de 2021 por ASG.

Como siempre, estamos a sus órdenes.

Gracias.

Recibido por:

Fecha:



11:37 am



6 de julio de 2021

Sra. Hilda Marie Rivera Colón
Directora Administrativa Interina
Oficina de Investigaciones Especiales
Administración de Servicios Generales

Estimada señora Rivera Colón:

Acuso recibo de su misiva de 1 de julio de 2021, recibida a la 1:38 PM, referente al Requerimiento de Información #ASG-I-2021-006, en la cual solicita se provea para el martes, 6 de julio de 2021, a las 11:00 am, la siguiente información:

1. Expediente hasta esta fecha del RFP #PHARMACY 2022 – Servicios manejador del beneficio de Farmacia (PBM, por sus siglas en inglés) y programa de reembolsos (RA, por sus siglas en inglés).
2. Listado de los miembros de la Junta de Subastas y copia de sus nombramientos, renuncia, cese u otro Según aplique, desde 3 de enero de 2021 hasta el presente.
3. Listado de los compradores y copia de sus nombramientos, renuncia, cese u otro Según aplique, desde 3 de enero de 2021 hasta el presente.
4. Copia del Reglamento de compras y subastas de ASES.

El requerimiento antes mencionado, está predicado en la facultad investigativa de la Administración de Servicios Generales (ASG), bajo la Ley Núm. 73 de 19 de julio de 2019, según enmendada, (en adelante, "Ley Núm. 73"), como el organismo de la Rama Ejecutiva responsable de establecer la política pública relacionada con las compras de bienes, obras y **servicios no profesionales** del Gobierno de Puerto Rico. (Énfasis suplido). Como explicamos en detalle a continuación, objetamos el requerimiento #1 basado en que el proceso de contratación competitivo objeto de esta investigación no es una compra de bienes, obras ni servicios no profesionales regulado por la Ley Núm. 73. Por el contrario, se trata de la contratación de un servicio profesional, por lo que, con excepción de lo dispuesto en el Artículo 35 sobre el Registro Único de Proveedores de Servicios Profesionales, no le son de aplicación a este RFP las disposiciones de la Ley Núm. 73.

Por virtud de la Ley Núm. 72 de 1993, según enmendada, la Administración de Seguro de Salud de Puerto Rico (en adelante, "ASES") es el organismo gubernamental encargado de implantar, administrar y negociar, mediante contratos con aseguradores, y/u Organizaciones de Servicios de Salud, según definidas en el Código de Seguros de Puerto Rico, un sistema de seguros de salud que le permita a la población médico-indigente de Puerto Rico, recibir cuidados médico-hospitalarios de

calidad. De conformidad, ASES administra el Plan de Salud Vital del Gobierno de Puerto Rico (en adelante "PSG" o "Plan Vital") a través del cual se brindan servicios de salud física y mental a sobre 1.6 millones de puertorriqueños.

El PSG incluye el beneficio de farmacia como parte de su cubierta. Véase Artículo VI, Sección 6 de la Ley 72, *supra*. Bajo el modelo de prestación de servicio actual los beneficios cubiertos bajo el Plan Vital recaen sobre aseguradoras y/o Organizaciones de Servicios de Salud- conocidas como organizaciones de manejo de cuidado dirigido ("Manage Care Organizations" o MCOs por sus siglas en inglés)- contratadas por ASES. Sin embargo, la responsabilidad de proveer y administrar la red de farmacias, el formulario de medicamentos, procesamiento de las reclamaciones del componente de farmacia, entre otros aspectos relacionados a este beneficio del Plan Vital, es del Manejador de Beneficio de Farmacia (en adelante "Pharmacy Benefit Manager" o "PBM"). Otro servicio medular de la administración de este componente de la cubierta del Plan Vital es la negociación de acuerdos de "rebates" o reembolsos de acuerdo con la utilización de medicamentos determinados. Al presente esta tarea ha sido delegada al Administrador del Programa de Farmacia (en adelante "Pharmacy Program Administrator" o "PPA"). En resumen, todos estos servicios forman parte fundamental del PSG.

Con el propósito de lograr mayor competencia y reducir el costo actual de esta contratación de servicios profesionales, el 31 de marzo de 2021 ASES inició el proceso de Solicitud de Propuestas (en adelante "Request for Proposals" o "RFP") para la selección del PBM y del negociador del programa de "rebates"/reembolsos y/o administrador del "Medicare Rebate Drug Program" o "MDRP", que en adelante se conocerá como el "Rebate Aggregator", para el Plan Vital.

A continuación se incluye el listado de los servicios profesionales objeto de este RFP.

PBM Services:

Developing, implementing and offering to ASES and the MCOs a comprehensive Pharmacy Benefit Management program including but not limited to the following programs and services:

- Managing and credentialing the Pharmacy Network that covers the whole jurisdiction of Puerto Rico and performing Pharmacy Audits;
- Maintaining a Pharmacy Call Center for the Pharmacy Network;
- Adjudicating and accurately processing Pharmacy Claims and payment including handling Coordination of Benefits ("COB") with other health insurance plans, including Medicare;
- Developing, maintaining and updating the Maximum Allowable Cost ("MAC") list for Pharmacy reimbursement for Generic Drugs and multi-source Brand

- Drugs and providing an electronic platform to Pharmacies desiring to appeal MAC pricing, and if requested by ASES, coordinating with Puerto Rico's Department of Consumer Affairs ("DACO") to provide drug price information for DACO's drug price control list, as amended from time to time;
- Providing a comprehensive Drug Utilization Review ("DUR") program, including capabilities to identify potential opioid abuse and suspect prescribing and dispensing patterns, and to track drug utilization for specific prescription drugs identified by ASES for special monitoring;
 - Supporting ASES and the contracted MCOs with the High Cost High Need (HCHN) Program and other care management programs;
 - Developing and implementing a compliance plan and Fraud, Waste and Abuse detection initiatives;
 - Assisting in the support and operation of formulary management through the Pharmacy & Therapeutics Committee and Pharmacy Financial Committee;
 - Managing the Academic Detailing program;
 - Updating and maintaining standard operating procedure manual(s) for PBM services;
 - Maintaining an Information System, Information management processes and technical support to meet the GHP requirements;
 - Providing robust reporting and online reporting tool as described in the Contract;
 - Retaining and storing data as required under the Contract;
 - Developing strategies to promote an active participation of the MCOs in the development of Enrollee and prescribing Provider educational activities.

RA Services:

The RA Services shall include but are not limited to:

- Producing drug rebate invoices for pharmaceutical manufacturers according to federal schedule requirements for the MDRP and ASES's schedule requirements for non-MDRP rebates;
- Processing and submitting to the Medicaid Program the CMS drug utilization and information necessary for CMS-64 reporting;
- Providing Rebate program reports for retail Pharmacy drugs and PADs to ASES and its designees on a quarterly basis;
- Reconciling and resolving drug rebate disputes with pharmaceutical manufacturers;
- Ensuring quality control to validate accuracy of drug Rebate Data;

- Maintaining administrative, physical and technical safeguards to ensure security and confidentiality of all drug Rebate Information according to Puerto Rico and federal laws and industry standards;
- Updating and maintaining standard operating procedure manual(s) for Rebate program administration;
- Maintaining a Data repository system that interfaces with multiple Data sources;
- Maintaining a reporting database that can be accessed in real time by ASES to review and analyze rebate information and produce ad hoc reporting;
- Creating and maintaining a secure web portal for Data sharing with pharmaceutical manufacturers.
- Coordinating and assisting in the support and operation of ASES's Pharmacy Financial Committee.

En vista de todo lo anterior, es claro que este proceso de contratación competitiva está dirigido a obtener servicios que requieren conocimientos especializados, donde la prestación principal de los servicios consiste en el producto de la labor intelectual y el manejo de destrezas altamente técnicas y especializadas en el área de farmacia. En suma, el proceso de contratación competitiva de este RFP enmarca en la definición de servicio profesional contenido en el inciso ii del Artículo 4 de la Ley Núm. 73, por lo que no cae bajo el ámbito de la regulación de compras de gobierno de la competencia de la ASG y la Ley Núm. 73, si no que está regulado y cobijado por la ley orgánica de ASES, Ley 72 de 2003, *supra*. Por ende, respetuosamente exponemos que no procede la producción de la información solicitada a la ASES bajo el inciso #1 del Requerimiento de Información ASG-I-2021-006.¹

¹ Como hemos indicado anteriormente, el único requisito legal dispuesto en la Ley Núm. 73 aplicable a este proceso de RFP es el relacionado al registro del (los) contratista(s) seleccionado(s) en el Registro Único de Proveedores de Servicios Profesionales de la Administración de Servicios Generales. En cumplimiento con lo dispuesto en el Artículo 35 de la Ley 73, *supra*, la Sección 1.5.15 del RFP informa a los proponentes que:

For the contracting of professional services in the Government of Puerto Rico, it is a mandatory requirement that the professional service provider be registered in the Single Registry of Professional Service Providers (RUP for its Spanish acronym), under the corresponding category and that it has the corresponding certification of registry issued by the Puerto Rico General Services Administration ("Administración de Servicios Generales" or "ASG" for its Spanish acronym). See Boletín Informativo #2021-003 RUP, located in the Procurement Library.

En su consecuencia, en la Sección 6.7.3.1 del RFP se requiere como requisito mandatorio que el proponente y cualquier subcontratista someta con la propuesta:

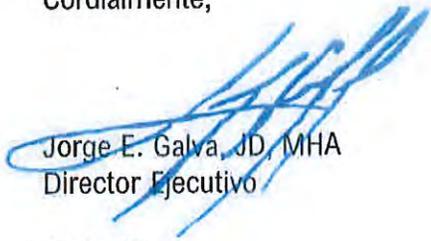
6.7.3.1 Current Certification of the Single Registry of Professional Service Providers ("RUP" for its Spanish acronym) issued by the Puerto Rico General Services Administration ("Administración de Servicios Generales de Puerto Rico" or "ASG" for its Spanish acronym).

El inciso 2 del requerimiento de información, solicita listado de los miembros de la Junta de Subastas y copia de sus nombramientos, renuncia, cese u otro, según aplique, desde 3 de enero de 2021 hasta el presente. Por este medio certificamos que en ASES no existe Junta de Subastas. En virtud de la Ley 73 de 23 de julio de 2019, "Ley de Administración de Servicios Generales para la centralización de las compras del Gobierno de Puerto Rico", y su Reglamento 9230, las entidades gubernamentales deben realizar sus procesos de compras y subastas de bienes, obras y servicios no profesionales a través de la Administración de Servicios Generales. Además, ASES no figura como parte del listado de Entidades Exentas.

Se nos solicita también listado de los compradores y copia de sus nombramientos, renuncia, cese u otro según apliqué, desde 3 de enero de 2021 hasta el presente. (*Anejo 1*)

Por último, se requiere presentar Copia del Reglamento de Compras y Subastas de ASES. En cumplimiento con la Ley 73 de 2019 y el Reglamento 9230, ASES cesó el uso de nuestro Reglamento 7636 (Reglamento de Compras, Suministro y Contratación de Servicios No Profesionales) y redactó un documento interno, Procedimiento Operativo Estándar (Standard Operating Procedure) sobre Compras, Suministro y Contratación de Servicios No Profesionales en virtud de la Ley Número 73 del 2019, (*Anejo 2*) que recoge las directrices de ASG que sirve de instrumento de trabajo para los empleados designados para estas tareas.

Cordialmente,



Jorge E. Galva, JD, MHA
Director Ejecutivo

Anejos (2)

ADMINISTRACIÓN DE
SEGUROS DE SALUD
DE PUERTO RICO

ASES



CERTIFICACIÓN OFICINA DE RECURSOS HUMANOS

Certifico que en la Administración de Seguros de Salud (ASES) no existe el puesto de Comprador.

CERTIFICO CORRECTO:

Jennifer González Negrón
Directora Recursos Humanos

Fecha

7/7/2021



• PO Box 195661, San Juan, PR 00919-5661 • Tel: 787.474.3300 • www.asespr.org

Autorizado por la Comisión Estatal de Elecciones CEE-SA-19-166



GOBIERNO DE PUERTO RICO
Administración de Servicios Generales

PROPIEDAD ADSCRITA A LAS UNIDADES DE COMPRAS

Agencia: Administración de Seguros de Salud

Nombre del Empleado: No Aplica

Últimos 4 dígitos del Seguro Social: No Aplica

Puesto: No Aplica

| NÚMERO DE PROPIEDAD | DESCRIPCIÓN | SERIE |
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GOBIERNO DE PUERTO RICO
Administración de Servicios Generales

14-1-16-2019

Personal adscrito a las Unidades de Compras de las Agencias y Corporaciones Públicas de la Rama Ejecutiva

Agencia: Administración de Seguros de Salud de Puerto Rico
Código: 122

| Nombre del(a) Empleado(a) | Número de Empleado | Categoría (Regular, Continúa, Transitorio) | Dirección Postal Personal | Número de Contrato | Curso Inicial/Obligatorio | Título del Puesto | Escala Individual | Impuesto de Retención | | | | | | Comentarios |
|---------------------------|--------------------|--|---------------------------|--------------------|---------------------------|-------------------|-------------------|-----------------------|--------------------------------------|----------------------------|-----------------------------|-------------------|-------|---|
| | | | | | | | | Mensual | | Anual | | Mensual | | |
| | | | | | | | | Cambio del Estado | Aportación Patronal y Mediana (FICA) | Aportación Patronal (FICA) | Aportación Patronal Mediana | Otras Retenciones | Total | |
| Análisis | | | | | | | | | | | | | | Actualmente la ASIS no cuenta con un puesto de Comptroller en su Plan de Clasificación y Retención. El Puesto que actualmente realiza esta función es el Auxiliar de Servicios Administrativos II, debe señalar que entre las múltiples funciones que realiza, una de ellas es realizar compras, pero no es su función principal. |

Yo, Rafael García Lugo, Jefe de Recursos Humanos de la Administración de Seguros de Salud, mayor de edad, vecino(a) de San Juan, Puerto Rico, certifica a la Administración de Servicios Generales que la información suministrada es fiel y exacta, y contiene todas las datos relacionados a la Unidad de Compras o del personal que realiza funciones similares.

Nombre: Rafael García Lugo
Puesto: Director General de Recursos Humanos
Fecha: 14 de Agosto de 2019



14/8/2019

14/8/2019

**ADMINISTRACIÓN DE SEGUROS DE SALUD DE
PUERTO RICO**

**PROCEDIMIENTO OPERATIVO ESTÁNDAR
(STANDARD OPERATING PROCEDURE)
SOBRE COMPRAS, SUMINISTRO Y
CONTRATACIÓN DE SERVICIOS
NO PROFESIONALES
EN VIRTUD DE LA LEY
NÚMERO 73 DEL 2019**

ADMINISTRACIÓN DE SEGUROS DE SALUD DE PUERTO RICO

Procedimiento Operativo Estándar (Standard Operating Procedure) Sobre Compras, Suministro Y Contratación De Servicios No Profesionales En Virtud De La Ley Número 73 Del 2019

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Artículo I – Propósito y Base Legal

El pasado 23 de julio de 2019 se creó la Ley número 73, conocida como “Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019”, mediante la cual se estableció como política pública del Gobierno de Puerto Rico que los procesos de compras gubernamentales de bienes, obras y servicios no profesionales serán centralizados en la Administración de Servicios Generales (ASG).

La Ley 73, supra, tiene 2 objetivos principales, a saber: (i) la transformación de la ASG, con el propósito de convertirla en la única entidad gubernamental facultada para establecer y llevar a cabo todo procedimiento de adquisición de bienes, obras y servicios del Gobierno de Puerto Rico; y (ii) la reestructuración de sus procesos de compras a los fines de simplificarlos.

El Artículo 3 de la Ley 73, supra, establece que las disposiciones de dicha Ley regirán los procesos de compras y subastas de bienes, obras y servicios no profesionales en todas las Entidades Gubernamentales, incluyendo la Administración de Seguros de Salud de Puerto Rico (ASES). Dicho artículo claramente dispone lo siguiente: **“Las entidades Gubernamentales, según definidas en esta Ley, realizarán todas las compras y subastas de bienes, obras y servicios no profesionales a través de la Administración de Servicios Generales, sin excepción alguna”**. Más aún, cualquier disposición legal que contravenga lo dispuesto en dicha Ley, queda derogado por virtud de la misma.

Por tanto, se adopta el presente Procedimiento Operativo Estándar (Standard Operating Procedure en adelante SOP por sus siglas en Inglés) de conformidad con lo establecido en la Ley de Administración de Seguros de Salud de Puerto Rico (ASES), Ley Número 72 del 7 de septiembre de 1993, según enmendada y leyes especiales aplicables que rigen los procesos de compra y adquisición de bienes o servicios no profesionales en los organismos públicos; y en específico, de conformidad con la nueva Ley 73 de 23 de julio de 2019, conocida como “Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019” y su Reglamento Uniforme de Compras y Subastas de Bienes del 18 de noviembre de 2020, Núm. 9230. Por disposición de la Ley 73 del 2019, el “Reglamento de Compras, Suministro y Contratación de Servicios no Profesionales” número 7636 de la ASES del 18 de diciembre del 2008, queda derogado.

Artículo II -Aplicabilidad

Este SOP se promulga de conformidad con la nueva Ley 73 de 23 de julio de 2019, según enmendada, conocida como “Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019”, la cual establece que todas las compras y subastas de bienes, obras y servicios no profesionales de entidades gubernamentales se realizarán a través de la ASG.

El Artículo 15 de dicha Ley prohíbe a cualquier entidad gubernamental, incluyendo a la ASES, que venga obligada a realizar sus procesos de compras a través de ASG, a desarrollar dentro de sus organismos, programas similares a

los que ofrezca la ASG, ni podrá suministrarse esos servicios por entidad alguna que no sea la ASG, a menos que medie autorización expresa del Administrador. Es decir, por vía de excepción, tanto el Artículo 15 antes citado, como el Capítulo 12 del Reglamento de la ASG, Núm. 9230, disponen que la ASG podrá delegar las funciones que establecen dicha ley y el Reglamento a las entidades gubernamentales que así lo soliciten y se les autorice, para la adquisición de uno o varios bienes, obras y/o servicios no profesionales, por tiempo fijo o por periodo indefinido.

En virtud de ello, la ASES establece este SOP para regular dentro de la agencia el procedimiento para la adquisición de bienes, obras y servicios no profesionales a través de la ASG y se establece que en la eventualidad que ASES solicite, por vía de excepción y de conformidad con el Artículo 15 antes citado, al Administrador autorización escrita para la compra a través de ASES de bienes, obras y servicios no profesionales, este procedimiento se hará utilizando el Reglamento de la ASG el cual se adopta y se hace formar parte de este SOP por referencia. Esto de conformidad con el Artículo 25 de la Ley 73, supra, que dispone que el Administrador de la ASG adoptara y promulgara el Reglamento Uniforme de Compras y Subastas de Bienes, Obras y Servicios no Profesionales de la ASG de conformidad con la Ley 38 del 2017 y que las disposiciones del Reglamento Uniforme se aplicaran a todos los procesos de compras y subastas realizadas por las Entidades Gubernamentales. Cualquier clausula o párrafo de este SOP incompatible o contraria con el Reglamento de ASG, regirá lo establecido en dicho Reglamento.

Artículo III - Definiciones

Las palabras y frases usadas en este SOP se interpretarán según el contexto y el significado aceptado por el uso común y corriente; las usadas en el tiempo presente incluyen también el futuro; las usadas en el género masculino incluyen el femenino y el neutro, salvo en los casos en que tal interpretación resultare absurda. El número singular incluye el plural y el singular.

1. Administración/ASG - Significa la Administración de Servicios Generales del Gobierno de Puerto Rico.
2. Administrador - Significa el Administrador de la Administración de Servicios Generales del Gobierno de Puerto Rico.
3. Administrador Auxiliar del Área de Adquisiciones - Significa el Administrador Auxiliar de Adquisiciones de ASG.
4. Adjudicación - Es el proceso de otorgar la subasta o propuesta al licitador o postor agraciado conforme los criterios del Reglamento de la ASG.
5. Agencia Peticionaria o Entidad Requirente - Toda agencia o entidad del Gobierno que somete ante la ASG la correspondiente solicitud o requisición para el trámite de una adquisición.
6. ASES- Administración de Seguros de Salud de Puerto Rico.
7. Bienes y Servicios no Profesionales:
 - a. Servicios no Profesionales; Aquellos servicios que no son ofrecidos por una persona natural o jurídica con conocimientos o habilidades especializadas a quien se le requiere poseer un

título universitario o licencia que lo acredite como profesional especializado.

- b. Servicios Auxiliares; Servicios de transportación, servicios relacionados con la propiedad excedente y cualquier otro servicio que pueda rendir la ASG para que las entidades gubernamentales puedan llevar a cabo sus funciones fundamentales.
- c. Bienes: Incluye bienes muebles, complementarios, sustitutos, de consumo, de capital o toda cosa que sea susceptible de moverse por sí o por otra fuerza y que puede ser fungible o no, tales como, pero no limitados a los siguientes: alimentos, material y equipo de oficina; material y equipo de construcción, medios de transporte terrestre o aéreo, área terrestre o marítima; materiales escolares; equipo médico y científico; equipo, maquinaria y materiales relacionados con el procesamiento de información mediante medios electrónicos, las piezas, accesorios y materiales necesarios para su mantenimiento y reparación, así como todos aquellos elementos necesarios para el buen funcionamiento de ASSES.

8. Certificado de Elegibilidad o Certificación Única - Certificación expedida por la ASG, acreditativa del cumplimiento por parte de un suplidor o proveedor, licitador o proponente de los requisitos que mediante reglamento de la ASG sean requeridos para pertenecer al Registro Único de Licitadores o Registro Único de Proveedores Servicios Profesionales.

9. Compra - Monto total de necesidades afines agrupadas, ya sean bienes, obras o servicios no profesionales que deben adquirirse en una misma transacción o momento por tener un mismo propósito, suplidores comunes o que así convenga al interés público.

10. Compra Excepcional - Toda compra que está exenta de tramitarse mediante el procedimiento de subasta formal o informal, solicitud de propuestas o solicitud de cualificaciones.

11. Compra de Emergencia- Aquella que se realiza para atender unas necesidades inesperadas e imprevistas de bienes, obras y servicios no profesionales que requieran la acción inmediata del Administrador y/o el Gobierno de Puerto Rico por estar en peligro la vida, salud o seguridad pública, al suspenderse o afectarse adversamente el servicio público, la propiedad del Gobierno de Puerto Rico y aquellos programas del Gobierno que se nutren de fondos federales o estatales.

12. Contratista - Un vendedor, suplidor, licitador o proponente, según corresponda, al que se adjudique una orden de compra o servicio, o firme un contrato.

13. Contrato - Pacto o convenio escrito entre la Administración y/o ASES y el contratista, quien será el licitador que resulte seleccionado en un procedimiento de subasta o propuesta, donde se consignarán los términos bajo los cuales el licitador ofrecerá los bienes y/o servicios.

14. Cotización- Precio u oferta presentada por un proponente o suplidor bajo el método de licitación de compra informal.

15. Invitación a Subasta - Documento enviado a licitadores o proponentes potenciales y que contendrá el aviso de la celebración de una subasta o solicitud de propuesta, las instrucciones sobre cómo obtener los pliegos relacionados a éstas o las instrucciones de cómo presentar una licitación u oferta.

16. Junta de Subastas - Organismo administrativo de estudio, evaluación y adjudicación de subastas formales o propuestas selladas, cuyas funciones se rigen por el Reglamento de ASG.

17. Junta Revisora de Subastas - Junta Revisora de Subastas de la Administración de Servicios Generales del Gobierno de Puerto Rico.

18. Licitador - Cualquier persona natural o jurídica registrada en el Registro Único de Licitadores (RUL) de la ASG que ha presentado una Solicitud de Ingreso al RUL, que participe o pueda participar como postor en determinado proceso de licitación mediante la presentación de una oferta o propuesta.

19. Licitador Agraciado - Licitador a quien se le haya adjudicado la buena pro de una subasta o propuesta.

20. Licitador Responsivo - Licitador que ha presentado una oferta o propuesta luego de haberse celebrado un proceso de licitación, la cual cumple con todos los términos, condiciones, especificaciones y requerimientos especiales contenidos en la Invitación a Subasta y su pliego.

21. Mejor valor - Será la oferta o propuesta que represente el mayor beneficio para el Gobierno de Puerto Rico; la oferta o propuesta del licitador o proponente que mejor cumpla con los requisitos establecidos en la hoja de cotización o en el pliego de la subasta o propuesta y en la cual quede establecido que el licitador o proponente ofrece el mejor bien o servicio, o que tiene la capacidad de realizar la obra de forma eficiente, al considerar todos los criterios, como lo son: inspección, pruebas, calidad, entrega, idoneidad para un propósito particular, garantías del bien o servicio y los términos bajo las cuales serían prestadas dichas garantías, ciclo de vida del bien a ser adquirido, descuentos, impacto económico en términos de creación de empleos e impacto fiscal sobre el gobierno de Puerto Rico. También, serán considerados como parte del mejor valor, los siguientes elementos: las condiciones y limitaciones de

las garantías de piezas y servicios del producto o servicio ofrecido, así como el tiempo y lugar en que se honran y se ejecutan dichas garantías y el impacto fiscal sobre el gobierno de Puerto Rico del producto o servicio. Los criterios que afectarán el precio de la oferta y que se considerarán en la evaluación para la adjudicación, serán medibles de manera objetiva, como los descuentos, los costos de transporte tanto en su entrega original como para ejecutar sus garantías, y el costo de disposición del equipo, una vez termine su vida útil o utilización, entre otros criterios. El mejor valor no necesariamente será la oferta o propuesta que presente el más bajo costo o precio.

22. Obligar Fondos - Separar y reservar de las asignaciones presupuestarias una cantidad de dinero que se estime necesario para cubrir ciertos desembolsos.

23. Obra - Cualquier trabajo de construcción, reconstrucción, alteración, ampliación, mejora, reparación, conservación o mantenimiento de cualquier estructura; Obra Pública; Proyecto de Obra de Construcción.

24. Oferta o Propuesta - Ofertas o propuestas que sometan los licitadores o proponentes como respuesta a un aviso de subasta o solicitud de propuestas. También es la oferta presentada por un suplidor o proveedor de servicio ante la solicitud de cotización como parte de un proceso de compra informal.

25. Orden de compra o servicio - Documento oficial que se emite a un suplidor para adquirir bienes o servicios no profesionales.

26. Pliego de Subasta - Documento que se entrega, mediante venta o gratuitamente, a los licitadores o proponentes interesados en presentar ofertas o

propuestas bajo un procedimiento de subasta, solicitud de propuesta o solicitud de propuestas selladas. Está compuesto de la invitación a subasta informal, subasta formal, solicitud de propuestas o solicitud de propuestas selladas, las especificaciones de los bienes, obras o servicios no profesionales solicitados, los términos, las condiciones y las instrucciones de cómo presentar una licitación, oferta o propuesta.

27. Proveedor o Suplidor - Persona natural o jurídica que supe los materiales, bienes o servicios.

28. Registro Único de Licitadores (RUL) - En este registro constan las personas naturales o jurídicas cualificadas por la Administración de Servicios Generales para contratar con el Gobierno al haber cumplido con los requisitos establecidos por el Administrador de dicha oficina.

29. Registro Único de Proveedores de Servicios Profesionales (RUPSP) - Registro electrónico en el cual habrán de constar los nombres, direcciones y toda la información requerida por la Administración sobre las personas naturales o jurídicas cualificadas y clasificadas como proveedores de servicios profesionales por la Administración de Servicios Generales para contratar con el Gobierno de Puerto Rico, al haber cumplido con los requisitos establecidos por el Administrador mediante reglamento y aquellas leyes y reglamentaciones aplicables.

30. Registro Único de Subastas (RUS) - Página electrónica del Gobierno de Puerto Rico donde se encuentran todos los documentos relacionados con los procesos de publicación, celebración y adjudicación de subastas.

31. Solicitud de Adquisición de Bienes, Obras o Servicios No Profesionales - Documento utilizado por las agencias peticionarias o entidades gubernamentales para la adquisición de un bien, obra o servicio no profesional.

32. Plan Anual de Adquisiciones - Documento que tiene que someter las entidades gubernamentales, incluyendo a ASES, a ASG en o antes del 31 de marzo de cada año que incluirá un listado de todos los bienes, obras y servicios no profesionales que se estimen necesarios y cuya compra sea probablemente adquirida durante el año fiscal para el cual se elabora el plan.

Artículo IV – Procedimiento

A. Disposiciones Generales

1. El Artículo 24 de La Ley número 73 del 23 de julio del 2019 claramente establece que ASG será el único ente gubernamental autorizado a realizar y negociar la adquisición de bienes, obras y servicios no profesionales para beneficio de las entidades gubernamentales, incluyendo ASES. Por tanto, ASES, independientemente de la procedencia de los fondos para la adquisición (estatales o federales), adquirirá todos los bienes, obras y servicios no profesionales a través de la ASG, salvo las excepciones que se expondrán más adelante. En aquellos casos donde la Ley o Reglamentación Federal requiera otro procedimiento al establecido en el Reglamento de la ASG, prevalecerá dicho procedimiento sobre el dispuesto en la ASG. A esos efectos, el Artículo 39 de la Ley 73, supra, establece que será nula cualquier compra o venta efectuada por ASES en contravención de las disposiciones de dicha Ley y el Reglamento de la ASG Número 9230 del 18 de noviembre del 2020.

2. Los Artículos 47 al 54 de la Ley 73, supra, disponen todo lo concerniente a la creación y procedimiento relacionado con la Junta de Subasta adscrita a la ASG la cual tendrá naturaleza cuasi judicial y estará facultada para evaluar y adjudicar las subastas formales, solicitud de propuestas selladas y/o solicitud de cualificaciones que se realicen de conformidad con dicha Ley. La Junta de Subasta no tiene jurisdicción sobre compras informales ni compras excepcionales. Las adjudicaciones de las compras informales y solicitud de propuestas serán realizadas por la Administración Auxiliar de Adquisiciones adscrita a la ASG. La Junta de Subasta estará compuesta por el presidente y 4 miembros asociados.

3. A solicitud de la entidad gubernamental para la cual se lleve a cabo una Subasta Pública, en este caso ASES, se incorporará un miembro adicional a la Junta en representación de dicho organismo, el cual tendrá voz, pero no voto. Este formará parte de la Junta hasta tanto y cuanto finalice el proceso de Subasta concerniente al organismo que representa.

4. Una vez la Junta de Subasta realice la adjudicación correspondiente, procederá a emitir Resolución la cual incluirá Determinaciones de Hechos y Conclusiones de Derechos y la misma será notificada de conformidad con el Artículo 3.16 del Reglamento de la ASG.

5. Dicha Resolución final podrá ser revisada por la Junta Revisora de Subasta creada en virtud del Artículo 55 de la Ley número 73, 2019. La Junta Revisora estará facultada a revisar cualquier impugnación de las determinaciones o adjudicaciones hechas por la Administración Auxiliar del Área de Adquisiciones y por la Junta de Subasta.

6. Una vez emitida la Resolución final de la Junta Revisora, la parte adversamente afectada podrá presentar un recurso de Revisión Judicial ante el Tribunal de Apelaciones conforme lo establecido en la Ley número 38 del 2017.

B. Plan Anual de Adquisiciones

7. Con lo antes en mente, el primer paso a seguir por ASES para la obtención de bienes, obras y servicios no profesionales a través de la ASG es identificar la necesidad del servicio no profesional y/o bien y/o obra y la disponibilidad de los fondos para el tipo de contratación.

8. De conformidad con el Artículo 26 de la Ley 73, supra, ASES deberá “elaborar un Plan Anual de Adquisiciones, según su estimado anual de necesidades y compras probables, utilizando como referencia las compras realizadas durante el año fiscal previo, pero sin incluir las compras únicas que se realizaron en dicho periodo, para obtener artículos o productos específicos. Dicho plan deberá incluir un listado de todos los bienes, obras y servicios no profesionales que se estimen necesarios y cuya compra sea probablemente adquirida durante el año fiscal para el cual se elabora el plan”.

9. En el Plan Anual de Adquisiciones, ASES deberá señalar los bienes, obras y servicios no profesionales específicos que interesa adquirir y deberá incluir el valor estimado de estos, concepto de gasto, número de cuenta y la fecha aproximada de la compra o servicio. La ASG publicará una guía anual para la elaboración del Plan Anual de Adquisiciones, en el cual se establecerán las guías y el formato requerido para el mismo.

10. **El Plan Anual de Adquisiciones deberá ser remitido a la ASG en o antes del 31 de marzo de cada año.** El incumplimiento con la entrega del

Plan Anual de Adquisiciones a la ASG acarreará una imposición de una multa administrativa de hasta \$5,000.00

11. El contenido del Plan Anual de Adquisiciones es confidencial, salvo cuando la información contenida en el mismo sea necesaria para fines oficiales. El empleado o funcionario que revela el contenido o cualquier información relacionados con las necesidades de la ASES identificadas en el Plan Anual de Adquisiciones se expone a ser destituido de cargo o empleo.

12. De conformidad con el Artículo 28 de la Ley 73, supra, ASES está obligada a revisar trimestralmente los estimados de necesidades y compras probables incluidas en el Plan Anual de Adquisiciones y deberá notificar a la ASG de cualquier cambio realizado al vigente y previamente establecido. El incumplimiento con esta disposición acarreará la imposición por parte de ASG de una multa administrativa hasta \$5,000.00.

13. Según el Artículo 27 de la Ley 73, supra, las entidades gubernamentales, entiéndase ASES, "no vendrán obligadas a licitar, comprar y/o contratar cualesquiera bienes o servicios incluidos en el Plan Anual de Adquisiciones. No obstante, el Plan Anual de Adquisiciones debe incluir la información más precisa y correcta".

14. La ASG, utilizando la información contenida en cada Plan Anual de Adquisiciones de cada entidad gubernamental y entidades exentas, deberá preparar un Plan Anual Central de Adquisiciones y las actualizaciones de este, el cual deberá ser publicado en la página web de ASG.

C. Contenido de la Solicitud para la Adquisición de Bienes, Obras o Servicios no Profesionales

15. Además de elaborar el Plan Anual de Adquisiciones, ASES deberá presentar a la ASG una solicitud escrita para la adquisición de Bienes, Obras o Servicios no Profesionales. La solicitud que se presente deberá ser preparada por el delegado comprador de la entidad peticionaria, en este caso ASES, y autorizada por el director de la Oficina de Compras de la entidad peticionaria.

Además, deberá incluir:

- a. Una descripción detallada de los bienes, obras o servicios que facilite preparar las especificaciones y permita establecer competencia entre varios(as) suplidores(as) y marcas;
- b. Justificación, si aplica;
- c. Especificaciones recomendadas;
- d. Condiciones que se interesa cumpla lo solicitado;
- e. El sitio y las condiciones de entrega requeridas, o la forma en que se requerirán y prestarán los servicios;
- f. El propósito y uso específico de los bienes, obras o servicios solicitados;
- g. Certificación de la entidad peticionaria sobre el por ciento y la cantidad disponible en su presupuesto para compras de preferencia;
- h. Certificación sobre disponibilidad de fondos:
- i. Al someter la solicitud de compra, la Administración verificará la disponibilidad de fondos asignados a la entidad peticionaria, mediante certificación en línea con el Departamento de Hacienda. Al verificar la disponibilidad de fondos, el sistema autorizará la compra si hay fondos disponibles o notificará la insuficiencia de fondos:
- j. Insuficiencia de fondos cuando se certifica la insuficiencia de fondos para la compra solicitada, se paralizará el proceso de compras iniciado y la Administración notificará electrónicamente la culminación del proceso al Director de Compras de la entidad peticionaria.

- k. Fondos disponibles cuando se certifica la disponibilidad de fondos, la Administración obligará los fondos, mediante notificación al Departamento de Hacienda, a la Oficina de Gerencia y Presupuesto y al Director de Compras de la entidad peticionaria que solicitó la compra.
- l. En caso de Entidades Gubernamentales que no figuren bajo el Sistema de Contabilidad Central (PRIFAS, por sus siglas en inglés), deberán presentar una certificación de fondos disponibles de su institución bancaria. La certificación de fondos será requisito mandatorio previo a tramitar cualquier solicitud de compra;
- m. Si la entidad peticionaria identifica la necesidad de establecer un contrato a término sobre el bien o servicio a ser adquirido, deberá informar el término de vigencia propuesto para dicho contrato.
- n. Su recomendación al Administrador en cuanto a la adjudicación; si la necesidad deberá ser cubierta por un (1) solo suplidor (contrato individual) o por varios licitadores (contrato de selección múltiple). . .
- ñ. Cualquier otro documento o certificación requerida por la Secretaría de la Gobernación o la Oficina de Gerencia y Presupuesto.
- o. Cualquier otra información que a juicio de la entidad peticionaria o la Administración sea de utilidad.

D. Devolución De La Solicitud A La Entidad Peticionaria

16. La Oficina de Compras de la ASG podrá devolver la solicitud a la entidad peticionaria en las siguientes circunstancias:

- a. Por falta de información;
- b. Por no incluir especificaciones;
- c. Por no señalar cantidades;
- d. Por no incluir el porcentaje y la cantidad disponible en su presupuesto para compras de preferencia;
- e. Por no estar firmada por el Director de Compras de la entidad peticionaria;
- f. Por insuficiencia de fondos;

- g. Por falta de cualquier otro documento o certificación requerida por la Secretaría de la Gobernación o la Oficina de Gerencia y Presupuesto, y;
- h. Por cualquier otra particular que la Administración estime pertinente que sea necesario incluir para realizar la compra.

17. La Oficina de Compras de la Administración podrá requerir a la entidad peticionaria, mediante escrito o correo electrónico, que someta cualquier información adicional o que realice cambios, correcciones y/o alteraciones a la solicitud recibida. La Administración también podrá enviar a la entidad requirente especificaciones para que indique si éstas concuerdan con el bien, obra o servicio no profesional requerido. La Oficina de Compras de la Administración, en dicho escrito o correo electrónico, notificará a la entidad peticionaria el plazo concedido para que provea lo solicitado. El proceso de compra se reanudará cuando la entidad peticionaria someta a la Administración lo solicitado por ésta última. De no obtenerse respuesta de la entidad peticionaria en el plazo concedido, se entenderá que la solicitud fue retirada y la Oficina de Compras de la Administración devolverá a la entidad peticionaria todos los documentos previamente sometidos.

E. Evaluación Preliminar de la Solicitud para la Adquisición De Bienes, Obras o Servicios No Profesionales

18. Cuando la solicitud para la adquisición de bienes, obras o servicios no profesionales de una entidad peticionaria, entiéndase ASES, sea recibida en la ASG y evaluada por la Oficina de Compras, el Administrador Auxiliar de Adquisiciones y/o el Oficial de Licitación, previa evaluación de la recomendación de trámite realizada por la Oficina, determinará el método de licitación, compra excepcional u otro método de adquisición mediante el cual se tramitará la

compra. En caso de que la solicitud sometida originalmente por la entidad peticionaria fuere enmendada y dicha enmienda altere el precio de la adquisición, se procederá a realizar el método de licitación correspondiente.

F. Procesos de Licitación

19. La ASG utilizará los siguientes procesos de licitación para toda adquisición de bienes, obras y servicios no profesionales de entidades gubernamentales, incluyendo ASES. Estos son;

- a. **Compra Informal:** Método de licitación a ser utilizado cuando se adquieran bienes, obras y servicios no profesionales cuyo costo no exceda de quince mil dólares (\$15,000.00). En las mismas no será necesario realizar subastas. El Administrador Auxiliar de Adquisiciones o su representante autorizado solicitarán un mínimo de tres (3) cotizaciones a licitadores debidamente inscritos en el RUL, bajo la categoría correspondiente. El número de por lo menos tres (3) licitadores estarán sujetos a que existan suficientes firmas suplidoras para el bien o servicio que se pretenda adquirir;
- b. **Subasta Informal:** Método de licitación a ser utilizado cuando se adquieran bienes, obras y servicios no profesionales cuyo costo exceda de quince mil dólares (\$15,000.00), pero no exceda la cantidad de cien mil dólares (\$100,000.00). El Administrador Auxiliar de Adquisiciones o su representante autorizado evaluarán las ofertas y adjudicará la buena pro al licitador responsivo que haya ofertado el mejor valor;
- c. **Subasta Formal:** Método de licitación a ser utilizado cuando se adquieran bienes, obras y servicios no profesionales cuyo costo exceda la cantidad de cien mil dólares (\$100,000.00). Dicha adjudicación será realizada por la Junta de Subastas al licitador responsivo que haya ofertado el mejor valor;
- d. **Solicitud de Propuestas:** Método de licitación a ser utilizado cuando se adquieran bienes, obras y servicios no profesionales cuyo costo exceda de quince mil dólares (\$15,000.00), pero no exceda la cantidad de cien mil dólares (\$100,000.00). Admite la negociación entre el oferente y la Administración, mientras se evalúan las propuestas recibidas. La adjudicación será realizada por el Área de Adquisiciones con la aprobación del Administrador;

- e. **Solicitud de Propuestas Selladas (RFP):** Método de licitación a ser utilizado cuando se adquieran bienes, obras y servicios no profesionales cuyo costo exceda la cantidad de cien mil dólares (\$100,000.00). Admite la negociación entre el oferente y la Administración, mientras se evalúan las propuestas recibidas. La adjudicación será realizada por la Junta de Subastas;
- f. **Solicitud de Cualificaciones (RFQ):** Método de licitación a ser utilizado cuando se trate de la adquisición de bienes, obras o servicios especializados, que involucran asuntos altamente técnicas y complejas, mediante el cual se solicita a proponentes potenciales que sometan sus cualificaciones para participar en un proceso de licitación mediante Solicitud de Cualificaciones (RFQ). Este mecanismo consistirá en un proceso dual; en la primera fase, se cualificarán los proponentes; en la segunda fase se adjudicará la propuesta. La invitación correspondiente, así como la evaluación y la adjudicación será realizada por la Junta de Subastas, sin importar el costo de los bienes, obras y servicios especializados.

20. Por tanto, el método de licitación que aplique dependerá de la cuantía involucrada en la contratación. Más aún, el Artículo 40 de la Ley 73, supra, prohíbe fraccionar las solicitudes con el fin de burlar los mecanismos dispuestos en la ley.

G. Compras de Emergencia

21. **Compras de Emergencia:** Aquella que se realiza para atender necesidades inesperadas e imprevistas de bienes, obras y servicios no profesionales que requieran la acción inmediata del Administrador o del Gobierno de Puerto Rico por estar en peligro la vida, la salud o la seguridad pública, al suspenderse o afectarse adversamente el servicio público, la propiedad del Gobierno de Puerto Rico y aquellos programas del Gobierno de Puerto Rico que se nutren de fondos federales o estatales.

H. Compras Excepcionales

22. Compras excepcionales se define como toda compra que está exenta de tramitarse mediante los métodos de licitación antes identificados, entiéndase, compra informal, subasta formal o informal, solicitud de propuestas o solicitud de cualificaciones.

23. Una entidad gubernamental, incluyendo ASES, podrá realizar las compras excepcionales que más adelante se enumeran, pero estas deberán ser recomendadas por escrito por el Administrador Auxiliar de Adquisiciones de la ASG y autorizada por el Oficial de Licitación de esa misma agencia. Ni el Administrador Auxiliar de Adquisiciones ni el Oficial de Licitación podrán recomendar ni autorizar, como compras excepcionales, aquellas que impliquen circunstancias distintas o adicionales a las descritas en el Artículo 34 de la Ley antes citada y el Artículo 6.3 del Reglamento de ASG, las cuales se detallan más adelante.

24. Tanto el Administrador Auxiliar de Adquisiciones como el Oficial de Licitación de la ASG se asegurarán por cualquier medio (inspección, requerimiento documental, fotografías y videos, certificaciones, entre otros), previo a emitir su recomendación y aprobación de cada compra excepcional, respectivamente, que las circunstancias excepcionales expuestas por la entidad requirente existen y que no se trata de un subterfugio para evadir el trámite ordinario de adquisición.

25. El Administrador Auxiliar de Adquisiciones y el Oficial de Licitación certificarán, bajo su firma, el medio por el cual corroboraron la existencia de las circunstancias excepcionales expuestas por la entidad requirente en su solicitud.

26. El Oficial de Licitación podrá denegar el trámite de cualquier solicitud de compra excepcional, de entender que las circunstancias expuestas en dicha solicitud han sido causadas por la negligencia administrativa de la entidad requirente, al no haberse presentado oportunamente ante la Administración la solicitud de compra de bienes, obras y servicios no profesionales. Dicha denegación estará debidamente fundamentada y deberá notificarse a la Autoridad Nominadora de la entidad requirente para el trámite correspondiente.

27. El procedimiento a seguir por la entidad gubernamental para realizar compras excepcionales, luego de ser aprobadas por ASG, está delimitado en el Artículo 6.4 y 6.5 del Reglamento número 9230 de la ASG. Es importante señalar que no se podrán levantar contratos a términos mediante el trámite de compra excepcional. Solo se podrá levantar la orden de compra o servicio correspondiente a dicha compra excepcional. Como excepción, se podrán levantar contratos a término para compras excepcionales, mediante autorización expresa de la ASG, por un término máximo de 6 meses. También se podrán levantar contratos a un término máximo de 1 año en caso de compras excepcionales de emergencia, por motivo de la declaración de emergencia o desastre por parte del Gobernador.

28. El Art. 34 de la Ley Núm. 73-2019, supra, enumera como compras excepcionales las siguientes:

- a. Cuando los precios mínimos estén fijados por ley o autoridad gubernamental competente;
- b. Cuando la compra se haga al Gobierno de Estados Unidos de América, alguno de sus estados o a través de sus agencias e instrumentalidades o departamentos, corporaciones cuasi públicas,

sus subsidiarias y afiliadas, o cualquier entidad gubernamental del Gobierno de Puerto Rico;

- c. Cuando se utilice un suplidor que tiene contrato con la ASG;
- d. Cuando exista una sola fuente de abastecimiento y así consta mediante certificación del fabricante de que la empresa en Puerto Rico es el representante exclusivo del bien, o certificación del Administrador Auxiliar de Adquisiciones de que, a su mejor entender y conocimiento personal, la entidad es la única que puede proporcionar el bien o prestar el servicio, según aplique;
- e. **Cuando en la entidad gubernamental exista una situación de emergencia que genera necesidades inesperadas, imprevistas e inaplazables que requiera acción inmediata de la autoridad nominadora, por estar en peligro la vida, la salud o la seguridad de los empleados o la ciudadanía que visita sus facilidades, o porque implique la suspensión de los servicios que se brindan o que estos se afecten;**
- f. Cuando la Gobernador(a) haya declarado un estado de emergencia; **(Para el procedimiento a seguir bajo esta excepción, ver Carta Circular ASG Numero 2021-03 del 25 de agosto del 2020 vigente a la fecha de este SOP)**
- g. Cuando la propiedad gubernamental pueda dañarse o perderse;
- h. Cuando la vigencia de los fondos este próxima al vencimiento y toda oportunidad de adquirir los bienes, obras y servicios no profesionales se pueda perder, afectándose adversamente los mejores intereses del gobierno de Puerto Rico;
- i. Cuando se necesiten piezas de repuesto, accesorios, equipo adicional o servicios suplementarios para equipo cuya reparación o servicio este bajo contrato;
- j. Cuando sea necesario adquirir los bienes, obras y servicios no profesionales fuera de Puerto Rico por no haber suplidores cualificados en el mercado local; o las condiciones ofrecidas en esos mercados represente una ventaja mayor que las del mercado local;
- k. Cuando no se reciban ofertas luego de haberse emitido solicitudes de cotizaciones, invitación a subasta o solicitud de propuestas;
- l. Cuando todas las cotizaciones, ofertas o propuestas recibidas sean rechazadas porque incumplen con las especificaciones, condiciones o porque su precio resulte irrazonable;

- m. Cuando la compra se efectuó bajo los términos de contratos o subastas realizadas previamente; siempre y cuando redunde en beneficio de la Administración. En caso de incumplimiento contractual del licitador agraciado al cual se le adjudique la buena pro de una subasta particular, se podrá contratar con el licitador alterno conforme a la propuesta presentada en la subasta;
- n. Cuando los artículos, materiales, equipos, obras o servicios no profesionales a ser adquiridos son de naturaleza especializada, o se desee comprar cierto tipo o marca en particular, por el buen servicio probado que unidades análogas hayan rendido, por la economía envuelta en mantener uniformidad en unidades múltiples o por superioridad en el tipo y la calidad del servicio que se obtendrán en la unidad comprada y en su conservación, todo lo cual debe justificarse por escrito en la requisición;
- ñ. Cuando se justifique, en forma razonable, que el tiempo que tomará la preparación y adjudicación de la subasta afectará adversamente el comienzo, desarrollo y uso de la obra, bien o servicio, según se haya determinado conforme a la necesidad o planificación de la misma;

29. El Artículo 6.3 del Reglamento de la ASG detalla aún más cuales son las definiciones de compras Excepcionales y se informa además que toda compra excepcional deberá ser justificada por la entidad peticionaria, conforme en el Artículo 6.5 (1) y (2) de dicho Reglamento.

I. Responsabilidades Generales de la Oficina de Compras de la Entidad Peticionaria

30. La oficina de compras de ASES tendrá las siguientes responsabilidades;

- a. Identificar y justificar la necesidad y la utilidad del bien, obra o servicio no profesional.
- b. Verificar la disponibilidad de fondos disponibles antes de proceder a iniciar los trámites para solicitar o requerir una compra o servicio.
- c. Preparar la Solicitud para la Adquisición de Bienes, Obras o Servicios no Profesionales. Al identificarse la necesidad del bien, obra o servicio, la entidad peticionaria cumplimentará la Solicitud para la Adquisición de Bienes, Obras o Servicios no Profesionales (Formulario

1001 u otro análogo), la cual será firmada por el Delegado Comprador y el Director de Compras de la entidad peticionaria.

- d. La Solicitud para la Adquisición de Bienes, Obras o Servicios no Profesionales deberá ser presentada ante la Administración, debidamente cumplimentada, sesenta (60) días previos a la fecha para la cual se estima que será necesario contar con el bien, comenzar la obra o comenzar a recibir los servicios no profesionales.
- e. Proveer toda la documentación requerida con la Solicitud para la Adquisición de Bienes, Obras o Servicios no Profesionales.
- f. Asegurarse de que conste una orden de compra y/o servicio o contrato antes de recibir los bienes o que se efectúe la prestación de servicios.
- g. Resolver cualquier duda o discrepancia que surja en torno a las especificaciones contenidas en una orden de compra o servicio y el producto presentado por el suplidor en el momento de la entrega y aceptación.
- h. Verificar si en la Administración existe un contrato vigente con un proveedor o suplidor que provea el bien o servicio solicitado, en cuyo caso se realizará a éste la compra correspondiente.
- i. Verificar la exactitud de lo dispuesto en la solicitud para la Adquisición de Bienes, Obras o Servicios no Profesionales (cantidad, descripción del producto, etc.), en todos sus extremos, antes de presentarla ante la Administración.

J. Responsabilidades Generales de la Oficina de Compras de la Administración

31. La oficina de compras de la ASG tendrá las siguientes responsabilidades:

- a. Revisar y corroborar, la exactitud de lo dispuesto en la Solicitud para la Adquisición de Bienes, Obras o Servicios no Profesionales (cantidad, descripción del producto, firma(s), etc.), en todos sus extremos, antes de comenzar el trámite de adquisición. Verificar, además, si la entidad peticionaria presentó toda la documentación requerida con la Solicitud para la Adquisición de Bienes, Obras o Servicios.
- b. Requerir mediante correo electrónico, de ser necesario, a la entidad peticionaria información adicional, cambios, correcciones y alteraciones a la solicitud recibida, o enviarle especificaciones razonables para que indique si concuerdan con el bien, obra o servicio no profesional requerido. La Oficina de Compras de la Administración,

en dicho correo electrónico, proveerá a la entidad peticionaria el plazo correspondiente para que dicha entidad envíe mediante correo electrónico la información solicitada. El proceso de compra se reanudará cuando la entidad peticionaria supla la información solicitada. De no obtenerse respuesta en el término requerido, se entenderá que la solicitud fue retirada y la Oficina de Compras de la Administración devolverá a la entidad peticionaria todos los documentos relacionados debido a la inacción.

- c. Verificar las solicitudes de compra o servicio para evitar el fraccionamiento de las compras con el propósito de eludir la aplicación de los criterios correspondientes al valor total de los bienes, obras o servicios no profesionales a ser adquiridos.
- d. Verificar si en la Administración existe un contrato vigente con un proveedor o suplidor que provea el bien o servicio solicitado, en cuyo caso se realizará a éste la compra correspondiente.
- e. Verificar la disponibilidad de fondos antes de proceder a iniciar los trámites para efectuar una compra, contrato u orden de servicio.
- f. Verificar que las solicitudes recibidas cumplen con los requisitos establecidos en las leyes, reglamentos o cualesquiera normas aplicables.
- g. Conforme el contenido de la solicitud, la Directora de Compras recomendará al Administrador Auxiliar de Adquisiciones y al Oficial de Licitación el método de licitación, compra excepcional u otro método de adquisición mediante el cual se debe tramitar la solicitud, de acuerdo con lo dispuesto en el presente Reglamento.
- h. Luego de realizar el proceso de licitación correspondiente, se preparará la orden de compra o contrato correspondiente y se obligarán los fondos.
- i. La Administración Auxiliar de Adquisiciones y la Junta de Subastas, en caso de adquisiciones con fondos federales, deberá verificar que el licitador agraciado no se encuentra en el Registro de Excluidos (Debarment Registry) del "System for Award Management (mejor conocido como "SAM" o "SAM System"). En caso de que un licitador que resulte agraciado en cualquier procedimiento adquisitivo esté incluido en dicho registro, será causa suficiente para su descalificación.

K. Excepción de la Ley 73 del 2019 Delegaciones a las Entidades Gubernamentales

32. Según antes informado, el Artículo 15 de la Ley 73 del 2019 dispone que por vía de excepción una entidad gubernamental, entiéndase ASES entre otras, podrá solicitar autorización expresa, entiéndase escrita, de la ASG para llevar a cabo su propio proceso de compras, suministro y contratación de servicios no profesionales. De igual forma, el Reglamento número 9230 de la ASG dispone en su capítulo 12 que “las entidades gubernamentales podrán solicitar al Administrador, mediante escrito formal firmado por el jefe de la agencia, que les deleguen las funciones que establece el Reglamento de la ASG para la adquisición de uno o varios bienes, obras y/o servicios no profesionales, por tiempo fijo o por periodo indefinido...”

33. El escrito deberá exponer la justificación debidamente fundamentada para tal solicitud.

34. El Administrador de la ASG tendrá la facultad para conceder o denegar la solicitud presentada, considerando los mejores intereses del Gobierno de Puerto Rico.

35. En caso de ser aprobada una delegación a una entidad gubernamental, en este caso ASES, a esta le corresponde la facultad de velar por el fiel cumplimiento de lo dispuesto en el Reglamento de la ASG y cualquier otra disposición legal vigente relacionada a procesos de adquisición.

36. De concederse tal delegación, la entidad gubernamental deberá someter mensualmente a la Administración un informe sobre las adquisiciones realizadas.

37. El Administrador tendrá la facultad de revocar la delegación concedida en cualquier momento de entenderlo apropiado.

38. Bajo este escenario, y de ser aprobado por la ASG, ASES se regirá por el Reglamento de la ASG, utilizando uno de los procesos de licitación antes identificados y/o el procedimiento para compras de excepcionales también utilizando el procedimiento establecido en el Reglamento de ASG número 9230.

Dado en San Juan, Puerto Rico, hoy _____ de _____ de 2021.

ANEJO C



Hon. Pedro Pierluisi Urrutia
Gobernador

Lcda. Karla G. Mercado Rivera
Administradora y Principal Oficial de Compras

RECIBIDO
JUL 08 2021
ASES
RECEPCION

8 de julio de 2021

Hoja de Trámite

A:

Sr. Jorge E. Galva, JD, MHA
Director Ejecutivo
Administración de Seguros
de Puerto Rico
Urb. Caribe Calle Alda 1549
San Juan, P.R. 00926-2712

De:


Hilda Marie Rivera Colón
Directora Administrativa Interina
Oficina de Investigaciones Especiales
Administración de Servicios Generales

Asunto: Segundo y final Requerimiento de Información ASG-I-2021-006.

Recibido por:



OFICINA DE
INVESTIGACIONES ESPECIALES
A.S.G.

Fecha: _____

Hora: 8:02



Hon. Pedro Pierluisi Urrutia
Gobernador

Lcda. Karla G. Mercado Rivera
Administradora y Principal Oficial de Compras

ADMINISTRACIÓN DE SEGUROS DE
PUERTO RICO (ASES)

P/C: JORGE E. GALVA, JD, MHA
DIRECTOR EJECUTIVO

NÚM. ASG-I-21-006

SOBRE:

RFP # PHARMACY 2022- SERVICIOS
DE MANEJADOR DEL BENEFICIO DE
FARMACIA Y PROGRAMA DE
REEMBOLSOS

CONFIDENCIAL¹

A: Sr. Jorge E. Galva, JD, MHA
Director Ejecutivo
Administración de Seguros
de Puerto Rico
Urb. Caribe Calle Alda 1549
San Juan, P.R. 00926-2712

**SEGUNDO Y FINAL AVISO DE REQUERIMIENTO DE INFORMACIÓN PREVIO A
RECURRIR AL TRIBUNAL**

La Ley Núm. 73 de 19 de julio de 2019, según enmendada, conocida como “Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019” (en adelante, “Ley Núm. 73-2019”) establece que la Administración de Servicios Generales (en adelante, la “Administración” o la “ASG”) es el organismo de la Rama Ejecutiva responsable de establecer la política pública relacionada con las compras de bienes, obras y servicios no profesionales para todas las Entidades Gubernamentales y Entidades Exentas, según definidas en la referida Ley. La ASG es responsable, además, de la implementación de la centralización de las compras gubernamentales. A su vez, la Administración tiene la encomienda

¹ AVISO: Esta comunicación es para uso exclusivo del destinatario. Si el lector no es destinatario ni ha sido autorizado por este a leerle, se le advierte que el contenido es confidencial y puede contener naturaleza privilegiada y protegida por ley. De recibir esta comunicación por error debe comunicarse inmediatamente con la Oficina de Investigaciones Especiales de la ASG.

de impartirle uniformidad a las distintas disposiciones reglamentarias que ri[gen] los procesos de compras en el Gobierno de Puerto Rico.²

Con el propósito de cumplir con la encomienda antes enunciada, el Artículo 82 de la Ley Núm. 73-2019, establece que la Administración “podrá requerir la información que sea necesaria, apropiada y conveniente para lograr tales propósitos”. Además, “[e]l Administrador podrá expedir citaciones requiriendo la comparecencia de testigos y la presentación de datos o información. . . ,[así como] por sí o mediante funcionario debidamente autorizado, tomar juramentos y recibir testimonios, datos o información”.³

Al amparo de las facultades que le concede la Ley Núm. 73-2019 al Administrador o su representante autorizado para emitir las ordenes que sean necesarias y convenientes para cumplir con las funciones, responsabilidades y deberes, se le requiere, por segunda ocasión, que provea la siguiente información:

1. Expediente hasta esta fecha del RFP # PHARMACY 2022- Servicios de manejador del beneficio de Farmacia (PMB, por sus siglas en inglés) y programa de reembolsos (RA, por sus siglas en inglés).

TÉRMINO PARA PROVEER LA INFORMACIÓN

La información solicitada en el presente requerimiento deberá ser entregada, **mediante diligenciamiento personal**, al funcionario(a) que emite este Requerimiento. Dicha información deberá ser enviada en formato digital, así como en formato físico. Este último deberá ir en un sobre sellado y marcado como “información confidencial”, en la siguiente fecha, hora y lugar dirección:

viernes, 9 de julio de 2021, a las 11:00 a.m.

Oficina de Investigaciones Especiales

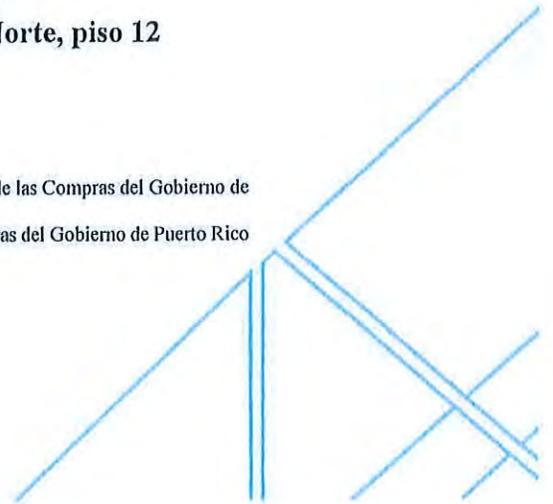
Centro Gubernamental de Minillas, Torre Norte, piso 12

² Exposición de Motivos, Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019, Ley Núm. 73 de 19 de julio de 2019, según enmendada.

³ Artículo 82, Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019, Ley Núm. 73 de 19 de julio de 2019, según enmendada.



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Gobierno de Puerto Rico
PO Box 41249
San Juan, PR 00940
(787) 759-7676
administracion@asg.pr.gov



La información entregada deberá estar acompañada de una **certificación emitida por el funcionario público con autoridad legal**, en la cual exprese que la información está completa y que la misma es correcta. De no contar con la información requerida, deberá emitir una certificación negativa.

ADVERTENCIAS

Este Requerimiento de Información, así como la información entregada, es confidencial. La infracción a la responsabilidad de asegurar la confidencialidad podrá dar paso a medidas correctivas que incluyen: sanciones civiles, administrativas y criminales. Por otro lado, el cumplimiento de este Requerimiento no es discrecional. En atención a lo antes dispuesto, el Artículo 82 de la Ley Núm. 73-2019, prescribe lo siguiente:

[Si un Requerimiento]. . . expedid[o] por el Administrador [o su representante autorizado], no fuese debidamente cumplid[o], el Administrador podrá comparecer ante el Tribunal de Primera Instancia de Puerto Rico y solicitar se ordene el cumplimiento de [lo requerido]. El Tribunal de Primera Instancia dará preferencia al curso y despacho de dicha petición y podrá dictar órdenes haciendo obligatoria la comparecencia de testigos o la presentación de los datos o información requerida previamente por el Administrador. El Tribunal de Primera Instancia tendrá facultad para castigar por desacato la desobediencia a esas órdenes. Ninguna persona podrá negarse a cumplir una citación [o requerimiento] del Administrador o de su representante, o producir la evidencia requerida o rehusar contestar cualquier pregunta en relación con cualquier estudio o investigación o porque la evidencia que se le requiere podría incriminarle o le expondría a un proceso criminal o a que se le destituya o suspendiera de su empleo, profesión u ocupación. (énfasis subrayado nuestro)

El citado Artículo, también expone que:

“[n]inguna persona podrá negarse a cumplir una citación del Administrador o de su representante, o producir la evidencia requerida o rehusar contestar cualquier pregunta en relación con cualquier estudio o investigación o porque la evidencia que se le requiere podría incriminarle o le expondría a un proceso criminal o a que se le destituya o suspendiera de su empleo, profesión u ocupación; pero el testimonio o evidencia producida por dicha persona a requerimiento del Administrador o su representante, o en virtud de orden judicial, no podrá ser utilizada o presentada como prueba en su contra en ningún proceso criminal, o en procesos civiles o administrativos que puedan resultar en la destitución, o suspensión de empleo, profesión u ocupación, luego de haber reclamado su



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privilegio de no declarar en su contra, excepto que dicha persona que así declarase no estará exenta de procesamiento o castigo por perjurio al así declarar.”

El no cumplir con lo dispuesto y según las facultades otorgados por la Ley 73-2019, una persona podrá ser sancionado en su carácter personal como en su capacidad oficial.⁴

Expedido hoy, 7 de julio de 2021, en San Juan, Puerto Rico.

REGÍSTRESE y NOTIFÍQUESE.



Hilda Marié Rivera Colón
Directora Administrativa Interina
Oficina de Investigaciones Especiales

⁴ Artículos 72 y 73 de la Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019, Ley Núm. 73 de 19 de julio de 2019, según enmendada.



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administracion@ asg.pr.gov



ANEJO D



Oficina Ejecutiva

Hoja de Trámite

Fecha: 9 de julio de 2021

| | | | |
|-----------|-------------------------------|-------------|--------------------------|
| Para: | Sra. Hilda Marie Rivera Colón | De: | Carla Imbert, Secretaria |
| Dpto. | ASG | Dpto.: | Oficina Ejecutiva |
| Tel /Fax: | | Tel. / Fax: | 787-474-3344 |
| Re: | Varias Facturas | Núm. Pág.: | |

Saludos,

Se hace entrega de contestación a su carta del **7 de Julio sobre Segundo y Final Aviso de Requerimiento de Información Previo a Recurrir al Tribunal.**

Como siempre, estamos a sus órdenes.

Gracias.

Recibido por: _____

Fecha: _____

Sr. Orama de la Oficina de Registro lo entregó a la OTE hoy, 12 de julio de 2021 en horas de la mañana. Alego que lo entregaron en la Oficina de Registros nadie firmo en sobre como recibido.



Oficina Ejecutiva

Hoja de Trámite

Fecha: 9 de julio de 2021

| | | | |
|-----------|-------------------------------|-------------|--------------------------|
| Para: | Sra. Hilda Marie Rivera Colón | De: | Carla Imbert, Secretaria |
| Dpto. | ASG | Dpto.: | Oficina Ejecutiva |
| Tel /Fax: | | Tel. / Fax: | 787-474-3344 |
| Re: | Varias Facturas | Núm. Pág.: | |

Saludos,

Se hace entrega de contestación a su carta del **7 de Julio sobre Segundo y Final Aviso de Requerimiento de Información Previo a Recurrir al Tribunal.**

Como siempre, estamos a sus órdenes.

Gracias.

Recibido por: _____

Fecha: _____



GOBIERNO DE PUERTO RICO
ADMINISTRACIÓN DE SEGUROS DE SALUD
Director Ejecutivo | Jorge E. Galva, JD, MHA | jgalva@asespr.org

8 de julio de 2021

Sra. Hilda Marie Rivera Colón
Directora Administrativa Interina
Oficina de Investigaciones Especiales
Administración de Servicios Generales

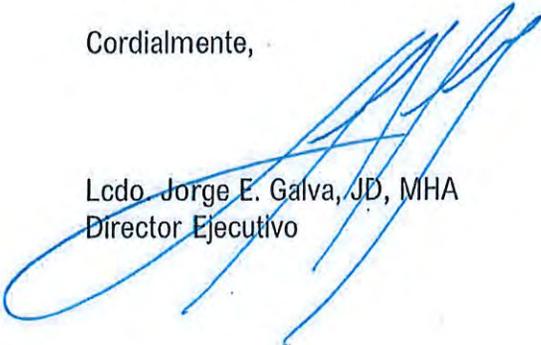
Estimada señora Rivera Colón:

Acuso recibo de su comunicación de 7 de julio de 2021, recibida en ASES en la mañana de hoy, titulada "Segundo y Final Aviso de Requerimiento de Información Previo a Recurrir al Tribunal", en la que nos requiere por segunda ocasión, que se provea el expediente del RFP #PHARMACY-2022 que fuera objeto del Requerimiento de Información ASG-I-2021-006 recibido el 1 de julio de 2021 (en adelante "el Primer Requerimiento").

Dentro del término provisto, el 6 de julio de 2021, se proveyó nuestra postura al requerimiento de expediente de RFP del Primer Requerimiento, debidamente fundamentada en que el RFP en cuestión es uno para la adquisición de un servicio profesional por lo que no cae bajo el ámbito de la regulación de compras de gobierno de la competencia de la ASG. En otras palabras, objetamos la referida solicitud de expediente basado en que el proceso de contratación competitivo objeto del requerimiento no es una compra de bienes, obras ni servicios no profesionales regulado por la Ley Núm. 73. En suma, se estableció que no procedía la producción de la información solicitada a la ASES bajo el inciso #1 del Primer Requerimiento de Información.

No empecé lo anterior, en el Segundo y Final Aviso recibido esta mañana no se hace referencia a nuestra comunicación del 6 de julio, ni se replica a las respuestas provistas por ASES al Primer Requerimiento. De conformidad, nos reiteramos en la posición previamente establecida.

Cordialmente,


Lcdo. Jorge E. Galva, JD, MHA
Director Ejecutivo

P.O. Box 195661, San Juan, P.R. 00919-5661

787-474-3300 787-474-3346 asespr.org



Hon. Pedro Pierluisi Urrutia
Gobernador

Lcda. Karla G. Mercado Rivera
Administradora y Principal Oficial de Compras

ADMINISTRACIÓN DE SEGUROS DE
PUERTO RICO (ASES)

P/C: JORGE E. GALVA, JD, MHA
DIRECTOR EJECUTIVO

NÚM. ASG-I-21-006

SOBRE:

RFP # PHARMACY 2022- SERVICIOS
DE MANEJADOR DEL BENEFICIO DE
FARMACIA Y PROGRAMA DE
REEMBOLSOS

CONFIDENCIAL¹

A: Sr. Jorge E. Galva, JD, MHA
Director Ejecutivo
Administración de Seguros
de Puerto Rico
Urb. Caribe Calle Alda 1549
San Juan, P.R. 00926-2712



**SEGUNDO Y FINAL AVISO DE REQUERIMIENTO DE INFORMACIÓN PREVIO A
RECURRIR AL TRIBUNAL**

La Ley Núm. 73 de 19 de julio de 2019, según enmendada, conocida como "Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019" (en adelante, "Ley Núm. 73-2019") establece que la Administración de Servicios Generales (en adelante, la "Administración" o la "ASG") es el organismo de la Rama Ejecutiva responsable de establecer la política pública relacionada con las compras de bienes, obras y servicios no profesionales para todas las Entidades Gubernamentales y Entidades Exentas, según definidas en la referida Ley. La ASG es responsable, además, de la implementación de la centralización de las compras gubernamentales. A su vez, la Administración tiene la encomienda

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de impartirle uniformidad a las distintas disposiciones reglamentarias que ri[gen] los procesos de compras en el Gobierno de Puerto Rico.²

Con el propósito de cumplir con la encomienda antes enunciada, el Artículo 82 de la Ley Núm. 73-2019, establece que la Administración “podrá requerir la información que sea necesaria, apropiada y conveniente para lograr tales propósitos”. Además, “[e]l Administrador podrá expedir citaciones requiriendo la comparecencia de testigos y la presentación de datos o información. . . ,[así como] por sí o mediante funcionario debidamente autorizado, tomar juramentos y recibir testimonios, datos o información”.³

Al amparo de las facultades que le concede la Ley Núm. 73-2019 al Administrador o su representante autorizado para emitir las ordenes que sean necesarias y convenientes para cumplir con las funciones, responsabilidades y deberes, se le requiere, por segunda ocasión, que provea la siguiente información:

1. Expediente hasta esta fecha del RFP # PHARMACY 2022- Servicios de manejador del beneficio de Farmacia (PMB, por sus siglas en inglés) y programa de reembolsos (RA, por sus siglas en inglés).

TÉRMINO PARA PROVEER LA INFORMACIÓN

La información solicitada en el presente requerimiento deberá ser entregada, **mediante diligenciamiento personal**, al funcionario(a) que emite este Requerimiento. Dicha información deberá ser enviada en formato digital, así como en formato físico. Este último deberá ir en un sobre sellado y marcado como “información confidencial”, en la siguiente fecha, hora y lugar dirección:

viernes, 9 de julio de 2021, a las 11:00 a.m.

Oficina de Investigaciones Especiales

Centro Gubernamental de Minillas, Torre Norte, piso 12

² Exposición de Motivos, Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019, Ley Núm. 73 de 19 de julio de 2019, según enmendada.

³ Artículo 82, Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019, Ley Núm. 73 de 19 de julio de 2019, según enmendada.



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Gobierno de Puerto Rico
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San Juan, PR 00940
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La información entregada deberá estar acompañada de una **certificación emitida por el funcionario público con autoridad legal**, en la cual exprese que la información está completa y que la misma es correcta. De no contar con la información requerida, deberá emitir una certificación negativa.

ADVERTENCIAS

Este Requerimiento de Información, así como la información entregada, es confidencial. La infracción a la responsabilidad de asegurar la confidencialidad podrá dar paso a medidas correctivas que incluyen: sanciones civiles, administrativas y criminales. Por otro lado, el cumplimiento de este Requerimiento no es discrecional. En atención a lo antes dispuesto, el Artículo 82 de la Ley Núm. 73-2019, prescribe lo siguiente:

[Si un Requerimiento]. . . expedid[o] por el Administrador [o su representante autorizado], no fuese debidamente cumplid[o], el Administrador podrá comparecer ante el Tribunal de Primera Instancia de Puerto Rico y solicitar se ordene el cumplimiento de [lo requerido]. El Tribunal de Primera Instancia dará preferencia al curso y despacho de dicha petición y podrá dictar órdenes haciendo obligatoria la comparecencia de testigos o la presentación de los datos o información requerida previamente por el Administrador. El Tribunal de Primera Instancia tendrá facultad para castigar por desacato la desobediencia a esas órdenes. Ninguna persona podrá negarse a cumplir una citación [o requerimiento] del Administrador o de su representante, o producir la evidencia requerida o rehusar contestar cualquier pregunta en relación con cualquier estudio o investigación o porque la evidencia que se le requiere podría incriminarle o le expondría a un proceso criminal o a que se le destituya o suspendiera de su empleo, profesión u ocupación. (énfasis subrayado nuestro)

El citado Artículo, también expone que:

“[n]inguna persona podrá negarse a cumplir una citación del Administrador o de su representante, o producir la evidencia requerida o rehusar contestar cualquier pregunta en relación con cualquier estudio o investigación o porque la evidencia que se le requiere podría incriminarle o le expondría a un proceso criminal o a que se le destituya o suspendiera de su empleo, profesión u ocupación; pero el testimonio o evidencia producida por dicha persona a requerimiento del Administrador o su representante, o en virtud de orden judicial, no podrá ser utilizada o presentada como prueba en su contra en ningún proceso criminal, o en procesos civiles o administrativos que puedan resultar en la destitución, o suspensión de empleo, profesión u ocupación, luego de haber reclamado su



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PO Box 41249
San Juan, PR 00940
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privilegio de no declarar en su contra, excepto que dicha persona que así declarase no estará exenta de procesamiento o castigo por perjurio al así declarar.”

El no cumplir con lo dispuesto y según las facultades otorgados por la Ley 73-2019, una persona podrá ser sancionado en su carácter personal como en su capacidad oficial.⁴

Expedido hoy, 7 de julio de 2021, en San Juan, Puerto Rico.

REGÍSTRESE y NOTIFÍQUESE.


Hilda Marie Rivera Colón
Directora Administrativa Interina
Oficina de Investigaciones Especiales

⁴ Artículos 72 y 73 de la Ley de la Administración de Servicios Generales para la Centralización de las Compras del Gobierno de Puerto Rico de 2019, Ley Núm. 73 de 19 de julio de 2019, según enmendada.



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PO Box 41249
San Juan, PR 00940
(787) 759-7676
administracion@asg.pr.gov

ANEJO E



Administración

Hoja de Trámite
Administración de Servicios Generales
Gobierno De Puerto Rico

Para:

Hilda Marie Rivera Colón
Directora Administrativa OIE

De:

Sr. Joel Fontáñez González
Administrador Interino

| FECHA | |
|--|-------------------------|
| 3 de noviembre de 2021 | |
| ASUNTO | |
| Documentos presentados por la Administración de Seguros de Salud (ASES) en el caso núm. SJ2021CV06557. | |
|  4528 | |
| Recibido por: (Nombre en letra de molde) <i>Hilda M. Rivera Colón</i> | Fecha: (día/mes/año) |

[Handwritten Signature]
Firma

OFICINA DE INVESTIGACIONES ESPECIALES

Misión:

Monitorear, inspeccionar e intervenir en los procesos de adquisición de bienes, obras y servicios no profesionales. Lo anterior tiene como objetivo corroborar que las transacciones efectuadas se hayan ejecutado conforme a las normas reglamentarias que rigen los procesos de compras gubernamentales. Esto así para promover las mejores prácticas administrativas y potenciar tanto la eficiencia como la efectividad, salvaguardando la transparencia y objetividad, en los protocolos de adquisición gubernamental.

Valores:

1. *Compromiso*- Potenciar al máximo nuestros talentos para ofrecer un resultado de altura, vía el monitoreo, la inspección y la intervención oportuna, en los procesos de adquisición de bienes, obras y servicios no profesionales.
2. *Integridad*- Desplegar coherencia y consistencia en la consumación de nuestro deber.
3. *Confianza*- Elaborar sistemas estandarizados de revisión que faciliten el rendimiento diligente, objetivo y transparente de nuestra labor.
4. *Transparencia*- Publicar y proceder con claridad en cuanto a los hallazgos que resulten de las investigaciones realizadas, de manera que se propicie la homogeneidad en los procesos de adquisición.
5. *Competencia*- Destinar nuestra pericia y experiencia al ejercicio de nuestra labor. Además de actualizar nuestras destrezas y conocimientos para cumplir cabalmente con nuestro mandato.

Información Contacto:



oie@asg.pr.gov



P.O. Box 41249, San Juan, PR 00940



Ave. José De Diego, Centro Gubernamental Minillas, Torre Norte, Piso 12, Hato Rey, PR.



787-756-7979



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**ADMINISTRACIÓN DE
SERVICIOS GENERALES**
GOBIERNO DE PUERTO RICO



SECTION 6 Mandatory Requirements



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6.12 Subcontractors..... 31-32

6.13 Redacted Proposal..... 33



6.1 Letter of Transmittal

Response: Included Appendix B as per RFP instructions



6.2 Qualifications and References

6.2.1 Provide the Independence and Conflict of Interest Certification and the Conflict of Interest Affidavit (Appendix C and C-1). Offeror must submit Appendices C and C-1 for the Offeror and for each Subcontractor to be used for functions and responsibilities under the Scope of Work of this RFP.

Response: Certifications included on Appendix C and C-1 as per RFP instructions

6.2.2 Provide a detailed description of the company, its operations, and ownership, addressing the following, in no more than three (3 pages)

6.2.2.1 General description of primary business of the organization and its client base;

6.2.2.2 Organization's areas of specialization.

6.2.2.3 Any current or recent experience working with state Medicaid agencies;

6.2.2.4 Size of organization, including structure and ownership. The organizational chart or diagram should present information clearly and concisely and include, at a minimum, the lines of authority and reporting and roles and functions for each position. Include a narrative description to supplement the chart or diagram.

6.2.2.5 Length of time organization have been in business.

Response: See response in next page



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MC-21 LLC General Description

Founded in 1998, MC-21 LLC (“MC-21”) is the first locally owned Pharmacy Benefit Manager (PBM) in Puerto Rico. Located in Caguas, P.R., MC-21 is an undisputed industry leader with a long history of success and financial stability.

In May of 2018, MC–21 successfully partnered with ProCare Rx; a partnership that provides additional benefits such as a state-of-the-art claims adjudication system, proprietary client service programs, sound technological tools and applications, and a deeper understanding of the Medicare and Medicaid lines of business from the mainland’s perspective. MC-21 is a wholly-owned subsidiary of ProCare Rx Puerto Rico LLC, which is jointly owned by Roger and Barbara Burgess.

MC-21 is much more than a traditional PBM. Our lines of business include, but are not limited to: Pharmacy Benefit Management Solutions, Health Information Technology, Rebate Contracting and Aggregation, Hospice Services, Discount Card Programs, 340B Claims Processing, Workers Compensation Administration, Private Label PBM Services, PACE Program Support, and Reimbursement HUB Services.

Our client base in Puerto Rico and the contiguous United States comprises more than 3,000 clients directly or indirectly within all lines of business. MC-21 serves more than 1.5 million lives in Puerto Rico, approximately 55% of the total healthcare insured on the island, and over 13 million lives in the United States.

Our knowledge of the local market has been crucial to the continued development, implementation, and administration of PBM services and programs for ASES’ beneficiaries in Puerto Rico. MC-21 has served the health system of the Government of Puerto Rico (VITAL) these last twenty years with one purpose: achieving continuous and measurable results by maximizing health outcomes and total cost savings using a methodology that focuses on an integrated approach and net cost.

We are equipped with the combined expertise of over 135 specialized professionals, which 50% are dedicated to serving ASES beneficiaries. The team understands and addresses the complex needs of ASES and is comprised of subject matter experts in clinical services, finances, health analytics, call center management, account management, program development, among others. Please refer to the organizational chart which illustrates the main areas of the organization providing services to ASES. See



Exhibit 6.2.2.A - MC-21 Organizational Chart.

For over 20 years, we have created and managed innovative and unique PBM solutions tailored to the needs of our Medicaid clients in Puerto Rico, Maryland, and California, while continuing to provide stability, transparency, and uncompromising quality of service that has become our trademark. See Exhibit 6.2.2.B for a detailed list of the services we currently provide.

Also, we have developed and implemented unique KEY programs to support ASES' Pharmacy Benefits Program at no additional cost to ASES and/or to the MCOs. These programs are critical to maintaining ASES beneficiaries' access to medications to manage complex conditions more efficiently and cost-effectively. Most of these programs are not included in the RFP document. The programs and services that MC-21 developed and administered to support ASES pharmacy benefit program are: (1) HIV Integrated Model, (2) ADFAN Program, (3) OPM Program, (4) PREVEN Program, (5) Hepatitis C Reimbursement Program, (6) Synthroid Program, (7) COVID 19 vaccine Administration Fee program, (8) Online Prior Authorization System integrating all MCOs, (9) Set Up 100% of all clinical protocols to the Online system – hundreds of clinical protocols, (10) Support ASES and the MCOs in over 12 transitions processes in the past years as the healthcare model managed by ASES has changed over the years, (11) Training to all MCOs personnel throughout the year, (12) Emergency On-site facility to provide the MCOs access to MC-21's systems including Call Center facility, internet access, PA processes, and (13) HUB established to process claims during emergencies i.e. Hurricane Maria.

MC-21 has historically succeeded in achieving important cost savings for ASES with many initiatives that have resulted in higher pharmacy discount savings through the years. The increase in savings during the past ten years has been exponential and a result of successful, PDL redesign efforts, the implementation of a new high-cost drug reimbursement program, and other important strategies to obtain higher discounts. As displayed below in the chart,



total savings of approximately \$11.5B have been accomplished.



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AN INNOVATIVE PROPOSAL FOR VITAL

On Section 7.8 of this RFP (Care Management and High Needs Programs), MC-21 details its innovative offer to ASES that contains unique cost-containment options and health outcome programs, specially designed for ASES needs and based on the experience accumulated in the implementation of tailored solutions for ASES over the last 20 years.

These can generate over \$220 million in savings annually. Included is a list of programs and strategies previously presented to ASES but not yet implemented: and new initiatives based on ASES needs and market trends. For detailed information of each program, see Exhibit 6.2.2C – New Programs Brief Description. **1.** Center of Excellence – **NEW**; **2.** Medication Therapy Management Program – **NEW**; **3.** Hospital Discharged – Transition of Care – **NEW**; **4.** Healthcare Interoperability Program - McInteropRx – Through Mobile APP – **NEW**; **5.** Patient Importation Medication Program – PIM – **NEW**; **6.** ePA at Physician Level – **NEW**; **7.** Pay For Performance to Pharmacies – STAR Program Look Alike – **NEW**; **8.** Discount Card for non-covered drugs – Free for beneficiaries – **NEW**; **9.** Diabetes Program – Integrated Model – Previously presented to ASES; **10.** High-Cost Medication Management Program – Previously presented to ASES; **11.** Adherence to Treatment Program - Previously presented to ASES; **12.** Mandatory e-Rx - Previously presented to ASES; **13.** Expand HIV Integrated Model - Previously presented to ASES; **14.** Process Medical claims through PBM - Previously presented to ASES

MC-21’s history and trajectory unequivocally demonstrate that we have been a supportive and reliable PBM partner for ASES. Over the twenty years MC-21 has been serving ASES, not once has our service been interrupted, nor have we ever failed to successfully assist ASES with any requests. Our management and staff have continually been present and available to work hand-in-hand with ASES to solve any challenges in the most professional and timely manner.

MC-21 is the PBM that encompasses it all: knowledge, experience, state-of-the-art technological capabilities, a proven record of excellence in service, innovative, client-gear PBM solutions, successful cost savings strategies, and a thorough understanding of Puerto Rico’s culture, demographics, and business particularities.



6.2.3 Describe the Offeror’s experience in providing services similar to those included in the scope of this RFP, with emphasis on clients of similar size as GHP and Other Enrollees and details on the number of years of providing services. **Do not include ASES as one of your clients.**

Response: MC-21 is a full-service PBM provider with a decades-long history of success and financial stability. We have been serving the industry for more than twenty years and have developed strong and long-standing relationships with local pharmacies, physicians, associations, and top industry leaders. This cumulative experience comes with a profound comprehension of the unique aspects of the healthcare market in Puerto Rico.

Over the years, MC-21 has accumulated vast experience as the PBM for several Puerto Rico Government programs, providing considerable benefits for all components. MC-21’s innovative approach has successfully provided sophisticated services tailored to the needs of each Government program, effective cost control of prescription coverage expenses, and, most importantly, quality services to the population in need.

MC-21 has the proven capacity to implement and administer the government and commercial Pharmacy Benefit Management Programs (PBMP) in Puerto Rico and the United States.

Over the past twenty years, MC-21 has developed, implemented, and maintained more than 3,000 benefit designs for our clients, including Medicaid and Medicare programs in Puerto Rico, Wisconsin, Maryland, and California. Presently, we provide PBM services to the following entities:

- Medicare Mucho Mas (MMM), covering over 270,000 lives in Puerto Rico. Provider since 2014.
- Number One MAPD plan in Puerto Rico. Three consecutive years with 5 STAR rating in one of the Part D plans.
- Health Plan of San Joaquin, covering 341,000 lives in California. Provider since 2014.

Because of our unique program offering and collaboration with this health plan, the plan has saved tens of millions of dollars. Our ability to provide - a custom pharmacy network; plan specific terms and definitions; a unique, custom MAC pricing strategy; brand /



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generic definitions; and the avoidance of Generic Effective Rate (GER) guarantees with major chain pharmacies - has allowed the plan to develop its MAC price list and generate very significant savings. Other PBMs were not selected, because they did not provide the flexibility desired by the plan to execute this strategy. The plan stands out among Medi-Cal plans on these grounds and is a leader in Rx cost containment.

- Jai Medical Systems, covering 26,000 lives in Maryland. Provider since 2000.

We provide full PBM services and have contributed to the plan's NCQA number one (1) ranking at the top of all Managed Medicaid plans for the last 4 years consecutively. We are proud to have served the plan for over 20 years.

There is no other PBM in Puerto Rico that can match MC-21's overall accomplishments and strengths:

- We are the top-tier PBM provider in Puerto Rico, with unparalleled knowledge of the needs of the Puerto Rico market.
- Fully transparent and pass-through to our Medicaid clients
- With all systems in place and running, we are the only PBM able to guarantee a seamless transition, as has been the experience with multiple transitioning processes over the years.
- We are a financially sound and highly reputed company with strong ties to local and U.S. healthcare industries.
- We are URAC (Utilization Review Accreditation Commission) accredited.
- Our staff is composed of competent and seasoned professionals that are fully attuned to the needs of ASES and its programs.
- We provide 24/7/365 customer service and around-the-clock access to management.
- We have the best IT platform and technological capabilities, proven by a history of uninterrupted service and a record number of time-sensitive PBM implementations.
- Our flexibility allows us to quickly adapt and proactively respond to the changes and requirements of the dynamic health environment in Puerto Rico, with its full host of industry standards, regulations, technology, and plan needs.
- We understand and are sensitive to the nature of the services rendered and of the target population that receives them.



MC-21 is the PBM that encompasses it all.

See Exhibit 6.2.3 – Current PBM Services

6.2.4 Provide a certification confirming the Offeror’s adherence to the requirements of this RFP and the expectations of ASES as stated in Section 1.1 of the RFP.

Response: Certification included in Exhibit 6.2.4 as per RFP instructions

6.2.5 Provide a list of terminated contracts for the type of services required in this RFP, including expired or non-renewed Contracts, in the last five (5) years and the reason/circumstances pertaining to the termination

Response: Since MC-21's inception 23 years ago, we have only terminated one contract that compares to the services required in this RFP.

1. Triple-S Salud – PBM Services. The contract expired and we were not interested in renewing due to significant financial differences.

6.2.6 Provide a list of three (3) specific business references with at least one (1) for a state Medicaid program or other large similar government or large private industry project within the last (5) years or similar engagement. **The Offeror shall not use ASES as a reference to fulfill this requirement.**

Each reference must include the contact name, phone number, email address, a brief description of the services provided, and the period of service.

References for the Offeror shall be submitted to ASES using the questionnaire contained in Appendix H of this RFP strictly following the instructions therein stated as well as those in Section 3.3.6 of this RFP.

Response: Below please find three client references. Per the instructions in this RFP, MC-21 sent Appendix H to each client reference for completion and submission.



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| CLIENT REFERENCES | |
|----------------------------|---|
| Company Name | MMM Healthcare |
| Contact Name | Orlando González, CPA |
| Contact Title | President |
| Email Address | orlando.gonzalez@mmmhc.com |
| Telephone Number | 787-622-3000 |
| Period of Services | 2014 - Present |
| Scope of Services Provided | Pharmacy Benefits Management Services for Medicare Advantage Program in Puerto Rico |
| | |
| Company Name | Banco Popular of Puerto Rico (Popular Inc.) |
| Contact Name | Rosa del Carmen Vega Matias |
| Contact Title | Vice President & Manager of Employee Benefit Practice |
| Email Address | rosa.vega@popular.com |
| Telephone Number | 787-723-0077 ext. 633570 |
| Period of Services | 2016 - Present |
| Scope of Services Provided | Pharmacy Benefits Management Services for Active and Retired Members in Puerto Rico and the Contiguous U.S. |
| | |
| Company Name | Health Plan of San Joaquin |
| Contact Name | Matthew Garrett, Pharm.D |
| Contact Title | Director, Pharmacy |
| Email Address | mgarrett@hpsj.com |
| Telephone Number | 209-461-2321 Fax: 209-461-2561 |
| Period of Services | 2014 - Present |
| Scope of Services Provided | Pharmacy Benefits Management Services for Medicaid Lives in California |



6.3 Key Personnel

The Offeror must demonstrate that staff proposed as Key Personnel as described in Article 20 of the Contract in Appendix K have the proper credentials and experience to perform all duties and responsibilities of that role. For the planned Account Manager, Implementation Manager, Clinical Pharmacist, Information Systems Coordinator and Pharmacy Call Center Manager that will be in charge of the implementation phase of the Contract, include the following:

- Name;
- Role; and
- Resume

Response: MC-21 has been providing reliable and unwavering PBM services to the population served by ASES for over twenty years, never faltering even during the recent emergencies Puerto Rico has experienced, such as Hurricane Maria, various earthquakes, and more recently, the COVID-19 pandemic. MC-21 has worked hand-in-hand with ASES to ensure uninterrupted access to medications, guaranteeing continuity of treatment and saving lives.

Since our inception twenty-three years ago, MC-21’s operations have been based entirely in Puerto Rico, guaranteeing ASES complete accessibility to our key resources. MC-21 strives to ensure that the highest quality customer service is consistently delivered across the spectrum of our organization, from our COO to our Customer Service Center representatives. As such, MC-21 has met and exceeded ASES’ requirements to support the Vital Pharmacy Benefits Program.

MC-21’s Account Management team is composed entirely of bilingual subject matter experts with decision-making authority and the singular goal of successfully addressing ASES’ every need. MC-21 strives to provide ASES with a knowledgeable, well-trained, and proactive Account Management team. Our account management service model is focused on six (6) essential areas: local presence (accessibility), responsiveness, knowledge, creativity, frequent interaction, and optimization of clinical program utilization. MC-21 strongly believes that the account service relationship is one of the most important



aspects to developing and maintaining a genuine partnership dedicated to achieving ASES' objectives.

Through these essential areas, MC-21 will continue to be committed to the following:

- Responding to and resolving ASES service inquiries
- Ensuring successful pharmacy benefit implementations of new benefits, services, and/or programs
- Addressing new programs; reviewing the status of existing programs and the strategies developed to improve quality while reducing costs
- Focusing on quality and net cost strategies with ASES
- Monitoring industry trends through data analysis and actively recommending initiatives that promote the best therapy at the lowest cost
- Providing current industry news and information
- Promoting ongoing educational initiatives
- Organizing monthly meetings to discuss clinical program results to keep ASES abreast of industry updates and savings opportunities, in addition to providing the quarterly drug trend reviews
- Supporting ASES in the implementation of existing and new federal and/or local regulations
- Generating standard and custom reports, as requested, on a regularly scheduled basis

Upon initial implementation, MC-21 assigned a dedicated team of experts to ASES that has served as the key contact between MC-21, ASES, and MCOs. This team has assisted ASES with strategic preparations relating to plan performance, including providing recommendations for benefit design and cost containment opportunities, performing analyses of Vital performance, overseeing all contractual services under the agreement, and managing day-to-day operations. If allowed by ASES, MC-21 suggests having the Account Manager Onsite at the ASES facility two days per week and/or as requested by ASES' designated Pharmacy team. MC-21 expects ASES' dedicated Account Manager to meet continuously with ASES' designated officials responsible for pharmacy services. The objective of this onsite function is to ensure MC-21 supports



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ASES in managing any pharmacy benefit-related issues and to proactively collaborate to maintain an ongoing service relationship. ASES' Account Manager will have complete access to MC-21's Senior Management team. Based on MC-21's organizational structure, this position would report directly to the Senior Vice President of Operations. In addition to this position, MC-21 currently has a Clinical Pharmacist Manager fully dedicated to supporting ASES' Clinical Pharmacy department. The Clinical Pharmacist Manager serves as a formulary management consultant, providing recommendations to ASES for the development of specialized PDLs, overseeing ASES' P&T Committee, and ensuring that all of MC-21's clinical programs and services are in full compliance with ASES' expectations.

MC-21's team has been the partner of choice for ASES over the last 20 years and is superbly represented by our Clinical, Analytics, Technology, and Operations departments. ASES will continue to have direct access to all the members of MC-21's organization, especially for the management of any special requests ASES may require. See Exhibit 6.3 A - Key Personnel & Roles and Exhibit 6.3B - Key Personnel Resumes. ASES' dedicated Account Manager and the rest of your Account Management team will be easily accessible via email or cell phone 24/7 or onsite, as required. Every member of ASES' Account Management team must respond to all service requests within twenty-four (24) hours of receipt. Under the new contract execution scheduled for December 1, 2021 and the implementation date of September 1, 2022, MC-21 will keep the personnel included in Exhibit 6.3 A in the same positions.

Additionally, MC-21 will continue providing Quarterly Drug Trend reviews to ASES regarding the utilization and performance of MC-21's services. The Quarterly Drug Trend presentation meeting is focused on cost savings recommendations, including financial impact, and any required implementation plan as solicited by ASES. On a bi-annual basis, or as requested by ASES, MC-21's Senior Management team will meet with ASES' Management team to present an Executive Report focused on Vital pharmacy program results, market trends, and recommendations for future programs implementations and strategies.



6.4 Proposal Bond

Include with the Proposal, no later than 2:00 PM (AST) on July 12, 2021, a true and exact copy of the Original Proposal Bond in the amount of ten percent (10%) of the total bid for Contract Year 1 (See Table A of Section 3.4.8 of this RFP). The Original Proposal Bond is to be delivered to ASES' Finance Office no later than 4:00 PM (AST) July 14, 2021. For further details, requirements and instructions regarding the Proposal Bond, refer to Sections 3.3.7 and 3.4.8 of this RFP, as amended.

Response: Included in Exhibit 6.4 Proposal Bond as per RFP requirements.



6.5 Tax Identification Number

Provide the Offeror's federal taxpayer identification number and Commonwealth taxpayer identification number, if different

Response: MC-21's federal taxpayer identification number is 943276520 and the Commonwealth taxpayer identification number is 3093850008.



6.6 Suspension and Debarment Form

The Offeror must complete the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters Form to certify compliance with federal regulations relating to suspension and debarment. (See Appendix D of this RFP).

Response: Certification included in Appendix D as per RFP instructions and previously delivered as per ASES requirement.



6.7 Financial and Legal Documentation

6.7.1 Financial Statement

6.7.1.1 Provide audited financial statements prepared by an independent Certified Public Accountant (CPA) for the two (2) most recent fiscal years. If the Financial Statements for the latest full fiscal years have not been issued, submit Management-prepared financial statement and related notes.

Response: MC-21 audited financial statements for the two (2) most recent fiscal years (2019 and 2020) are presented in the following exhibits: Exhibit 6.7.1.1 A - MC-21 LLC Audited Financial Statement 2019-CONFIDENTIAL and Exhibit 6.7.1.1 B - MC-21 LLC Audited Financial Statement 2020-CONFIDENTIAL.

The financial statements that are attached to this RFP constitute sensitive and confidential economic information protected from disclosure as determined by the Supreme Court in Rodriguez v. Scotiabank de P.R., 113 DPR 110, 216-217 (1982). See also, Alfonso Bru v. Trane Export, Inc., 155 DPR 158, 168 (2001). Also see Law 80-2011, better known as the Law for the Protection of Commercial and Industrial Secrets of Puerto Rico, 10 LPRA sec. 4131 et seq. See also Ponce Adv. Med. V. Santiago Gonzalez, 197 D.P.R. 891 (2017).

6.7.1.1.1 Must provide a detail of any significant outstanding account balances that represents, alone or when added to other accounts, more than seventy-five percent (75%) of account receivables and payables.

Response: Please refer to Exhibit 6.7.1.1.1 - MC-21 LLC AR and AP Balances- CONFIDENTIAL for a detail of the account balances that represent 75% or more of MC-21's Accounts Receivable and Accounts Payable balances.

6.7.1.1.2 Must provide a description of any substantial business surpluses resulting from nonrecurring transactions or items, changes in accounting treatment, and/or asset transfers or other activities with affiliates.



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Response: No substantial business surpluses exists as of December 31, 2020 that resulted from nonrecurring transactions or items, changes in accounting treatment, and/or asset transfers or other activities with affiliates.

6.7.1.1.3 The Offeror's firm name must be included on each page submitted.

Response: Agreed, MC-21 LLC name will be included on each page submitted.

6.7.1.1.4 Must include the contact information for the CPA/Audit firm, a copy of the CPA's Opinion Statement and report, and an explanation to all noted audit exceptions.

Response: MC-21 CPA/Audit Firm Information:

Driven P.S.C.

Ryan Marín, CPA

Managing Shareholder

PO Box 363343

San Juan, Puerto Rico 00936-3343

T: (+1) 787-725-1500

ryan@drivenadvisors.com

www.drivenadvisors.com

See Exhibit 6.7.1.1.4 – Auditors' Opinion Statement for 2019 & 2020 for the firm's Opinion Statement and Report. No Audit Exceptions are part of the 2019 nor 2020 audit results.

6.7.1.2 Provide the current Month-End Balance Sheet and Year-to-Date Income Statement at the time of Proposal submission.

Response: Please refer to Exhibit 6.7.1.2 - MC-21 LLC Month End Balance Sheet and Income Statement - CONFIDENTIAL for MC-21 most current financial statements as requested.



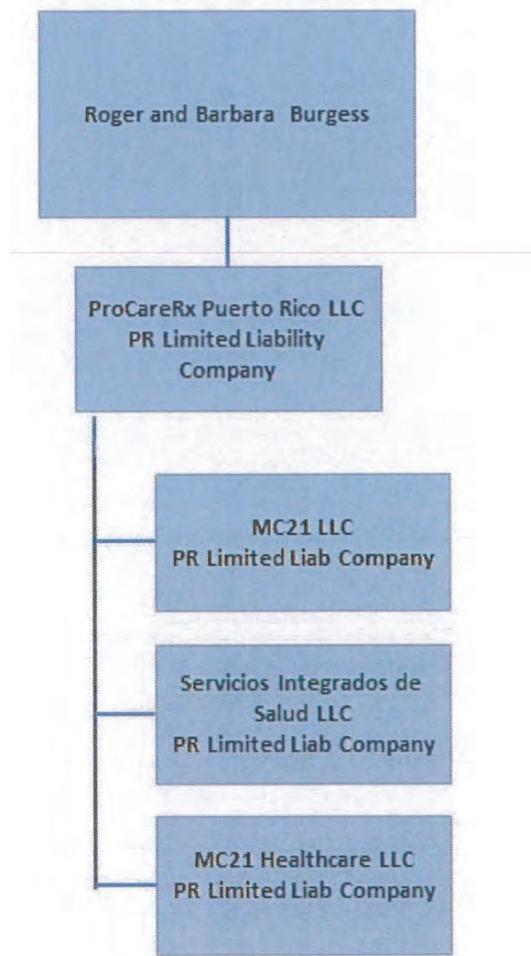
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6.7.1.3 Explain any negative financial information in the Offeror's financial statements.

Response: There is no negative financial information included on MC-21's financial statements. MC-21 has a strong financial position as presented on its standalone audited financial statements.

6.7.1.4 Provide any relevant documentation regarding your organization's relationship to Parent, affiliated and/or related business entities, including, but not limited to Subcontractor(s), subsidiaries, joint ventures, or sister companies.

Response: Please see Exhibits 6.7.1.4 A, B, C & D for Certificates of Good Standing for MC-21 LLC as the offeror and for its affiliates. Moreover, please refer to the following chart reflecting our organization's relationship to Parent, affiliated and/or related business entities:





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As reflected in the organizational chart herein above. MC-21, LLC is a wholly owned subsidiary of ProCare Rx Puerto Rico, LLC, which in turn is jointly owned by Roger and Barbara Burgess.

MC-21 LLC is a commonly held Puerto Rican limited liability company along with its 'sibling' affiliate: MC-21 Healthcare LLC & Servicios Integrados de Salud, LLC. Mr. Roger D. Burgess is Chairman and Chief Executive Officer of MC-21 LLC and all its affiliates, Servicios Integrados de Salud, LLC and MC-21 Healthcare LLC.

6.7.1.5 Provide Offeror's projected pro forma financial statement and statement of changes in financial position for the next three (3) years predicted upon operation without the award of this Contract.

Response: Please refer to Exhibit 6.7.1.5 - Proforma Financial Statements - CONFIDENTIAL for MC-21's projected pro forma financial statement and statement of changes in financial position for the next three (3) years predicted upon operation without the award of this Contract.

6.7.1.6 Provide Offeror's detailed financial plan and proposed cash flow budget demonstrating that the availability and source of sufficient funds to cover the Offeror's projected operation cost without risk of insolvency were the Offeror to provide the contractual services under the Contract period.

Response: Please refer to Exhibit 6.7.1.6 - Detailed Financial Plan and Proposed Cash Flow Budget-CONFIDENTIAL for MC-21's financial statements which demonstrate its ability and sources of sufficient funds to cover the projected operations without risk of insolvency during the contractual period of this RFP.



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6.7.2 Litigation Information

Provide a statement of whether there is any pending or recent (within the past five (5) years) litigation against the Offeror(s). This shall include but not be limited to litigation involving noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of this RFP and Contract. The Offeror does not need to report workers' compensation cases.

Response: There is no pending or recent (within the past five (5) years) litigation against MC-21 LLC.

6.7.2.1 If there is a pending or recent litigation against the Offeror, the Offeror shall describe the damages being sought or awarded or the extent to which adverse judgment is/would be covered by insurance or reserves set aside for this purpose. Include an opinion of counsel as to the degree of risk presented by any pending litigation and whether the pending or recent litigation will impair the Offeror's performance in a Contract under this RFP.

Response: Not Applicable

6.7.2.2 If there has been a judgment against the Offeror please provide the details of the judgment and an opinion of counsel as to the degree of risk presented by the judgment and whether the judgment will affect the Offeror's solvency and/or impair the Offeror's ability to perform under the Contract. The Offeror shall include its Parent organization, affiliates, and subsidiaries.

Response: Not Applicable

6.7.2.3 Additionally, for the last five (5) years, list any monetary sanctions Offeror has incurred pursuant to contract enforcement from any state, Government of Puerto Rico, federal, or private entity, including the date, amount of sanction, and a brief description of such enforcement and resolution. Include in your response, a brief description of any corrective action plan the Offeror has been under during the same time period.

Response: Not Applicable



6.7.2.4 Indicate whether, in the last ten (10) years, the Offeror, a predecessor company, or the Offeror's parent organization has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, provide an explanation detailing relevant facts, including the date on which the Offeror emerged from bankruptcy or expects to emerge. If still in bankruptcy, provide a summary of and anticipated timeframe for approval of a plan of reorganization.

Response: Not Applicable



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6.7.3 Government Certifications

Provide the following Certifications:

6.7.3.1 Current Certification of the Single Registry of Professional Service Providers (“RUP” for its Spanish acronym) issued by the Puerto Rico General Services Administration (“Administración de Servicios Generales de Puerto Rico” or “ASG” for its Spanish acronym).

Response: Certification included in Exhibit 6.7.3.1 RUP Certification 2021-2022, as per RFP instructions.

6.7.3.1.1 If the Offeror has completed the registry process and is awaiting issuance of the certification by ASG at the time of submitting the Proposal, the Offeror must submit:

- (1) evidence of payment of the certification process;
- (2) the current status of said process;
- (3) all the certifications and documentation submitted to the RUP with evidence of submission; and
- (4) a certification attesting that it recognizes that, if a Contract is awarded to the Offeror under this RFP:

- a. the Offeror must provide, before the signature of the Contract, a Current Certification of the Single Registry of Professional Service Providers (RUP Certification);
- b. that failure to provide the RUP Certification will cause the forfeiture of the Proposal Bond in favor of ASES and that ASES may cancel the Award and issue an Award in favor of the next best Offeror(s).

ASES reserves the right to Award the RFP, even if at the time of the Award the Graceful Offeror does not have the RUP Certification, provided that ASES has been given sufficient reliable and convincing proof that there is no impediment for the ASG to issue the RUP Certification before the Contract is signed.

Response: Not Applicable



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6.7.3.1.2 If the Offeror is not registered in the RUP at the time of submission of the Proposal:

(1) the Offeror must submit with the Proposal all the certifications required by the RUP, namely:

a. Current Certification from the Treasury Department of Puerto Rico that the Offeror has no outstanding debt with the Department or, if such a debt exists, it is subject to a payment plan or pending administrative review under applicable law or regulation (Model SC 6096).

b. Certification of filing of income tax returns issued by the Department of the Treasury confirming filing for the last five (5) years prior to the Contract. If the Offeror has not filed a return in any of the five (5) years, it must indicate the reasons for not filing a return. (Model SC 6088).

c. Current Certifications from the Center for the Collection of Municipal Revenues (“CRIM”, its Spanish acronym) certifying:

i. that there is no outstanding debt on all concepts of property or, if a debt exists, that such debt is subject to payment plan or pending administrative review under applicable law or regulations;

ii. filing of property tax returns for the last five (5) years prior to the Contract. If the Offeror has not filed a return in any of the five (5) years, it must submit a sworn statement indicating the reasons for not filing a return.

d. Certification issued by the Minor Children Support Administration (“ASUME”, by its Spanish acronym) of no outstanding order of withholding of wages for the payment of alimony or child support debts, if applicable.

e. Certification of Unemployment Insurance and Disability Insurance issued by the Department of Labor of the Commonwealth of Puerto Rico;



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- f. Certification of no debt and registration as employer under the Chauffer Insurance Act, issued by the Department of Labor of the Commonwealth of Puerto Rico or, if such a debt exists, it is subject to a payment plan or pending administrative review under applicable law or regulation;
- g. Certification of current insurance policy with the Commonwealth of Puerto Rico Workmen's Compensation Fund (Fondo de Seguro del Estado);
- h. Current Copy of the Certificate of Merchant's Registry (Model SC2918). If the Offeror is a retaining Agent, must also submit:
 - 1. Current Certificate of filing of IVU returns issued by the Department of the Treasury confirming filing for the last five (5) years prior to the Contract. If the Offeror has not filed a return in any of the five (5) years, it must indicate the reasons for not filing a return.
 - 2. Current Certificate from the Treasury Department of Puerto Rico that it has no outstanding debt related to the IVU (Model SC 2942) or, if such a debt exists, it is subject to a payment plan or pending administrative review under applicable law or regulation.
- j. Current Certificate of Incorporation and Good Standing issued by the State Department and date of issue;
- k. Current Certificate of authorization to do business in Puerto Rico issued by the State Department. If the Offeror is in the process of being so authorized, the Offeror must present sufficient evidence of said process and the current status; See Section 1.9.1 of the RFP ("The Offeror and any proposed subcontractor must be authorized by the Department of State of Puerto Rico to do business in Puerto Rico prior to Contract Award").
- l. Certificate of Criminal Record issued by the Puerto Rico Police Department.



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Response: Not Applicable

(2) the Offeror will be given an automatic non-extendable term of five (5) business days, from the date of the submission of the Proposal, to submit the RUP Certification. If at the term of the five (5) business days, the Offeror does not have the certification, it must comply with the requirements of Section 6.7.3.1.1 of this RFP.

Response: Not Applicable

6.7.3.2 A sworn statement certifying that it has no debts with the government of Puerto Rico, or with any state agencies, corporations or instrumentalities that provide or are related to the provision of health services or, if a debt exists, that such debt is subject to a payment plan with which the Offeror is in compliance, a work plan to reconcile amounts in controversy with which the Offeror is in compliance, or pending administrative review under applicable law or regulations. In such case, the Offeror must submit recent evidence of said payment plan, debt reconciliation agreement or pending administrative review. See Section 1.5.16 of the RFP.

Response: Included in Exhibit 6.7.3.2 Sworn Statement Certifying No Debts

6.7.3.3 Certification from the Puerto Rico Administration of Medical Services (“ASEM”, its Spanish acronym) certifying that there is no outstanding debt or, if a debt exists, that such debt is subject to a payment plan with which the Offeror is in compliance, a work plan to reconcile amounts in controversy with which the Offeror is in compliance, or pending administrative review under applicable law or regulations. See Section 1.5.16 of the RFP.

Response: Included in Exhibit 6.7.3.3 ASEM Certification

6.7.3.4 Corporate resolution identifying the person authorized to represent and legally bind the entity. In case of a Limited Liability Company, the Offeror must



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submit evidence of the designation as Administrator or as authorized voting member. See Letter of Transmittal, Appendix B of this RFP.

Response: Included in Exhibit 6.7.3.4 MC-21 LLC Administrator Authorization Resolution

6.7.3.5 Letter to indicate the agencies or government agencies with which the Offeror has or is in contract negotiation process;

Response: Included in Exhibit 6.7.3.5 Certification of Agencies

6.7.3.6 Certification of updated municipal patent.

Response: Included in Exhibit 6.7.3.6 Municipal Patent

6.7.3.7 Retention waiver issued by the Treasury Department, in order to reduce or eliminate the applicable tax retention. If no waiver is presented, ASES shall deduct the applicable amount from payments to be made to Contractors for services rendered.

Response: Included in Exhibit 6.7.3.7 Retention Waiver MC-21 LLC 2021

6.7.3.8 Provide evidence of registration in the System for Award Management (SAM) <https://www.sam.gov/SAM/>. If not currently registered, provide evidence of current status of registration process. WARNING: The Offeror must be registered at the time of the Award.

Response: Included in Exhibit 6.7.3.8 SAM Registration

6.7.3.9 Provide a certification to the effect that all current personnel who would be providing services under the RFP and eventual contract are trained in the administrative, physical and technical aspects of HIPAA Law as established in 45 CFR §§ 164.308, 164.310, 164.312, 164.316. If said personnel is not currently trained, explain why and submit a Certification to the effect that, if awarded a contract, will fully comply with this requirement.

Response: Included in Exhibit 6.7.3.9 Certification for HIPAA Training



6.8 Information Systems Audit

Provide a copy of the Offeror's most recent information systems audit (e.g. SSAE18).

Response: Included in Exhibit 6.8 SSAE18



6.9 Insurance Policies

Provide a copy of any and all liability insurance policies including at a minimum, commercial general liability policy, Electronic Data Processes Error and Omissions, Miscellaneous Error & Omissions Insurance, excess liability, workers' compensation policy, unemployment insurance policy, Professional Responsibility Insurance and Cyber Security Liability Insurance. If the Offeror presently does not possess the insurance policies mentioned in Article 23 of the Contract or with the limits mentioned in said Article, please explain the reason and submit a Certification to the effect that, if awarded a contract, will fully comply with these requirements.

Response: Included in Exhibit 6.9 Insurance Policies & Compliance Certification



6.10 Fraud and Misappropriation

Response: Included Appendix E form of Sworn Statement Fraud and Misappropriation and previously delivered as per ASES requirement



6.11 Other Appendixes or required documents in the RFP

6.11.1 Submit the Disclosure of Lobbying Activities, if applicable. If not applicable, explain. (Appendix F of this RFP)

Response: Included in Appendix F Disclosure of Lobbying Activities and also previously delivered as per ASES requirement

6.11.2 Submit any other applicable appendices and documentation required throughout the RFP that is not expressly requested under another item in Sections 6, 7 and 8 of this RFP.

Response: Not Applicable



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6.12 Subcontractor(s)

If the Offeror(s) will be using Subcontractor(s) for functions and responsibilities under the Scope of Work of this RFP, it must provide the following documentation:

6.12.1 Identify each subcontractor, specify the tasks in which each subcontractor will intervene and disclose the remuneration that the subcontractor will receive for the work to be carried out, and the profit margin, if any, that the Offeror will have in relation to the subcontractor's paid fees.

6.12.2 Attestation of Independence and Freedom from Conflict of Interests and Conflict of Interest Affidavit (Appendices C and C-1 of this RFP)

6.12.3 Suspension and Debarment Form (Appendix D of this RFP)

6.12.4 Sworn Statement on Fraud and Misappropriation (Appendix E of this RFP)

6.12.5 Disclosure of Lobbying Activities, if applicable. If not applicable, explain. (Appendix F of this RFP)

6.12.6 All Certifications required under Section 6.7.3 of this RFP.

6.12.7 Copy of insurance policies mentioned in Section 6.9 of this RFP that apply to services to be provided.

6.12.8 Provide a list of any litigations or sanctions that have been applied under any current or former services contract in the last three (3) years. State the status, final outcome and findings in said process, particularly, any findings of noncompliance under federal or state law.

6.12.9 Provide at least three (3) specific business references with at least one (1) for a state Medicaid program or other large similar government or large private industry project within the last (5) years, or similar engagement or project of similar size and scope to those functions and responsibilities that it would be performing under this RFP, within the last five (5) years. Do not use ASES as one of the references to fulfill this requirement. Each reference must include the contact name, phone number, email address, a brief description of the services provided, and the period of service. Include with the above required information a letter addressed to the Executive Director of ASES authorizing ASES to contact said business references to obtain the information stated in Section 1.9 of this RFP.



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6.12.10 Provide a copy of the Subcontractor's most recent information systems audit (e.g. SSAE18).

Response: Not Applicable



6.13 Redacted Proposal

6.13.1 If the Offeror requests confidential treatment, submit one (1) copy of the full Proposal (including the Cost Proposal) with proposed confidential Information redacted. The redacted copy must tell the general nature of the material removed and shall retain as much of the Proposal as possible.

Response:

MC-21 submitted one (1) copy of the full Proposal (including the Cost Proposal) with proposed confidential Information redacted.

6.13.2 Supply a listing of the provisions identified by Section/subsection number for which the Offeror sought confidential treatment and the statutory basis or bases under federal law, Puerto Rico Law, including a detailed justification for exempting the information from public disclosure.

Response:

The following are the provisions identified by Section/subsection number for which MC-21 sought confidential treatment:

- Section 6.7.1.1 Audited Financial Statements
- Section 6.7.1.1.1 Significant Outstanding Account Balances
- Section 6.7.1.2 Month-End Balance Sheet and Year to Date Income Statement
- Section 6.7.1.5 Pro Forma Financial Statement and Statement of Changes in Financial Position
- Section 6.7.1.6 Financial Plan and Proposed Cash Flow Budget

Below in **bold** is the explanation of the statutory basis or bases under federal law, Puerto Rico Law, including a detailed justification for exempting the information from public disclosure.

MC-21 audited financial statements for the two (2) most recent fiscal years (2019 and 2020) are presented in the following exhibits: Exhibit 6.7.1.1 A -



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MC-21 LLC Audited Financial Statement 2019-CONFIDENTIAL and Exhibit 6.7.1.1 B - MC-21 LLC Audited Financial Statement 2020- CONFIDENTIAL.

The financial statements that are attached to this RFP constitute sensitive and confidential economic information protected from disclosure as determined by the Supreme Court in *Rodriguez v. Scotiabank de P.R.*, 113 DPR 110, 216-217 (1982). See also, *Alfonso Bru v. Trane Export, Inc.*, 155 DPR 158, 168 (2001). Also see Law 80-2011, better known as the Law for the Protection of Commercial and Industrial Secrets of Puerto Rico, 10 LPRA sec. 4131 et seq. See also *Ponce Adv. Med. V. Santiago Gonzalez*, 197 D.P.R. 891 (2017).

6.13.3 If the Offeror does not request confidential treatment of any portion of its proposal, it must submit a certification to that effect agreeing to release and hold ASES, the federal and state government harmless, as stated in Section 3.4.9 of this RFP.

Response:

Not Applicable



SECTION 7 TECHNICAL PROPOSAL



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7.1 Implementation

7.1.1 [Both] Provide a detailed Implementation Plan to achieve a seamless transition and implementation of services by the Implementation Date of the Contract. Describe how resources will be deployed, who will provide oversight, and how staff are hired, trained and tested. Describe any barriers the Offeror has identified to meeting the timeframes and how those barriers will be mitigated.

Response: Since the current PBM for the ASES pharmacy benefit program is MC-21, an implementation process is not required for the transition of PBM services, ensuring a seamless process for ASES, beneficiaries, MCOs, IPA groups, physicians, and pharmacies. However, we are including an implementation plan that specifies few actions based on the RFP requirements. See Exhibit 7.1.1A – PBM Implementation Plan.

Over the past 20 years, MC-21 has been developing and implementing KEY programs to support ASES' Pharmacy Benefits Program. These programs are critical to maintaining ASES beneficiaries' access to medications to manage complex conditions more efficiently and cost-effectively. It is worth mentioning, that most of these programs are not included in the RFP document as part of the services that the PBM will provide. Moreover, MC-21 has been providing these programs and/or services at **no additional cost to ASES and/or to the MCOs**. Included is a list of the programs and services that MC-21 is administering to support ASES pharmacy benefit program and **that will not require transition if MC-21 is selected to continue providing PBM services to ASES:**

1. HIV Integrated Model (ASES, DoH, Commercial & Medicare);
2. ADFAN Program;
3. OPM Program;
4. PREVEN Program;
5. Hepatitis C Reimbursement Program;
6. Synthroid Program;
7. COVID 19 vaccine Administration Fee program;
8. Online Prior Authorization System integrating all MCOs;
9. Set Up all clinical protocols to the Online system – hundreds of clinical protocols;
10. Support ASES and the MCOs in over 12 transitions processes in the past years as the healthcare model managed by ASES has changed over the years
11. Training to all MCOs personnel throughout the year;
12. Emergency On-site facility to provide the MCOs access to MC-21's systems including Call Center facility, internet access, PA processes, and
13. HUB established to process claims during emergencies i.e. Hurricane Maria



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Related to the implementation of RA Services, MC-21's main goal is to provide ASES a seamless and transparent transition of ASES' rebate program. MC-21 current business relationships with pharmaceutical manufacturers, both local and in the mainland, will provide opportunities to maintain and improve negotiations on behalf of ASES. One factor that will positively impact the transition process is the fact that MC-21 is ASES's current PBM, which provides an advantage of knowing the details of the program and the utilization trends by therapeutic class. In addition, MC-21 implemented the rebate program on behalf of ASES for many years, before the implementation of the PPA model, providing millions of dollars in savings.

We have NOT identified any barriers to implementing all the requirements included in the RFP document or the Contract Template provided by ASES.

For the past 23 years, MC-21 has successfully negotiated rebates for the benefit of our clients. We currently have rebate contracts with over 70 pharmaceutical companies based in Puerto Rico and the contiguous U.S. MC-21 has a flexible rebate contracting process that is aligned with our clients' formularies and multiple drug lists and is not subject to a single rigid formulary.

Regarding the implementation of rebate aggregation services and supplemental rebates, MC-21's mainland affiliate has extensive experience in contracting supplemental rebates for Medicaid programs and currently performs rebate aggregation services for many of our clients. Furthermore, MC-21 does not foresee any barriers to the implementation of MDRP, as we have the technology necessary to successfully work directly with the state program and pharmaceutical companies.

For a detailed plan to efficiently and effectively implement the rebates program for MDRP and RA, see Exhibit 7.1.1B - MDRP Implementation Plan and Exhibit 7.1.1C - RA Implementation Plan.

7.1.2 [Both] Describe the systems (Information Management, Operations, Claims Processing) build and testing strategy and timeline. Describe how initial testing and auditing of the system for accuracy, timeliness, and quality of the services will be accomplished before the Implementation Date.

Response: Over the last 20 years, MC-21 has an evidenced track record of compliance with ASES and the contracted MCOs, demonstrating our capabilities and commitment to



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support and fulfill all ASES requirements and specifications. The fact that MC-21 has already in place all existing resources, processes, and infrastructure for VITAL implies that no significant implementation processes are required to implement the program, guaranteeing continuous, uninterrupted operations for beneficiaries, MCOs, and Pharmacies.

For claims adjudication services, MC-21 currently uses *eProCare*, an advanced, powerful, flexible, and always-available system designed for continuous online/real-time adjudication of prescription drug claims at the point of sale. The MC-21's *eProCare* implementation has explicitly been enhanced and tailored to administer the VITAL complex plan design and models, taking advantage of our extensive pharmacy benefit administration knowledge and expertise developed over our 20 years administering the VITAL program. See Exhibit 7.1.2 - *eProCare* Special Programming for ASES for examples of specific programming developed to manage the ASES VITAL program.

Fully integrated with our *eProCare* system, PAHub™ is MC-21's web-based, feature-rich Prior Authorization Management System that simplifies and automates end-to-end prior authorization administration of healthcare services, by providing a level of flexibility that ensures all PAs are handled in a timely and efficient manner. PAHub™ provides MC-21 effective workflow and document management capabilities, delivering an effective solution for managing ASES prior authorization to maximize the benefits of prior authorizations. At PAHub™, MC-21 creates PA rules using a sophisticated rule development system to achieve structured, standardized, and documented coverage decision outcomes. Currently, MC-21 and all the MCO's use PAHub™ to effectively manage all VITAL PAs.

Our state-of-the-art technological infrastructure integrates the power, flexibility, and security to enable outstanding productivity and unmatched efficient services to ASES. MC-21 has already installed a fully functional, state-of-the-art data communications infrastructure that makes it the best alternative to service the ASES program. Our Information Technologies capabilities, including our tailored *eProCare* implementation, *MC21 PBM Applications Suite*™, modern technological infrastructure, software development capabilities, and data analytics expertise, all combined to offer ASES the best technological solution available to achieve its objectives.



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MC-21 as the current provider of PBM services to ASES has virtually all Information Systems needed in place to meet the RFP requirements. We currently integrate with key program stakeholders, including the Department of Health, pharmacies, ASES, MCOs, and the PRMMIS. The following table shows the operational status of the MC-21 Information System according to the requirements of the RFP:

| Information System | Status |
|---|-----------------------|
| Claims Adjudication System | Currently Operational |
| Electronic File Transfer System | Currently Operational |
| Claims And Encounters Files | Currently Operational |
| Automated Call Center System | Currently Operational |
| Web Site | Currently Operational |
| Prior Authorization Management System | Currently Operational |
| Reporting System | Currently Operational |
| Information Systems Compliance Requirements | Currently Operational |
| Information Systems Organizational Structure | Currently Operational |
| Information Systems Infrastructure Requirements | Currently Operational |
| Information Systems Security Requirements | Currently Operational |
| Data Management Requirements | Currently Operational |
| Data Exchange Requirements | Currently Operational |

System testing and auditing for accuracy, timeliness, and quality of the services

Our procedures include quality assurance checks, internal/external audits, and ongoing testing, among others. MC-21 has also completed modifications to its data systems to ensure on-time compliance with ASES requirements and a seamless, secure interface with all required systems.

- **The MC-21 quality assurance (QA) process for ASES’ benefit plans setup ensures the benefit structure is accurately implemented:** Testing benefit designs and other pertinent scenarios is accomplished by using a set of standard tests for claims, members, and formularies, through a test environment. These test scenarios allow full use of production tools, such as benefit plans, formulary lists, pharmacy networks, and price schedules during the testing process and before implementation.



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Actual benefit parameters, including pricing, are established, and test claims are submitted utilizing “test” members that parallel actual member demographics and eligibility. This process allows testing of existing benefit structures and simplifies the migration from the test environment to production by simply attaching benefit plans to actual groups and/or members, copying and renaming, or simply making any changes to existing benefit plans.

- **Ability, turn-around time, and quality assurance (QA) process for providing data to ASES upon request:** MC-21 has already implemented all processes and infrastructure to generate ASES-related data. To effectively exchange electronic data with ASES, MC-21 currently uses a comprehensive development and production environment fully integrated with the MC-21 Corporation’s Data Warehouse. This allows MC-21 to quickly and seamlessly generate data files in the required layouts with an extensive and complete validation process, assuring data quality for effective and accurate interaction between ASES and MC-21.

MC-21 has consistently and successfully provided ASES with ad-hoc data that has been requested, including data related to audit processes, special information requests, and data to support ASES process modifications, among others. As we have effectively accomplished until now, MC-21 agrees and will continue supporting ASES to provide any data required, allowing the tracking, monitoring, and evaluation of the program. MC-21 is aware that the data exchange requirements may vary through the extent of the contract resulting from this RFP.

7.1.2.1 [PBM Services] Provide your recommendation for transferring necessary Data to perform the required services such as, claims history, provider data, enrollee data, and prior authorization information.

Response: MC-21 has currently implemented all required capabilities and processes to transfer all necessary VITAL data, including beneficiary eligibility update files, provider files, claim history files, and prior authorization information.

Besides having in place all the elements for transferring the necessary data to perform the required services, MC-21 has ample, demonstrated experience creating, generating, and submitting file feeds to clients or designated third parties for various purposes. These include provider directories, PA approvals and denials, data intended to monitor program



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measures, and files to feed member and provider portals. We can design, develop, implement and generate custom file formats and adapt to any transmission frequency needed, according to each specific requirement.

Also, MC-21's data interface capabilities allow seamless integrations with other care management systems. Our eProCare claim adjudication system currently integrates with third-party applications employing Web Services, allowing external applications to interact with the claims system using standardized web protocols when required.

MC-21's current data exchange infrastructure and processes ensure the highest compliance levels with government data security and privacy regulations such as PCI, FIPS, HIPAA, SOX, and corporate security policies and mandates.

7.1.2.2 [RA Services] Provide your recommendation for obtaining the necessary information to perform the required services such as CMS Rebate files, Other Enrollee Rebate files, and Claims Data.

Response: Among the MC-21 actions to obtain the necessary information to perform the required RA services are:

1. Identify all applicable MDRP and Other Enrollees rebate programs' requirements. For example, identify the data elements required for processes such as Drug rebate invoicing to pharmaceutical manufacturers, processing and submitting CMS drug utilization information, compliance with ASES's processing and schedule requirements, etc.
2. Design and implement all necessary data flow processes, including quality control procedures, to validate the accuracy of the drug rebate data.
3. Define and implement all applicable policies and procedures.
4. Execute a comprehensive testing and validation process.

As the current provider of PBM services to ASES, MC-21 has all the claims data necessary to perform the required RA services requested in this RFP. During the past 20 years, MC-21 has demonstrated the capabilities and unsurpassed commitment to design, develop and implement successful solutions to ASES needs. The MC-21's Rebates Management Program is supported by a multidisciplinary team of rebates subject matter experts from the Clinical, Contracting, Finance, and Technology areas. They will work



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together with ASES, MCO's and other applicable partners to guarantee that all data needed to perform the RA services is obtained according to the established requirements.

7.1.3 [Both] In a scenario where the MDRP Implementation Date is not September 1, 2022, describe the approach to transition to the MDRP at a later date and the impact of managing the necessary activities while maintaining the current Rebate program services. At a minimum please describe: • The milestone activities and timeframes • The necessary resources • The coordination and dependency requirements on other entities (ASES, MCOs, PBM, RA, Pharmacies) • The strategies to assure successful and seamless implementation.

Response: MC-Rx has identified critical milestones activities to be conducted to ensure a seamless transition process. The main milestones activities identified are: (1) establishment of periodic status meetings (bi-weekly) with ASES to track the implementation progress, (2) coordination of meetings with MCO's to communicate their responsibilities in providing medical data, (3) train 340B pharmacies on how to correctly process 340B claims through MC-Rx's system, (4) obtain access to Medicaid Drug Data Reporting (DDR) System, (5) obtain access to Medicaid Drug Program Systems, (6) programming MDRP capabilities in MC-Rx's current Rebates System, and (7) define MDRP reporting to ASES, among others milestones.

MC-Rx analyzed the MDRP Program requirements and identified the following resources to efficiently manage the program: MDRP Director, MDRP Administrative Assistant, MDRP Quality Analysts, MDRP Account Receivable Accountants, MDRP IT Business Analyst, MDRP IT Developer, MDRP Clinical Pharmacist, and MDRP Coordinator.

The main strategy to assure successful and seamless transition of the MDRP Program is to maintain continuous communication with ASES through periodic status meeting until the implementation is completed. We have developed an implementation plan that displays the milestones activities with its respective duration that needs to be performed in order to complete a successful implementation. A close monitoring progress of the implementation plan will be key to assure a seamless transition. During our initial meeting with ASES we can discuss the milestones included in our implementation plan and obtain any recommendation from ASES in order to assure that we cover all of ASES' needs. For



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more detail information related to the MDRP implementation See Exhibit 7.1.3 MDRP Implementation Plan.

7.1.4 [Both] Explain plan for restoring systems (Information Management, Operations, Claims Processing) in the event of a natural or man-made disaster to accommodate:

Response: During the past 20 years, the MC-21's pharmacy claim adjudication system that has provided services to ASES has consistently averaged over 99.98% availability, demonstrating our system's proven technology and class. Due to the complete claims adjudication redundancy configuration, the services that MC-21's claims adjudication system has provided to ASES have worked continuously, including during emergencies like tropical storms, hurricanes, earthquakes, severe weather conditions, major electrical outages, and similar disruptive circumstances.

For example, on September 20, 2017 Puerto Rico was directly impacted by Maria, a powerful Category 4 hurricane that caused significant, severe damage to people, property, and the environment across the entire Island. The MC-21 IT Department's systems, services, and support to MC-21 business operations allowed the organization to successfully provide uninterrupted services across the emergency created by the hurricane. Please refer to Exhibit 7.1.4 - MC-21 IT Department support during Hurricane Maria emergency to see how the MC-21 IT Department maintained uninterrupted operations before, during, and after this major emergency.

Besides our complete processing and communication's fault-tolerance capabilities, plans have been established to handle the various types of business contingency situations in the unlikely event that downtime may occur, including during the following circumstances:

7.1.4.1 Loss of online communications

MC-21's online communications are provided with multiple lines from different carriers to ensure service availability, maintaining connectivity in the event of losing an online communications circuit. All our communication lines are connected to state-of-the-art, enterprise-level communication equipment designed for high-availability applications and communication security. Our Internet connection infrastructure consists of multiple data lines from different providers, connected to a highly available firewall cluster that sits behind a set of dual, redundant-load balancing and traffic management devices. All



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connections to the primary switching entities are reliable and constantly monitored and measured.

MC-21's computerized systems responsible for claims processing are entirely redundant, so in the unlikely event that there is a software malfunction in one system, another system is readily available. If there is a significant event disrupting the online communications of either facility, the remaining facility is prepared to accept the workload in total to continue data center operations. Since the data centers operate under normal circumstances 24x7, each data center is fully configured to accept the workload from a failing facility as soon as the transfer of the operations is complete.

7.1.4.2 Loss of data

Response: MC-21's claims adjudication system backup and recovery procedures are based upon two strategies: Continuous availability of a redundant, hot site and data saves to off-line media. Besides the protection provided by the redundant system, data backup processes and operations are implemented. Procedures are defined and established to save data on designated systems. Data saves are performed on a daily, weekly, monthly, and yearly basis. Tape cycles are set up to verify data can be restored at any given time based on the date and need. Procedures have also been established to send backup media to a secured off-site storage facility. To protect the data, the data is encrypted before being written to the media. Authorized personnel can call and request for release from the secured off-site storage facility.

MC-21's backup procedures and strategies are designed to securely and completely protect information while at the same time allowing for fast backup and restore operations. Depending on the nature of the data, a backup strategy is implemented to accommodate for the data's characteristics and protection requirements:

- *Transactional Databases:* Are backed up daily, with Transaction Log backups performed every 60 minutes. The last full backup and the transaction log backups performed are applied to restore a database to its original state.
- *Historical Databases:* Are fully backed up every two weeks, with differential backups daily. In need of a full restore, the last full backup and the last differential backup are required to be restored.



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- *File Systems*: Our file servers are backed up daily, with incremental backups every 3 hours.

7.1.4.3 Software malfunction

Response: MC-21 employs a rigorous end-to-end testing methodology to ensure developed software passes stringent quality assurance testing before the code is migrated to a production system. Our software implementation team utilizes a strict prioritization system, code library tracking and locking, and software release strategy and schedules that are coordinated with the operations and account management teams.

We have validated processes and procedures that ensure that once an issue is identified, it is documented, including the root cause, who identified the issue, how the issue was identified, when was it reported, as well as an in-depth analysis to find what caused the issue. MC-21's computerized systems responsible for claims processing are entirely redundant, so in the unlikely event that there is a software malfunction in one system, another system is readily available. MC-21's pharmacy claims processing and adjudication system operates on primary data processing centers out of Gainesville, GA, and Lawrenceville, GA. Each data processing center operates 24X7X365. A portion of production operations is hosted in each data center, and each data center contains the infrastructure and capacity to fully support all company production workload.

7.1.4.4 [PBM Services] Loss of Pharmacy Call Center services

Response: MC-21's Call Center operations are powered by Contivio's Enterprise Cloud Contact Center Software. Designed and created for the cloud, this state-of-the-art system provides our company with the most advanced call center technology allowing MC-21 to provide continuous, uninterrupted services to the Vital program using full redundancy and a state-of-the-art enterprise security infrastructure. Since the solution is based on cloud technologies, it enables MC-21 to seamlessly access and uses it from any place we choose to do so.

The MC-21 Call Center and Prior Authorization Business Continuity Mode is an alternate way to operate in the unlikely event that our services cannot be provided from our facilities. For this, select users are equipped with the hardware and auxiliary equipment to remotely connect to the systems used to meet the call center and prior authorization requirements of ASES. If a disruptive event affects the MC-21 main site, or cannot be



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used due to other circumstances, the MC-21 Call Center and Prior Authorization Business Continuity Mode is activated to relocate the Call Center operations without significant impact to normal operations. Please refer to Exhibit 7.1.4.4 A – MC-21 Business Continuity Plan and Disaster Recovery Plan-2021.

The MC-21 Call Center and Prior Authorization Business Continuity Mode is tested at least on an annual basis. As part of the test, MC-21 Call Center staff remotely connects and access all systems as if the person performing the test is physically at our site. If there are systems that are not working as expected, corrective actions are taken immediately and worked out until the situation is resolved. This comprehensive testing methodology allows full validation assuring that the center operations are available and operational when required.

This mode has been extensively executed and validated during the COVID-19 pandemic when executive orders from the Puerto Rico government required a lockdown and curfews. During these periods, our Call Center and Prior Authorization operations have been carried out remotely without any interruptions or consequences affecting the service to providers, clients, or members.

In extraordinary or emergencies, we are capable to seamlessly transfer MC-21's call center operations to our alternate facilities supported by ProCare Rx, which is readily available 7 x 24 x 365 in Gainesville, Georgia.

For a summary of the results of the outstanding implementation of MC-21's Emergency Recovery Plan for Hurricane Maria, please refer to Exhibit 7.1.4.4 B - MC-21 Business Continuity for Hurricane Maria Executive Summary.



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7.2 Pharmacy Network

7.2.1 [PBM Services] Describe how the Offeror shall have an adequate Pharmacy Network of Participating Pharmacies meeting all Contract requirements as described in Article 7 of the Contract in Appendix K as of the Implementation Date. Describe how you will also meet the location criteria in Section 7.2 of the Contract.

Response: For the past 20 years, MC-21 has developed, contracted, and administered an extensive retail pharmacy network of over 900 pharmacies, both independent and chain, to serve ASES' population. MC-21's current contracted retail pharmacy network not only surpasses ASES' needs, but it is also in full compliance with CMS rules and regulations and with ASES' requirements as established under Article 7.2 of Contracting Appendix K. Since MC-21 already has a contracted pharmacy network for VITAL in place **with the terms specified by ASES**, no implementation process is required to contract the pharmacy network, guaranteeing a seamless, transparent process for beneficiaries, MCOs, MBHO, physicians and pharmacies.

MC-21 has contracted different types of pharmacy networks to provide ASES the best alternatives available in the market. MC-21's existing contracted networks for ASES are as follows:

1. **MC-21's Retail Pharmacy Network** - MC-21's retail pharmacy network contracted on behalf of ASES, comprises 911 pharmacies, and has been providing services to ASES beneficiaries for the last 20 years. This network covers ASES beneficiaries nationwide, as well as the ADFAN and OPM population, and is contracted at the reimbursement rates and fees established by ASES in Attachment 5 of Appendix K of this RFP. As part of its retail network, MC-21 also has a U.S. retail pharmacy network of over 62,000 pharmacies in place to manage out-of-network claims, as needed and as approved by ASES.
2. **MC-21 HIV-AIDS Pharmacy Network** - MC-21's HIV-AIDS pharmacy network developed to provide patients with access to HIV-AIDS drugs, ensuring maximum geographic coverage, and **is contracted at the rates and fees established by ASES**. This network includes 45 pharmacies.
3. **ASES' Vaccine Pharmacy Network** - MC-21 currently manages a network of



pharmacies to administer vaccines covered by the VITAL program. The network is comprised of 131 pharmacies throughout Puerto Rico.

4. **COVID-19 Vaccine Administration Pharmacy Network** - Due to the COVID-19 pandemic, MC-21 developed a pharmacy network comprising 283 pharmacies to provide access to the COVID-19 vaccine.

To manage ASES' pharmacy networks, MC-21 developed MC21 RedRx™, a state-of-the-art technology solution designed as a centralized repository to efficiently manage the pharmacy networks. See Exhibit 7.2.1A for MC21 Fact Sheet RedRx™.

Additionally, it should be noted that if ASES determines to change any current reimbursement terms to the pharmacy networks, MC-21 will support ASES and will develop an implementation plan that will meet ASES' needs. This process should take no more than 30 days. Each percentage point that is increased to the discounted AWP of branded drugs, would represent over \$3 million of savings for the ASES.

However, MC-21 believes that the drug reimbursement that ASES currently has for independent participating pharmacies is appropriate when considering the aggregate effective discounts for high-cost, MAC-listed generics and branded discounts for traditional drugs.

We recommend that ASES evaluate the implementation of new and innovative programs and strategies that will not affect reimbursement to pharmacies, but will reduce drug costs while improving patient care. To more effectively manage the cost-effectiveness of high-cost medications, MC-21 presents the following recommendations for ASES. These include:

- Centers of Excellence - 330-340B Look Alike Model for Hemophilia – program presented to ASES more than 4 years ago, Rheumatoid Arthritis, Multiple Sclerosis & Cancer. See Exhibit 7.2.1B – Centers of Excellence Program
- High-Cost Medication Management Program – See Exhibit 7.2.1C
- Patient Importation Medication Program – See Exhibit 7.2.1D
- Diabetes Management Program - Integrated Model – See Exhibit 7.2.1E

In the analysis performed by MC-21, taking as a reference the HIV program implemented since 2008 and assuming similar discounts on drugs, ASES could potentially save more



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than **\$ 212 million annually** in drug spend through the implementation of Centers of Excellence for the conditions mentioned.

Centers of Excellence - Savings Opportunity

| Annualized | | | | | | | | |
|----------------------|--------------|---------------|-----------------------|------------------------|--------------------|----------------------------|----------------------------|-----------------------|
| | Patients | Claims | Full AWP | Actual Ingredient Cost | Effective Discount | Discounted Ingredient Cost | Program Effective Discount | Savings |
| Reumathoid Arthritis | 2,317 | 20,253 | \$ 138,900,000 | \$ 110,400,000 | 20.5% | \$ 30,600,000 | 78.0% | \$ 79,800,000 |
| Multiple Sclerosis | 993 | 8,538 | \$ 81,000,000 | \$ 58,300,000 | 28.0% | \$ 19,000,000 | 76.5% | \$ 39,300,000 |
| Hemophilia | 119 | 945 | \$ 46,600,000 | \$ 33,700,000 | 27.7% | \$ 10,400,000 | 77.7% | \$ 23,300,000 |
| Cancer | 1,886 | 12,846 | \$ 139,300,000 | \$ 99,100,000 | 28.9% | \$ 28,800,000 | 79.3% | \$ 70,300,000 |
| Total | 5,315 | 42,582 | \$ 405,800,000 | \$ 301,500,000 | 25.7% | \$ 88,800,000 | 78.1% | \$ 212,700,000 |

7.2.2 [PBM Services] Describe how the Offeror will ensure that its Pharmacy Network is adequate to assure access to all Covered Services, and that all Network Pharmacies are appropriately credentialed throughout the Contract Term.

Response: Our pharmacy networks are designed to provide maximum geographic coverage, thereby providing ASES' members with more options and maximum convenience. The current contracted network includes more than 80% of all independent pharmacies in P.R.

MC-21's contracting process begins with initial credentialing, which primarily requires an enrollment application to be completed. As part of the credentialing requisites, each pharmacy must comply with and show evidence of all listed licensure requirements. The credentialing process complies with ASES, local government, and federal government requisites.

Additionally, MC-21 re-credentials each pharmacy in our networks and their internal clinical staff on an annual basis to ensure that they comply with the contract, as well as with local and federal laws and regulations. Pharmacies are required to present MC-21 with satisfactory evidence of compliance with the credentialing requirements. A sophisticated database is utilized to maintain pharmacy demographic information, which includes, among other features, a module for credentialing and re-credentialing purposes. MC-21 tracks and maintains pharmacy credentials and either call or sends reminder



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letters to each pharmacy in our networks to obtain credentialing updates.

Since MC-21 is the incumbent managing ASES' pharmacy networks, MC-21's pharmacy network credentialing and licensure requirements comply with ASES' requirements established in this RFP and Articles 7.4 through 7.8 and Article 7.9 of the Contract.

To ensure ASES beneficiaries have adequate access to pharmacies, MC-21 will conduct a Geo Access analysis every six months based on the beneficiaries' locations. Presently, MC-21 performs this analysis for all our lines of business.

Please refer to Exhibit 7.2.2 Geo Access Analysis Example.

7.2.3 [PBM Services] Describe the Offeror's Pharmacy Call Center operations and services and how the Offeror will meet the performance standards outlined in Attachment 4 of the Contract in Appendix K.

Response: MC-21's Customer Service Department is composed of three (3) units: Pharmacy Call Center, Prior Authorization Call Center, and Customer Service Support Center. Our Customer Service Department is entirely based in Caguas, Puerto Rico and operates 24/7/265 days, with bilingual pharmacy technicians.

MC-21 call centers are equipped with a powerful Call Center system, Contivio, which provides all the features necessary to keep the help desk and the customer service operations performing at its best. These services are offered through a toll free access number for calls and faxes to the pharmacy network and members. A TTY phone line is available as part of the special telephone features for the hearing and visually impaired population.

The Pharmacy Call Center handles service requests from the pharmacies related to beneficiaries' pharmacy benefit program and resolution of any situation that may arise. MC-21's Pharmacy Call Center Representatives (PCSR) have online access to MC-21's Claims Adjudication system which is used to maintain important real-time and historical data while maximizing PCSR productivity and assuring quality performance in handling incoming and outgoing call volume in the call center. The system allows the PCSR to obtain all the required information to provide pharmacies with detailed information of the plan design, member eligibility, covered drugs, PA status, patient profiles, drug utilization history, plan requirements, claim status, participating pharmacies, formulary drugs, processing of prior authorization requests and adjustment in doses, among others.



MC-21 service level indicators surpasses the requirements established in Attachment 4 of the Contract in Appendix K. MC-21 also has available a voice mail unit in order to receive voice mail messages in case a call can't be answered. This voice mail message system is not frequently used, since MC-21's Pharmacy Call Center is open 24/7. Any messages left are responded to within 24 hours as per ASES requirements.

Additionally, MC-21 **have additional call centers to support ASES'** Pharmacy Benefit, including the followings:

Prior Authorization Call Center (PACC)- MC-21 has a dedicated PACC to provide support services to the management of Prior Authorizations (PA) to Vital beneficiaries. MC-21's PACC is managed by over 25 pharmacy technicians, clinical pharmacists and health care professionals. MC-21 has established policies and procedures for PAs that cannot be handled by an automated system or that require the submission of certain information or documentation.

MC-21's Prior Authorization Call Center manages over 100,000 PAs and 99% of all PAs were managed within twenty-four (24) hours.

Customer Service Support Center (CSSC)- MC-21 has a dedicated CSSC responsible to handle service requests from the clients related to beneficiaries' pharmacy benefit program and resolution of any situation that may arise.

To manage requests in a timely manner, MC-21 has established asuntosdelcliente@MC-21.com, an email address specially assigned to receive written services requests from ASES, MCOs/ MBHO and pharmacies. When a request is received, an automated case number is assigned for tracking purposes, and is sent to the corresponding department responsible to handle the request.

Drug Information Center - Committed to supporting evidence-based medicine, MC-21's Drug Information Center (DIC) has been providing access to ASES providers to the most updated medical literature for the past 20 years. Providers' timely access to updated Drug Information and Pharmacy Benefit Information at the point of care benefits the physician, the patient and ASES. It allows appropriate understanding for treatment protocols, physician's formulary adherence, and patient's satisfaction in terms of prompt access to prescribed therapies and pharmaceutical care received; therefore, contributing to the cost-effective management of pharmacy benefits and improved quality of care.



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In addition to the usual services provided by drug information centers, MC-21 also provides assistance to ASES providers and/or their representatives in the administration of the formulary request forms, follow up and status of those requests, formulary drug status, formulary drug alternatives, clinical criteria for the management of certain drugs, among other questions specific to the ASES pharmacy benefit. At this moment we are the only Drug Information Center in Puerto Rico providing a variety of services, tailored to the specific needs of ASES providers.

MC-21 Call Center and Prior Authorization Business Continuity Site - The MC-21 Call Center and Prior Authorization Business Continuity Site is an alternate, hot-site for the main operations facilities of the organization. Available 24x7, the site is equipped with all required processing hardware and auxiliary equipment needed to meet the call center and prior authorizations requirements of ASES. If a disruption affects the MC-21 main site, the MC-21 Call Center and Prior Authorization Business Continuity Site is always ready and available so that the organization can relocate its call center with minimal losses to normal operations. Since the MC-21 Call Center and Prior Authorization Business Continuity Site is up and running continuously, the site is already operational from a data processing perspective before staff has relocated. The capacity of the MC-21 Call Center and Prior Authorization Business Continuity Site allow handling all pharmacy and patient calls.

The MC-21 Call Center and Prior Authorization Business Continuity Site is located in Gainesville, Georgia. The site is available twenty-four hours a day, seven days a week (24/7). Since we use a cloud-based telephone service, we can resume all call center operations immediately.

7.2.4 [PBM Services] Describe the Offeror's communication plan to ensure Pharmacies, Pharmacy billing agents, MCOs and other interested parties are kept informed of GHP Pharmacy benefits, billing requirements and services.

Response: MC-21 developed and implemented the first local, multidisciplinary, comprehensive Pharmacy Education Program 20 years ago with outstanding results that continue today. MC-21 coordinates roundtables with Pharmacy Network leaders to address important issues. Moreover, MC-21's top management has a direct and open line of communication with Pharmacy Network representatives.



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MC-21 Pharmacy Education Program's objective is to support VITAL programs and to keep the pharmacies well informed regarding the specifics of the ASES benefit program. Our pharmacy education program provides a seamless experience by offering targeted education to our Pharmacy Network including, but not limited to:

(1) Claims processing procedures and management of clinical edits, (2) Pharmacy Audit Program, (3) Management of Prior Authorization processes, (4) ASES' Preferred Drug Lists, (5) Changes in Benefit Design, (6) Co-payments and deductibles information, (7) Rights and responsibilities of the pharmacy, (8) Preventing Fraud, Waste and Abuse, (9) Management of Appeal processes, (10) Grievances and complaints procedures, (11) Administrative processes.

MC-21 Pharmacy Education Program is implemented through; (1) Face to Face field visits to MC-21's Pharmacy Network by dedicated personnel, (2) Group Presentations, (3) Presentations to local PSAO and Pharmacy Associations, (4) Sponsoring Continued Educational Programs through the Puerto Rico College of Pharmacists, (5) MC-21 Provider Manual published annually, Posting educational materials on MC-21's website,(6) Letter and Faxes.

MC-21 prepares a work plan quarterly with a detailed description of strategies to be implemented. See Exhibit 7.2.4A, Pharmacy Providers Manual, Exhibit 7.2.4B Audit Guide, Exhibit 7.2.4C–MEIR -Volume 47, Exhibit 7.2.4D–MEIR - Volume 48 and Exhibit 7.2.4E - PSG Changes to Formulary.

7.2.5 [PBM Services] Describe Offeror's process for handling pharmacy disputes.

Response: MC-21's procedure to handle pharmacy Disputes is as follows:

- Dispute is received via, email, call or fax at MC-21 Pharmacy Center
- The Customer Service Representative (CSR) will gather all the required information to report the dispute.
- The dispute is registered in the *MC21 CR System™* Module.
- The dispute is referred to the Customer Service Supervisor (CSS) with the assigned number. If the case requires referral to another department, the Customer Services Supervisor will always be notified.



- The CCS reviews the dispute reported and if necessary will refer the case to the corresponding department for its evaluation and action. The CSS will request the approximate date or time in which an answer is expected to provide a timeframe to the pharmacy.
- After the evaluation and resolution of the reported dispute is closed, the CSS receives the information and will notify the CSR who will call the pharmacy and provide the resolution.
- All the information discussed with the pharmacy is documented and registered in our system.
- The CSR will notify the CSS that the communication with the pharmacy has been completed.

Every quarter, a report is prepared and presented to MC-21's Quality Assurance Committee (QAC). The QAC is responsible to monitor and track all disputes received to ensure the quality of services offered by MC-21.



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7.3 Claims Processing and Payment

7.3.1 [PBM Services] Describe the Offeror's claims processing system and how it has the ability to meet all claims processing requirements as described in Article 8 of the Contract in Appendix K, including but not limited to coordination of benefits and supporting different payment methodologies depending on Provider and Enrollee type

Response: MC-21 currently processes all claims for Vital through **eProCare**, an advanced, powerful, flexible, and always-available claims processing system designed for continuous online/real-time adjudication of prescription drug claims at the point of service. eProCare supports virtually every type of pharmacy benefits program and pharmacy delivery mechanism that has been introduced in the marketplace today, including all the requirements for the Vital program. It supports all commercial benefit programs, plus government programs (including Fee-for-Service Medicaid, Managed Medicaid, and Medicare Part D), Long-term Care, Hospice, 340B, and Worker's Compensation.

eProCare features support for an unlimited number of variations in plan designs, plan rules and claim requirements, pricing algorithms, cost-share algorithms, and a host of other pharmacy benefit plan management functions. A flexible, parameter-driven benefit design drives all the processing performed by the system. All plan design parameters can be changed in real-time for immediate impact if needed. Changes can be scheduled to become effective on a future date to provide the benefits administration team greater latitude in timing and implementing proposed changes.

Our claims processing system's implementation has been specifically enhanced and tailored to administer ASES' complex plan designs and model, taking advantage of MC-21's knowledge and expertise developed through 20 years of successful service to ASES. All of these capabilities developed for Vital provide a wide array of features allowing precise control, flexibility, and functionality. Our eProCare system can meet all claims processing requirements as described in the Appendix K of Article 8 of the model contract. See Exhibit 7.3.1 A - eProCare Special Programming for ASES for examples of specific programming developed to manage the ASES VITAL program.



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MC-21 claims adjudication system's eProCare is always kept updated regarding industry standards, compliance, technology, and functionality. eProCare has regularly been enhanced and improved since its origin. It will continue to be updated and enhanced, as needed, to comply with all CMS, HIPAA, and other regulatory or industry requirements and maintain its reputation of unparalleled performance, accuracy, and reliability. Since eProCare has regularly been updated and improved since its origin, MC-21 takes great pride in the fact that the eProCare claims adjudication system has long been a leader in innovation and a standard-setter in the industry.

eProCare provides extraordinary flexibility on clinical edits definitions using its hierarchical structure. eProCare's hierarchical structure provides MC-21 with virtually unlimited flexibility in designing and administering our Client's pharmacy benefit designs, protocols, and features for specific groups. Clinical edits can be applied at the group level in the system, where groups can be structured based on specific plan designs. The hierarchical structure supports an unlimited number of variations in plan designs, plan rules, clinical edits, claim requirements, pricing algorithms, cost-share algorithms, and a host of other pharmacy benefits plan management functions. Besides providing a flexible suite of products and services, eProCare enables MC-21 to have complete, absolute control over the ASES pharmacy program. The flexibility of the rules-based system allows MC-21 to develop unique programs and benefit designs tailored explicitly to ASES' needs.

Main eProCare pharmacy benefit management capabilities

- **Member Eligibility Management:** MC-21 has over 20 years of extensive experience and a proven track record working with ASES and the contracted MCOs managing the complex online eligibility process of Vital beneficiaries. This daily process is performed uninterrupted in a completely integrated manner through eProCare in a joint effort between MC-21 and the MCOs. As part of our standard eligibility management process, MC-21 always processes Vital subscriber data within one (1) business day of receipt. The eligibility process and our claims processing system has been modified and customized throughout the years with the participating MCOs to ensure compliance with the different requirements and regulations of the local and federal government, including the Puerto Rico State Medicaid Department (PAM), CMS, ASES and the Department of Health. Moreover, the fact that MC-21 has already in place all existing Eligibility processes and



infrastructure for Vital, implies that no implementation process is required to comply with the requirements of this RFP, guaranteeing an effective process to beneficiaries, MCOs, and Pharmacies.

MC-21 has dedicated resources with unsurpassed experience and a proven track record in designing, developing, and managing the eligibility process with the MCOs for Vital population during the past 20 years. MC-21 has always gone above and beyond in providing support to MCOs during crises and expedited implementations, helping to reduce the impact on beneficiaries. For example, to complete the implementation of Vital in October 2018 and allow beneficiaries to be eligible at the point of service without rejections, MC-21 provided Eligibility Process support to all MCOs regarding the diagnosis codes. The eligibility support provided includes: Coordination of new member and group eligibility files, loading of claim history and prescriber networks support (Care Network and Specialist Network), manual eligibility file correction to avoid rejections at the point of service, among others.

Our system also automatically documents the receipt of eligibility information. The date of eligibility updates, the number of records processed, and the number of any errors detected are retained in the Client's profile. This information supports computer operations, Help Desk operations, and other forms of client support activities.

- **Online/real-time Eligibility:** MC-21 currently offers online access to the MCOs to view and add/update members in the eligibility system through eProCare, providing the MCOs the ability to securely perform eligibility operations online, real-time, through a Web browser from any computer with Internet access. Eligibility verifications and updates can be performed at any time, providing the flexibility for the eligibility database to reflect day-to-day enrollment changes. The benefit is that a pharmacy can submit a claim for the member and it will be processed and adjudicated immediately upon beneficiary addition to the system.
- **Eligibility On-Hold:** Furthermore, MC-21 has a direct resubmission of eligibility (called "Eligibility On-Hold Process"). This is an alternate process to re-submit eligibility files that fail the Eligibility Load Process during the standard Eligibility Load Procedure for "Data Integrity" reasons or "Data Content" reasons, automatically without the resubmission of a new eligibility file from the MCO. MC-21 implements the error file



process on an ad-hoc basis.

In conclusion, MC-21's unsurpassed experience, dedication, flexibility, and proven track record in managing the ASES eligibility process guarantee a seamless, effective service to beneficiaries, MCOs, and Pharmacies

- **Dual Coverage** — Members and dependents are indexed and stored based on the Member ID, Group ID, Account ID, and Carrier ID under which they are added to the system. As such, a member may be in the system multiple times, allowing for dual coverage and the separation or accumulation of benefits.
- **Overrides** — The system's robust prior authorization capabilities allow for overrides to be placed for early refill, vacation supply, etc. Overrides can be set for any edit in the system, with appropriate documentation regarding ASES procedures, to immediately override a non-covered drug and charge the copay designated by ASES for a specific patient.
- **Physician Identification** — Physician file updates are accepted and loaded from the NCPDP Provider Database, HCIdesa, monthly, which can be augmented and enhanced. Client-specific prescriber files can easily be supported and loaded, and new prescribers can be added directly into the system. We are currently developing Web Services that will provide the ability to add/update prescriber information directly from a client's information systems.
- **National Physician Identification (NPI) Implementation** — The eProCare system fully supports the NPI to identify the provider (pharmacy) and the prescriber on the submitted drug claim. The system can support the submission of other forms of identification for both prescriber and provider identification, but the NPI is the preferred form on submitted claims. The system can also mandate that the NPI be used in submissions for each of these data items if desired.
- **Operational and Audit Trail Reports** — Operational reports produce summary totals for prescribers added and those who have been updated. Detailed reports are also available for those prescribers who have been updated, with details on changes in key fields. Also, the report can show which network of prescribers have been affected by this maintenance activity.



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- **OTC Drug Product Management** — ASES can designate as eligible for coverage as few or as many OTC products as it chooses. OTC claims are processed in the same fashion as other electronically submitted pharmacy claims, subject to plan edits and benefit parameters (including different cost-sharing logic). This also means that specific classes or categories of products can be excluded or treated differently during the adjudication process.
- **Drug Pricing** — We support multiple sources of pricing through our claims system, using the full 11-digit NDC submission. Pricing is updated every week.
- **Drug Classification** — Medi-Span data is used, as published in its Master Drug Database v2.5; however, clients can override these designations using NDC/GPI Lists.
- **Management of Online Claims History** — The eProCare system can retain all historical data for any agreed-upon term. Typically, the most recent 24 months' history is made available for online viewing and access; however, we can store virtually any amount of data on the system for our clients
- **Payment Options** — The system allows for an almost infinite combination of pharmacy payment options and scenarios that can be adapted to meet client-specific needs.
- **Coordination of Benefits (COB):** This eProCare functionality in our claims processing system enables ASES to acknowledge Coordination of Benefits (COB) through plan set-up to perform adjudication. If ASES elects COB processing, the applicable member record ID is "flagged" to indicate that the patient has alternate insurance. The presence of industry-standard values in the Other Coverage Code field on the claim submitted by the pharmacy determines if the claim is allowed or not allowed to adjudicate for that member. Additionally, if the Other Coverage Code indicates the claim is primary, but the member ID submitted is secondary, the system will attempt to locate the member's primary record before rejecting the claim. Through plan set-up, ASES can also define if alternate pricing or patient pay calculations should be performed on the claim processed as secondary. Multiple methods exist within the claims administration system to verify eligibility and either process or not process the claim. These edits work with COB, alternate insurance, and plan override features.



The eligibility components of our system allow for a member's eligibility record to indicate that additional or alternate coverage exists for that member (e.g., alternate spouse coverage). This information is updated during the standard eligibility maintenance process, or it is maintained by data entry, or separate data feeds. COB information is used to control benefits available to the member or to provide a message back to the pharmacy that the claim can be submitted under a different benefit plan.

The specific data elements that are maintained for a member who has an alternate or supplemental coverage for COB purposes include Alternate coverage type, Alternate coverage ID number, Alternate coverage effective date, Alternate coverage term date. In addition, we can load the spousal coverage information in a separate member record that can be referenced using the alternate coverage information maintained on the original member record.

- **Copayment Management:** The system functionality will easily accommodate changes to, and/or the creation of, unique benefit plans, including almost any copayment structure, to proactively manage the Client's pharmacy program. MC-21's contracted retail pharmacies can electronically transmit claims for beneficiaries and receive a response from eProCare with an average of .6 seconds response time. Pharmacies are required to follow the standard NCPDP v5.1 field submission requirements when submitting a transaction. All claim transactions are processed by eProCare in real-time and a response is sent back to the submitting pharmacy, indicating how much of the calculated copay is to be indicated to the beneficiary.
- **Prior Authorization:** MC-21's eProCare comprehensive, robust and flexible prior authorization capabilities, currently available to the MCOs, allows for overrides to be placed for early refill, vacation supply, etc. Overrides can be placed for any edit in the system, with appropriate documentation regarding ASES procedures, to immediately override a non-covered drug and charge the copay designated by ASES for a specific member or to process emergency prescriptions as established by ASES.
- **Participating and non-participating physician determination:** MC-21's claims processing and adjudication system provide the flexibility to allow members to be restricted to fill prescriptions only from a select prescriber(s) and also will support a physician-exclusion list if provided by MCOs.



MC-21's eProCare Edit Management

MC-21's eProCare system provides ample flexibility as it processes claim data through extensive plan edits and DUR edits simultaneously. The eProCare system guides claim data through extensive plan edits and DUR edits simultaneously, which could encompass over 1,500 separate edits. Our system's functionality will easily accommodate changes to, and/or the creation of, unique benefit plans, copayment structure, and support adding, modifying, and suppressing POS prospective DUR edits, to proactively manage the Vital program.

eProCare Reject Codes and Messages

MC-21's claims adjudication system eProCare easily accommodates custom messaging functionality to enhance the information available to our network pharmacies and aid Vital Beneficiaries' services. Online messages are sent back to the submitting pharmacy with the claim response, which can include rejected claims, specific claims for an individual group and/or population, etc. Custom messages and new messages can be created at any time and will be immediately available to network pharmacies. NCPDP standards allow a 120-byte (3 lines by 40) user-definable message to be returned to the pharmacist. For a complete list of reject code messages available to pharmacists through POS submissions, please see Exhibit 7.3.1B - eProCare Reject Codes.

Compound Prescription Processing

MC-21's eProCare claims adjudication system currently fully supports and offers ASES ample flexibility to administer compound prescriptions providing a wide array of options to customize its handling.

To process a claim with multiple NDCs, our claims adjudication system allows setting a minimum and a maximum number of ingredients to be accepted and processed. The system defaults to the industry standard of a minimum of two ingredients but can be set to a maximum of 25.

Key Programs Supported by MC-21's claims processing system

MC-21 have developed and implemented unique KEY programs to support ASES' Pharmacy Benefits Program at no additional cost to ASES and/or to the MCOs. These programs required complex system programming to process the prescriptions at POS and are critical to maintaining ASES beneficiaries' access to medications to manage



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complex conditions more efficiently and cost-effectively. Most of these programs are not included in the RFP document. The programs and services that MC-21 developed and administered to support ASES pharmacy benefit program are: (1) HIV Integrated Model, (2) ADFAN Program, (3) OPM Program, (4) PREVEN Program, (5) Hepatitis C Reimbursement Program, (6) Synthroid Program, (7) COVID 19 vaccine Administration Fee program, (8) Online Prior Authorization System integrating all MCOs, (9) Set Up 100% of all clinical protocols to the Online system – hundreds of clinical protocols, (10) Support ASES and the MCOs in over 12 transitions processes in the past years as the healthcare model managed by ASES has changed over the years, (11) Training to all MCOs personnel throughout the year, (12) Emergency On-site facility to provide the MCOs access to MC-21's systems including Call Center facility, internet access, PA processes, and (13) HUB established to process claims during emergencies i.e. Hurricane Maria.

7.3.2 [PBM Services] Describe the Offeror's ability to implement an Automated Clearinghouse ("ACH") mechanism that will allow Network Pharmacies to request and receive electronic funds transfer ("EFT") of Claims Payments.

Response: MC-21 has a process in place to facilitate pharmacies to request and receive electronic fund transfers for claims payments. For this process, MC-21 submits the pharmacies the "MC-21 Electronic Payment Form" to be completed (See Exhibit 7.3.2 - Electronic Payment Form). This form is used for enrollment in the Automated Clearing House (ACH) process for payments. The form requests the information about the payee's (pharmacy or chain) financial institution and requires a signature of the pharmacy's authorized representative and a copy of a voided check.

Once completed and signed, the pharmacy will send the form to an MC-21 dedicated email address for this service (financeservices@mc-21.com). After receiving the completed form, MC-21 updates the adjudication system with the electronic payment information, and the change is reflected within one to two payment cycles.

7.3.3 [PBM Services] Describe the Offeror's Claims processing system to screen all Claims and apply all ASES approved and required Data validation procedures and edits

Response: MC-21's eProCare Edit Management



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MC-21's eProCare system provides ample flexibility as it processes claim data through extensive plan edits and DUR edits simultaneously, which could encompass over 1,500 separate edits.

Currently, MC-21 offers flexible benefit design options that accommodate all ASES' needs. Our options allow ASES to set threshold values, rules for soft and hard edits, and criteria for triggering point-of-service pharmacist alerts and messaging, as well as coverage limits at the drug or drug class level and for specific groups or plans. Following this, we provide details on our standard soft and hard edit options.

Soft Edits - We implement soft edits when ASES wishes to promote a specific behavior without disrupting member service. A soft edit can either be simply informational or result in an initial rejection which the pharmacy may override by submitting a drug utilization review (DUR)/PPS or Submission Clarification code.

Hard Edits- Hard edits, like soft edits, provide messages to alert dispensing pharmacies of potentially unsafe or inappropriate prescriptions. They also can be set up to result in rejected claims and can be set up to require the pharmacy to contact a Pharmacy Help Desk for manual overrides, if applicable. Hard edit messages can be set up to direct dispensing pharmacies to contact a Pharmacy Help Desk for assistance.

Our standard hard edits fall into the following categories: Step therapy, Quantity limits and Prior authorization.

System edits are in place to identify aberrant claims at the point of service or adjudication.

Ability to limit the adjudication of certain drugs or classes of drugs according to the area of specialty practice of the provider

MC-21 can limit the adjudication of certain drugs or classes of drugs according to the area of specialty practice of the provider. MC-21's claim processing system database is constantly updated in terms of providers and their corresponding specialty codes. This information is used to compare prescriber specialty against the client benefit rules that can limit certain drugs to prescribers with specific practice specialties.

Drug Utilization Review Features and Capabilities

MC-21's concurrent DUR involves a series of edits that are applied to a prescription drug claim, comparing member information with the drug to be dispensed and information in the database related to other medications the member is taking. The Drug Utilization



Review (DUR) is a file supported by Medi-Span that houses information on drugs related to their uses. Real-time computer link-ups between the pharmacy and MC-21's adjudication system almost instantly inform the pharmacist whether there are any DUR concerns before dispensing the medication. The MC-21's claims processing and adjudication system can manage the following concurrent DUR edits, among others:

- **Step therapy:** Developed to ensure that medications are utilized in the appropriate order according to treatment guidelines and to ensure that the most cost-effective agents are utilized early in therapy. Step Therapy uses a systematic process that electronically reviews a member's prescription claims history to determine if the adjudicated drug meets therapy protocols before utilizing a second or third-line agent.
 - **Quantity limits:** Establishing appropriate quantity supply limitations for specific drugs is imperative. Without such guidelines, drug wastage, excessive and unnecessary costs, and potential patient harm can occur. MC-21 has established reasonable dispensing guidelines for several drug products/classes to ensure appropriate utilization.
- **Dose-Check:** Checks for dosages that are too high or too low based upon pediatric, adult, or geriatric age groups included on Display Drug Dosage Information screen in the product record.
- **Duplicate Therapy:** This edit can be customized to allow for several days overlap, as well as to report only on duplications that exceed documented thresholds.
- **Drug-Drug Interaction:** This edit can be customized such that, based on severity, onset, and documentation, the response level may be changed. Additionally, ASES may define their drug-to-drug interactions, with the same level of responses available as those within the DUR editing standards.
- **Refill too soon:** Percentages can vary based on days supply (e.g., 95% of a 100-day supply, 85% of a 50-day supply, 75% of a 30-day supply). This edit can be customized to allow for several days overlap, based on either a percentage or a set number of days.
- **Drug Allergy:** Uses information on the member's health profile record to determine if the member has an allergy that conflicts with the drug submitted.
- **Drug-Diagnosis:** Checks the member's health profile record for conflicts between the listed diagnosis and the submitted drug.



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- **Drug-Gender:** Identifies contraindications that make a particular treatment or procedure inadvisable based on the member's gender.
- **Drug-Age:** Identifies contraindications that make a particular treatment or procedure inadvisable based on the beneficiary's age.
- **Drug Regimen Compliance Screening:** Checks to make sure the member is not underutilizing a drug by making sure he/she picked up the last refill when the previous fill was scheduled to run out. If the concurrent DUR verification process at the POS detects a potential problem, the pharmacy will receive a warning message, for soft edits, or a rejection of the claim, for hard edits.
- **Ability for adding, modifying, and suppressing POS Prospective DUR edits**

The eProCare system guides claim data through extensive plan edits and DUR edits simultaneously, which could encompass over 1,500 separate edits. Our system's functionality will easily accommodate changes to, and/or the creation of, unique benefit plans, copayment structure, and support adding, modifying, and suppressing POS prospective DUR edits, to proactively manage the Vital program.

ASES has the flexibility to choose the level of program management and decision support to meet their requirements and can be as creative as it chooses in developing unique programs and benefit designs to manage its pharmacy program proactively.

If desired, we can implement changes instantaneously to formulary information, benefit plan rules, and eligibility—online, in real-time—with no programming by MC-21 required. This capability differentiates us from other processing systems that require 5 to 30 days to implement changes.

Required/Optional Edits

Pharmacy claim information submitted by pharmacies that is either required or optional is described to each of the Pharmacy Network participants using the MC-21 Payor Sheet. Please see Exhibit 7.3.3 - MC-21 LLC Medicaid D.0 Payer Sheet 03172020 for complete details about the pharmacy claims data requirements.

7.3.4 [PBM Services] Describe the Offeror's Network Pharmacy payment management function.

Response: MC-21 is ASES's current PBM and has managed the Pharmacy Network Payment process successfully during the last 20 years. MC-21 has established a bi-



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weekly drug claim reimbursement payment process to pharmacies. MC-21 bills MCO's the drug cost on a biweekly basis, at least two (2) business days before the date the actual payment is made to the pharmacies. Every payment cycle, MC-21 provides MCO's with invoices, billing files, pharmacy payment summaries, and a claim utilization file with the detail of the claims paid during the respective payment cycle via secure FTP. Each MCO is responsible for transferring funds to MC-21 for the payment of claims. Currently, the payment process includes several adjustments related to programs implemented by ASES such as: HIV, Synthroid, Hepatitis C, and COVID- 19 Vaccines. All these programs generate adjustments to the amount invoiced to the MCO's and therefore special programming was performed to manage the respective adjustments.

Once funds are received, MC-21 releases payments to pharmacies both by checks and electronic fund transfers. Remittances to pharmacies are made immediately after payment of claims is received from the MCO's. Each remittance clearly shows each claim included on the payment and any withholding fees as contracted with the Pharmacy Network. Currently, the process automatically uploads the 835 reporting to each pharmacy's sFTP site on our server.

7.3.5 [PBM Services] Describe how the Offeror will implement and maintain a MAC list that is similar in breadth and depth of rates established with the current MAC list.

Response: MC-21 has over 20 years of experience creating and updating generic MAC lists with remarkable results targeting the main drugs used by ASES and commercial client beneficiaries. MC-21 created the first unified MAC list for ASES. The MAC list contains the maximum reimbursement price assigned by MC-21 for those drugs that have been selected to be on this list. The MAC list requires constant updates that match drug market conditions and contract requirements. MC-21 current MAC list achieves over 91% generic effective discounts of AWP to our clients. Generic discounts obtained through MC-21 MAC list, exceeds \$1.2 billion annually.

MC-21 maintains an updated MAC list, at least monthly, to achieve Cost Containment objectives. New generic products are included in the MAC list as soon as market conditions allow, and the effectiveness of MAC discounts is monitored at least monthly. Prices from the MAC list apply to all transactions according to the rules of drug coverage defined and agreed with customers and providers.



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Periodically, MC-21 determines the group of products representing a significant amount of the total "Full AWP" of generic products. Once defined, MC-21 obtains local market acquisition prices of products and uploads the proprietary "Price Acquisition Manager" tool. The program generates utilization summaries, applies proprietary algorithms, and calculates suggested MAC prices. The system compares the suggested MAC price with the current price and, using the drug utilization data of the last six months, calculates the economic impact. These results, along with the evaluation performed by a MAC revision Specialist, are discussed and approved. Our proprietary MAC Tool software maintains tracking of product prices and generates updated MAC price files that are loaded in the adjudication system. Modified or new MAC prices are internally referred for validation. MC-21 also evaluates those drugs that have low effective discounts that are not part of the MAC list. If information is found that tends to indicate that the price warrants review, an evaluation for inclusion is conducted. MC-21's clinical department constantly monitors and identifies new generic products available on the market. As soon as they are identified, those products are immediately included in the evaluation process and are evaluated regardless of the claims volume or costs.

7.3.6 [PBM Services] Describe how the Offeror will implement Pharmacy reimbursement changes as may be requested by ASES throughout the Contract Term.

Response: Throughout the last 20 years, MC-21 has been able to successfully implement, on a timely basis, pharmacy reimbursement changes requested by ASES. Upon receipt of the reimbursement change request, the MC-21 Benefit Set-Up Department proceeds to verify the applicability and implement these changes at network level. With our adjudication system, these changes can be made in less than 3 days. During emergencies, MC-21 has successfully implemented all required changes within hours. Additionally, MC-21 has a thorough quality process that ensures the change has been implemented correctly. Random sample selection and tests are performed upon implementation and after utilization claims are processed with a 100% accuracy rate.

7.3.7 [PBM Services] Describe the Offeror's quality assurance process to assure accuracy of all Data received including but not limited to the enrollment file, drug reimbursement files and the Claims processing and ancillary systems proposed



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Response: MC-21 has already implemented all the required infrastructure, methodologies, and processes to effectively provide quality assurance to the ASES-related data.

Data import/export quality assurance

MC-21 currently uses a comprehensive development and production environment to quickly and seamlessly import or generate data files in the required layouts with an extensive and complete validation process, assuring data quality for effective and accurate interaction between ASES and MC-21. We effectively apply current technology and tools to provide a proven process for validating submitted data at different phases.

MC-21 utilizes a comprehensive workflow process for file transfers that begin with thorough documentation of file content requirements, transferred protocols, and published schedules. As files are submitted to MC-21, a detailed quality assurance process is performed against every transmitted file, including file exception reporting, along with detailed audit trails to assure that files are sent, received, and loaded in a timely, accurate manner. Experienced staff members, who understand all aspects of pharmacy data, work diligently to ensure precise transformation and mapping of data into and out of our systems. Also, the extensive testing procedures performed before moving a file load/extract process to production ensure that all data is mapped and exchanged accurately.

Membership Data Quality Assurance

MC-21's standard procedure for eligibility file loading establishes that the system generates several reports when a file load process is complete. Some of the reports detail the number of members sent in the file, the number of members who successfully passed the loading process, and the number of rejected members who did not pass through the process. These rejection reports specify the number of members rejected with the reason for the rejection during the automated loading process. The reports are created immediately upon file loading process completion and are delivered to the MCO's as soon as MC-21 validates the information. Reports are sent daily.

However, MCOs' internal processes may cause their databases to become out of sync with our member eligibility database from time to time. To address these potential situations, a Member Eligibility Reconciliation File containing all active members within



our system is generated every month and delivered to the MCO's to allow reconciliation with their beneficiaries' databases.

During special circumstances, like MCO additions, terminations, or through various ASES model changes, MC-21 has successfully accommodated all ASES membership reconciliation requirements regarding formats, specifications, procedures, and frequency to monitor the membership synchronization between all interconnected systems.

Quality Test Environment

MC-21's test environment consists of secure access to test (i.e., non-production) components, including test benefit plans, parameters, and other elements required to perform formal adjudication procedures. The test environment is managed and controlled, allowing for a secure, comprehensive testing execution, including the use of test benefit plans that are specifically developed for testing purposes. Thus, the test environment does not interfere with production processes or information. MC-21's test environment employs the same adjudication engine used for production purposes. This assures that the testing process is performed in the same conditions as in production mode.

In the test environment, multiple scenarios can be exercised by submitting trial claims against test benefit plans. Test claims are appropriately marked when submitted and correctly identified when reported. In this way, test claims are unequivocally differentiated from "production" claims. Once tests are performed, different alternatives (e.g., online or detail-level claims data files) are available to evaluate test results.

The QA environment demonstrates MC-21 commitment to provide what ASES needs to remain flexible and responsive to changes in their business. The QA environment allows for the security and confidence that such changes can be performed in an orderly fashion without unexpected impact or increased risk levels.

Benefit Plan Testing

MC-21's comprehensive testing capabilities that allow testing benefit designs and other pertinent scenarios are accomplished by a dedicated and experienced QA team supported by quality assurance (QA) protocols, processes, and environment for claims processing testing.



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MC-21 has a process to test and verify correct and accurate setup for benefits plans included in the claims processing system. Testing benefit designs and other pertinent scenarios are accomplished by using a set of standard tests for claims, members, and formularies, as established for all lines of business through a test environment. These test scenarios allow full use of production tools, such as benefit plans, formulary lists, pharmacy networks, and price schedules during the testing process and before implementation.

Actual benefit parameters, including pricing, can be established, and test claims can be submitted utilizing "test" members that parallel actual member demographics and eligibility. This process allows testing of actual benefit structures and simplifies the migration from the test environment to production by simply attaching benefit plans to actual groups and/or members, copying and renaming, or simply making any changes to existing benefit plans. This test scenario is limited to making minor changes in benefit designs or testing certain types of situations that can immediately impact real-time production situations or solutions.

Plan Change Tracking and Testing

MC-21 has an all-inclusive test plan that leverages our most comprehensive testing technologies, methodologies, and resources. The test plan will include the structured testing of benefit designs. This test environment is used by plan design and plan administration personnel to validate that a client's benefit designs have been properly transferred into the claims processing system. Claims are entered into this environment using manual claim entry and/or through a pre-established collection of "batch" claims that have been designed to exercise all aspects of the client's benefit design, including known boundary conditions. Testing results can be examined by the testers using online claim access or through the full spectrum of the claims processing reports.

Software development quality assurance process

All application software changes are subject to multiple levels of testing using standardized Quality Assurance (QA) processes. For full releases and major software modifications, "all customer" regression tests are conducted for the full library, which includes a copy of all production databases with an automated feed of claims to emulate



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the production load. For individual customer requests and smaller changes, regression testing is conducted on a subset of the entire production operation.

Testing of all changes to program requirements that involve source code changes, data structure modifications, or have any financial impact, will undergo the following multi-step QA testing process:

Step 1. White Box Testing: White box testing is the initial testing performed by the development team with access to the technical specs, code, inputs, outputs, and data. The developer responsible for creating or modifying the specific program or report performs rigorous testing before the product is released to QA. Various tests are run against the specific change, including "active" (changes that directly impact data) and "passive" (changes that should not impact changes to non-affected data) testing. If any of the specific criteria of the specification fail, or if any failure occurs to general code, the white box testing fails and is not permitted to be released by the Programming team to the QA team.

Step 2. Black Box Testing: Once the programming is released to the QA team, experienced system functionality experts perform rigorous testing to ensure that the programming meets the specifications and the programming did not impact previously released general code or client-specific code. Again, various tests are run against the specific change, including "active" and "passive" testing. The team also tests programming interface modifications, system data inputs, and data field outputs to ensure that the data elements that are stored in the system claims table are calculated and stored according to the specifications. If any of the specific criteria of the specification fail, or if any failure occurs to general code, the black box testing fails, and the code is returned to the Programming team for correction.

Step 3. Regression Testing: If the programming passes black box testing, regression testing can occur using the new programming code. MC-21 uses live production data in a test environment (sub-directory) to reprocess claims previously adjudicated in the claims adjudication system. Any differences are then reviewed, evaluated, and reconciled as acceptable or not acceptable, with system data changes being made when necessary. The QA team specifically looks for drug coverage changes, pricing errors, formulary aberrations, Pharmacy Provider issues, eligibility impacts, and any other



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change that causes any kind of financial impact. If specific step therapy programs are involved, each scenario is manually tested to ensure accuracy. If the output of the regression testing does not meet the expected results, the code is returned to the Programming team for review and potential correction.

Step 4. User Acceptance Testing: If the programming passes the appropriate level of regression testing, the user (which may be either an MC-21 associate or a client user) runs the new program (or report) against a copy of the live data in a test area to confirm that the change is correct and has had no impact on previously adjudicated claims. Depending on the complexity of the request, a test plan may include the preliminary entry of sample claims using the keyed claims module. If any results are not as expected, the code is returned to the QA team for review (Step 2) and must undergo black box and regression testing again. Once the User Acceptance testing is completed, it is sent to IT for release.

Step 5. Implementation: After sign-off by the IS supervisor and the user team, the programming code or report is scheduled for implementation, which includes a full implementation plan, a "back-out" plan in case of unforeseen failures, and internal and client notification. The implementation plan and schedule is approved by the Operations team at a daily meeting, with the implementation based on impact, data structure update requirements, and volume peaks. For larger implementations or changes, additional Call Center staffing may be engaged to answer Pharmacy Provider telephone calls that may be the result of the change.

Step 6. Post Implementation Review: After implementation, the Account Management team reviews submitted claims through the first few days of implementation to ensure accuracy. All financial reports are reviewed after the financial cycle (e.g., bills, checks, etc.) is completed before reports and invoices are released to the clients.

7.3.8 [PBM Services] Describe the Offeror's experience and expertise with other Medicaid agencies in working with 340B covered entity providers and 340B Claims

Response: MC-21 has nearly 10 years of experience in processing claims for 340B clients. We support several 340B Administrator clients who work with Covered Entities to provide full 340B services. We work with our clients to set up specific 340B price lists



for Covered Entities, as required, with the other required processing requirements for the clinical facility, physician, and specific Covered Entity network pharmacy.

MC-Rx processes approximately 1 million 340B claims annually (in nearly all US states and territories, including Puerto Rico) for more than 1,500 340B groups.

We have Implementation and Account Management personnel with experience in 340B projects. Our Pharmacy Help Desk is also familiar with 340B programs and the unique aspects of serving these patients and providers. See Exhibit 7.3.8 – 340 B solution.



7.4 Pharmacy and Therapeutics Committee

7.4.1 [PBM Services] Describe the Offeror's experience with and ability to support the P&T Committee as required in Section 9.2.1 of the Contract in Appendix K.

Response: There is no PBM in the Puerto Rico market with the experience of developing and managing P&T Committees for the ASES.

Since 2002, MC-21 has dedicated a specialized clinical and administrative team to establish and manage the ASES P&T Committee. In 2002, MC-21 developed and implemented the first integrated model for the P&T Committee management that included the different components of the system. In addition, all policies and procedures included in Attachment 3 of the Contract of this RFP have been developed and updated annually by our clinical team at MC-21. See Exhibit 7.4.1A P&T Committee Presentation and See Exhibit 7.4.1B - ASES P&T Calendar Table – 2021.

Our clinical team will continue to work in collaboration with ASES, the P&T Committee, and all system components to provide evidence-based decisions that balance the health requirements of ASES beneficiaries with budget-driven efforts to contain costs. Concerning the services included in the Pharmacy and Therapeutics Committee of Article 9 of the Contract, MC-21 is currently providing these services and has consistently complied with all the contractual requirements established by ASES for more than 20 years.

If MC-21 is selected to administer RA services, the new contractual requirements are minimal to continue supporting the ASES program. The Contract requires that a pharmacoeconomic analysis be presented to the P&T Committee. MC-21's experience in conducting pharmacoeconomic analysis and recommendations is part of the processes that we currently implement in other business segments that we administer. Our current process will also support ASES if they decide to implement a Supplemental Rebate Program or Value-Based Purchase agreements. See Exhibit 7.4.1C Pharmacoeconomic Analysis Example.

Additionally, at MC-21 we believe technology plays a significant role in achieving greater operational effectiveness. The use of the WEB, secure emails, and teleconferencing can and will enhance the whole P&T experience. MC-21 currently uses technology to deliver



P&T materials through a completely paperless process.

In summary, MC-21 has provided ASES and the MCOs with a complete, proven track record and results-oriented P&T Committee service that will continue to support ASES and the MCOs with the best suited Formulary Management Program available in the Puerto Rico market.

7.4.2 [PBM Services] Describe the Offeror's ability to monitor existing medications included in the FMC and the LME for new or expanded indications, or new information regarding side effects or contraindications and make recommend changes to the P&T Committee regarding Prior Authorization criteria, step therapy protocols, quantity limits, and other related edits.

Response: For the past 20 years, the MC-21 clinical services team managing the ASES P&T Committee has implemented policies and procedures to monitor existing drugs included in ASES' formularies.

Our team performs retrospective drug utilization (rDUR) reviews to identify inappropriate or medically unnecessary care. MC-21 performs periodic reviews of claims data to evaluate prescribing patterns and drug use that may indicate inappropriate use. Our rDUR reports are part of the information provided to the P&T Committee for the evaluation of therapeutic classes and products during P&T meetings. If inappropriate use is identified, the clinical presents to the P&T clinical recommendations and/or interventions such as prior authorizations criteria, quantity limit, step therapy, etc. Examples of drug utilization reviews are: Utilization trend analysis, Prescription Patterns – Branded and Generics, Changes in Units Per Prescription for the Top 25 Therapy Classes, New Drugs introduced in the market & Percent of Total Cost by Therapy Class.

To ensure that we are up-to-date with new products on the market and/or new line extensions or new indications, we use the following sources of information available on the market. Included are some examples: Drug Approval Report, FDA-Approved Biosimilar Products, Hematology/Oncology (Cancer) Approvals & Safety Notifications, 2021 Novel Drug Approvals & Biological Approvals.

With the information collected from these sources, we proceed to complete an internal document, identified as Products Evaluation Schedule (PES) Log. This log is developed



to keep track of new molecular entities, new indications, extended indications, and new dosage form approvals.

Additionally, MC-21 provides ASES a Quarterly Drug Trend Report and Annual Drug Trend Report to review and monitor member drug utilization and provide recommendations and/or initiatives that promote the best therapy at the lowest cost. See Exhibit 7.4.2A Quarterly Drug Trend Report and Exhibit 7.4.2B Annual Drug Trend Report.

7.4.3 [RA Services] Describe the Offeror’s experience with and ability to support the P&T Committee as required in Section 9.2.1 of the Contract in Appendix K.

Response: During the last 20 years, MC-21 has managed different P&T Committees, according to the ASES pharmaceutical benefits model. In addition, all policies and procedures included in Attachment 3 of the Contract of this RFP have been developed and updated annually by our clinical team at MC-21. See Exhibit 7.4.3A P&T Committee Presentation and See Exhibit 7.4.3B - ASES P&T Calendar Table – 2021.

Concerning the services included in the Pharmacy and Therapeutics Committee of Article 9 of the Contract, MC-21 is currently providing these services and has consistently complied with all the contractual requirements established by ASES for more than 20 years.

If MC-21 is selected to administer RA services, the new contractual requirements are minimal to continue supporting the ASES program. The Contract requires that a pharmacoeconomic analysis be presented to the P&T Committee. MC-21's experience in conducting pharmacoeconomic analysis and recommendations is part of the processes that we currently implement in other business segments that we administer. Therefore, just by implementing our current processes with ASES utilization data, we will provide ASES with immediate implementation of the pharmacoeconomic recommendations. Our current process will also support ASES if they decide to implement a Supplemental Rebate Program or Value-Based Purchase agreements.

See Exhibit 7.4.3C Pharmacoeconomic Analysis Example.

7.4.4 [RA Services] Describe the Offeror’s qualifications to make pharmacoeconomic recommendations regarding FMC and LME medications and Prior Authorization criteria, step therapy protocols, quantity limits and other cost containment related edits.



Response: MC-21 team is equipped with subject matter experts including: clinical pharmacists, statisticians, accountants, financial consultants, information technology, and formulary management specialists. Our highly skilled team of clinical Pharm.D, trained pharmacists encompass > 20 years of experience in managed care and as part of an interdisciplinary team, we incorporate and deliver expert information on new drugs, treatment guidelines, clinical studies, current formulary status, utilization patterns, and pharmacoeconomic considerations. In this process, we also develop and evaluate new or existing PA criteria, step therapy protocols, quantity limits and other cost containment related edits.

MC-21's experience in conducting pharmacoeconomic analysis and recommendations is part of the processes that we currently implement in other business segments that we administer, however not for ASES since this type of analysis should be performed by the PPA. Therefore, just by implementing our current processes with ASES utilization data, we will provide ASES with immediate implementation of the pharmacoeconomic recommendations. Our current process will also support ASES if they decide to implement a Supplemental Rebate Program or Value-Based Purchase agreements.

See Exhibit 7.4.4A Pharmacoeconomic Analysis Example.

As a result of the pharmacoeconomic analysis, our clinical team will present recommendations to the P&T Committee on whether or not to make changes to the current FMC / LME status of drugs, as well as review and validate drug management tools such as ST, QL, PA, among others.

MC-21 currently uses Zero-In, a web-based analytical tool, to measure clinical and financial information to assess and provide pharmacoeconomic recommendations, including those related to FMC and LME medications. See Exhibit 7.4.4B – Zero In Tool.



7.5 Pharmacy Financial Committee

7.5.1 [RA Services] Describe the Offeror's experience with and ability to support the Pharmacy Financial Committee

Response: MC-21 currently manages more than 100 formularies and hundreds of drug lists to support our clients. This number does not take into consideration the ASES FMC and LME, as the final determination is driven by the PPA rebate negotiations. However, before the PPA was integrated into the ASES Pharmaceutical Benefits Program years ago, MC-21 handled the formularies and rebates as an integrated program, and all decisions at the time were driven by a Financial Committee whose main goal was to obtain the lowest net cost of therapy, net of rebates, for the benefit of the ASES Program. See Exhibit 7.5.1A Financial Committee Evaluation Presentation. Last year, MC-21 recommended that ASES reinstate a Financial Committee to ensure that decisions are made based on the net cost and benefit of ASES, rather than considering only reimbursements negotiated by the PPA. The recommendation was implemented.

MC-21 performs evaluations and analyses of the economic impact of every medication under consideration to be included in any formulary. The clinical evaluation determines the benefits and/or contraindications of the new drug and the implication of its inclusion or exclusion from the formulary. Also, MC-21 estimates the utilization impact on these medications taking into consideration the market trend of the therapeutic class, and any information from clinical studies performed on these drugs. With this information, a financial assessment is performed to estimate the potential cost to our clients. This financial evaluation includes an analysis of unitary costs, applicable rebates, co-pay scenarios, pharmacoeconomics analysis, and net cost to the plan. For our commercial clients, the final decision will be determined by a separate Financial Committee. See Exhibit 7.5.1B Pharmacoeconomics Presentation.

7.5.2 [RA Services] Describe the Offeror's ability and experience with evaluating and making recommendations on cost-effective drug therapies to be included on the FMC and the LME.

Response: In 2017, ASES requested MC-21 to perform a detailed analysis to optimize ASES PDLs due to a significant increase in drug utilization. The increase was mainly



driven as a result of the PPA contracting expensive branded drugs to increase rebates, instead of performing evaluation based on net cost to ASES. After a detailed review and performing the analysis based on net cost and not in increasing rebates, MC-21 recommendations to **ASES represented approximately \$58 million in savings the first year**. MC-21's recommendation to ASES is that it must be ensured that all programs and strategies developed and implemented must be aligned with the objectives of ASES rather than the interests of each provider. See Exhibit 7.5.2A Final Report Changes Recommended to Mi Salud Formularies – MC21

Additionally, MC-21 performs evaluations and analyses of the economic impact of every medication under consideration to be included in any formulary. The clinical evaluation determines the benefits and/or contraindications of the new drug and the implication of its inclusion or exclusion from the formulary. Also, MC-21 estimates the utilization impact on these medications taking into consideration the market trend of the therapeutic class, and any information from clinical studies performed on these drugs. This financial evaluation includes an analysis of unitary costs, applicable rebates, co-pay scenarios, pharmacoeconomics analysis, and net cost to the plan. See Exhibit 7.5.2B Pharmacoeconomics Presentation.

7.5.3 [RA Services] Describe the Offeror's ability and methods to maintain the confidentiality of all information that is protected by law and/or deemed confidential, including, but not limited to, any financial, cost, or market analyses that may be presented to the P&T Committee and PFC.

Response: MC-21 is fully compliant with the standards and regulations established by the Health Insurance Portability and Accountability Act (HIPAA) regarding data security and privacy. Annual Mandatory HIPAA training program is required to be provided to all employees, and also The P&T Committee and PFC. In addition, the P&T members and PFC, as well as MC-21 employees and sub-contractors are required to execute confidentiality agreements. Financial, cost, or market analyses that may be presented to the P&T Committee and PFC are strictly confidential and safeguarded in our encrypted files. See Exhibit 7.5.3 – 2021 General Compliance HIPAA Training.

It is important to note that MC-21 is also HIPAA-compliant for reporting purposes and has long made it a practice to safeguard the confidentiality of the personal health information.



7.6 Formulary Management

7.6.1 [PBM Services] Describe how the Offeror will fulfill core components of the Formulary Management requirements as described in Article 11 of the Contract in Appendix K, including but not limited to maintenance of the Formulary of Medications Covered (FMC) and List of Medications by Exception (LME), administration of Prior Authorization decisions determined by MCOs, and commitment to substitution restrictions.

Response: Since 2002, MC-21 has dedicated a specialized clinical and administrative team to develop and manage ASES' Formulary Management Services, including the development and administration of ASES' first P&T Committee. In 2017, together with ASES and the P&T Committee, we developed the FMCs and LME that included: Dental, Nephrology, Ob-Gyn, Oncology, Integrated Emergency Formulary, HIV-AIDS, and Sub-physical and mental formularies.

Our team will continue to work in collaboration with ASES and all system components to provide evidence-based decisions that balance the health requirements of ASES beneficiaries with budget-driven efforts to contain costs. The major features of our formulary management process are Clinical Reviews and Therapy Protocols, FDA and Market Alerts Monitoring, Pharmaco-economic Principles, and Drug Utilization Trend Analysis.

MC-21 being the current PBM of ASES has been responsible for developing and implementing all Policies and Procedures included in Article 11 of the Contract in Appendix K. Therefore, MC-21 has the experience and the knowledge to assure ASES that MC-21 has the experience to continue providing ASES with best in class formulary management services.

7.6.2 [PBM Services] For Prior Authorization administrations, describe how the Offeror will work with the MCOs to meet the requirements of Section 11.2 in the Contract and how the Offeror will process technical Prior Authorizations.

Response: For the past 20 years, MC-21 has provided and will continue to provide ASES and the MCOs an integrated approach to efficiently support and manage Prior Authorizations (PA) for VITAL beneficiaries. During these 20 years, MC-21 has efficiently



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managed over 2 million PA for VITAL beneficiaries while maintaining the highest standard of quality in the Puerto Rico market. Throughout the years, we have consistently surpassed our internal PA performance indicator of managing 99% of all PAs within twenty-four (24) hours. Moreover, MC-21 has proved to be the most experienced PBM in Puerto Rico managing ASES PA protocols.

In 2015, MC-21 implemented the most advanced and cutting-edge technology available on the market to manage all PAs for VITAL beneficiaries at no additional cost to ASES or MCOs. MC-21 has invested more than \$ 3,000,000 to provide this technology to ASES and the MCOs.

MC-21's Prior Authorization (PA) Program, is a web-based, feature-rich software system that simplifies and automates end-to-end prior authorization management of healthcare services. The system is a highly customizable platform, which allows administrators to configure system-driven rules for different lines of business. This flexibility ensures that fully delegated or partially delegated prior authorizations are handled in a timely, efficient manner. The system has integrated inbound and outbound fax capability, which allows the seamless creation of a PA request when receiving fax submissions, the system also allows users to create PA requests for cases that are received by email or telephone. We currently have more than 170 clinical protocols programmed into the system and they are updated as required by the P&T Committee. The system allows for notifications to be directly faxed to the pharmacy and prescriber.

MC-21 has a procedure in place to coordinate appeals requests by members and/or physicians. The system complies with CMS audits processes.

Additionally, to support the PA processes, MC-21 has a dedicated PA Center that has provided services to ASES' pharmacy network for the past 20 years.

MC-21 proposes ASES to implement the tool at the physician level to improve PA processes at the POS. MC-21 is ready to implement **this initiative at no additional cost to ASES.**

7.6.3 [PBM Services] Describe the Offeror's Formulary Management experience, recommendations to keep it reflective of marketplace changes and cost effective.

Response: MC-21 believes that a formulary or a PDL should be developed based on the net cost of the medications, rather than the amount of rebates exclusively, to ensure the



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lowest net cost to the plan. MC-21 currently manages more than 100 formularies and hundreds of drug lists to support our clients. This number does not take into consideration the ASES' FMC and LME, as the final determination is driven by the PPA rebate negotiations. However, before the PPA was integrated into the ASES Pharmaceutical Benefits Program years ago, MC-21 handled the formularies and rebates as an integrated program, and all decisions at the time were driven by a Financial Committee that was always looking for the lowest net cost, net of rebates, for the benefit of the ASES Program. Last year, MC-21 recommended that ASES reinstate a Financial Committee to ensure that decisions are made based on the net cost and benefit of ASES, rather than considering only rebates negotiated by the PPA. ASES agreed to the recommendation and the Committee was composed in 2020.

To ensure we keep our client's formularies recommendations reflective of marketplace changes and cost effective, we perform evaluations and analyses of the economic impact of every medication under consideration to be included in any formulary. The clinical evaluation determines the benefits and/or contraindications of the new drug and the implication of its inclusion or exclusion from the formulary. Also, MC-21 estimates the utilization impact on these medications taking into consideration the market trend of the therapeutic class, and any information from clinical studies performed on these drugs. With this information, a financial assessment is performed to estimate the potential cost to our clients. This financial evaluation includes an analysis of unitary costs, applicable rebates, co-pay scenarios, pharmacoeconomics, and net cost to the plan.

In 2017 ASES requested MC-21 to perform a detailed analysis to optimize ASES PDLs due to a significant increase in drug utilization. The increase was mainly driven as a result of the PPA contracting expensive branded drugs to increase rebates, instead of performing evaluation based on net cost to ASES. After a detailed review and performing the analysis based on net cost and not in increasing rebates, **MC-21 recommendations to ASES represented approximately \$58 million in savings the first year**. See Exhibit

7.6.3 Final Report - Changes Recommended to MI Salud Formularies - MC21

MC-21's recommendation to ASES is that it must be ensured that all programs and strategies developed and implemented must be aligned with the objectives of ASES rather than the interests of each provider.



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7.7 Drug Utilization Review and Evaluation

7.7.1 [PBM Services] Describe how the Offeror will support the MCO in fulfilling the Drug Utilization Review (DUR) program requirements, including the functions of the IT systems and Information needed to support the Prospective DUR (pro-DUR), Retrospective DUR (retro-DUR) requirements, and annual DUR report requirements upon ASES's request as outlined in Article 12 of the Contract in Appendix K.

Response: During the past 20 years, MC-21 has provided ASES with an extensive comprehensive Drug Utilization Review (DUR) program that integrates all the stakeholders that provide services to ASES beneficiaries. MC-21 has a team of clinical experts for DUR analysis that surpasses the industry standards. Annually the team performs over 90 DUR evaluations for a total of 1,200 drugs and has contributed to the development of over 170 clinical protocols for drug inclusions into ASES' FMC and LME.

Concurrent DUR (cDUR) involves a series of edits that are applied to a prescription comparing member information with the drug to be dispensed and information in the database related to other medications the member is taking. MC-21's claims adjudication system can manage the following concurrent DUR edits which can also be customized:

- **Step Therapy:** Step Therapy uses a systematic process that electronically reviews a beneficiary's prescription claims history to determine if the adjudicated drug meets therapy protocols before utilizing a second or third-line agent.
- **Quantity Limits:** Appropriate quantity supply to manage drug wastage, excessive and unnecessary costs, and potential patient harm can occur.
- **Dose-Check:** Checks for dosages that are too high or too low based upon pediatric, adult, or geriatric age groups.
- **Duplicate Therapy:** This edit can be customized to allow for several days overlap, as well as to report only on duplications that exceed documented thresholds.
- **Drug-Drug Interaction:** ASES may define their drug-to-drug interactions, with the same level of responses available as those within the DUR editing standards.
- **Refill too soon:** Percentages can vary based on days supply. This edit can be customized to allow for several days overlap, based on either a percentage or a set number of days.



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- **Drug Allergy:** Uses information on the beneficiary's health profile record to determine if the beneficiary has an allergy that conflicts with the drug submitted.
- **Drug-Diagnosis:** Checks the beneficiary's health profile record for conflicts between the listed diagnosis and the submitted drug.
- **Drug-Gender:** Identifies contraindications that make a particular treatment or procedure inadvisable based on the beneficiary's gender.
- **Drug-Age:** Identifies contraindications that make a particular treatment or procedure inadvisable based on the beneficiary's age.
- **Drug Regimen Compliance Screening:** Checks to make sure the beneficiary is not underutilizing a drug by making sure that he/she picked up the last refill when the previous fill was scheduled to run out.

If the cDUR verification process, at the POS, detects a potential problem, the pharmacy will receive a warning message, for soft edits, or a rejection of the claim, for hard edits.

Retrospective drug utilization (rDUR) reviews identify inappropriate or medically unnecessary care. Information gathered through the rDUR review is used as part of MC-21's Educational Programs directed to physicians and pharmacies.

In addition, MC-21's rDUR reports are part of the information provided to ASES P&T for the evaluation of therapeutic classes and products during P&T meetings. If inappropriate use is identified, ASES P&T recommends interventions such as prior authorizations criteria, quantity limit, step therapy, etc. as appropriate. See Exhibit 7.7.1A P&T DUR Low Molecular Drug and Exhibit 7.1.1B P&T Committee Presentation.

Additionally, MC-21 is currently presenting to the ASES team a Quarterly Drug Trend Report and an Annual Drug Trend Report. See Exhibit 7.7.1C Quarterly Drug Trend Report and Exhibit 7.7.1D Annual Report VITAL.

MC-21's prospective DUR (pDUR) provides physician information to improve utilization of the most cost-effective pharmaceutical products including: national treatment guidelines, new therapies, and cost comparisons for drugs within the same therapeutic class. This information and appropriate recommendations are constantly shared with ASES P&T Committee for its consideration and approval.

To educate physicians MC-21 has developed and implemented for the past 20 years the Academic Detailing Program. MC-21's Academic Detailing Program has influenced ASES



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physician's prescribing behavior and promoted the use of high-quality products with the lowest net cost, thus providing significant savings to ASES.

In conclusion, for the past 20 years, MC-21 has developed and implemented the most comprehensive Drug Utilization Review (DUR) Program available in Puerto Rico, based on ASES needs and the utilization pattern of **VITAL** beneficiaries with outstanding results.

7.7.2 [PBM Services] Describe the capabilities of the Offeror's DUR system, the ability to customize the systems and DUR program priorities as needed, and how savings are calculated for DUR activities. Provide examples of how the Offeror has made significant improvements in outcomes for other state agencies based on DUR activities.

Response: Drug utilization reviews are performed each time a prescription is dispensed to ensure that information on a potential drug interaction/contraindication is messaged to the pharmacy before the prescription is dispensed. These real-time reviews are undertaken automatically through system programming, allowing pharmacist intervention if necessary. Within the DUR model, you will be given the option to (1) allow the claim to pay without incident, (2) allow the claim to pay with a message to the pharmacy, or (3) reject the claim with a specific message.

MC-21's system can manage the following concurrent DUR edits which can also be customized: Step Therapy, Quantity Limits, Dose-Check, Duplicate Therapy, Drug-Drug Interaction, Refill too soon, Drug Allergy, Drug-Diagnosis, Drug-Gender, Drug-Age, Drug Regimen Compliance Screening Under-Utilization Warning, and Iatrogenic Checks, among others.

MC-21's retrospective drug utilization reports are part of the information provided to ASES P&T for the evaluation of therapeutic classes and products during P&T meetings. If inappropriate use is identified, ASES P&T recommends interventions such as prior authorizations criteria, quantity limit, step therapy, etc. as appropriate. Exhibit 7.7.2A P&T Committee Presentation.

MC-21 is currently presenting to the ASES team a Quarterly Drug Trend Report and an Annual Drug Trend Report. MC-21 also keeps ASES abreast of industry updates and potential savings opportunities to be implemented as well as drug pipeline information. See Exhibit 7.7.2B Quarterly Drug Trend Report and Exhibit 7.7.2C Annual Report VITAL.



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Most of the characterization of DUR medication cost savings are based on concretely identifying prescription instances in which the patient successfully filled a less expensive medication as a result of this system DUR triggers and comparing medication costs of initial drug prescription dispensing attempts versus final dispensed medication cost.

The following table shows the savings generated as a result of the MC-21 recommendations to ASES. **DUR Savings – VITAL 2016 to 2020**

| DUR Strategy | 2016 | 2017 | 2018 | 2019 | 2020 |
|---------------------|---------------|---------------|---------------|---------------|---------------|
| Non Formulary | \$101,893,372 | \$125,815,093 | \$127,637,374 | \$166,077,227 | \$187,540,332 |
| Prior Authorization | \$82,597,130 | \$71,625,451 | \$78,020,573 | \$113,919,678 | \$139,952,738 |
| Maximum Cost Edit | \$21,100,233 | \$9,093,609 | \$11,072,846 | \$20,055,904 | \$18,470,842 |
| Duplicate Therapy | \$1,881,650 | \$5,264,985 | \$3,853,668 | \$3,788,257 | \$2,691,548 |
| Step Therapy | \$2,294,841 | \$3,505,207 | \$3,157,513 | \$5,855,421 | \$1,944,809 |

Years 2017 and 2020 revealed decreases in savings related to the hurricane events, earthquakes, and COVID-19 pandemic emergency.

In 2017, ASES requested MC-21 to perform an in-depth utilization analysis review to evaluate the most recent drug cost-increasing trend reported by the MCOs. The increase was mainly driven as a result of the PPA contracting expensive branded, instead of performing evaluation based on net cost to ASES. After a detailed review and performing the analysis based on net cost and not in increasing rebates, MC-21 recommendations to ASES represented approximately **\$58 million in savings the first year**. Some of these changes were implemented by ASES, however, this is an ongoing process that needs to be monitored and adjusted as needed. See Exhibit 7.7.2 D Final Report – Changes Recommended to Mi Salud Formularies–MC21

7.7.3 [PBM Services] Describe how the Offeror will run the Academic Detailing Program. Provide examples of three potential topics for messaging through the Academic Detailing Program and explain what messaging would be done with regard to those topics.



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Response: MC-21 has been a pioneer in Puerto Rico in the development and implementation of the first local Physician Academic Detailing and Education Program. For the past 20 years, MC-21 has implemented this program for ASES' providers obtaining outstanding results. MC-21's Academic Detailing dedicated team of healthcare professionals has been able to influence physician's prescribing behavior through the annual implementation of over 400 face-to-face visits, over 100 group presentations, and thousands of telephone call interventions annually, by promoting the highest quality products at the lowest net cost. MC-21 has developed a strong relationship with physicians based on high standards of credibility and has, therefore, become their number one advisor in matters related to the VITAL pharmacy benefits program.

MC-21's Academic Detailing Program initiatives will continue to yield significant savings while enhancing the quality of care to ASES beneficiaries by: 1. Improving physician knowledge of drug costs, formulary coverage, and managed care issues, discuss. 2. Promoting the use of therapeutically equivalent lower-cost alternatives. 3. Encouraging prescribing patterns that reflect current clinical guidelines. 4. Improving health care cost outcomes. And 5. Enhancing quality of member care.

MC-21's Academic Detailing Program will continue to support the MCOs in the development and implementation of tailored physician programs to improve the cost-effectiveness of VITAL formularies. Our Academic Detailing Specialists educate physicians by providing them comprehensive and objective information on medications and management of the conditions.

To ensure the continued success of MC-21's Academic Detailing Program, MC-21 meets with the MCOs at least every two (2) months to coordinate the educational programs and activities related to: Polypharmacy, disease management programs, among others. During these meetings, the outcomes and results of each initiative will be discussed and adjustments to the Academic Detailing Program will be made. Refer to Exhibit 7.7.3 A & B - Academic Detailing Educational Program Presentations.

7.7.4 [PBM Services] Describe Offeror's capabilities to identify potential opioid abuse, suspect prescribing and dispensing patterns, etc.

Response: MC-21 has dedicated personnel to ensure that Federal and State regulations and requirements for opioid management are fulfilled. MC-21's claims processing system



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can manage the following utilization strategies for opioid management. Currently, MC-21 has in place CUMULATIVE OPIOID EDITS at point of service (POS). These are real-time safety alerts at the time of dispensing to prospectively prevent opioid overutilization, creating awareness to physicians and pharmacists about opioid uses, and helping in the identification of activities potentially related to fraud.

Specifically for ASES, while most beneficiaries utilize clinicians prescribe opioids in medically appropriate ways, opioid overutilization is nonetheless a significant concern for the Plan VITAL program, and ASES is helping MCOs and all providers identify individuals potentially at risk for opioid abuse through programs like "Combat Opioid Misuse in Plan VITAL Beneficiaries". MC-21's clinical team was key in the development and implementation of this program. For details of the program already developed and implemented please see Exhibit 7.7.4 Opioid Program VITAL

7.7.5 [PBM Services] Describe Offeror's capabilities to track drug utilization trends for specific drugs identified by ASES for special monitoring, e.g. drugs that are the subject to class action suits, product recalls, etc.

Response: MC-21's DUR Program is geared toward improving the quality of patients' care, physicians' prescribing patterns, and pharmacy dispensing activities. Our Clinical Services team has in place the following services to track drug utilization trends for specific drugs, as required by ASES.

To minimize or avoid medication errors, MC-21's Clinical Department experts conduct drug utilization reviews to make sure the beneficiaries are receiving safe and appropriate care. To specifically address the medication error issues for **VITAL**, MC-21 is implementing the following initiatives: Drug Alerts Communications: Safety and Recalls Program see Exhibit 7.7.5A FDA Recall Communication, Medication Error Identification and Reduction Educational Program (MEIR) see Exhibit 7.7.5B MEIR Volume 47 & Exhibit 7.7.5 C. MEIR Volume 48. Additionally, MC-21 has developed for ASES a proactive pharmacy monitoring program focused on preventing overutilization of prescribed medications which is part of the clinical interventions and MC-21's Clinical Quality Assurance Program. MC-21 offers ASES the flexibility to assist in the definition of parameters to be monitored, as well as to integrate MC-21's programs with other initiatives already developed by ASES and the MCOs.



7.8 Care Management and High Needs Program

7.8.1 [PBM Services] Describe examples of "best in class" care management strategies that could result in cost-containment efforts and positive health outcomes in Puerto Rico Medicaid.

Response: Since its inception in 1998, MC-21 has partnered with ASES, by designing PBM programs and services according to ASES.

From 2001 to 2006, MC-21 was the sole provider of PBM and PPA services to the entire ASES Pharmacy benefit program. As the single PBM, MC-21 implemented cost containment strategies that have saved ASES millions of dollars while providing more access and flexibility to beneficiaries. Along with ASES, MC-21 implemented several first time initiatives that have resulted in substantial savings to ASES, such as: (1) the Uniform Pharmacy Benefit, (2) the Pharmacy and Therapeutic Committee geared to the needs of the local market, (3) the Uniform Preferred Drug List (PDL) and Specialized PDL's for the population geared to the specific utilization patterns in Puerto Rico, (4) the Rebate Management Program focused on the "net cost" of drugs and not on the rebate amount, (5) the Uniform Maximum Allowable Cost List (MAC) for ASES, (6) the Drug Utilization Review Program (DUR) which aids in adequate patient safety and care in the aspects of dosage, drug interactions, and therapy duplicity, among others, (7) the Historic Utilization Database, which is a tool to help formulate public policy and other initiatives to improve the health situation of the medically-indigent population, and (8) the creation of flexible information and intelligence systems in order to provide services that fulfilled the expectations of both beneficiaries and providers. And in partnership with ASES and the Department of Health, MC-21 was instrumental in the development of a customized integrated solution for the **HIV-AIDS population that has saved ASES over \$830 million to this date.**

As part of our strategic support to ASES, each year MC-21 presents "best-in-class" care management strategies and recommendations to ASES to optimize ASES's pharmacy benefits program, these have provided cost containment and health outcomes. For examples of all the programs and recommendations submitted to ASES in recent years, see Exhibits 7.8.1A, B. & C ASES Savings Opportunities



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AN INNOVATIVE PROPOSAL FOR VITAL

MC-21 proposal for ASES contains the following unique cost-containment options and health outcome programs, specially designed for ASES needs and based on the experience accumulated in the implementation of tailored solutions over the last 20 years.

These can generate *millions* in savings during the three-year contract term:

- Centers of Excellence – 330-340 B Look Alike
- Hospital Discharge Transition of Care
- Diabetes Program-Integrated
- Specialty Medication Management Program
- Patient Importation Medication Program
- Expand HIV Integrated Model
- Healthcare Interoperability Program - MCInteropRx
- Adherence Programs
- MTMP
- ePA at POS
- eRx

For detailed information of each program, see Exhibit 7.8.1D New Programs Brief Description.

7.8.2 [PBM Services] Describe how the Offeror will implement care management initiatives among Network Pharmacy Providers, including monitoring of patients for potential use of care management.

Response: MC-21 is constantly reviewing and looking for new ways to innovate and enhance its programs. Following is a list of the most crucial and unique programs offered where the Pharmacies are critical for the success of the beneficiaries to improve their health.

1. High-Cost Medication Mng Program –For detailed description, see Exhibit 7.8.2A.
2. Diabetes Integrated Program - For detailed description, see Exhibit 7.8.2B.
3. Transition of Care Program (TCP)- For detailed description, see Exhibit 7.8.2C.
4. Medication Adherence Program - For detailed description, see Exhibit 7.8.2D.
5. Medication Therapy Mng Program - For detailed description, see Exhibit 7.8.2E.
6. Pay for Performance to Pharmacies - STAR Program Look Alike - Our in-class technology solutions, top tier clinical programs, advanced data analytics, and innovative approaches are at ASES disposal towards a star rating (look alike) in the most critical measures and integrate the pharmacies to compensate them based on



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the results obtained in the programs included in this section.

The programs presented in this section are a summary of detailed programs already developed and ready to be implemented in Puerto Rico for the benefit of ASES. Several programs described here have been presented to ASES in recent years.

7.8.3 [PBM Services] Describe the Offeror's experience in care management initiatives that reflect the current health condition priorities of the High-Cost High Need Program (e.g., asthma, diabetes/hypertension, congestive heart failure, cardiovascular diseases, obesity, and chronic renal disease stages 1 and 2).

Response: For more than 20 years, MC-21 has been supporting the MCOs in the development and implementation of programs focused on the management of patient care, including, but not limited to, disease management programs and adherence programs for the following conditions: Asthma, Diabetes, Depression, Congestive Heart Failure, Cardiovascular Diseases, Obesity, Chronic Renal Disease Stages 1 and 2, among others. See Exhibit 7.8.3A for Disease Management Support Program.

MC-21's Clinical Services Department successfully developed and implemented adherence programs to address diabetic patient problems in using statins for the management of anti-hyperlipidemia. Most recently, MC-21 implemented an adherence to statin program in the Commercial sector. After six (6) months of being implemented, the program has shown a 40.1% increase in adherence to prescribed statins when compared to the baseline measurement. Refer to Exhibit 7.8.3B Clinical Quality Improvement Program.

MC-21 has also developed and implemented initiatives for other drug categories, such as diabetes and antihypertensive medications. MC-21 presented ASES a DUR analysis and made recommendations of the therapeutic classes that need to be targeted for program development and implementation within the VITAL beneficiaries. Please refer to Exhibit 7.8.3C Diabetes Integrated Program. And Exhibit 7.8.3D – Medication Therapy Management Program.

7.8.4 [PBM Services] Describe Offeror's strategies to manage orphan drugs, high and extremely high-cost specialty drugs (for example, enhanced clinical protocols, close



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monitoring, and tracking of utilization.)

Response: MC-21's lowest net cost of treatment policy takes into consideration that, among therapeutically equivalent drugs, the selection for inclusion on the formulary will be the lowest cost of treatment available. This policy towards net cost of treatment is a crucial strategy in controlling drug cost trends and has resulted in significant savings regarding the total cost per claim to our clients.

MC-21 currently manages more than 100 formularies and hundreds of drug lists to support our clients' needs. This number does not take into consideration the ASES FMC and LME, as the final determination is driven by the PPA rebate negotiations. However, more recently, ASES initiated a new initiative, prompted by MC-21, to reinforce that the P&T Committee and the newly established Finance Committees will evaluate the inclusion of Orphan Drugs and other high-cost drugs, as well as the Exceptions Request Process for these. This is a change in the right direction to control the cost of drugs.

Additionally, MC-21 performs evaluation and analysis of the economic impact of the medications. MC-21 has provided ASES with a complete process to support the clinical and financial evaluation of existing and new medications. The clinical evaluation determines the benefits and/or contraindications of the new drug and the implication of its inclusion or exclusion from the formulary. Also, MC-21 estimates the utilization impact on these medications taking into consideration the market trend of the therapeutic class, and any information from clinical studies performed on these drugs. With this information, a financial assessment is performed to estimate the potential cost to ASES.

As part of our strategic support to ASES, each year MC-21 presents "best-in-class" strategies and recommendations to ASES to optimizing the ASES' pharmacy benefit program, these have provided cost containment and health outcomes, however, not all have been implemented. As examples of all the programs and recommendations submitted to ASES in recent years, see Exhibits 7.8.4 A, B & C – ASES Savings Opportunities.

MC-21 proposal for ASES contains unique strategies to manage orphan drugs, high and extremely high-cost specialty drugs, specially designed for ASES needs. For brief description of the proposed programs, see Exhibit 7.8.4 D – New Programs Proposed



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7.9 Fraud, Waste and Abuse

7.9.1 [PBM Services] Describe how the Offeror will meet the core requirements for Fraud, Waste, and Abuse activities described in Article 18 of the Contract, including but not limited to the Fraud, Waste and Abuse Plan requirements, a Compliance Plan, Reporting and Investigation requirements, and Program Integrity Requirements.

Response: For the past 20 years, MC-21's has implemented an effective compliance program for ASES that meets the regulatory requirements set forth in the Medicare Prescription Drug Benefit Manual, the Centers for Medicare and Medicaid Services (CMS) and is guided by the Federal Sentencing Guidelines. Leading the program is the Chief Compliance Officer (CCO), a certified member by the Health Care Compliance Association (HCCA). In collaboration with the Compliance Manager, a compliance committee, and a Board of Directors, the CCO implements the program across the company for all lines of business.

The Compliance Program has dedicated Compliance staff, including Compliance Auditors who perform routine internal auditing of compliance risks. As part of these audits, our dedicated staff investigates potential compliance problems and offers prompt responses to compliance issues by providing thorough corrective actions. Our Compliance Program ensures our workforce is clear on our compliance goals and milestones by executing key dates for achieving identified outcomes through our internal auditing protocol. See Exhibit 7.9.1A – MC-21 Compliance Program Policy

In addition, all employees and contractors are trained on Compliance and FWA upon hire and annually thereafter. MC-21's education and training efforts are designed to ensure that employees understand their role in the compliance process and how the legal and regulatory requirements impact their specific functions. The training program ensures that all employees and contractors are knowledgeable about MC-21's' Code of Conduct and Ethics, HIPAA-HITECH, Federal Laws, Fraud, Waste and Abuse, and all other corresponding and applicable laws and regulations, including Medicaid and Medicare thus being able to alert senior management of problems and concerns.

Our corporate compliance program monitors and tracks laws and regulations to ensure compliance with regulatory policies and procedures and proper submission and payment



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of claims. If during an investigation there is a potential non-compliance concern, a report is generated to the client and/or government authorities, as required.

MC-21 has formal policies in place that ensure appropriate OIG-Exclusion or Debarment verification procedures for providers are established and frequently updated and corroborated. Our validation process uses primary source verifications through the Exclusions' List provided by SAM/GSA and the OIG. MC-21 reviews the HHS OIG and GSA exclusion lists monthly for employees, contractors, and providers, and has processes in place to prevent the payment of claims for services provided by excluded providers.

Parallel to our Compliance Program, MC-21 possesses a Benefit Integrity Program which encompasses procedures and activities to take prompt action towards potential or actual FWA through prevention, detection, investigation, resolution, collaboration, and reporting mechanisms.

Prevention activities under our program start with education efforts to internal and external parties, including: employees, contractors, and network pharmacies, among other stakeholders in the delivery of care. MC-21 provides Compliance and FWA training to all employees within 90 days upon hire and then annually thereafter. In addition, pharmacies are required to complete training requirements regarding Compliance and FWA annually; as part of this process, every network pharmacy is required to attest to training requirements completion. MC-21 makes available its annual training to all network pharmacies through the Pharmacy module within our website, so pharmacies can have access to these all year round. In addition, prevention efforts are accomplished through the implementation of efficient and intelligent system controls (including edits and algorithms) that allow MC-21 to hold payment for claims with improper, aberrant, or clinically inaccurate information, including providers with payment restrictions (e.g. pre-payment review).

Detection of potential or actual FWA is accomplished through various methods, including: Continuous monitoring of claims through MC-21's proprietary FWA Monitoring Tool , Targeted reports, In-depth pharmacy audits , FWA referrals or complaints and Proactive activities.



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Potential FWA is thoroughly investigated by FWA Specialists promptly upon detection or referral. FWA investigations are documented, logged, and tracked to ensure that corrective actions are implemented appropriately and in a timely fashion. Any cases in which credible allegations of FWA are identified are promptly referred to the client for further actions. And summary reports are provided every quarter. Collaboration between MC-21 and the client is key in the prosecution of actual FWA cases, including open communication with law enforcement agencies, such as the HHS-OIG, PRMFCU, DEA, DOJ, among others. See Exhibit 7.9.1B FWA Summary Report to ASES.

7.9.2 [PBM Services] Describe the Offeror's experience in preventing and abating Fraud, Waste, and Abuse, including innovations and recommendations that could be considered by Puerto Rico Medicaid.

Response: MC-21 possesses over 20 years of successful and progressive experience in the prevention, deterrence, and correction of fraud, waste and abuse. Our proven track record and the effectiveness of our Program are demonstrated by the monies we have been able to recover on behalf of ASES through our pharmacy audits program and the dollars we have prevented from loss due to our system controls and our continuous monitoring efforts, as well as through the constant collaboration with law enforcement agencies (HHS-OIG and PRMFCU) in the investigation and prosecution of fraud schemes. MC-21 has investigated, referred to law enforcement, and helped uncover complex fraud cases, including: false claims billing schemes, identity thefts, billing of potentially adulterated drugs, physicians with an invalid license, among many others. In addition, law enforcement has established close communication with MC-21's FWA Program leadership for consulting and investigational support of high-profile cases, as well as with the collection of data for national Medicaid fraud investigations, as requested by the Medicaid Fraud Control Unit (MFCU). See Exhibit 7.9.2A – FWA Summary Report to ASES

MC-21 is always looking for opportunities to innovate and develop new strategies towards the deterrence of FWA. Included are the strategies that may help the industry innovate, strengthen its approaches and unify efforts:

- FWA tracking and predictive modeling industry-wide tool - A few years ago, the Centers for Medicare and Medicaid Services (CMS) launched a web-based tool called



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The Predictive Learning Analytics Tracking Outcome (PLATO). The tool allowed plan sponsors and PBMs to log FWA investigations, findings, outcomes, and corrective actions at the provider/pharmacy level.

- FWA Administrative Committee - Serve as a forum for discussion of potential FWA incidents and a panel for getting counseling from stakeholders regarding actions to be taken towards correction, which is part of an effective compliance program. In the local industry, we have ongoing workgroup meetings along with the HHS-OIG, PRMFCU, and MCOs to discuss FWA efforts and specific cases.
- Participation in judicial processes - as subject matter experts in the administration of pharmacy benefits, MC-21 puts its knowledge, expertise, and experience to the disposal of ASES and law enforcement agencies as part of judicial proceedings resulting from the prosecution of FWA cases. MC-21 can support and participate in court hearings of actual FWA cases prosecuted by HHS-OIG or the PRMFCU.
- FWA Work-Plan - The OIG Work Plan sets forth various projects including OIG audits and evaluations that are underway or planned to be addressed during the fiscal year and beyond by OIG's Office of Audit Services and Office of Evaluation and Inspections. MC-21 recommends the development of a similar work-plan by ASES, where the focus is put on those critical activities or areas of great concern for the agency, so that contractors can align their efforts towards those areas, thus better supporting ASES with integrated FWA-detection strategies.

To manage the FWA program, MC-21 developed a unique software system, MC-21 FWA TOOL©, to identify potential FWA. See Exhibit 7.9.2B MC-21 FWA Tool

7.9.3 [PBM Services] Describe in detail the Offeror's Pharmacy Auditing services to ensure Pharmacies comply with contract provisions.

Response: MC-21 has in place an effective Pharmacy Audits Program whose main purpose is to collect all information needed to corroborate or validate the integrity and legitimacy of the claims submitted by Participating Pharmacies so they are correctly billed and in compliance with contract requirements, and related federal and local laws and regulations, including but not limited to CMS requisites. This method also investigates irregularities and flaws of identified claims adjudication patterns and ensures pharmacies operate within the legal framework. The program defines and establishes a streamlined



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auditing process either onsite or remote (desk). Depending on the nature of the audit, a pharmacy may also be subject to a Wholesaler Invoice Review/Audit. Through this approach, the Auditor will look for potential aberrancies in the billing by reconciling the pharmacy's billing with the acquisition of drug products.

MC-21's participating pharmacies are audited through an internal pharmacy audit work plan. This plan is prepared and reviewed quarterly where pharmacies are selected either randomly or based on specific criteria including pharmacy billing patterns, specific indicators, suspicion, referrals, and other billing characteristics. Although the number of pharmacies to be audited may vary from one year to another, it is MC-21's policy to audit, at least, 20% of its pharmacy, thus exceeding the 4% threshold required by ASES for post-payment audits.

Whenever audit results show deficiencies or substantiated findings, corrective actions apply. These corrective actions seek to remediate discrepancies, prevent recurrence of issues and take prompt action to hold perpetrators accountable. Depending on the nature of the findings, corrective actions may include:

- Education to the pharmacy;
- Further investigation;
- Claim recoupments;
- Suspension of payments;
- Referral to client; and/or
- Follow-up audits;
- Claims adjustments;
- Corrective Action Plans (CAP);
- Termination from network;
- Referral to law enforcement, among others.

MC-21 provides results of pharmacy audit activities to ASES, at least, quarterly to ensure transparency and visibility of the delegated activities related to pharmacy audits. Reporting is a critical element to the Pharmacy Audits Program as it seeks to ensure transparency and provide visibility of matters adversely impacting the pharmacy benefits. See Exhibit 7.9.3 – Pharmacy Audit Program Results ASES.

MC-21 has a credential renewal process that allows our team to verify if the pharmacy complies with all contract provisions, including but not limited to review licenses, insurances, drug inventory, facilities, and clinical references to educate patients, among others.



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7.10 Other Enrollee Rebate Negotiating, Invoicing and Processing

7.10.1 [RA Services] Describe the Offeror's process for rebate negotiations with pharmaceutical manufacturers.

Response: For over 20 years, MC-21 had been negotiating and contracting rebates for our clients in P.R. and U.S. MC-21 has created a robust rebates negotiation process with pharmaceutical manufacturers as a result of the experience gained over the years. MC-21 assisted ASES in implementing its rebates program over twenty years ago. From 2001 to 2006 MC-21 managed ASES's rebates program with outstanding results.

For the past 20 years MC-21 has successfully negotiated rebates for the benefit of its clients with over 90 pharmaceutical manufacturers based in U.S. and Puerto Rico. This experience includes negotiating Medicaid contracts for non-covered drugs (enhanced coverage) and for supplemental rebates when available, as well as for Medicare Part D, and Commercial lines of business. Rebates negotiations are executed locally to ensure the fulfillment of our specific market needs. One example of these negotiations is the product Synthroid® for which MC-21 has obtained significant rebates for the Puerto Rico commercial market when in the US is not a rebatable drug. In addition, MC-21 has negotiated rebates for medical claims with pharmaceutical manufacturers for the Medicare Part D segment.

MC-21 will provide ASES an experienced team to maximize rebate negotiations locally according to the formulary design. Since its foundation, MC-21 has implemented transparent rebate processes with its clients and will do the same for ASES.

MC-21 negotiation process is part of a strong multi-departmental operation which main objective is to achieve the lowest cost of therapy for clients. This operation integrates MC-21 most experienced staff from the Clinical, Contracting, and Finance departments. This team of professionals participate in monthly meetings named Formulary Management Team (FMT). The FMT main goal is to discuss contractual opportunities of drugs that will be evaluated in P&T meetings and to establish the negotiation strategies with pharmaceutical manufacturers. A health economic analysis is presented in these FMT meetings to evaluate the net cost of each drug that is part of the therapeutic classes, including pharmaceutical manufacturers rebates discount proposals. This team manages



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multiple potential financial scenarios to evaluate and recommend lowest cost of therapy. After P&T decisions are made, the FMT meets again to define the final scenarios that will be contracted. After this meeting, MC-21 will negotiate with pharmaceutical manufacturers the formulary positioning, utilization management tools requirements, highest available rebate percentage, price-protection clauses, supplemental rebates and contractual terms and conditions that will be aligned with MC-21's lower cost of therapy strategy. See Exhibit 7.10.1A- Rebates Negotiation Process Flowchart for a diagram of the Rebates negotiation process and See Exhibit 7.10.1 B - Health Economic Analysis.

7.10.2 [RA Services] Describe the Offeror's approach for accurate and timely Rebate invoicing and processing as prescribed in Article 15 of the Contract. Describe how the Offeror will resolve Rebate disputes in a way that is most favorable to ASES.

Response: Accurate and Timely Rebates Invoicing and Processing

MC-21 offers its clients a highly reliable in-house rebate system for the speedy, safe and precise rebate management process. MC-21 has developed a unique and innovative infrastructure that is designed to respond rapidly to the changing market conditions that the health care industry is currently undergoing.

MC-21 has internally developed a software application, **MC21 RB System™**, designed to manage the rebates program with pharmaceutical manufacturers. **MC21 RB System™** offers a complete and flexible tool to efficiently manage the process of billing rebates to pharmaceutical manufacturers, as well as the rebates collections and reconciliations. In addition, the application has the capability to produce standard rebates reports by Drug Name, Manufacturers, summarized by NDC level, or detailed at claim level. Thanks to its internal design, MC-21 has the ability and expertise to make any modification to the system that ASES requires. See Exhibit 7.10.2A- MC-21 Rebates Billing System.

Currently, the rebates collection vs. the rebates invoiced amount indicates that MC-21 collects approximately 99% of the total Rebates invoiced to the pharmaceutical manufacturers. This high ratio is the results of the MC-21 collection efforts with the pharmaceutical manufacturers in addition to the accuracy in the amounts billed. MC-21 has controls and analytical procedures in place to detect possible errors before the final invoice is released to the pharmaceutical manufacturers. Examples of these controls and analytical procedures are: (1) system edits validation for data accuracy; (2) data



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scrubbing to exclude non-billable utilization (i.e. 340B Centers claims, repackage NDCs, terminated NDCs, etc.); (3) prior period billing comparison or trend reports to detect any significant fluctuation (outliers); (4) independent revision of the rebate invoices of a separate employee not involved in the invoicing preparation focusing on rebates contracts revision, among others. See Exhibit 7.10.2 B - Invoicing Validation.

MC-21 ensures a timely submission of rebates invoices by implementing procedures that complies with contracted terms. These procedures are tested in the SSAE 18 audit within the Rebates Billing Process Control Objective #5, See Exhibit 7.10.2 C - SSAE 18. For example, the rebates billing process is performed quarterly and based on the contracts with pharmaceutical manufacturers. MC-21 has from 45 to 60 days after the end of the quarter to bill total rebates. MC-21 ensures to bill on time by maintaining an electronic billing calendar and including the billing terms updated in the **MC21 RB System™**. During the SSAE 18 audit, the auditors inspect a selection of quarters and pharmaceutical manufactures invoices to inspect that the rebates billing process was performed quarterly and that MC-21 billed timely the total rebates as required by each contract. Since the inception of the SSAE 18 report, no exceptions has been noted in this control objective, indicating that MC-21 has exceptional internal controls in place to ensure timely submission of rebates invoices.

Rebates Disputes Resolution

MC-21 prioritizes resolving any Rebates disputes by firstly establishing good communication channels with the pharmaceutical manufacturers and escalating the disputes to higher levels within the companies. In addition, MC-21 Rebates contracts with pharmaceutical manufacturers includes mechanisms to ensure unpaid rebates amounts are resolved within a reasonable timeframe. Nevertheless, MC-21 has successfully resolved disputes without the need of invoking this mechanism established in the contracts.

MC-21 will resolve Rebate disputes in a way that will be most favorable to ASES by establishing the following process: any objection by pharmaceutical manufacturers as to the accuracy of any rebate request shall be notified in writing to MC-21 within forty five days of the receipt of the objected rebate amount. Failure by pharmaceutical manufacturers to so object shall be constructed as acknowledgement by pharmaceutical



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manufacturers of the accuracy and correctness of the Rebates amount invoiced. In the event of a timely objection by pharmaceutical manufacturers, MC-21 agrees to reach an understanding in good faith with the pharmaceutical manufacturers within 60 days. MC-21 will also request pharmaceutical manufacturers that payment for Rebates amounts billed without discrepancies shall not be delayed. However, if disputes are not resolved or pharmaceutical manufacturers fail to pay rebates within the established timeframe, MC-21 has the right to terminate the contracts. See Exhibit 7.10.2 D - Other Enrollees Dispute Resolution.

7.10.3 [RA Services] Describe the Offeror's ability to coordinate all Data transfers and reporting requirements between its Rebate Program systems and designated stakeholders including but not limited to ASES and MCOs.

Response: MC-21 has extensive experience with the design, development, coordination, and execution of data transfer processes related to rebates programs with clients and designated third parties.

MC-21 has created a rebates software application specially designed to manage pharmaceutical discounts and rebates with pharmaceutical companies, **MC21 RB System™**. This proven technological platform allows us to provide ASES with complete and flexible services to efficiently manage the rebates billing process and the production of standards reports. MC-21's rebate reporting application, **MC21 RB System™**, can provide both billed and collected details of rebates. MC-21 will provide ASES with rebate reports that indicate reconciliation between the dollar volumes of rebates collected vs. the rebates billed to pharmaceutical companies. This report is available at the drug-level and manufacturer level and also as an overall summary.

7.10.4 [RA Services] Describe how the Offeror will ensure a seamless transition in rebate processing during implementation.

Response: MC-21 main goal is to provide ASES a seamless and transparent transition of all processes, including rebates. MC-21 has experienced in providing support to ASES in over 12 successful transition processes in its pharmacy benefit model. MC-21 successful business relationships with pharmaceutical manufacturers, both local and in the mainland, will provide opportunities to maintain and improve negotiations on behalf of ASES. One factor that will positively impact the transition process is the fact that MC-21



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is ASES's current PBM, which provides an advantage of knowing the program and the utilization trends by therapeutic class. MC-21 currently performs the clinical analysis, P&T Committee support, clinical assistance and program expertise, so we are very aware of the current formulary, plan set-up, covered drugs, and processes that are in place. As we provide claims to the current rebate aggregator for submission, we will work to assume responsibility for submission of claims according to the established process and ensure that all other rebate contracts for non-covered drugs and supplemental rebates are in place.

In 2017, MC-21 worked hand-in hand with ASES to provide lower net cost therapies recommendations for over 60 highest utilized therapeutic classes, proving MC-21 capacity to manage and provide ASES with the expected results.

MC-21 will provide ASES with an efficient and effective implementation plan for the rebates area, which will include the following: evaluation of the current ASES rebates contracts with pharmaceutical manufacturers, historical rebates data transfer to **MC21 RB System™** for reporting purposes, assessment of ASES PDL and therapeutic classes to define additional contract opportunities, coordinate pharmaceutical manufactures meetings for transition process, establish RFP Process for additional contractual opportunities, complete new contracts with pharmaceutical companies with MC-21 on behalf of ASES, work with ASES current rebates vendor to obtain information of all pending rebates amounts from pharmaceutical manufactures in order to define a proper collection plan after the transition process, actual contract set-up in **MC21 RB System™**, definition of billing package to pharmaceutical manufactures, and the creation of the rebates results reports to ASES, among others. See Exhibit 7.10.4 - Other Enrollees Rebates Transition Implementation Plan.

7.10.5 [RA Services] Describe the Offeror's experience with other clients in identifying 340B Claims for Rebate exclusion.

Response: MC-21 has extensive experience in P.R. and U.S. in adjudicating claims for 340B entities as the PBM for hospital systems, the adjudicator for 340B administrators that manage 340B entities, and as the processor for PBMs that manage the 340B cash paying component of the program. As such, our rebate system already is programmed to evaluate and exclude 340B claims as needed.



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During our rebate processing, we have several different ways to determine if a claim is a 340B claim. This algorithm ensures that claims that can be identified and actually paid under 340B OPAIS (Office Pharmacy Affairs Information System) program are not submitted for rebates.

We perform the following basic analysis:

- Does the claim contain a value of '20' in NCPDP field 420-DK (Submission Clarification Code)?
- At plan level, is the program a 340B program?
- Is the pharmacy primarily a contract pharmacy to a covered entity?
- For brand claims, how has the claim been priced?

For ASES Other enrollees, MC-21 will use its actual system capacity to establish 340B claim identifiers at point of sale with the NCPDP 420-DK field. This approach will provide a precise methodology to identify claims that are subject to 340B discounts and consequently avoid duplicate discounts by eliminating those specific claims from the billing process to pharmaceutical manufacturers. In addition, MC-21 will amend the Pharmacy Network Contract language to enforce the identification of 340B claims by pharmacies using the specified data field. Lastly, MC-21 will monitor HRSA 340B center list quarterly and cross match with its Pharmacy Network to identify potential non-compliance pharmacies.



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7.11 MDRP Rebate Invoicing and Processing

7.11.1 [RA Services] Describe the Offeror's approach for accurate and timely MDRP Rebate invoicing and processing as prescribed in Article 14 of the Contract. Describe how the Offeror will resolve Rebate disputes in a way that is most favorable to ASES.

Response: **Accurate and Timely Rebates Invoicing and Processing**

MC-21's will ensure an accurate and timely MDRP Rebates invoicing and processing by focusing on quality of data and making such data available to manufacturers, CMS, and ASES. MC-21's rebates processes are designed to produce high quality utilization data in compliance with all federal and CMS specifications. This approach will minimize the potential rebate disputes and will accelerate rebate payment from pharmaceutical manufacturers. MC-21 will also have a dedicated team to MDRP rebates processing that will ensure to comply with all time sensitive requirements such as providing rebate invoices to manufacturers, providing access to a web portal for manufacturing to obtain claim level data, submitting drug utilization data reports to CMS, and rebate reports to ASES, among others. In addition, MC-21 will have a data repository system to share with ASES all rebate data to be accessed in real time and produce ad-hoc reports at different levels.

MC-21 main goal is to submit MDRP rebates invoices free of errors in order to prevent drug rebates disputes and to ensure ASES will receive the corresponding rebates based on utilization. This objective will be achieved by improving the quality of claims data submitted by providers and pharmacies and taking the necessary steps to review that data prior to submitting it to pharmaceutical companies. The following are examples of the processes MC-21 will be implementing to make sure data is free of errors and rebates disputes are reduced:

1. MC-21 will implement appropriate system edits (i.e. applying correct conversion factors for unit of measure, edits for whole numbers, etc.) to ensure that any outliers (i.e. notably over or under stated utilization) in ASES' drug utilization data are found prior to transmission to both CMS and pharmaceutical manufacturers. Based on MDRP statistics, these outliers often result in significant overstatements and understatements of rebates billed, which makes the data non-compliant and can cause rebate disputes that



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require resources to be expended by manufacturers, states, and CMS.

2. MC-21 will work with ASES to ensure and encourage the 340B entities to provide accurate data. Based on this information provided MC-21 will adequately scrub out 340B claims prior to invoicing pharmaceutical manufacturers. MC-21 efforts to identify 340 centers will include the following:

a. Monitor HRSA website to identify the 340B centers status applicable for Puerto Rico and cross match that information with MC-21's Pharmacy Network list. (HRSA website:<https://340bopais.hrsa.gov/CoveredEntitySearch/000096073>)

b. MC-21 will include a contract clause in the Pharmacy Network contract to ensure that pharmacies that process 340B claims are required to identify such claims at point of sale using MC-21 designated claim identifier for such purposes. Non-compliance with this clause could face penalties including contract cancellation and recoupment of potential duplicate discounts that affected ASES.

c. Currently, MC-21's claim processing system has the capability to identify on a claim basis the 340B dispensed drugs which enable to extract these claims from the rebates billing process, see Exhibit 7.11.1A - System Screenshot 340B Claim Identification.

3. MC-21 have edits in place to ensure that ASES will not pay claims for terminated drug products if the date of service is after the termination date. This will ensure that those claim are not part of the utilization and therefore, not included in the rebates invoice to the manufacturers.

The controls mentioned above will minimize the common reasons for MDRP disputes which are: (1) Quantity issues due to discrepancies in unit of measure, (2) 340B claims submitted for Medicaid rebate, and (3) claims submitted for terminated drugs. For MDRP invoicing process see the following Exhibits: See Exhibit 7.11.1B- MDRP Invoicing Process, Exhibit 7.11.1C - ROSI, Exhibit 7.11.1D PQAS, Exhibit 7.11.1E CMS-Quarterly Rebate File, Exhibit 7.11.1F Medicaid Drug Rebate Invoice CMS-R-144

Rebates Disputes Resolution

The experience over 20 years working with pharmaceutical manufacturers gives MC-21 the knowledge of adequately managing and resolving disputes. MC-21 prioritizes resolving any rebates disputes by establishing good communication channels with the



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pharmaceutical manufacturers and escalating the disputes to higher levels within the companies. The longer the dispute goes unresolved, the more difficult it is to obtain the necessary data for resolution; therefore, MC-21 will ensure an expedite process to resolve any disputes submitted by the pharmaceutical manufacturers. To facilitate the reconciliation process with pharmaceutical manufacturers, MC-21 will make available to them, when requested, claim level data to facilitate the reconciliation process. This claim level data file will include, as a minimum, fields that are essential for the reconciliation of rebates billed as recommended by CMS. See Exhibit 7.11.1G- Claim Level Data Fields Definitions CMS.

If dispute resolution processes are delayed or agreements are not achieved to satisfy either ASES or the manufacturer's needs, MC-21 can request assistance through The Medicaid Drug Rebate Dispute Resolution Program (DRP); by contacting CMS's Medicaid DRP Team to the following email DRP@cms.hhs.gov. See Exhibit 7.11.1H MDRP Disputes Resolution.

In addition, a state hearing option is available when the parties have reached an impasse through the normal dispute resolution process. MC-21 in coordination with ASES will develop P&P to ensure we manage the process in compliance with all Federal requirements.

7.11.2 [RA Services] Describe the Offeror's ability to coordinate all Data transfers and reporting requirements between its Rebate Program systems and designated stakeholders including but not limited to ASES, CMS, and MCOs.

Response: MC-21 has extensive experience with the design, development, coordination, and execution of data transfer processes with clients and designated third parties, including federal programs such as the Centers for Medicare & Medicaid Services' (CMS) Medicare Part D and the Health Resources and Services Administration's (HRSA) Ryan White HIV / AIDS Program. MC-21 has successfully performed special programming to fulfill ASES' needs with the HIV program, Hepatitis C, Synthroid and COVID-19 vaccine programs which required special data transfers processes.

In the case of Medicare Part D, MC-21 has directly coordinated the generation and data exchange with the CMS's Health Plan Management System (HPMS) for the transmission of required data like the Plan Finder Files (Formulary File, Pricing File, Providers File,



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etc.) and the Prescription Drug Event (PDE) file, among many others. For the local AIDS Drug Assistance Program (ADAP) office, MC-21 directly coordinates all required data transfers on their behalf, according to the specifications and requirements of the designated Coordination of Benefits Contractor (COBC).

MC-21's expert and flexible data generation/exchange services have allowed satisfying our clients' needs in compliance with all CMS, Federal, and State requirements. MC-21 is fully capable of meeting the requirements and establishing the necessary data exchange processes between our Rebate Program systems and designated stakeholders, including the Medicaid Drug Program (MDP), ASES and the MCO's.

MC-21 will comply with the reporting requirements for contracted RA services established in this RFP, See Exhibit 7.11.2 MDRP Report Samples.

7.11.3 [RA Services] Describe how the Offeror will ensure seamless transitions in rebate processing if CMS makes changes to Data submission platforms or processes.

Response: Currently, Medicaid Drug Rebate Program (MDRP) file formats are used by CMS, states, and manufacturers to transmit and receive various data required by the MDRP. CMS is currently building a new Medicaid Drug Program (MDP) system in which all the current MDRP file formats will be transitioned to MDP file formats on July 1, 2021. MC-21 will continue to monitor the changes effective July 1, 2021.

MC-21 has vast, demonstrated experience in the design, development, and implementation of data exchange projects, including those resulting from changes in CMS, Medicaid, HIPAA, NCPDP, or other regulatory or law requirements. MC-21 has over 20 years of evidenced track record of compliance with all these requirements. For example: PRMMIS data exchange requirements: The Puerto Rico Medicaid Management Information System (PRMMIS) required MC-21 to implement an automated data exchange processes using the NCPDP Post Adjudication Standard v4.2, to transmit all ASES pharmacy claims. MC-21 participated in the program's definition sessions and successfully met all requirements regarding specifications and timing. Also, MC-21 successfully complied with the PRMMIS Provider Master Data Interface and Provider Group Links Interface requirements, for inbound and outbound data exchanges related to the providers registered in the Medicaid's Program Provider Enrollment Portal (PEP). During the time that MC-21 has exchanged information with the PRMMIS, we have



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successfully adapted by implementing all required changes in terms of formats, methodology, frequencies, and other technical and administrative requirements with outstanding results.

In addition, MC-21 already has access and currently uses the CMS Enterprise Identity Management (EIDM) Portal, which is a requirement to access the Drug Data Reporting for Medicaid (DDR). This DDR system is a web application that standardizes manufacturer drug data reporting and is an integral part of the MDRP. Definitely, this access will assist MC-21 in a seamless transition in the MDRP implementation.

ASES/Mercer Reporting: MC-21 was required to generate and deliver a variety of statistical reports, following detailed specifications as provided by Mercer, a consulting firm providing services to ASES. MC-21 successfully provided all reports, consisting of over 600 reports that include retroactive information since 2018, in full compliance with all requirements and timeframes. We have automated the process for the ongoing generation of the reports and have adapted according to Mercer's requirements changes. MC-21 will define and execute a project to implement the requirements resulting from this and any future CMS data platform change or data submission processes. A MC-21's dedicated MDRP/RA project leader will define and coordinate an implementation/transition plan, ensuring that all requirements are fully defined and timely met. MC-21 has defined the structure of the Department that will be managing the MDRP processes. The resources identified for the MDRP team are: MDRP Director, MDRP Administrant Assistant, MDRP Quality Analysts, MDRP Account Receivable Accountants, MDRP IT Business Analyst, MDRP IT Developer, MDRP Clinical Pharmacist and MDRP Coordinator.

Upon award, we will immediately engage with CMS and ASES to ensure that we are ready to assume responsibility for submissions using the latest requirements effective 7/01/2022.

See Exhibit 7.11.3- MDRP Transition Implementation Plan.

7.11.4 [RA Services] Describe the Offeror's experience with other Medicaid agencies in identifying 340B Claims for Rebate exclusion.

Response: MC-21 has extensive experience in adjudicating claims for 340B entities as the PBM for hospital systems, the adjudicator for 340B administrators that manage 340B



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entities, and as the processor for PBMs that manage the 340B cash paying component of the program. As such, our rebate system already is programmed to evaluate and exclude 340B claims as needed.

During our rebate processing, we have several different ways to determine if a claim is a 340B claim. This algorithm ensures that claims that can be identified and actually paid under OPA's 340B program are not submitted for rebates either through MDRP or any supplemental rebate program.

We perform the following basic analysis:

- Does the claim contain a value of '20' in NCPDP field 420-DK (Submission Clarification Code)?
- At plan level, is the program a 340B program?
- Is the pharmacy primarily a contract pharmacy to a covered entity?
- For brand claims, how has the claim been priced?

For ASES MDRP, MC-21 will use its actual system capacity to establish 340B claim identifiers at point of sale with the NCPDP 420-DK field. This approach will provide a precise methodology to identify claims that are subject to 340B discounts and consequently avoid duplicate discounts by eliminating those specific claims from the billing process to pharmaceutical manufacturers. In addition, MC-21 will amend the Pharmacy Network Contract language to enforce the identification of 340B claims by pharmacies using the specified data field. Lastly, MC-21 will monitor HRSA 340B center list quarterly and cross match with its Pharmacy Network to identify potential non-compliance pharmacies.



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7.12 Additional RA Services: Supplemental Rebates and Value-Based Purchasing Agreements

7.12.1 [RA Services] ASES reserves the right to exercise the implementation of a Supplemental Rebate Program and/or Value-Based Purchasing Agreements during the Contract Term. Describe the Offeror's experience with supporting such initiatives and how the Offeror will assist ASES with the development, implementation, and management of the additional rebate services.

Response: MC-21 will provide ASES with assistance in the development, implementation and management, Supplemental Rebate Program and/or Value Based Purchasing Agreements. MC-21 will negotiate supplemental rebates agreements primarily by opportunities on preferred drug placement in ASES PDL. Also, MC-21 will assist ASES in joining a purchasing pool with other states to increase supplemental rebate contracting ability, as for example Florida.

MC-21 understands that an effective transition towards improving the health outcomes of the ASES members, as well as creating sustainability from a financial perspective requires ensuring that not only the most cost-effective agents are made available through the formularies but that risk sharing of such investments with pharmaceutical manufacturers has a place to ensure budget impact predictability. MC-21 has experience and will recommend ASES Outcome Based Contracting Strategies for additional rebates opportunities. These Outcome Based Contracting Strategies take into account clinical effectiveness or outcome of the drug and the pharmaceutical manufacturers' drug rebates are linked to a defined value metric. Examples of outcome based contractual strategies include:

- Outcome based rebate models whereby rebates are increased if pre-defined clinical outcomes are not achieved.
- Indication based rebate models that vary the rebates for a drug based on its clinical effectiveness for different indications. For example, a medication might be used to treat one condition with high levels of success but an unrelated condition with less effectiveness.

MC-21 has successfully negotiated value based incremental rebates for diabetes, a high



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impact disease state in Puerto Rico, focusing on A1c level data to assess control of the beneficiaries condition. Another important outcome based incremental rebates negotiations experience was target to Cardio Vascular Disease (CVD) therapeutic class, specifically looking at PCSK-9 cholesterol lowering agents and target-specific oral anticoagulants (TSOAC), as well as for high impact biologics in the immunology space. Specifically within immunology, MC-21 negotiated an outcome based agreement to ensure both compliance to drug dosing regimens and persistence in drug use.

In general terms, drug agents with multiple indications should be assessed on an indication-by indication level and rebates negotiated as such. Some drugs might show demonstrated superiority in one of their indications and be lagging behind other therapies in other targeted disease states. The “One-Stop Solution” or the “Breadth of Indications” approach typically marketed by pharmaceutical manufacturers to position their agents across a portfolio of disease states, is typically not in the best interest of the payer and should be avoided. Outcome based rebates contracting needs to focus initially on the higher impact diagnoses treated by such agents, such as Rheumatoid Arthritis (RA). More importantly, the most effective outcome based contracts in this space will be those that can actually connect the use of the therapeutic agent with an empirical clinical measure or clinical proxy measure (i.e., lab value or measure of clinical improvement).

Currently, MC-21 manages a collaborative program between ASES and ADAP. The Ryan White Part B AIDS Drugs Assistance Program (ADAP) is a covered entity that is eligible to purchase certain outpatient drugs at reduced prices from pharmaceutical manufacturers. MC-21 assist ASES in coordinating the use of these drugs by the ASES eligible population, benefiting from the low costs and permitting to use these savings for other purposes. This program **has saved ASES \$830 million since the inception** of this program 2008. With this experience with the ASES/ADAP collaborative program, MC-21 will be able to assist in supporting ASES with initiatives such as the Value Based Purchasing Agreements with other States for MDRP.



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7.13 Information System and Management

7.13.1 [Both] Describe how the Offeror's Information management processes, Information systems and technical support will meet the GHP requirements, ASES and federal reporting requirements, all other Contract requirements, and any other applicable Puerto Rico and federal laws, rules and regulations.

Response: At MC-21 we understand the value of Information Systems as a key component in our mission to provide efficient services and cost-effective quality of care. To deliver this, MC-21 Information Technologies effectively integrate intelligent applications, agile processes, proven methodologies, robust infrastructure, and first-class services to create a unique technology environment capable of effectively handling all ASES requirements.

Compliance with applicable requirements, laws, rules, and regulations

As the current provider of PBM services to ASES, MC-21 has in place all Information Systems and procedures needed to meet all applicable GHP, ASES, Federal, Puerto Rico any other applicable laws, rules and regulations, and requirements of the RFP. However, any needed or required changes or enhancements will be completed within the implementation period as required by the RFP.

MC-21 has been firmly committed to protecting ASES by ensuring full compliance with all CMS, Federal, and State requirements, enabling a highly capable, flexible, and compliant data, information services, and reporting environment. MC-21's process for accommodating changes required by regulatory entities starts with the use of internal and external resources to monitor, identify, review, and assess the impact of regulatory guidance and developments that impact the industry. By participating in industry standards development organizations, systems and services used by MC-21 are ensured to be up-to-date with all ASES, Federal, and other applicable regulations. Should a change requirement is identified, it is scheduled to be developed, tested, and implemented in compliance with all applicable requirements.

Global System Architecture and Design Requirements

Throughout the years, MC-21's technology Infrastructure has always been an essential cornerstone of the company's success in creating tailored services for ASES. Our



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technology strategies include the use of industry-leading solutions, state-of-the-art components, and load balancing equipment with redundant configurations to enhance the company's trustworthy services and technology reliability. Compliance with industry standards and regulations guarantees the quality and ethical integrity of our technology processes. For a visual overview of MC-21's IT Infrastructure, including diagrams of the hardware, claims processing, data backup, and Call Center components, please see Exhibit 7.13.1 A - MC-21 Technology Infrastructure.

System and Data Integration Requirements

Since its inception, MC-21 has had a fully functional, flexible, and state-of-the-art data communications infrastructure entirely based upon industry-standard protocols, capable of maintaining constant online communication with ASES' and MCO's Information Systems. As the ASES current PBM, MC-21 has already in place the proven infrastructure and technology required to receive and transmit reports and files electronically for VITAL.

System Access Management and Information Accessibility Requirements

MC-21 has already installed a fully functional, state-of-the-art data communications infrastructure entirely based upon industry-standard protocols, capable of maintaining constant online communications with ASES. Furthermore, MC-21 is committed to accommodate and adapt its infrastructure, communications methods, and formats for any special request that ASES may present for online access or general electronic communications.

Current VITAL MCO's authorized personnel already have online access to our claims adjudication system, eProCare, to perform online eligibility updates and evaluate and approve/reject a prior authorization. The system also allows MCO's customer service representatives to look at the MC-21's claims processing system screens to answer questions about claims and review historical data. Access to MC-21's claims adjudication system eProCare can be achieved over the Internet (VPN or secure SSL web site).

Also, current VITAL's MCOs have access to maintain bidirectional electronic file communications, like eligibility updates and utilization files. For that, MC-21 has already in place the infrastructure and technology required to receive and transmit reports and files electronically.

Claims Data Capabilities and Compliance



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Currently, data about claims rendered to Beneficiaries is correctly submitted by MC-21 to ASES. MC-21 has ample, demonstrated experience creating, generating, and submitting file feeds to ASES or designated third parties for various purposes. We can accommodate custom file formats and/or frequencies according to each specific requirement.

Systems Availability and Performance Requirements

MC-21's claims processing system is protected by a fully redundant, 24x7 hot-site backup facility. Our primary data processing center operates out of Gainesville, GA, and has a secondary, fully-synchronized system at Lawrenceville, GA. This strategic setup makes it possible for our services to continue to operate out of the Lawrenceville facility if the Gainesville facility is completely disabled without loss of any transactional data. ProCare Rx's Business Continuity Plan is provided on Exhibit 7.13.1 B - ProCare Rx Business Continuity Plan.

System Testing and Change Management Requirements

MC-21's comprehensive testing capabilities that allow testing benefit designs and other pertinent scenarios are accomplished by a dedicated and experienced QA team supported by a completely independent quality assurance (QA) environment for claims processing testing. This QA environment enables the client to plan the system changes, test those changes, and determine their conformance to correct business requirements—without impacting any of the client's production data. The QA setup includes an eProCare environment dedicated to performing testing with required eProCare tables to perform plan setup, batch and online claim process tests, and screen inquiry, and generate claim extract files.

System Security and Information Confidentiality and Privacy Requirements

MC-21 maintains strict and monitored controls over physical access to facilities, Information Systems, and data. All MC-21 facilities are protected by electronic security systems that limit physical access to the buildings to authorized personnel only. Areas of the buildings that house critical information management equipment and electronic and/or printed material containing PHI have further access restrictions through this same security system. Security cameras monitor entrances and critical areas within the facilities. To



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safeguard our claims adjudication system (eProCare) and provide protection to our data, ProCare Rx established the following physical and data protection mechanisms:

- **Controlled Physical Access:** Physical security is maintained over the facility, Data Center, sensitive document storage, and the tape library. Access to the equipment is allowed through security card access and is based on the level of system responsibility as established by management.
- **Controlled network access security:** Network connections are managed and measures are taken to mitigate the potential for intrusion and penetration. In order to assure data exchanged has integrity, that data network is protected by using technologies such as firewalls, IDSs, and virus protection software.
- **Controlled logical access to the MC-21 System:** User IDs and passwords are provided to customers for accessing MC-21's claims adjudication system. Passwords are required to be changed at regular intervals. A report that identifies unused accounts is examined on a scheduled basis to verify unnecessary accounts, which are removed from the system.

Reporting Requirements

MC-21 offers state-of-the-art and flexible analytical technologies that adapt to ASES business needs, which combined with our unsurpassed data analytics expertise, offers unmatched PBM clinical, financial, operational, and administrative solutions to ASES. This includes PRESCRIPTREND®, a web-based business intelligence solution that provides an efficient, concise, and clear method of reporting clinical and financial information to support a better, improved, and more efficient decision-making process. For sample PRESCRIPTREND® standard reports and Ad Hoc Reporting, see Exhibit 7.13.1 C – PrescripTrend Report Catalog.

Zero-In is a web-based analytical tool offered by MC-21 to allow ASES to identify cost trends and create targeted action plans to manage them effectively. Zero-In will allow ASES to measure and monitor the effectiveness of benefit designs, utilization management edits, formulary tier placements, and utilization patterns. For Zero-In 21 sample screens, see Exhibit 7.13.1 D - MC-21 Zero-In 21 Sample Screenshots.

Ad-Hoc Reporting



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MC-21 has consistently and successfully provided ASES with ad-hoc data that has been requested, including data related to audit processes, special information requests, and data to support client's process modifications, among others. As we have effectively accomplished until now with our clients, MC-21 will support ASES by providing any data required which permits the tracking, monitoring, and evaluation of the program.

7.13.2 [PBM Services] Describe the Offeror's Information systems capacity and sufficiency to handle the workload projected for the start of the program and the ability to be scalable and flexible to adapt and/or upgrade to more advanced levels of technology as needed, within negotiated timeframes.

Response: For the past 20 years, MC-21 has had a fully operational, state-of-the-art data processing and communications infrastructure that effectively has managed all ASES' Vital program requirements. Over that time, MC-21 has an evidenced track record of compliance with the information systems capacity and volume requirements needed to handle the ASES programs.

MC-21's Technology capacity and scalability

MC-21's claims adjudication system currently processes approximately 160 million claims per year for our existing clients, with an average response time of less than one second. Our claims processing system's platform is very scalable and can be easily expanded with additional storage, memory, and processors to accommodate growth. Our current systems' configuration is capable of being upgraded in-place using capacity-on-demand features to accommodate additional capacity. Due to this, our scalability capabilities allow us to administer an unlimited number of benefit designs and support an unlimited number of clients and members.

MC-21 has unlimited capability to retain ASES data as required. Archived data is stored in near-online storage devices, where data can be easily and quickly retrieved if needed. Claims data is also stored in offline magnetic media, which is encrypted and securely stored. Due to this capability, during the past 20 years, we have been able to satisfy all ASES requests regarding historical data retrieval and reporting, regardless of the timeframe requested.

MC-21's Technology enhancements and upgrades



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MC-21's claims adjudication system supports virtually every type of pharmacy benefits program that has been introduced into the marketplace, including all the requirements to successfully manage the ASES program. MC-21's claims adjudication system is always kept updated with regards to industry standards, compliance, technology, and its breadth of functionality. Our system has regularly been enhanced and improved since its origin, and MC-21 takes great pride in the fact that it has long been a leader in innovation and a standard-setter in the industry.

MC-21's Technology Flexibility

MC-21 systems have proven and demonstrated flexibility in various pharmacy benefit management environments, including the complex ASES benefit design model. Besides providing a flexible suite of products and services, our claims processing system provides MC-21 and our clients with complete control over the pharmacy programs. The flexibility of the rules-based system is a critical factor for success in the drug benefits markets because it enables ASES to be as creative as they choose in developing unique programs and benefit designs.

MC-21 Information Systems are readily capable of quickly adapting to any changes necessary as a result of modifications to the ASES service models and requirements. This flexibility level enables MC-21 to remain as the leader in Puerto Rico's PBM marketplace.

7.13.3 [PBM Services] Describe the Offeror's ability to assure that systems shall be able to transmit, receive and process Data in HIPAA-compliant and NCPDP-compliant formats that are in use as of the Implementation Date.

Response: MC-21 has been firmly committed to protecting ASES by ensuring full compliance with all CMS, Federal, and State requirements, enabling a highly capable, flexible, and compliant data, information services, and reporting environment. MC-21 is fully compliant with the Codes and Transactions requirements of HIPAA and NCPDP-compliant formats:

- MC-21's claims adjudication system currently accepts pharmacy requests for processing and responds to retail pharmacies using the HIPAA-compliant National Council for Prescription Drug Programs (NCPDP) Telecommunications Standard Format Version D.0 transaction set. MC-21 also submits electronic Explanation of Benefits (EOB)



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remittance advice to requesting pharmacies using the ASC X12N 835 standard.

- The MC-21 claims adjudication system fully supports the National Provider Identifier (NPI) to identify the provider (i.e., pharmacy) and the prescriber on the submitted drug claims. Contracts with MC-21 Pharmacy Network participants require full compliance with the NPI standard.
- ePrescribing: MC-21 supports all current standards defined for ePrescribing, including eligibility request, eligibility response, Rx transmission, and all others:
 - The National Council for Prescription Drug Programs Telecommunication Standard Specification, Version D, Release 0 for eligibility queries between dispensers and Part D sponsors.
 - The Accredited Standards Committee X12N 270/271-Health Care Eligibility Benefit Inquiry and Response, Version 5010; For eligibility and benefits queries and responses between prescribers and Part D sponsors.
 - The NCPDP SCRIPT Standard Version 2017071(2017071) for exchange between prescribers, pharmacies, intermediaries, and payers.
- ePA: The Centers for Medicare & Medicaid Services (CMS) issued a final rule requiring Part D prescription drug plans to support the electronic prior authorization transaction standard in NCPDP's SCRIPT Standard Version 2017071. The MC-21 PA system fully supports this standard according to the required guidelines.
- PRMMIS NCPDP PA v4.2: The Puerto Rico Medicaid Management Information System (PRMMIS) requires the use of the NCPDP Post Adjudication Standard v4.2 to receive all ASES transactions. MC-21 participated in all sessions focused to define the program's requirements and implemented them, including the NCPDP PA v4.2, in full compliance with all due dates and requirements.

Evidence of MC-21's compliance with HIPAA Codes and Transactions. See Exhibit 7.13.3 A - MC-21 LLC Medicaid D.0 Payer Sheet 03172020 and Exhibit 7.13.3 B - MC-21 Remittance Advice Report.

Being always in full compliance with the HIPAA's code and transactions provisions, MC-21 has never had a HIPAA breach situation.

MC-21 proactively continues vigilant in addressing the Health Insurance Portability and Accountability Act (HIPAA) and NCPDP requirements to remain an industry leader in



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complying with their requirements. MC-21's process for accommodating changes required by regulatory entities starts with using internal and external resources to monitor, identify, review, and assess the impact of regulatory guidance and developments that impact the industry. By participating in industry standards development organizations, systems and services used by MC-21 are ensured to be up-to-date with all CMS, Federal, and other applicable regulations. When a change requirement is identified, it is scheduled to be developed, tested, and implemented according to all applicable requirements.

7.13.4 [Both] Describe how the Offeror will assure that applications will interface with ASES's systems and its designees, including but not limited to MCOs and other entities, as allowed by law, for purposes of Data exchange and will conform to standards and specifications set by ASES.

Response: MC-21 has had in place for the past 20 years a fully operational, state-of-the-art data processing and communications infrastructure that effectively manages all requirements of ASES VITAL program:

MC-21 has in place and implemented all processes and infrastructure to exchange (transmit and receive) VITAL-related data with ASES.

- Authorized personnel of MCOs currently participating in VITAL already have online access to MC-21's claims adjudication system (eProCare) and connectivity to maintain bidirectional electronic file communications, like eligibility updates and utilization files.

Since its inception, MC-21 has had a fully functional, flexible, and state-of-the-art data communications infrastructure entirely based upon industry-standard protocols, capable of maintaining constant online communications with ASES' and MCO's Information Systems

Electronic files and reports transmissions

As ASES's current PBM, MC-21 has already in place the proven infrastructure and technology required to receive and transmit reports and files electronically for VITAL. MC-21 has connectivity with the existing MCO's to maintain bidirectional electronic file communications, like eligibility updates and utilization files.

Compatibility of protocols and procedures with ASES

MC-21's state-of-the-art data communications infrastructure is completely based upon industry-standard protocols, with the proven capability to maintain constant online



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communication with ASES' Information Systems. Currently, online access and systems interaction are achieved due to the compatibility of protocols between MC-21 information systems with ASES systems. Furthermore, MC-21 is committed to accommodate and adapt its infrastructure, communications protocols, and procedures for any special request that ASES may present for online access or general electronic communications.

INTERFASES: The eProCare system currently integrates with the following third-party systems:

- **Pharmacy Point-Of-Service Systems:** Used by participating pharmacies to submit pharmacy claims and receive the final disposition (adjudication) including related messaging.
- **National Claim Switches:** Used by pharmacy software vendors to route pharmacy claims transactions from/to participant pharmacies using standard NCPDP Telecommunications v5.1 messages.
- **Surescripts:** ePrescribing electronic exchange of member eligibility information and formulary and benefits information.
- **E-Prescribing Technology Vendors:** Submits eligibility and medication history transactions to our claims processing system eProCare on behalf of participating physicians using CMS-defined standard communications protocols.
- **Web Services Interfaces:** Our claims adjudication system currently integrates with other third-party applications utilizing Web Services. Available Web Services allows external applications to interact with the eProCare system using standardized web protocols. For a detailed description of available eProCare Web Services please see Exhibit 7.13.4 – eProCare Web Services.

MC-21 has already implemented all processes and infrastructure to exchange (transmit and receive) VITAL-related data about claims rendered to Beneficiaries with ASES, including the Claims and Encounters, Providers, Claims and Encounters Error files and any other VITAL-related data as requested by ASES.

Providing Other Information to ASES

MC-21 has consistently and successfully provided ASES with ad-hoc data that has been requested. Data that MC-21 has provided ASES includes: data related to audit processes,



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special information requests, data to support VITAL modifications, data to support periodic ASES contract negotiations, data provided to the Pharmacy Program Administrator for rebate administration, etc. As we have effectively accomplished until now, MC-21 agrees and will continue to cooperate with ASES to provide any other data required, allowing the tracking, monitoring, and evaluation of the program.

- **Obtain required data elements needed for reporting and/or analysis if these are not included in standard or custom claim extract file layout:** ASES can obtain the required data elements needed for reporting and/or analysis if these are not included in MC-21's standard or custom claim extract file layout. If the necessary data elements are available from other data sources, we can integrate them into an ASES-specific claim file.
- **Support custom claims file requests in specific format/file layout:** MC-21 will support custom claims file requests in specific formats/file layouts for vendor assessments at no additional charge.
- **Ability to support custom file feeds to ASES and/or third party vendors:** MC-21 has ample, demonstrated experience creating, generating and submitting file feeds to clients or designated third-parties for various purposes. We can accommodate custom file formats and/or frequencies according to each specific requirement.

7.13.5 [Both] Describe the physical safeguarding of the Offeror's Data processing facilities and the systems and information housed therein.

Response: MC-21 has undertaken several initiatives to ensure that its services safeguard all member information and in addition complies with the ongoing provisions of the Health Insurance Portability and Accountability Act (HIPAA) regarding data privacy and security. MC-21 security measures intended to protect our systems and transmissions are based upon proven, accepted industry standards that are widely used within the industry. MC-21 has demonstrated experience with multiple customers from multiple business segments, requiring maximum security capabilities to protect their private and sensitive data.

Physical safeguards:

- All facilities are protected by electronic security systems that limit physical access to the buildings to authorized personnel only.



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- Access is based on the level of system responsibility as established by management.
- Areas of the buildings that house critical information management equipment and electronic and/or printed material containing PHI have further access restrictions through this same security system.
- Security cameras monitor the entrances to the facilities.
- Any data that is removed from the facilities for backup protection purposes is moved only in locked cases and carried only by organizations with which there is a chain of trust agreement.
- Physical security is permanently maintained over the Data Center, sensitive document storage, and the tape library.
- MC-21's data center is located in a separate secured area within the building.
- Access to the equipment is allowed through security card access. Card usage is logged into a secure database from where security reports are generated.
- Keys to access the data computer room are administered by the IT Director.

Additional Data Security Safeguards Implemented

- Controlled network access security
- Controlled system's logical access
- Email security
- VPNs
- Firewalls
- File encryption
- Digital Security Certificates
- Anti-virus protection
- Secure FTP services
- Security trainings and assessments

7.13.6 [Both] Provide a summary of the Business Continuity and Disaster Recovery ("BC-DR") Plan that provides reasonable safeguards against the destruction, loss, intrusion, and unauthorized alteration of data and system processes.

Response: MC-21 recognizes the importance of providing continuous, uninterrupted pharmacy management services to ASES. MC-21 has a detailed business continuity plan and carries out reviews and tests of the facilities and procedures designed to help ensure continuity of service in the event of a significant disruption or disaster of its service capabilities.

MC-21 has established a business continuity process for its call center and prior authorization operations. This section presents the relationships between the different



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components that enable the MC-21 Call Center and Prior Authorization Operations Business Continuity process.

MC-21 Emergency Management Plan

The MC-21 Emergency Management Plan is the organization's official procedure containing the actions intended to protect its employees, property, and continuity of services during an emergency event. It includes the approved actions and measures to be taken during and after an emergency that affects all or part of the company's operations. It also defines a methodology that enables MC-21 to return to normal operation in a minimum time.

On an annual basis and before the beginning of the hurricane season, MC-21 proactively shares the MC-21 Emergency Management Plan with ASES and each MCO. The Plan includes the specific MC-21 staff members that will support ASES and the MCOs during an emergency.

As part of this MC-21 Emergency Management Plan, the MC-21 Call Center and Prior Authorization operations are specifically addressed. As part of that plan, the Management Committee (the top-management group responsible for all the decisions related to the handling of an emergency and the activation of any business continuity activity) can decide to resume the company's call center operations in the MC-21 Call Center and Prior Authorization Business Continuity Mode, if the conditions after management evaluation require doing so.

A copy of MC-21's disaster recovery/business continuity plan and the summary results of recent testing of this plan is included in Exhibit 7.13.6 A– MC-21 Business Continuity Plan 2021.

MC-21 Call Center and Prior Authorization Business Continuity Mode

The MC-21 Call Center and Prior Authorization Business Continuity Mode is an alternate way to operate when services cannot be provided from our facilities. For this, select users are equipped with the hardware and auxiliary equipment to remotely connect to the systems used to meet the call center and prior authorization requirements of ASES. If a disruption affects the MC-21 main site or otherwise cannot be used due to other circumstances, the MC-21 Call Center and Prior Authorization Business Continuity Mode



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is activated to relocate the Call Center operations without significant impact to normal operations.

The MC-21 Call Center and Prior Authorization Business Continuity Mode is tested at least on an annual basis. As part of the test, MC-21 Call Center staff remotely connects and access all systems as if the person performing the test is physically at our site. If there are systems that are not working as expected, corrective actions are taken immediately and worked out until the situation is resolved. This comprehensive testing methodology allows full validation assuring that the center operations are available and operational when required.

This mode has been extensively executed and validated during the COVID-19 pandemic when executive orders from the Puerto Rico government required a lockdown or curfew. During these periods, our Call Center and Prior Authorization operations were carried out remotely without any interruption or consequence that negatively impacted the service to providers, clients, or members.

In extraordinary or emergencies, we are capable to seamlessly transfer MC-21's call center operations to our alternate facilities supported by ProCare Rx, which is readily available in Gainesville, Georgia.

Claims Processing System Business Continuity Plan

MC-21's claims adjudication system backup and recovery procedures are based upon two strategies: Continuous availability of a redundant, hot site and data saves to off-line media.

The Claims Processing Business Continuity Plan (BCP) ensures that MC-21's services remain available in the event of any foreseeable hardware or network failure and that MC-21's service offerings can survive the loss of one of the processing centers as a result of a natural disaster or other incidents. MC-21's computerized systems responsible for claims processing are entirely redundant, so in the unlikely event that a system cannot be accessed, another system is readily available. These systems are strategically located in the United States. MC-21's pharmacy claims processing and adjudication system operates on a primary data processing center out of Gainesville, GA, and Lawrenceville, GA. Each data processing center operates 24X7X365. A portion of production operations is hosted in each data center, and each data center contains the infrastructure



and capacity to fully support all company production workload. Transactions are transmitted and received by both data processing centers. Replication software replicates the primary claims processing database to the alternate data processing center in near real-time.

MC-21 tests and verifies the operation of the alternate site continuously. These processes are entirely transparent to MC-21 clients and business partners as processing shifting between locations can be performed without any changes being necessary for MC-21 clients or the pharmacy community.

Besides the protection provided by the redundant system, data save processes and operations are implemented. Procedures are defined and established to protect data on designated systems. Data saves are performed on a daily, weekly, monthly, and yearly basis. Tape cycles are set up to verify data can be restored at any given time based on the date and need.

MC-21 Business Continuity during and after Hurricane Maria

After Hurricane Maria's impacted Puerto Rico, by September 29, 2017, the MC-21 team implemented a process and infrastructure to support pharmacies that did not have connectivity to transmit or process their claims. MC-21 jointly with pharmacy technology vendors, established four (4) different HUBs around the Island with all necessary equipment to support the claims processing to all the pharmacies that did not have electricity and/or Internet.

- Caguas – at MC-21 facilities
- Carolina
- Ponce
- Cabo Rojo/Mayaguez

As a result, by 10/31/2017 90% of the claims were processed electronically, since the pharmacies were able to process all the claims at the HUBs.

For a summary of the results of the outstanding implementation of MC-21's Emergency Recovery Plan for Hurricane Maria, please refer to Exhibit 7.13.6 B - MC-21 Business Continuity for Hurricane Maria Executive Summary.

7.13.7 [PBM Services] Describe how the Offeror will collaborate with ASES and the MCOs to develop solutions during an emergency/disaster situation.

Response: Recognizing the importance of providing continuous, uninterrupted pharmacy management services to ASES, MC-21 has provided effective and successful solutions



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to handle the most critical emergencies and disasters that Puerto Rico has experienced in its recent history, like the 2017 Hurricane Maria and the 2020 Earthquake.

When a disaster such as a hurricane or a flood occurs, many members lose their medications and are required to refill them without the usual refill limitations, quantity limitations, or physician authorization requirements. To accommodate this situation, a Disaster Override can be set up on MC-21's claims adjudication system before or when a disaster occurs. The Disaster Override configuration can be region-based. The region can be defined by city and allows MC-21 to filter based on where the member lives.

After the emergency, MC-21 verifies the accuracy and appropriateness of claims processing to detect errors, abuses, atypical utilization patterns, wrongful utilization of covered services during and after a disaster. An analysis is performed to detect trends and/or significant changes in dispensing patterns. MC-21 auditors analyze prescriptions and claim logs, determining if the information submitted for payment is in accordance with the prescription and ensuring that the prescription was dispensed. MC-21 has performed and provided ASES with data analysis and reconciliations to appropriately allocate claims utilization according to the ASES determinations during these events. Please refer to Exhibit 7.13.7 A - Impact Analysis of Edits Removal – Pharmacy Benefit - 12.2017

After Hurricane Maria's impacted Puerto Rico, by September 29, 2017, the MC-21 team implemented a process and infrastructure to support pharmacies that did not have connectivity to transmit or process their claims. MC-21 jointly with pharmacy technology vendors, established four (4) different HUBs around the Island with all necessary equipment to support the claims processing to all the pharmacies that did not have electricity and/or Internet.

- Caguas – at MC-21 facilities
- Carolina
- Ponce
- Cabo Rojo/Mayaguez

As a result, by 10/31/2017 90% of the claims were processed electronically, since the pharmacies were able to process all the claims at the HUBs.

For a summary of the successful implementation and results the MC-21's Emergency Recovery Plan for Hurricane Maria, please refer to Exhibit 7.13.7 B - MC-21 Business Continuity for Hurricane Maria Executive Summary.



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7.13.8 [PBM Services] Describe how the Offeror handles scheduled and unscheduled system unavailability.

Response: During the past 20 years, the MC-21's pharmacy claim adjudication system that has provided services to ASES has consistently averaged over 99.98% availability, demonstrating the proven technology and quality of our system. The system is automatically monitored by software and hardware devices that ensure that all required critical connections and components are tested and verified every 30 minutes. Due to the absolute and complete claims adjudication redundancy configuration, the services that MC-21's claims adjudication system has provided to ASES have worked continuously during the last 20 years, including during emergencies like tropical storms, hurricanes, earthquakes, severe weather conditions, major electrical outages, and similar disruptive circumstances.

Scheduled Downtime Management

The MC-21 claims adjudication system's comprehensive maintenance program covers two integrated areas: Hardware/system software maintenance and claims adjudication application maintenance.

- **Hardware/System software maintenance:** New operating software releases are controlled. In addition to the operating system, software-supporting operations are planned and carried out according to vendor specifications with adequate communications to those who might be impacted. Patches to the operating system are downloaded and applied regularly. Patches to the operating system are reviewed before being applied.
- **Claims adjudication application maintenance:** New releases to the MC-21's claims adjudication system are performed regularly to incorporate new and/or enhanced capabilities into the system. These functionalities include client-requested changes and new features as required by industry or regulatory standards.

Preventive or routine system maintenance is scheduled during non-business hours and can be agreed upon by MC-21 and ASES.

Unscheduled Downtime Management

MC-21's claims processing system is protected by a fully redundant, 24x7 hot-site backup facility. Our primary data processing center operates out of Gainesville, GA, and has a



secondary, fully-synchronized mirror system at Lawrenceville, GA. This strategic setup makes it possible for our services to continue to operate out of the Lawrenceville facility if our Gainesville facility is completely disabled without loss of any transactional data.

Besides our complete redundancy capabilities, escalation plans have been established to handle the various types of business continuity scenarios in the unlikely event that downtime may occur. As conditions, severity, or status change, the downtime situation may be escalated to a higher-level plan, with the likelihood of using different staffing and solution methods. Communications are promptly provided to our providers and client's designated staff regarding the system unavailability events, including frequent status updates about the problem's resolution and estimated availability.



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7.14 Staffing and Key Personnel

7.14.1 [Both] Describe how the Offeror will meet and maintain the core Staffing and Key Personnel requirements describe in Article 20, including but not limited to employment of sufficient qualified, bilingual, and experienced and knowledgeable staff to meet the requirements of the Contract.

Response: MC-21 currently employs experienced and knowledgeable staff with over 15 years of experience working for ASES clients. In addition, the organization employs 135 professionals and from this total, about 50 percent of employees are dedicated to our ASES client. Professional employees with high education and competencies comprised vast and strong experience in the healthcare and Pharmacy Benefits Management (PBM) business. Our team has a proven track record throughout the years of outstanding successful outcomes to meet ASES' needs and expectations. Our staffing and key personnel are consistently trained on policies and procedures, URAC Standards, CMS requirements, client requirements, and participate in external local and national conferences. In addition, the organization has specialized professionals in the areas of health, information systems, finance, rebates, clinical services, customer services call centers with 24/7 bilingual English/Spanish services, educational programs, pharmacy networks, and process improvement management. For over 15 years our staff has acquired the knowledge of the market that has been crucial for the successful development, implementation, and administration of the PBM services and programs for our clients. The competent staff and seasoned professionals with a proven track record are fully dedicated to fulfill the needs of our clients and their programs.

For detailed information of personnel currently supporting ASES and the personnel required to support MDRP, please refer to the Exhibit 7.14.1 – Staffing & Key Personnel.

7.14.2 [Both] Describe how the Offeror will appropriately train and ensure appropriate licensing and certification requirements for staff.

Response: MC-21 has an ongoing education and training program to ensure compliance with local and federal regulations. In addition, to comply with URAC Standards, CMS, and other regulatory requirements. The training and certification plan for the organization includes:



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Initial onboarding orientation and training for new hires before assuming assigned roles and responsibilities. The training program includes the following:

- Corporate Policies and Procedures
- Departmental Level training includes Policies and Procedures of department and position, system applications the employee will be using, and job description, among others.
- Training in state and regulatory requirements, as related to job functions, which includes: HIPAA, HITECH, Preventing Fraud, Waste and Abuse, False Claims Act, Code of Conduct, Conflict of Interest Compliance Program, Confidentiality Agreements, Privacy and Security, and other regulatory related Compliance fields.
- Training in the most current version of URAC Standards as appropriate to job functions.
- Basic Guidelines to Providers for Sensitive and Adequate Management when providing health services to LGBTTT+ beneficiaries, as required by our client ASES. See Exhibit 7.14.2 - MC-21 ASES LGBTTT+ Training 2021.

After the initial orientation, employees receive ongoing training in policies and procedures, at a minimum annually to maintain knowledge and skills required to perform the job and/or as needed.

Employees also participate in trainings, meetings, continuing educations, conventions and or conferences related to their specialty field and to improve competencies required to the job functions. Also, cross trainings are provided between working areas to ensure keeping up to date with information regarding clients, changes in protocols, tools utilization, and documentation, among others. The staff training is properly documented as required by our policy and procedure.

The Human Resources Department is responsible to monitor and track staff training program is accomplished as established in our policy. Monitoring system includes Human Resources electronic notifications sent to supervisors and managers about trainings due on a monthly basis, generating roster of training participation, make-up sessions, and training attendance and acknowledge certifications filled and signed by the employees.



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Training attendance and acknowledge certifications must be delivered to the Human Resources Department and filed in the employee training file.

Each employee has a training file that includes documentation related to professional credentials like certifications and professional licenses, confidentiality agreements, and evidence of corporate, departmental, regulatory trainings, and, continuing educations that the employee has participate among other compliance related documentation.

Training for our clients

MC-21 also provides external training to our clients. MCOs staff participates in trainings regarding user's accesses and features of our processing system tool. ASES staff is trained about ASES Benefit Management Portal features. MC-21 provides this training to ASES new employees and then every time as needed or requested by ASES staff.

Education and Professional Credentials

The organization ensures appropriate licensing and certification requirements for staff. Job descriptions are developed and/or revised on an annual basis for all positions in the company. The requirements of education and certifications are established according to essential functions and responsibilities of each position.

MC-21 has a Background Screening Program (P&P PA-18) that requires to complete a background check investigation for all new employees prior to hire, which includes education, professional verification, among other criteria. Job offers are subject to background screening results. Also, during the new hire orientation, employees are required to provide original documentation of their education and professional credentials. For positions that require a professional certification or license, employees must present prior to hire original documentation of their certifications and/or licenses as evidence as required in the Policy and Procedure Guidelines for the Verification of Education and Professional Credentials (P&P HR-19). Human Resources Department will verify the documentation and retain copies for the employee training file. In addition, Human Resources will monitor the licenses expiration dates in order to ensure the employees provide documentation and evidence of the renewal process on time. If an employee fails to comply with the process of renewal of its license or certification, the employee will be suspended from those responsibilities that require an active license. The employee will then have a certain period of time to complete the renewal process. Employees are



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required to notify of any adverse changes in their licensure or certification status to the supervisor and to a Human Resources Representative immediately. If an employee fails to notify of any adverse changes, they will face disciplinary actions, which may include termination of employment.

Also, MC-21 will validate with a primary source that the current licensure is in active and in a good standing status. This validation is performed prior to hire and then every three years or upon document scheduled expiration date, which happens first.

7.14.3 [Both] Describe separately the IT implementation team and the IT operational team that will be participating in this project. Provide years of experience, specialty and certifications obtained. State if they will be fully dedicated to this project.

Response: The MC-21's Information Technology Department strategically advises and supports the organization in areas related to technology management, applications program design, business intelligence strategies, and systems analysis functions:

- **IT Implementation Team:** The Information Technologies Implementation Team supervises the overall implementation process by managing and supervising all required resources. The Implementation Team provides services, consultation, and advice regarding appropriate technologies to support internal and external ASES activities. The Team incorporates an integrated array of services covering the essential aspects of planning, implementation, and operation. They are ready to deliver steady-state services, including critical processes to validate and surpass an excellent implementation.

- **IT Operational Team:** The Information Technologies Operational Team incorporates an integrated array of services covering the essential aspects of IT operations planning, implementation, and execution. The Team is composed of analysts and developers that are experts in rapid solutions development and administration of IT resources, oriented to meet both our organization and ASES-specific requirements and business needs.

The IT Implementation and IT Operational teams have proven knowledge and experience working with a broad range of PBM industry needs, including those for ASES during the last 20 years, following proven practices that allow for successful project completion, delivering solutions that exceed user's expectations.

MC-21 provides leading-edge technology solutions, including claims adjudication processing, data management, implementation, and operational support. MC-21 is



supported by ProCare Rx by providing an advanced, powerful, flexible, and always-available claims processing system designed for continuous online/real-time adjudication of prescription drug claims at the point of service, currently processing approximately 160 million claims per year for our existing clients, with an average response time of less than one second.

ProCare Rx's staff consisting of 235 employees (of which 50 employees are directly related to technological areas of Product Development, Software Development, Data Center Operations, Operations, Quality Assurance, and Product Support) are absolutely focused and oriented towards developing a comprehensive, tailored collection of technological solutions for MC-21, strengthening and solidifying our technology services with superior functionality, reliability, and stability.

See Exhibit 7.14.3 for IT Staff Organizational Chart



7.15 Reporting

7.15.1 [Both] Describe how the Offeror will meet the core components of the reporting requirements described in Article 21 of the Contract, including but not limited to the requisite reports, the reporting timeframes, and the reporting formats required by ASES.

Response: MC-21 has already implemented all processes and infrastructure to generate ASES's required reports. To effectively exchange electronic data with ASES, MC-21 currently uses a comprehensive development and production environment that is fully integrated with the MC-21 Corporation's Data Warehouse. This allows MC-21 to quickly and seamlessly generate data files in the required layouts with an extensive and complete validation process, assuring data quality for effective and accurate interactions between ASES and MC-21.

Also, MC-21 has consistently and successfully provided ASES with ad-hoc data that has been requested, including data related to audit processes, special information requests, and data to support ASES process modifications, among others. As we have effectively accomplished until now, MC-21 agrees and will continue supporting ASES to provide any data required, allowing the tracking, monitoring, and evaluation of the program. MC-21 is aware that the data exchange requirements may vary through the extent of the contract resulting from this RFP. As we have successfully accomplished, MC-21 agrees and will continue to support ASES with any changes in any data exchange requirements. In addition, MC-21 will provide ASES with full support to the Medicaid Drug Rebates Program and all its reporting requirements for CMS, ASES, and pharmaceutical manufacturers such as: Drug Rebates Invoices, Claim Level Data files, Claim Summary Reports, and Disputes Claims Reports, among others. See Exhibit 7.15.1 - MDRP Report Samples.

MC-21 is strongly committed to protecting its clients and ensuring full compliance with all CMS, Federal, and State requirements, enabling a highly capable, flexible, and compliant data, information services, and reporting environment.

MC-21's process for accommodating changes required by regulatory entities starts with the use of internal and external resources to monitor, identify, review, and assess the impact of regulatory guidance and developments that impact the industry. As part of our



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external team support, MC-21 has partnered with subject matter experts to provide impact analysis of regulatory changes and industry best practices. MC-21 actively participates in several CMS and NCPDP committees. By participating in industry standards development organizations, systems and services used by MC-21 are ensured to be up-to-date with all CMS, Federal, and other applicable regulations.

Should a change requirement is identified, it is scheduled to be developed, tested, and implemented in compliance with all applicable requirements.

7.15.2 [Both] Describe systems in place to ensure appropriate Data transfer and Data retention for requisite reporting, including adherence to HIPAA and other federal laws and regulations, in addition Puerto Rico laws and regulations.

Response: As the ASES current PBM, MC-21 has already in place the infrastructure and technology required to fully receive and transmit reports and files electronically for VITAL. MC-21 has connectivity with the existing MCO's to maintain bidirectional electronic file communications, like eligibility updates, utilization files, and reports.

All data communications at MC-21, including Web and secure file transfers, are delivered by routers and protected by high-availability firewall devices with advanced encryption and security capabilities, enabling our organization to securely manage sensitive information exchanges and transfers through public networks. MC-21's secure systems ensure the highest levels of compliance with government data security and privacy regulations such as PCI, FIPS, HIPAA, and SOX, and with Puerto Rico / Federal security mandates and regulations.

MC-21's state-of-the-art data communications infrastructure is completely based upon industry-standard protocols, with the proven capability to maintain constant online communication with ASES' Information Systems. Currently, online access and systems interaction are achieved due to the compatibility of protocols between MC-21 information systems with ASES systems. Furthermore, MC-21 has been committed to accommodate and adapt its infrastructure, communications protocols, and procedures for any special request that ASES may present for online access or general electronic communications. MC-21 has unlimited capability to retain ASES data as required. Archived data is stored in near-online storage devices, where data can be easily and quickly retrieved if required. Claims data is also stored in offline magnetic media, which is encrypted and securely



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stored. MC-21 has always provided and will provide ASES with complete/full access to the archived data. Due to this capability, during the past 20 years MC-21 has been able to satisfy all ASES data and reporting requests about its program, regardless of the historical data timeframe requested.

7.15.3 [Both] Describe how the Offeror will meet the special reporting requirements described in the Contract, including but not limited to actuarial reporting, and Fraud, Waste, and Abuse reporting.

Response: For the past 20 years, MC-21 has provided ASES with timely, accurate, consistent, and meaningful reporting, including the generation and the submission of electronically-generated utilization, actuarial and financial reports, on any required frequency or upon request, to monitor and evaluate the effectiveness of the ASES program.

Actuarial reporting

MC-21 will cooperate with and act in good faith to work and provide prompt assistance to, ASES' staff or the consulting actuary for requests regarding ASES PBMP as required. MC-21 recommends conducting periodic meetings, at least quarterly, to discuss drug cost trends and opportunities to manage and control drug cost expenditures. MC-21 has an experienced team that integrates clinical, operational, and financial personnel to assist ASES in developing, modeling, and budgeting cost-effective pharmacy benefits.

MC-21's experience has consistently proven that the appropriate clinical decision will result in cost reduction; therefore, budgetary recommendations will be clinically evaluated before considering financial elements. This process includes assessing and developing pharmacy management programs that can be integrated with total care management. These programs are proven to help reduce waste in the pharmacy benefit by ensuring the most cost-effective patient outcomes are utilized. MC-21 will assist in structuring and analyzing plan designs to meet ASES' needs in meeting future budgetary decisions.

MC-21 has a proven record assisting ASES in implementing special programs that improve the quality of healthcare and generates significant savings to ASES. Examples of the programs implemented are the ADFAN and HIV programs. Both programs have demonstrated the flexibility of MC-21 to tailor our services based on ASES needs and



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generate savings of over \$830 million in the HIV program. MC-21 can create special reports for the special programs implemented by ASES.

FWA

The MC-21 FWA program staff analyze, research, and investigate atypical utilization patterns resulting from established reports with performance indicators regarding member, prescriber, and pharmacy utilization, which are explained in detail. As requested by ASES, MC-21 may adopt new parameters or indicators for the monitoring process. See Exhibit 7.15.3 A - MC21 FWA Tool™ Description and Exhibit 7.15.3 B - FWA Findings Sample Report.

Special reporting

MC-21 has over 20 years of evidenced track record of compliance with all ASES special reporting requirements, demonstrating its experience in the design, development, and implementation of special reporting projects. As a recent example, MC-21 was required to generate and deliver a variety of statistical reports, following detailed specifications as provided by Mercer, a consulting firm providing services to ASES. MC-21 successfully provided all reports, consisting of over 600 reports that include retroactive information since 2018, in full compliance with all requirements and timeframes. We have automated the process for the ongoing generation of the reports and have adapted according to Mercer's requirements changes.

Rebates Reporting

MC-21 will meet the special reporting requirements described in the contract for both Medicaid Drug Rebates Program (MDRP) and Supplemental Rebates by dedicating resources to the rebates programs and maximizing the rebate data available in the MC21 RB System™. MC-21 will produce and provide ASES, on a quarterly and annual basis, high-quality rebates data that will assist ASES in monitoring the program performance and results. Among the information included in these reports will be: total rebates amount billed to pharmaceutical manufacturers at claim level, rebates collected and delinquency reporting by the pharmaceutical manufacturer, total claims excluded from the rebates process (i.e. 340B claims, terminated drugs, etc.), summary of rebates disputes with pharmaceutical manufacturers, and executive dashboard. See Exhibit- 7.15.3 C - MDRP Report Samples.



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7.15.4 [Both] Describe the Offeror's online database and reporting capabilities that will be offered and accessible to ASES staff and its designees.

Response: ASES personnel currently have access to MC-21's state-of-the-art and flexible analytical technologies that meet ASES' business needs. Combined with our unsurpassed data analytics expertise, during the past 20 years, MC-21 has offered ASES unmatched PBM clinical, financial, operational, and administrative reporting solutions.

Our reporting tool, PRESCRIPTREND® is a business intelligence solution that provides an efficient, concise, and clear method of reporting clinical and financial information to support a better, improved, and more efficient decision-making process. PRESCRIPTREND® is a web-based application designed to provide ASES a customized pharmacy benefit reporting package accessible at any time. The reports are useful to different business areas as they provide essential information for strategic decisions: Top Executives, Financial, Clinical, Analysts, and Sales, among others.

ASES users are also able to search, organize and analyze detailed business-specific information using PRESCRIPTREND® Ad Hoc Reporting, an interactive and individualized data mining tool consisting of more than 150 selectable fields that integrate key indicators in the pharmacy benefit management industry, such as claims, drug utilization, pharmacy providers and members. The user can create and define the criteria and metrics to be displayed through a concise and user-friendly design. These queries can be saved and run at any moment without having to recreate their definition.

Everything within the PRESCRIPTREND® business intelligence solution is fully customizable. For sample PRESCRIPTREND® standard reports and Ad Hoc Reporting, see Exhibit 7.15.4 A – PrescripTrend Report Catalog.

Additionally, two years ago we presented to ASES management team Zero-In. This is an advanced web-based analytical tool used by MC-21 to support ASES in identifying cost trends and create targeted action plans to manage them effectively. Zero-In enables MC-21 to measure and monitor the effectiveness of benefit designs, utilization management edits, formulary tier placements, and utilization patterns. The Zero-In application is intuitive with onscreen help icons to define data elements and filters to assess real-time metrics for the plan carrier. For Zero-In sample screens, see Exhibit 7.15.4 B - MC-21 Zero-In Sample Screenshots.



Medicaid Rebates Drug Program (MDRP)

MC-21 will provide ASES, on a quarterly and annual basis, reporting for the Medical Rebates Drug Program. The following reports will be provided to ASES separately for both Federal and Supplemental Rebates. See Exhibit 7.15.4 C - MDRP Report Samples. In addition, MC-21 maintained a data repository system to share with ASES all rebate data to be accessed in real-time and produce ad-hoc reports at different levels. With this tool, ASES will be able to generate supporting documentation regarding the rebates processes to assist them in the preparation of regulatory reports such as CMS-64 form.

Relación de las Instancias en las que la Propuesta de MC-21 Demuestra lo Especializado y Técnico del Servicio a ser Provisto y la Necesidad de Profesionales Licenciados para Realizar algunas Funciones a ser Contratadas

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
|-------------------------|---|---|-------------------------------------|
| 6.2.2 | Provide a detailed description of the company, its operations and ownership [...] | [...] We are equipped with the combined expertise of over 135 specialized professionals , which 50% are dedicated to serving ASES beneficiaries. The team understands and addresses the complex needs of ASES and is comprised of subject matter experts in clinical services, finances, health analytics, call center management, account management, program development, among others. [...] | Sec. 6; págs. 2 y 3 |
| 6.3 | The Offeror must demonstrate that staff proposed as Key Personnel as described in Article 20 of the Contract in Appendix K have the proper credentials and experience to perform all duties and responsibilities of that role. [...] | [...] MC-21's Account Management team is composed entirely of bilingual subject matter experts with decision-making authority and the singular goal of successfully addressing ASES' every need. [...] [...] Upon initial implementation, MC-21 assigned a dedicated team of experts to ASES that has served as the key contact between MC-21, ASES, and MCOs. This team has assisted ASES with strategic preparations relating to plan performance, including providing recommendations for benefit design and cost containment opportunities, performing analyses of Vital performance, overseeing all contractual services under the agreement, and managing day-to-day operations. [...] | Sec. 6; págs. 10 y 11 |
| 6.7.3.1 | Current Certification of the Single Registry of Professional Service Providers ("RUP" for its Spanish acronym) issued by the Puerto Rico General Services Administration ("Administración de Servicios Generales de Puerto Rico" or "ASG" for its Spanish acronym). | Certification included in Exhibit 6.7.3.1 RUP Certification 2021-2022, as per RFP instructions | Sec. 6; pág. 22 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.1.1 | Provide a detailed Implementation Plan to achieve a seamless transition and implementation of services by the Implementation Date of the Contract. [...] | <p>[...] For the past 23 years, MC-21 has successfully negotiated rebates for the benefit of our clients. We currently have rebate contracts with over 70 pharmaceutical companies based in Puerto Rico and the contiguous U.S. MC-21 has a flexible rebate contracting process that is aligned with our clients' formularies and multiple drug lists and is not subject to a single rigid formulary.</p> <p>Regarding the implementation of rebate aggregation services and supplemental rebates, MC-21's mainland affiliate has extensive experience in contracting supplemental rebates for Medicaid programs and currently performs rebate aggregation services for many of our clients. Furthermore, MC-21 does not foresee any barriers to the implementation of MDRP, as we have the technology necessary to successfully work directly with the state program and pharmaceutical companies. [...]</p> | Sec. 7; págs. 1 y 2 |
| 7.1.2 | Describe the systems (Information Management, Operations, Claims Processing) build and testing strategy and timeline. [...]. | <p>[...] The MC-21's eProCare implementation has explicitly been enhanced and tailored to administer the VITAL complex plan design and models, taking advantage of our extensive pharmacy benefit administration knowledge and expertise developed over our 20 years administering the VITAL program. [...]</p> <p>[...] PAHub™ provides MC-21 effective workflow and document management capabilities, delivering an effective solution for managing ASES prior authorization to maximize the benefits of prior authorizations. At PAHub™, MC-21 creates PA rules using a sophisticated rule development system to achieve structured, standardized, and documented coverage decision outcomes. [...]</p> | Sec. 7; págs. 2 y 3 |

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| 7.1.2.1 | Provide your recommendation for transferring necessary Data to perform the required services such as, claims history, provider data, enrollee data, and prior authorization information. | [...] Besides having in place all the elements for transferring the necessary data to perform the required services, MC-21 has ample, demonstrated experience creating, generating, and submitting file feeds to clients or designated third parties for various purposes. These include provider directories, PA approvals and denials, data intended to monitor program measures, and files to feed member and provider portals. We can design, develop, implement and generate custom file formats and adapt to any transmission frequency needed, according to each specific requirement. [...] | Sec. 7; págs. 5 y 6 |
| 7.1.2.2 | Provide your recommendation for obtaining the necessary information to perform the required services such as CMS Rebate files, Other Enrollee Rebate files, and Claims Data. | [...] The MC-21's Rebates Management Program is supported by a multidisciplinary team of rebates subject matter experts from the Clinical, Contracting, Finance, and Technology areas. [...] | Sec. 7; pág. 6 |
| 7.1.3 | [...] Describe the approach to transition to the MDRP at a later date and the impact of managing the necessary activities while maintaining the current Rebate program services. [...] | [...] The main milestones activities identified are: (1) establishment of periodic status meetings (bi-weekly) with ASES to track the implementation progress, (2) coordination of meetings with MCO's to communicate their responsibilities in providing medical data, (3) train 340B pharmacies on how to correctly process 340B claims through MC-Rx's system, (4) obtain access to Medicaid Drug Data Reporting (DDR) System, (5) obtain access to Medicaid Drug Program Systems, (6) programming MDRP capabilities in MC-Rx's current Rebates System, and (7) define MDRP reporting to ASES, among others milestones. [...] | Sec. 7; pág. 7 |
| 7.2.1 | Describe how the Offeror shall have an adequate Pharmacy Network of Participating Pharmacies meeting all Contract requirements [...] | For the past 20 years, MC-21 has developed, contracted, and administered an extensive retail pharmacy network of over 900 pharmacies, both independent and chain, to serve ASES' population. MC-21's current contracted retail pharmacy network not only surpasses ASES' needs, but it is also in full compliance with CMS rules and regulations and with ASES' requirements as established under Article 7.2 of Contracting Appendix K. [...] | Sec. 7; pág. 12 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.2.2 | Describe how the Offeror will ensure that its Pharmacy Network is adequate to assure access to all Covered Services, and that all Network Pharmacies are appropriately credentialed throughout the Contract Term. | <p>[...] MC-21's contracting process begins with initial credentialing, which primarily requires an enrollment application to be completed. As part of the credentialing requisites, each pharmacy must comply with and show evidence of all listed licensure requirements. The credentialing process complies with ASES, local government, and federal government requisites.</p> <p>Additionally, MC-21 re-credentials each pharmacy in our networks and their internal clinical staff on an annual basis to ensure that they comply with the contract, as well as with local and federal laws and regulations. [...]</p> | Sec. 7; pág. 14 |
| 7.2.3 | Describe the Offeror's Pharmacy Call Center operations and services and how the Offeror will meet the performance standards outlined in Attachment 4 of the Contract in Appendix K. | <p>[...] Our Customer Service Department is entirely based in Caguas, Puerto Rico and operates 24/7/265 days, with bilingual pharmacy technicians.</p> <p>[...]</p> <p>The Pharmacy Call Center handles service requests from the pharmacies related to beneficiaries' pharmacy benefit program and resolution of any situation that may arise. MC-21's Pharmacy Call Center Representatives (PCSR) have online access to MC-21's Claims Adjudication system which is used to maintain important real-time and historical data while maximizing PCSR productivity and assuring quality performance in handling incoming and outgoing call volume in the call center. The system allows the PCSR to obtain all the required information to provide pharmacies with detailed information of the plan design, member eligibility, covered drugs, PA status, patient profiles, drug utilization history, plan requirements, claim status, participating pharmacies, formulary drugs, processing of prior authorization requests and adjustment in doses, among others.</p> <p>[...]</p> <p>Prior Authorization Call Center (PACC)- MC-21 has a dedicated PACC to provide support services to the management of Prior Authorizations (PA) to Vital beneficiaries. MC-21's PACC is managed by over 25 pharmacy technicians, clinical pharmacists and health care professionals. [...]</p> | Sec. 7; págs. 15 y 16 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.2.4 | Describe the Offeror's communication plan to ensure Pharmacies, Pharmacy billing agents, MCOs and other interested parties are kept informed of GHP Pharmacy benefits, billing requirements and services. | [...] Our pharmacy education program provides a seamless experience by offering targeted education to our Pharmacy Network including, but not limited to: (1) Claims processing procedures and management of clinical edits, (2) Pharmacy Audit Program , (3) Management of Prior Authorization processes, (4) ASES' Preferred Drug Lists, (5) Changes in Benefit Design , (6) Co-payments and deductibles information, (7) Rights and responsibilities of the pharmacy, (8) Preventing Fraud, Waste and Abuse , (9) Management of Appeal processes, (10) Grievances and complaints procedures, (11) Administrative processes. [...] | Sec. 7; págs. 17 y 18 |
| 7.3.1 | Describe the Offeror's claims processing system and how it has the ability to meet all claims processing requirements as described in Article 8 of the Contract in Appendix K, including but not limited to coordination of benefits and supporting different payment methodologies depending on Provider and Enrollee type | [...] eProCare features support for an unlimited number of variations in plan designs, plan rules and claim requirements, pricing algorithms, cost-share algorithms, and a host of other pharmacy benefit plan management functions . A flexible, parameter-driven benefit design drives all the processing performed by the system. All plan design parameters can be changed in real-time for immediate impact if needed. Changes can be scheduled to become effective on a future date to provide the benefits administration team greater latitude in timing and implementing proposed changes. Our claims processing system's implementation has been specifically enhanced and tailored to administer ASES' complex plan designs and model [...] | Sec. 7; pág. 20 |
| 7.3.3 | Describe the Offeror's Claims processing system to screen all Claims and apply all ASES approved and required Data validation procedures and edits | [...] MC-21's eProCare system provides ample flexibility as it processes claim data through extensive plan edits and DUR edits simultaneously, which could encompass over 1,500 separate edits . Currently, MC-21 offers flexible benefit design options that accommodate all ASES' needs. Our options allow ASES to set threshold values, rules for soft and hard edits, and criteria for triggering point-of-service pharmacist alerts and messaging, as well as coverage limits at the drug or drug class level and for specific groups or plans . [...] | Sec. 7; págs. 27 y 28 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.3.4 | Describe the Offeror's Network Pharmacy payment management function. | [...] MC-21 bills MCO's the drug cost on a biweekly basis, at least two (2) business days before the date the actual payment is made to the pharmacies. Every payment cycle, MC-21 provides MCO's with invoices, billing files, pharmacy payment summaries, and a claim utilization file with the detail of the claims paid during the respective payment cycle via secure FTP. Each MCO is responsible for transferring funds to MC-21 for the payment of claims. Currently, the payment process includes several adjustments related to programs implemented by ASES such as: HIV, Synthroid, Hepatitis C, and COVID- 19 Vaccines. All these programs generate adjustments to the amount invoiced to the MCO's and therefore special programming was performed to manage the respective adjustments. [...] | Sec. 7; págs. 30 y 31 |
| 7.3.5 | Describe how the Offeror will implement and maintain a MAC list that is similar in breadth and depth of rates established with the current MAC list. | [...] The MAC list contains the maximum reimbursement price assigned by MC-21 for those drugs that have been selected to be on this list. The MAC list requires constant updates that match drug market conditions and contract requirements. MC-21 current MAC list achieves over 91% generic effective discounts of AWP to our clients. [...] | Sec. 7; pág. 31 |
| 7.3.6 | Describe how the Offeror will implement Pharmacy reimbursement changes as may be requested by ASES throughout the Contract Term. | [...] Upon receipt of the reimbursement change request, the MC-21 Benefit Set-Up Department proceeds to verify the applicability and implement these changes at network level. With our adjudication system, these changes can be made in less than 3 days. [...] | Sec. 7; pág. 32 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.3.7 | Describe the Offeror's quality assurance process to assure accuracy of all Data received including but not limited to the enrollment file, drug reimbursement files and the Claims processing and ancillary systems proposed | [...] MC-21 utilizes a comprehensive workflow process for file transfers that begin with thorough documentation of file content requirements, transferred protocols, and published schedules. As files are submitted to MC-21, a detailed quality assurance process is performed against every transmitted file , including file exception reporting, along with detailed audit trails to assure that files are sent, received, and loaded in a timely, accurate manner. Experienced staff members, who understand all aspects of pharmacy data, work diligently to ensure precise transformation and mapping of data into and out of our systems. Also, the extensive testing procedures performed before moving a file load/extract process to production ensure that all data is mapped and exchanged accurately. [...] | Sec. 7; págs. 32 y 33 |
| 7.3.8 | Describe the Offeror's experience and expertise with other Medicaid agencies in working with 340B covered entity providers and 340B Claims | [...] We have Implementation and Account Management personnel with experience in 340B projects. Our Pharmacy Help Desk is also familiar with 340B programs and the unique aspects of serving these patients and providers. [...] | Sec. 7; págs. 37 y 38 |
| 7.4.1 | Describe the Offeror's experience with and ability to support the P&T Committee as required in Section 9.2.1 of the Contract in Appendix K. | [...] Since 2002, MC-21 has dedicated a specialized clinical and administrative team to establish and manage the ASES P&T Committee. [...] Our clinical team will continue to work in collaboration with ASES, the P&T Committee, and all system components to provide evidence-based decisions that balance the health requirements of ASES beneficiaries with budget-driven efforts to contain costs. [...] [...] MC-21's experience in conducting pharmacoeconomic analysis and recommendations is part of the processes that we currently implement in other business segments that we administer. [...] | Sec. 7; pág. 39 |

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| 7.4.2 | Describe the Offeror's ability to monitor existing medications included in the FMC and the LME for new or expanded indications, or new information regarding side effects or contraindications and make recommend changes to the P&T Committee regarding Prior Authorization criteria, step therapy protocols, quantity limits, and other related edits. | <p>For the past 20 years, the MC-21 clinical services team managing the ASES P&T Committee has implemented policies and procedures to monitor existing drugs included in ASES' formularies.</p> <p>Our team performs retrospective drug utilization (rDUR) reviews to identify inappropriate or medically unnecessary care. MC-21 performs periodic reviews of claims data to evaluate prescribing patterns and drug use that may indicate inappropriate use. Our rDUR reports are part of the information provided to the P&T Committee for the evaluation of therapeutic classes and products during P&T meetings. If inappropriate use is identified, the clinical presents to the P&T clinical recommendations and/or interventions such as prior authorizations criteria, quantity limit, step therapy, etc. [...]</p> | Sec. 7; pág. 40 |
| 7.4.3 | Describe the Offeror's experience with and ability to support the P&T Committee as required in Section 9.2.1 of the Contract in Appendix K. | <p>[...] MC-21's experience in conducting pharmacoeconomic analysis and recommendations is part of the processes that we currently implement in other business segments that we administer. Therefore, just by implementing our current processes with ASES utilization data, we will provide ASES with immediate implementation of the pharmacoeconomic recommendations. [...]</p> | Sec. 7; pág. 41 |

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| 7.4.4 | Describe the Offeror's qualifications to make pharmacoeconomic recommendations regarding FMC and LME medications and Prior Authorization criteria, step therapy protocols, quantity limits and other cost containment related edits. | <p>[...] MC-21 team is equipped with subject matter experts including: clinical pharmacists, statisticians, accountants, financial consultants, information technology, and formulary management specialists. Our highly skilled team of clinical Pharm.D, trained pharmacists encompass > 20 years of experience in managed care and as part of an interdisciplinary team, we incorporate and deliver expert information on new drugs, treatment guidelines, clinical studies, current formulary status, utilization patterns, and pharmacoeconomic considerations. In this process, we also develop and evaluate new or existing PA criteria, step therapy protocols, quantity limits and other cost containment related edits.</p> <p>MC-21's experience in conducting pharmacoeconomic analysis and recommendations is part of the processes that we currently implement in other business segments that we administer, however not for ASES since this type of analysis should be performed by the PPA. Therefore, just by implementing our current processes with ASES utilization data, we will provide ASES with immediate implementation of the pharmacoeconomic recommendations. [...]</p> | Sec. 7; págs. 41 y 42 |
| 7.5.1 | Describe the Offeror's experience with and ability to support the Pharmacy Financial Committee | <p>[...] MC-21 performs evaluations and analyses of the economic impact of every medication under consideration to be included in any formulary. The clinical evaluation determines the benefits and/or contraindications of the new drug and the implication of its inclusion or exclusion from the formulary. Also, MC-21 estimates the utilization impact on these medications taking into consideration the market trend of the therapeutic class, and any information from clinical studies performed on these drugs. With this information, a financial assessment is performed to estimate the potential cost to our clients. This financial evaluation includes an analysis of unitary costs, applicable rebates, co-pay scenarios, pharmacoeconomics analysis, and net cost to the plan. [...]</p> | Sec. 7; pág. 43 |

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| 7.5.2 | Describe the Offeror's ability and experience with evaluating and making recommendations on cost-effective drug therapies to be included on the FMC and the LME. | [...] Additionally, MC-21 performs evaluations and analyses of the economic impact of every medication under consideration to be included in any formulary. The clinical evaluation determines the benefits and/or contraindications of the new drug and the implication of its inclusion or exclusion from the formulary. Also, MC-21 estimates the utilization impact on these medications taking into consideration the market trend of the therapeutic class, and any information from clinical studies performed on these drugs. This financial evaluation includes an analysis of unitary costs, applicable rebates, co-pay scenarios, pharmacoeconomics analysis, and net cost to the plan. [...] | Sec. 7; págs. 43 y 44 |
| 7.6.1 | Describe how the Offeror will fulfill core components of the Formulary Management requirements as described in Article 11 of the Contract in Appendix K [...]. | Since 2002, MC-21 has dedicated a specialized clinical and administrative team to develop and manage ASES' Formulary Management Services , including the development and administration of ASES' first P&T Committee. [...] Our team will continue to work in collaboration with ASES and all system components to provide evidence-based decisions that balance the health requirements of ASES beneficiaries with budget-driven efforts to contain costs . The major features of our formulary management process are Clinical Reviews and Therapy Protocols, FDA and Market Alerts Monitoring, Pharmaco-economic Principles, and Drug Utilization Trend Analysis . [...] | Sec. 7; pág. 45 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.6.2 | For Prior Authorization administrations, describe how the Offeror will work with the MCOs to meet the requirements of Section 11.2 in the Contract and how the Offeror will process technical Prior Authorizations. | [...] The system is a highly customizable platform, which allows administrators to configure system-driven rules for different lines of business. This flexibility ensures that fully delegated or partially delegated prior authorizations are handled in a timely, efficient manner. The system has integrated inbound and outbound fax capability, which allows the seamless creation of a PA request when receiving fax submissions, the system also allows users to create PA requests for cases that are received by email or telephone. We currently have more than 170 clinical protocols programmed into the system and they are updated as required by the P&T Committee. The system allows for notifications to be directly faxed to the pharmacy and prescriber. [...] | Sec. 7; págs. 45 y 46 |
| 7.6.3 | Describe the Offeror's Formulary Management experience, recommendations to keep it reflective of marketplace changes and cost effective. | [...] To ensure we keep our client's formularies recommendations reflective of marketplace changes and cost effective, we perform evaluations and analyses of the economic impact of every medication under consideration to be included in any formulary. The clinical evaluation determines the benefits and/or contraindications of the new drug and the implication of its inclusion or exclusion from the formulary. Also, MC-21 estimates the utilization impact on these medications taking into consideration the market trend of the therapeutic class, and any information from clinical studies performed on these drugs. With this information, a financial assessment is performed to estimate the potential cost to our clients. This financial evaluation includes an analysis of unitary costs, applicable rebates, co-pay scenarios, pharmacoeconomics, and net cost to the plan. [...] | Sec. 7; págs. 46 y 47 |
| 7.7.1 | Describe how the Offeror will support the MCO in fulfilling the Drug Utilization Review (DUR) program requirements, [...] | [...] MC-21 has a team of clinical experts for DUR analysis that surpasses the industry standards. Annually the team performs over 90 DUR evaluations for a total of 1,200 drugs and has contributed to the development of over 170 clinical protocols for drug inclusions into ASES' FMC and LME. [...] | Sec. 7; pág. 48 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.7.2 | Describe the capabilities of the Offeror's DUR system, the ability to customize the systems and DUR program priorities as needed, and how savings are calculated for DUR activities. [...] | <p>Drug utilization reviews are performed each time a prescription is dispensed to ensure that information on a potential drug interaction/contraindication is messaged to the pharmacy before the prescription is dispensed. These real-time reviews are undertaken automatically through system programming, allowing pharmacist intervention if necessary. Within the DUR model, you will be given the option to (1) allow the claim to pay without incident, (2) allow the claim to pay with a message to the pharmacy, or (3) reject the claim with a specific message.</p> <p>MC-21's system can manage the following concurrent DUR edits which can also be customized: Step Therapy, Quantity Limits, Dose-Check, Duplicate Therapy, Drug-Drug Interaction, Refill too soon, Drug Allergy, Drug-Diagnosis, Drug-Gender, Drug-Age, Drug Regimen Compliance Screening Under-Utilization Warning, and Iatrogenic Checks, among others.</p> <p>MC-21's retrospective drug utilization reports are part of the information provided to ASES P&T for the evaluation of therapeutic classes and products during P&T meetings. If inappropriate use is identified, ASES P&T recommends interventions such as prior authorizations criteria, quantity limit, step therapy, etc. as appropriate. [...]</p> | Sec. 7; pág. 50 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.7.3 | Describe how the Offeror will run the Academic Detailing Program. Provide examples of three potential topics for messaging through the Academic Detailing Program and explain what messaging would be done with regard to those topics. | <p>[...] MC-21's Academic Detailing dedicated team of healthcare professionals has been able to influence physician's prescribing behavior through the annual implementation of over 400 face-to-face visits, over 100 group presentations, and thousands of telephone call interventions annually, by promoting the highest quality products at the lowest net cost. [...]</p> <p>MC-21's Academic Detailing Program initiatives will continue to yield significant savings while enhancing the quality of care to ASES beneficiaries by: 1. Improving physician knowledge of drug costs, formulary coverage, and managed care issues, discuss. 2. Promoting the use of therapeutically equivalent lower-cost alternatives. 3. Encouraging prescribing patterns that reflect current clinical guidelines. 4. Improving health care cost outcomes. And 5. Enhancing quality of member care. [...]</p> | Sec. 7; págs. 51 y 52 |
| 7.7.4 | Describe Offeror's capabilities to identify potential opioid abuse, suspect prescribing and dispensing patterns, etc. | <p>MC-21 has dedicated personnel to ensure that Federal and State regulations and requirements for opioid management are fulfilled. MC-21's claims processing system can manage the following utilization strategies for opioid management. Currently, MC-21 has in place CUMULATIVE OPIOID EDITS at point of service (POS). These are real-time safety alerts at the time of dispensing to prospectively prevent opioid overutilization, creating awareness to physicians and pharmacists about opioid uses, and helping in the identification of activities potentially related to fraud. [...]</p> | Sec. 7; págs. 52 y 53 |
| 7.7.5 | Describe Offeror's capabilities to track drug utilization trends for specific drugs identified by ASES for special monitoring, [...] | <p>[...] To minimize or avoid medication errors, MC-21's Clinical Department experts conduct drug utilization reviews to make sure the beneficiaries are receiving safe and appropriate care. [...]</p> | Sec. 7; pág. 53 |
| 7.8.1 | Describe examples of "best in class" care management strategies that could result in cost-containment efforts and positive health outcomes in Puerto Rico Medicaid. | <p>[...] As part of our strategic support to ASES, each year MC-21 presents "best-in-class" care management strategies and recommendations to ASES to optimize ASES's pharmacy benefits program, these have provided cost containment and health outcomes. [...]</p> | Sec. 7; pág. 54 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.8.3 | Describe the Offeror's experience in care management initiatives that reflect the current health condition priorities of the High-Cost High Need Program [...]. | <p>[...] MC-21's Clinical Services Department successfully developed and implemented adherence programs to address diabetic patient problems in using statins for the management of anti-hyperlipidemia. Most recently, MC-21 implemented an adherence to statin program in the Commercial sector. After six (6) months of being implemented, the program has shown a 40.1% increase in adherence to prescribed statins when compared to the baseline measurement. [...]</p> <p>MC-21 has also developed and implemented initiatives for other drug categories, such as diabetes and antihypertensive medications. MC-21 presented ASES a DUR analysis and made recommendations of the therapeutic classes that need to be targeted for program development and implementation within the VITAL beneficiaries. [...]</p> | Sec. 7; pág. 56 |
| 7.8.4 | Describe Offeror's strategies to manage orphan drugs, high and extremely high-cost specialty drugs [...]. | <p>[...] Additionally, MC-21 performs evaluation and analysis of the economic impact of the medications. MC-21 has provided ASES with a complete process to support the clinical and financial evaluation of existing and new medications. The clinical evaluation determines the benefits and/or contraindications of the new drug and the implication of its inclusion or exclusion from the formulary. Also, MC-21 estimates the utilization impact on these medications taking into consideration the market trend of the therapeutic class, and any information from clinical studies performed on these drugs. With this information, a financial assessment is performed to estimate the potential cost to ASES. [...]</p> | Sec. 7; págs. 56 y 57 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.9.1 | Describe how the Offeror will meet the core requirements for Fraud, Waste, and Abuse activities described in Article 18 of the Contract, including but not limited to the Fraud, Waste and Abuse Plan requirements, a Compliance Plan, Reporting and Investigation requirements, and Program Integrity Requirements. | <p>For the past 20 years, MC-21's has implemented an effective compliance program for ASES that meets the regulatory requirements set forth in the Medicare Prescription Drug Benefit Manual, the Centers for Medicare and Medicaid Services (CMS) and is guided by the Federal Sentencing Guidelines. Leading the program is the Chief Compliance Officer (CCO), a certified member by the Health Care Compliance Association (HCCA). In collaboration with the Compliance Manager, a compliance committee, and a Board of Directors, the CCO implements the program across the company for all lines of business.</p> <p>The Compliance Program has dedicated Compliance staff, including Compliance Auditors who perform routine internal auditing of compliance risks. As part of these audits, our dedicated staff investigates potential compliance problems and offers prompt responses to compliance issues by providing thorough corrective actions. [...]</p> | Sec. 7; pág. 58 |
| 7.9.2 | Describe the Offeror's experience in preventing and abating Fraud, Waste, and Abuse, [...]. | [...] MC-21 has investigated, referred to law enforcement, and helped uncover complex fraud cases, including: false claims billing schemes, identity thefts, billing of potentially adulterated drugs, physicians with an invalid license, among many others. [...] | Sec. 7; pág. 60 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.9.3 | Describe in detail the Offeror's Pharmacy Auditing services to ensure Pharmacies comply with contract provisions | <p>MC-21 has in place an effective Pharmacy Audits Program whose main purpose is to collect all information needed to corroborate or validate the integrity and legitimacy of the claims submitted by Participating Pharmacies so they are correctly billed and in compliance with contract requirements, and related federal and local laws and regulations, including but not limited to CMS requisites. This method also investigates irregularities and flaws of identified claims adjudication patterns and ensures pharmacies operate within the legal framework. The program defines and establishes a streamlined auditing process either onsite or remote (desk). Depending on the nature of the audit, a pharmacy may also be subject to a Wholesaler Invoice Review/Audit. Through this approach, the Auditor will look for potential aberrancies in the billing by reconciling the pharmacy's billing with the acquisition of drug products.</p> <p>MC-21's participating pharmacies are audited through an internal pharmacy audit work plan. This plan is prepared and reviewed quarterly where pharmacies are selected either randomly or based on specific criteria including pharmacy billing patterns, specific indicators, suspicion, referrals, and other billing characteristics. [...]</p> <p>[...]</p> <p>MC-21 has a credential renewal process that allows our team to verify if the pharmacy complies with all contract provisions, including but not limited to review licenses, insurances, drug inventory, facilities, and clinical references to educate patients, among others. [...]</p> | Sec. 7; págs. 61 y 62 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.10.1 | Describe the Offeror's process for rebate negotiations with pharmaceutical manufacturers. | <p>[...] MC-21 will provide ASES an experienced team to maximize rebate negotiations locally according to the formulary design.</p> <p>MC-21 negotiation process is part of a strong multi-departmental operation which main objective is to achieve the lowest cost of therapy for clients. This operation integrates MC-21 most experienced staff from the Clinical, Contracting, and Finance departments. This team of professionals participate in monthly meetings named Formulary Management Team (FMT). The FMT main goal is to discuss contractual opportunities of drugs that will be evaluated in P&T meetings and to establish the negotiation strategies with pharmaceutical manufacturers. A health economic analysis is presented in these FMT meetings to evaluate the net cost of each drug that is part of the therapeutic classes, including pharmaceutical manufacturers rebates discount proposals. This team manages multiple potential financial scenarios to evaluate and recommend lowest cost of therapy. After P&T decisions are made, the FMT meets again to define the final scenarios that will be contracted. After this meeting, MC-21 will negotiate with pharmaceutical manufacturers the formulary positioning, utilization management tools requirements, highest available rebate percentage, price-protection clauses, supplemental rebates and contractual terms and conditions that will be aligned with MC-21's lower cost of therapy strategy.</p> <p>[...]</p> | Sec. 7; págs. 63 y 64 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.10.4 | Describe how the Offeror will ensure a seamless transition in rebate processing during implementation | [...] MC-21 will provide ASES with an efficient and effective implementation plan for the rebates area, which will include the following: evaluation of the current ASES rebates contracts with pharmaceutical manufacturers, historical rebates data transfer to MC21 RB System™ for reporting purposes, assessment of ASES PDL and therapeutic classes to define additional contract opportunities , coordinate pharmaceutical manufactures meetings for transition process, establish RFP Process for additional contractual opportunities, complete new contracts with pharmaceutical companies with MC-21 on behalf of ASES, work with ASES current rebates vendor to obtain information of all pending rebates amounts from pharmaceutical manufactures in order to define a proper collection plan after the transition process, actual contract set-up in MC21 RB System™, definition of billing package to pharmaceutical manufactures, and the creation of the rebates results reports to ASES, among others. [...] | Sec. 7; pág. 66 |
| 7.11.1 | Describe the Offeror's approach for accurate and timely MDRP Rebate invoicing and processing as prescribed in Article 14 of the Contract. Describe how the Offeror will resolve Rebate disputes in a way that is most favorable to ASES. | [...] MC-21's rebates processes are designed to produce high quality utilization data in compliance with all federal and CMS specifications. This approach will minimize the potential rebate disputes and will accelerate rebate payment from pharmaceutical manufacturers. MC-21 will also have a dedicated team to MDRP rebates processing that will ensure to comply with all time sensitive requirements such as providing rebate invoices to manufacturers, providing access to a web portal for manufacturing to obtain claim level data, submitting drug utilization data reports to CMS , and rebate reports to ASES, among others. [...] | Sec. 7; pág. 69 |
| 7.11.2 | Describe the Offeror's ability to coordinate all Data transfers and reporting requirements between its Rebate Program systems and designated stakeholders including but not limited to ASES, CMS, and MCOs. | MC-21 has extensive experience with the design, development, coordination, and execution of data transfer processes with clients and designated third parties, including federal programs such as the Centers for Medicare & Medicaid Services' (CMS) Medicare Part D and the Health Resources and Services Administration's (HRSA) Ryan White HIV / AIDS Program. MC-21 has successfully performed special programming to fulfill ASES' needs with the HIV program, Hepatitis C, Synthroid and COVID-19 vaccine programs which required special data transfers processes . [...] | Sec. 7; págs. 71 y 72 |

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| 7.11.3 | Describe how the Offeror will ensure seamless transitions in rebate processing if CMS makes changes to Data submission platforms or processes. | [...] MC-21 has vast, demonstrated experience in the design, development, and implementation of data exchange projects, including those resulting from changes in CMS, Medicaid, HIPAA, NCPDP, or other regulatory or law requirements. [...] | Sec. 7; pág. 73 |
| 7.13.1 | Describe how the Offeror's Information management processes, Information systems and technical support will meet the GHP requirements, ASES and federal reporting requirements, all other Contract requirements, and any other applicable Puerto Rico and federal laws, rules and regulations. | [...] MC-21 has been firmly committed to protecting ASES by ensuring full compliance with all CMS, Federal, and State requirements, enabling a highly capable, flexible, and compliant data, information services, and reporting environment. MC-21's process for accommodating changes required by regulatory entities starts with the use of internal and external resources to monitor, identify, review, and assess the impact of regulatory guidance and developments that impact the industry. [...] | Sec. 7; pág. 77 |
| 7.13.2 | Describe the Offeror's Information systems capacity and sufficiency to handle the workload projected for the start of the program and the ability to be scalable and flexible to adapt and/or upgrade to more advanced levels of technology as needed, within negotiated timeframes. | [...] MC-21's claims adjudication system currently processes approximately 160 million claims per year for our existing clients, with an average response time of less than one second. [...] [...] MC-21's claims adjudication system supports virtually every type of pharmacy benefits program that has been introduced into the marketplace, including all the requirements to successfully manage the ASES program. MC-21's claims adjudication system is always kept updated with regards to industry standards, compliance, technology, and its breadth of functionality. [...] | Sec. 7; págs. 81 y 82 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.13.7 | Describe how the Offeror will collaborate with ASES and the MCOs to develop solutions during an emergency/disaster situation. | [...] After the emergency, MC-21 verifies the accuracy and appropriateness of claims processing to detect errors, abuses, atypical utilization patterns, wrongful utilization of covered services during and after a disaster. An analysis is performed to detect trends and/or significant changes in dispensing patterns. MC-21 auditors analyze prescriptions and claim logs, determining if the information submitted for payment is in accordance with the prescription and ensuring that the prescription was dispensed. MC-21 has performed and provided ASES with data analysis and reconciliations to appropriately allocate claims utilization according to the ASES determinations during these events. [...] | Sec. 7; págs. 90 y 91 |
| 7.14.1 | Describe how the Offeror will meet and maintain the core Staffing and Key Personnel requirements describe in Article 20, [...]. | MC-21 currently employs experienced and knowledgeable staff with over 15 years of experience working for ASES clients. In addition, the organization employs 135 professionals and from this total, about 50 percent of employees are dedicated to our ASES client. Professional employees with high education and competencies comprised vast and strong experience in the healthcare and Pharmacy Benefits Management (PBM) business. Our team has a proven track record throughout the years of outstanding successful outcomes to meet ASES' needs and expectations. Our staffing and key personnel are consistently trained on policies and procedures, URAC Standards, CMS requirements, client requirements, and participate in external local and national conferences. In addition, the organization has specialized professionals in the areas of health, information systems, finance, rebates, clinical services, customer services call centers with 24/7 bilingual English/Spanish services, educational programs, pharmacy networks, and process improvement management. For over 15 years our staff has acquired the knowledge of the market that has been crucial for the successful development, implementation, and administration of the PBM services and programs for our clients. The competent staff and seasoned professionals with a proven track record are fully dedicated to fulfill the needs of our clients and their programs. [...] | Sec. 7; pág. 94 |

| Sección de la Propuesta | ¿Qué se pedía? | Respuesta (Énfasis suplido) | Referencia en la Propuesta de MC-21 |
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| 7.14.3 | Describe separately the IT implementation team and the IT operational team that will be participating in this project. Provide years of experience, specialty and certifications obtained. State if they will be fully dedicated to this project. | [...] MC-21 provides leading-edge technology solutions, including claims adjudication processing, data management, implementation, and operational support . MC-21 is supported by ProCare Rx by providing an advanced, powerful, flexible, and always-available claims processing system designed for continuous online/real-time adjudication of prescription drug claims at the point of service, currently processing approximately 160 million claims per year for our existing clients, with an average response time of less than one second . [...] | Sec. 7; págs. 97 y 98 |
| 7.15.3 | Describe how the Offeror will meet the special reporting requirements described in the Contract, including but not limited to actuarial reporting, and Fraud, Waste, and Abuse reporting. | <p>For the past 20 years, MC-21 has provided ASES with timely, accurate, consistent, and meaningful reporting, including the generation and the submission of electronically-generated utilization, actuarial and financial reports, on any required frequency or upon request, to monitor and evaluate the effectiveness of the ASES program.</p> <p>[...] MC-21 has an experienced team that integrates clinical, operational, and financial personnel to assist ASES in developing, modeling, and budgeting cost-effective pharmacy benefits.</p> <p>MC-21's experience has consistently proven that the appropriate clinical decision will result in cost reduction; therefore, budgetary recommendations will be clinically evaluated before considering financial elements. This process includes assessing and developing pharmacy management programs that can be integrated with total care management. These programs are proven to help reduce waste in the pharmacy benefit by ensuring the most cost-effective patient outcomes are utilized. MC-21 will assist in structuring and analyzing plan designs to meet ASES' needs in meeting future budgetary decisions.</p> <p>[...]</p> <p>The MC-21 FWA program staff analyze, research, and investigate atypical utilization patterns resulting from established reports with performance indicators regarding member, prescriber, and pharmacy utilization, which are explained in detail. [...]</p> | Sec. 7; págs. 101 y 102 |

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| 7.15.4 | Describe the Offeror's online database and reporting capabilities that will be offered and accessible to ASES staff and its designees | ASES personnel currently have access to MC-21's state-of-the-art and flexible analytical technologies that meet ASES' business needs. Combined with our unsurpassed data analytics expertise, during the past 20 years, MC-21 has offered ASES unmatched PBM clinical, financial, operational, and administrative reporting solutions. [...] | Sec. 7; pág. 103 |

MODEL CONTRACT BETWEEN

ADMINISTRACIÓN DE SEGUROS DE SALUD DE PUERTO RICO (ASES)

and

CONTRACTOR

for

**THE PROVISION OF PHARMACY BENEFIT MANAGER (PBM) AND
REBATE AGGREGATOR (RA) SERVICES FOR THE
GOVERNMENT HEALTH PLAN PROGRAM**

Note: For ease of reference, this Model Contract is drafted for use if Contractor provides both PBM and RA services under the GHP. If the RFP were awarded to two separate organizations to each perform PBM and RA services respectively, each agreement would incorporate only the terms within this Model Contract that were applicable to each service line.

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THIS CONTRACT, is made and entered into by and between the Puerto Rico Health Insurance Administration (Administración de Seguros de Salud de Puerto Rico, hereinafter referred to as “ASES” or “the Administration”), a public corporation of the Government of Puerto Rico (“the Government” or “Puerto Rico”) and [Contractor Name] (“the Contractor”), a contracted pharmacy benefit manager (“PBM”) and/or rebate aggregator (“RA”) duly organized and authorized to do business under the laws of Puerto Rico.

WHEREAS, pursuant to Title XIX of the Federal Social Security Act, codified as 42 USC 1396 et seq. (“the Social Security Act”), and Act No. 72 of September 7, 1993 of the Laws of Puerto Rico (“Act 72”), a comprehensive program of medical assistance for needy persons exists in Puerto Rico;

WHEREAS, ASES is responsible for health care policy, purchasing, planning, and regulation pursuant to Act 72, as amended, and other sources of law of Puerto Rico designated in Attachment 1 to this Contract, and pursuant to this statutory provision, ASES has established a managed care program under the medical assistance program, known as “the Government Health Plan”, “GHP”, “GHP Program”, or “Vital”;

WHEREAS, the Puerto Rico Health Department (“the Health Department”) is the single State agency designated to administer medical assistance in Puerto Rico under Title XIX of the Social Security Act of 1935, as amended, and is charged with ensuring the appropriate delivery of health care and pharmaceutical services under the Medicaid and the Children’s Health Insurance Program (“CHIP”) in Puerto Rico, and ASES manages these programs pursuant to a delegation of authority to ASES;

WHEREAS, GHP serves a mixed population including not only the Medicaid and CHIP populations, but also other eligible individuals as established in Act 72;

WHEREAS, ASES has engaged the services of managed care organizations (the “MCOs”), for the underwriting of physical and mental health services under GHP, subject to and in accordance of Act 72.

WHEREAS, ASES seeks to comply with Puerto Rico’s public policy objectives of creating an integrated system of physical and Behavioral Health services, including but not limited to access to prescription drugs;

WHEREAS, ASES issued a Request for Proposals (“the RFP”) for Contracted PBM and RA Services on [Date RFP Issued], which, in accordance with Article 59, are expressly incorporated as if completely restated herein;

WHEREAS, ASES has received from the Contractor a proposal in response to the RFP, “Contractor’s Proposal,” which, except as provided in Article 59, is expressly incorporated as if completely restated herein; and,

WHEREAS, ASES accepts the Contractor’s Proposal to provide the services contemplated under this Contract for ASES;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ASES and the Contractor (each individually a “Party” and collectively the “Parties”) hereby agree as follows:

ARTICLE 1 GENERAL PROVISIONS

1.1 General Provisions

- 1.1.1 The Contractor shall assist ASES by providing and delivering services through described tasks, obligations, and responsibilities included in this Contract.
- 1.1.2 The Contractor shall maintain the staff, organizational, and administrative capacity and capabilities necessary to carry out all the duties and responsibilities under this Contract.
- 1.1.3 The Contractor shall not make any changes to the following without explicit prior written approval from the Executive Director of ASES or his or her designee:
 - 1.1.3.1 Its business address, telephone number, facsimile number, and email address;
 - 1.1.3.2 Its corporate status or nature;
 - 1.1.3.3 Its business location;
 - 1.1.3.4 Its corporate structure;
 - 1.1.3.5 Its ownership, including but not limited to the new owner's legal name, business address, telephone number, facsimile number, and email address; and/or
 - 1.1.3.6 Its incorporation status.
- 1.1.4 The Contractor shall notify ASES within five (5) Business Days of a change in the following:
 - 1.1.4.1 Its solvency (as a result of a non-operational event);
 - 1.1.4.2 Its corporate officers, executive employees and key personnel for this Contract; or
 - 1.1.4.3 Its Federal employee identification number or Federal tax identification number.
- 1.1.5 Unless otherwise specified herein, all documentation, including policies and procedures that the Contractor is required to maintain, shall be given prior written approval from ASES. All documentation, including the Deliverables listed in Attachment 2 to this Contract, must be submitted to ASES in English.
- 1.1.6 Pursuant to Section 1902(a)(80) of the Social Security Act, the Contractor shall not be located outside of the United States.
- 1.1.7 All Administrative Functions of the Contractor must be located within the United States. Effective February 1, 2022, the following Administrative Functions must be located in Puerto Rico:

- 1.1.7.1 Key Administrative Functions, including but not limited to Contractor personnel responsible for the coordination or participation in the P&T Committee, the Pharmacy Financial Committee, or any other committee required under this Contract;
- 1.1.7.2 Marketing;
- 1.1.7.3 Management of Contractor's compliance plan and fraud, waste and abuse monitoring activities;
- 1.1.7.4 Pharmacy Call Center; and
- 1.1.7.5 Decision-making authority related to the Pharmacy Network, such as claim dispute resolution, credentialing activities, pharmacy contracting, administrative (but not clinical) reviews of Prior Authorization requests, approvals to dispense early prescription refills or replacement fills.

1.2 Background

- 1.2.1 The Government Health Plan ("GHP") program, also known as Vital, has the following objectives with respect to Contracted PBM and RA Services provided:
 - 1.2.1.1 Ensure appropriate and timely access to Covered Services, including Covered Pharmacy Services, for Enrollees across Puerto Rico, including facilitating and promoting access to prescription drugs.
 - 1.2.1.2 Require Contractor to provide Island-wide coverage and access to Covered Services in all geographic areas of Puerto Rico, including Vieques and Culebra. This may be achieved through sub-contractual relationships.
 - 1.2.1.3 Encourage Contractor to contract with local pharmacies to ensure access and to maintain and leverage existing Enrollee-pharmacy relationships.
 - 1.2.1.4 Require Contractor to propose and demonstrate cost-saving initiatives and programs, including the potential use of value-based payment models for Network Pharmacy reimbursement.
- 1.2.2 Should any part of the scope of work under this Contract relate to a state program that is no longer authorized by law (e.g., which has been vacated by a court of law, or for which CMS has withdrawn federal authority, or which is the subject of a legislative repeal), the Contractor must do no work on that part after the effective date of the loss of program authority. ASES must adjust payments for Contracted Services to remove costs that are specific to any program or activity that is no longer authorized by law. If the Contractor works on a program or activity no longer authorized by law after the date the legal authority for the work ends, the Contractor will not be paid for that work. If ASES paid the Contractor in advance to work on a no-longer-authorized program or activity and under the terms of this Contract the work was to be performed after the date the legal authority ended, the payment for that work should be returned to ASES. However, if the Contractor worked on a program or activity prior to the date legal authority ended for that program or activity, and ASES included

the cost of performing that work in its payments to Contractor, the Contractor may keep the payment for that work even if the payment was made after the date the program or activity lost legal authority.

1.3 Groups Eligible for Services under the GHP

1.3.1 The Contractor will be responsible for providing Covered Pharmacy Services to all persons determined eligible for and enrolled in the GHP. Contractor shall also be responsible for aggregating drug rebates based on utilization of Covered Pharmacy Services by such Enrollees. The groups eligible to be served under the GHP shall hereinafter be referred to collectively as “Eligible Persons,” while those Eligible Persons who have are actively enrolled in the GHP are “Enrollees.” The groups are subject to change and currently include:

1.3.1.1 **Medicaid and CHIP.** All Medicaid and CHIP eligibility categories covered in the Puerto Rico Medicaid and CHIP State Plans are eligible to enroll in the GHP and shall be referred to hereinafter as “Medicaid and CHIP Eligibles,” also known as the “Federal Population.”

1.3.1.2 **Other Groups (Non-Medicaid and CHIP Eligibles).** The following groups, which are eligible to receive services under the GHP without any federal financial participation, will be referred to hereinafter as “Other Eligible Persons.” Once enrolled in the GHP, the following groups shall be referred to as “Other Enrollees.”

1.3.1.2.1 The “State Population,” formerly known as the “Commonwealth Population,” is currently comprised of individuals, regardless of age, who meet State-eligibility standards established by the Puerto Rico Medicaid Program but do not qualify for Medicaid or CHIP.

1.3.1.2.2 Any other group of Other Eligible Persons may be added during the Contract Term as a result of a change in laws or regulations or as determined by ASES.

1.4 Geographic Scope of the Contract

1.4.1 The Contractor is responsible for the delivery of Covered Services under the GHP Island-wide, including Vieques and Culebra.

1.5 Delegation of Authority

1.5.1 Federal law and Puerto Rico law limit the capacity of ASES to delegate decisions to the Contractor. All decisions relating to public policy and to the administration of the Medicaid, CHIP, and the Puerto Rico government health assistance program included in the GHP rest with the Puerto Rico Medicaid Program and ASES.

1.6 Availability of Funds

1.6.1 This Contract is subject to the availability of funds on the part of ASES, which in turn is subject to the transfer of federal, Puerto Rico, and municipal funds to

ASES. If available funds are insufficient to meet its contractual obligations, ASES reserves the right to terminate this Contract, pursuant to Article 38.

1.7 Cooperation, Assistance and Compliance with Special Projects

- 1.7.1 The Contractor shall provide to ASES and any other agency of the Government all necessary cooperation, assistance, and compliance with requirements in the development and implementation of any special project of ASES and any other agency of the Government or the Federal Government. The Contractor acknowledges that this is a sine qua non of this Contract and that it will comply with ASES change requests related to such projects as these are implemented due to State or Federal mandate.

ARTICLE 2 DEFINITIONS

Whenever capitalized in this Contract, the following terms have the respective meaning set forth below, unless the context clearly requires otherwise.

AB Rated: Drugs that meet the necessary bioequivalence standards established by the FDA.

Abandoned Call: A call initiated to a Call Center that is ended by the caller before any conversation occurs or before a caller is permitted access to a caller-selected option.

Abuse: Provider practices that are inconsistent with sound fiscal, business, or medical practices, and that result in unnecessary costs to the GHP Program or in reimbursement for services that are not Medically Necessary or that fail to meet professionally recognized standards for the provision of health care. It also includes Enrollee practices that result in unnecessary costs to the GHP.

Academic Detailing: The process by which a health educator or authorized staff contacts a Provider and/or Network Pharmacy to provide an educational intervention on a specific topic. Academic Detailing provides complete and objective Information based on best available evidence and promotes formulary compliance.

Access: Adequate availability of Benefits to fulfill the needs of Enrollees.

Act 72: The law of Puerto Rico adopted on September 7, 1993, as subsequently amended, which created and empowered ASES to administer certain government health programs.

Actuarial Report: Actuarial reports the Contractor is required to submit in accordance with Article 21.3 of this Contract.

Administrative Law Hearing: The Appeal process administered by Puerto Rico and as required by federal law, available to Enrollees and Network Pharmacies after they exhaust the Contractor's Complaint Process.

Adverse Benefit Determination: The denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, or termination of a previously authorized service, requirements for medical necessity appropriateness, setting or effectiveness of a covered benefit; the denial, in whole or part, of payment for a service (including in circumstances in which an Enrollee is forced to pay for a service); the failure to provide services in a timely manner (within the timeframes established by this Contract or otherwise established by ASES); the failure of the Contractor to act within the timeframes provided in 42 CFR 438.408(b); or the denial of an Enrollee's request to dispute a financial liability, including cost-sharing, co-payments, premiums, deductibles, co-insurance, and other Enrollee financial liabilities. For a resident of a rural area, the denial of an Enrollee's request to

exercise his or her right, under 42 CFR 438.52(b)(2)(ii), to obtain services outside the network.

Affiliate: Any person, firm, corporation (including, without limitation, service corporation and professional corporation), partnership (including, without limitation, general partnership, limited partnership and limited liability partnership), limited liability company, joint venture, business trust, association or other entity or organization that now or in the future directly or indirectly controls, is controlled by, or is under common control with the Contractor.

Agent: An entity that contracts with ASES to perform Administrative Functions, including but not limited to: fiscal Agent activities; outreach, eligibility, and systems and technical support.

Appeal: An Enrollee request for a review of an Adverse Benefit Determination. It is a formal petition by an Enrollee, an Enrollee's Authorized Representative, or the Enrollee's Provider, acting on behalf of the Enrollee with the Enrollee's written consent, to reconsider a decision in the case that the Enrollee or Provider does not agree with an Adverse Benefit Determination taken.

ASES: Administración de Seguros de Salud de Puerto Rico (the Puerto Rico Health Insurance Administration), the Government entity responsible for oversight and administration of the GHP Program, or its Agent.

ASES Data: All Data created from Information, documents, messages (verbal or electronic), reports, or meetings involving, arising out of or otherwise in connection with this Contract.

ASES Information: All proprietary Data and/or Information generated from any Data requested, received, created, provided, managed and stored by Contractor—in hard copy, digital image, or electronic format— from ASES and/or Enrollees (as defined in Article 2) necessary or arising out of this Contract, except for the Contractor's Proprietary Information.

Authorized Certifier: The Contractor's CEO, CFO, or an individual with delegated authority to sign for and who reports directly to the CEO and/or CFO.

Average Speed to Answer ("ASA"): The timeframe between a caller choosing the option to speak with a customer service agent and the agent attending the phone call.

Average Wholesale Price ("AWP"): The standardized cost of a drug. The AWP is determined through reference to a common source of price Information, such as MediSpan[®] or any equivalent or substitute method accepted by ASES. AWP is defined as the post-settlement unadjusted amounts as published in a common source of pricing Information.

Behavioral Health: The umbrella term for Mental Health conditions (including psychiatric illnesses and emotional disorders) and substance use disorders (involving addictive and chemical dependency disorders). The term also refers to preventing and treating co-occurring mental health conditions and substance use disorders ("SUDs").

Blocked Call: A call that cannot be connected immediately because no circuit is available at the time the call arrives or because the telephone system is programmed to block calls from entering the queue when the queue is backed up beyond a defined threshold.

Brand Drug: A drug marketed under a proprietary trademark or protected name. Brand Drugs may have a Generic equivalent on the market upon its patent expiration.

Breach: As defined in 45 CFR 164.402, the acquisition, Access, use, or disclosure of Protected Health Information in a manner not permitted under 45 CFR 164, subpart E which compromises the security or privacy of such Information.

Business Continuity and Disaster Recovery (“BC-DR”) Plan: A documented plan (process) to restore vital and critical Information/health care technology systems in the event of business interruption due to human, technical, or natural causes. The plan focuses mainly on technology systems, encompassing critical hardware, operating and application software, and tertiary elements required to support the operating environment. It must support the process requirement to restore vital business Data inside the defined business requirement, including an emergency mode operation plan as necessary. The BC-DR also provides for continuity of health care in the event of plan terminations.

Business Days: Traditional workdays, including Monday, Tuesday, Wednesday, Thursday, and Friday. Puerto Rico Holidays, as defined in the Law for Compliance with the Fiscal Plan, Act No. 26 of April 29, 2017, or any other law enacted during the duration of this Contract regarding this subject, or officially designated or notified in writing by ASES and/or Medicaid are excluded.

Calendar Days: All seven (7) days of the Week.

Calendar Year: The period from January 1 of any year through December 31 of the same year, inclusive.

Call Center: A telephone service facility equipped to handle a large number of inbound and outbound calls.

Centers for Medicare & Medicaid Services (“CMS”): The agency within the US Department of Health and Human Services with responsibility for the Medicare, Medicaid, and the Children’s Health Insurance Programs (“CHIP”).

Children’s Health Insurance Program (“CHIP”): Puerto Rico’s Children’s Health Insurance Program established pursuant to Title XXI of the Social Security Act.

CHIP Eligible: A child eligible to enroll in GHP because he or she is eligible for CHIP.

Claim: Whether submitted manually or electronically, a bill for services, a line item of services, or a bill detailing all services for one (1) Enrollee. A Pharmacy Claim shall include any transmission of Information submitted for payment by a Pharmacy to the Contractor, to be adjudicated by the Contractor, for drugs dispensed by such Pharmacy to an Enrollee.

Claims Processing: The process followed to receive, adjudicate and pay, reverse or reject one or more Claims, whether through their full payment, partial payment, denial of payment, or a combination thereof.

Clean Claim: A Claim received by the Contractor for adjudication, which can be processed without obtaining additional Information from a Provider, the Pharmacy, or from a Third Party. It includes a Claim with errors originating in the Contractor’s Claims system. It does not include a Claim for a prescription drug prescribed or dispensed by a Provider or filled by a Pharmacy who is under investigation for Fraud, Waste, or Abuse, or a Claim under review to determine Medical Necessity.

Contract: The written agreement between ASES and the Contractor; comprised of the Contract, any addenda, appendices, attachments, or amendments thereto, as it may be amended, supplemented or revised after the Effective Date of Contract.

Contract Term or Term: The duration of time that this Contract is in effect, as defined in Article 24 of this Contract.

Contracted Services: The PBM services, RA contracted services, and all other services to be rendered by the Contractor pursuant to this Contract. This Contractor shall use the term “Contracted PBM

Services” and “Contracted RA Services” when referring to each specific Contracted Service only.

Contractor: The Contractor that is a party of the Contract, which contracts with ASES under the GHP program for the provision of Contracted Services.

Coordination of Benefits (COB): Method of integrating benefits payable under more than one health insurance plan so that the Enrollee’s benefits from all sources or reimbursement do not exceed one hundred percent (100%) of allowable medical expenses or eliminate appropriate patient incentives to contain costs.

Co-Payment: A cost-sharing requirement which is a fixed monetary amount paid by the Enrollee to a Provider for certain Covered Services as specified by ASES. This term is used in this Contract to reflect the portion of Covered Pharmacy Services which an Enrollee is responsible for paying to a Pharmacy and which the Pharmacy is authorized to collect as part of its compensation for services rendered, in general, a fixed amount.

Corrective Action Plan: The detailed written plan required by ASES from the Contractor to correct or resolve a deficiency or event causing the assessment of a liquidated damages or sanctions against the Contractor.

Cost Avoid or Avoidance: A method of paying Claims in which the Pharmacy is not reimbursed until it has demonstrated that all available health insurance, and other sources of Third Party Liability, have been exhausted.

Covered Pharmacy Services: The prescription drug benefits portion of Covered Services to which Enrollees are entitled under the GHP, the payment or indemnification of which is covered under this Contract and all other PBM services required under this Contract, including Contracted Services.

Covered Services: Those Medically Necessary health care services provided to Enrollees by Providers, the payment or indemnification of which is covered by an MCO.

Credentialing: The Contractor’s determination as to the qualification of a specific Network Pharmacy to participate in Contractor’s Pharmacy Network.

Credible Allegation of Fraud: Any allegation of Fraud that has been verified by another State, the Government, or ASES, or otherwise has been preliminary investigated by the Contractor, as the case may be, and that has indicia of reliability that comes from any source.

Daily Basis: Each Business Day.

Data: A series of meaningful electrical signals that may be manipulated or assigned.

Data Set: Demographic, health, or other Informational elements suitable for specific use.

Deliverable: A document, manual, or report submitted to ASES by the Contractor to exhibit that the Contractor has fulfilled the requirements of this Contract.

Disenrollment: The termination of an individual’s Enrollment in the MCO.

Dispensing Fee: The charge for the professional services provided by a Pharmacy when dispensing a prescription drug to an Enrollee.

Drug Utilization Review (DUR): The program, described in 42 CFR Part 456, Subpart K, that provides Pharmacies with Information that can assist pharmacists in evaluating the medical appropriateness of

an Enrollee's drug therapy on the basis of an evaluation of the prescribing patterns or patient drug utilization, preventing potential drug problems before a prescription is dispensed. Electronic alerts (messages), that may include payment denials, are sent to the Pharmacy indicating the type of problem detected.

DUR Annual Report: The annual submission required from states, and as of April 2022, U.S. territories, as set forth in 42 CFR 456.712, On an annual basis, states are required to report on their practitioners' prescribing habits, cost savings generated from their Drug Utilization Review (DUR) programs and their program's operations, including adoption of new innovative DUR practices via the Medicaid Drug Utilization Review Annual Report Survey".

Dual Eligible Beneficiary: An Enrollee or Potential Enrollee eligible for both Medicaid and Medicare.

Effective Date of Contract: The Day the Contract is executed by both Parties.

Electronic Funds Transfer ("EFT"): Transfer of funds between accounts using electronic means such as a telephone or computer rather than paper-based payment methods such as cash or checks.

Eligible Person: A person eligible to enroll in GHP, by virtue of being Medicaid Eligible, CHIP Eligible, or an Other Eligible Person.

Emergency Medical Condition: As defined in 42 CFR 438.114, a medical or Behavioral Health condition, regardless of diagnosis or symptoms, manifesting itself in acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairments of bodily functions, serious dysfunction of any bodily organ or part, serious harm to self or other due to an alcohol or drug abuse emergency, serious injury to self or bodily harm to others, or the lack of adequate time for a pregnant women having contractions to safely reach a another hospital before delivery. The Contractor may not impose limits on what constitutes an Emergency Medical Condition based only, or exclusively, on diagnoses or symptoms.

Emergency Services: As defined in 42 CFR 438.114, any Physical or Behavioral Health Covered Services (as described in Section 7.5.9) furnished by a qualified Provider in an emergency room that are needed to evaluate or stabilize an Emergency Medical Condition or a Psychiatric Emergency that is found to exist using the prudent layperson standard.

Encounter: A distinct set of services provided to an Enrollee in a Telehealth, Telemedicine, Teledentistry, or face-to-face setting on the dates that the services were delivered and properly documented on the appropriate health record, regardless of whether the Provider is paid on a Fee-for-Service, capitated, salary, or alternative payment methodology basis. Encounters with more than one (1) Provider, and multiple Encounters with the same Provider, that take place on the same day in the same location will constitute a single Encounter, except when the Enrollee, after the first Encounter, suffers an illness or injury requiring an additional diagnosis or treatment.

Encounter Data: (i) All Data captured during the course of a single Encounter that specify the diagnoses, comorbidities, procedures (therapeutic, rehabilitative, maintenance, or palliative), pharmaceuticals, medical devices, and equipment associated with the Enrollee receiving services during the Encounter; (ii) The identification of the Enrollee receiving and the Provider(s) delivering the health care services during the single Encounter; and (iii) A unique (i.e., unduplicated) identifier for the single Encounter.

Enrollee: A person who is currently enrolled in the GHP, and who, by virtue of relevant Federal and

Puerto Rico laws and regulations, is an Eligible Person listed in Section 1.3.1 of this Contract.

Enrollment: The process by which an Eligible Person becomes an Enrollee of an MCO's Plan.

Federally Qualified Health Center ("FQHC"): An entity that provides outpatient health programs pursuant to Section 1905(l)(2)(B) of the Social Security Act.

First Databank: A drug reference database that provides descriptive drug Information, unique identifiers, and pricing data with clinical decision-support modules.

Fiscal Year: The period from July 1 of a Calendar Year through June 30 of the following Calendar Year.

Formulary of Medications Covered ("FMC"): A published subset of pharmaceutical products used for the treatment of physical and Behavioral Health conditions developed after clinical recommendations from the Pharmacy and Therapeutics (P&T) Committee.

Fraud: An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit or financial gain to him/herself or some other person. It includes any act that constitutes Fraud under applicable Federal or Puerto Rico law.

Generic Drugs: A drug that is no longer covered by patent protection and thus may be produced and/or distributed by many firms. Generic Drugs are FDA reviewed and must be bio-equivalent, which means that they must have the same active ingredients and be absorbed by the body the same way as the Brand Name Drugs. All Generic Drugs dispensed to Enrollees shall be bioequivalent as included in the Orange Book as AB Rated bioequivalent.

The Government Health Plan ("GHP"): The government health services program (also referred to as "Vital") offered by the Government and administered by ASES, which serves a mixed population of Medicaid Eligible, CHIP Eligible, and Other Eligible Persons, and emphasizes integrated delivery of physical and Behavioral Health services.

Health Care Provider ("Provider"): Any physician, hospital, facility, or other provider of health care items or services who is licensed or otherwise authorized to provide physical or Behavioral Health services in the jurisdiction in which they are furnished.

Health Information Technology for Economic and Clinical Health ("HITECH") Act: Public Law 111-5 (2009). When referenced in this Contract, it includes all related rules, regulations, and procedures.

Health Insurance Portability and Accountability Act ("HIPAA"): A law enacted in 1996 by the Congress of the United States. When the term HIPAA is referred to in this Contract it shall mean to include all related rules, regulations and procedures thereunder.

High Cost High Needs ("HCHN") Program: A set of contractual obligations specific to a cohort of Enrollees with specific conditions that require specialized care management and a dedicated team of Providers due to the cost or elevated needs associated with treatment of the condition.

Immediately: Within twenty-four (24) hours, unless otherwise provided in this Contract.

Implementation Date of the Contract: The date on which the Contractor shall commence providing Contracted Services under this Contract. The expected Implementation Date of this Contract is February 1, 2022.

Implementation Plan: The measures and procedures developed and implemented, or to be implemented by the Contractor to enable rendering of the Contracted Services under this Contract.

Incident: The attempted or successful unauthorized access, use, disclosure, modification, or destruction of Information or interference with system operations in an Information System.

Information: Data to which meaning is assigned, according to context and assumed conventions; meaningful fractal Data for decision support purposes.

Information System(s): A combination of computing and communications hardware and software that is used in: (a) the capture, storage, manipulation, movement, control, display, interchange and/or transmission of Information, i.e., structured Data (which may include digitized audio and video) and documents; and/or (b) the processing of such Information for the purposes of enabling and/or facilitating a business process or a related transaction.

Island-wide: All geographic areas that comprise the entirety of Puerto Rico, including Vieques and Culebra, for which the Contractor is responsible for the delivery of Contracted Services.

List of Excluded Individuals and Entities (“LEIE”): A database of individuals and entities excluded from federally-funded health care programs maintained by the Department of Health and Human Services Office of the Inspector General.

List of Medications by Exception (“LME”): List of medications that are not included in the FMC, but that have been evaluated and approved by ASES’s Pharmacy and Therapeutics (P&T) Committee to be covered only through an exception process if certain clinical criteria are met. Covered outpatient drugs that are not included on the LME may still be covered under an Exception Request unless statutorily excluded.

Managed Care Organization (“MCO”): An insurance company, health care organization, or any other approved health organization in Puerto Rico that meets the CMS definition of an MCO.

Maximum Allowable Cost (MAC) List: The highest cost to be paid for Generic Drugs and Brand Drugs with generic versions available to Pharmacies. The MAC List with associated drug prices is developed and updated from on a monthly basis by the Contractor. The MAC list to be implemented on the Implementation Date of the Contract will be consistent with the list provided by ASES to the Contractor during Implementation. The Contractor will provide a revised MAC list when updates are made.

Medicaid: The joint federal/state program of medical assistance established by Title XIX of the Social Security Act.

Medicaid Drug Rebate Program (“MDRP”): Program administered by CMS that requires drug Manufacturers to enter into, and have in effect, a national rebate agreement with the Secretary of the Department of Health and Human Services in exchange for Medicaid coverage of a pharmaceutical manufacturer’s drugs.

Medicaid Eligible Person: An individual eligible to receive services under Medicaid, who is eligible, on this basis, to enroll in GHP.

Medicaid Management Information System (“MMIS”): Computerized system used for the processing, collecting, analyzing, and reporting of Information needed to support Medicaid and CHIP functions. The MMIS consists of all required subsystems as specified in the State Medicaid Manual.

Medical Record: The complete, comprehensive record of an Enrollee including, but not limited to, x-rays, laboratory tests, results, examinations and notes, accessible at the site of the Enrollee’s Network Primary Care Physician, Provider, or Network Pharmacies, that documents all health care services received by the Enrollee, including inpatient, outpatient, ancillary, and emergency care, prepared in accordance with all applicable federal and Puerto Rico rules and regulations, and signed by the Provider

and or Network Pharmacy, as the case may be, rendering the services.

Medicare: The federal program of medical assistance for persons over age sixty-five (65) and certain disabled persons under Title XVIII of the Social Security Act.

Medicare Part B: The part of the Medicare program that covers physician, outpatient, home health, and preventive services.

Medicare Part D: The part of the Medicare program that covers prescription drugs.

MediSpan®: A drug reference database that provides drug descriptive Data and attributes, along with current and historical drug product price Information.

National Drug Code (“NDC”): Unique 11-digit, 3-segment number, and a universal product identifier for human drugs.

National Drug Rebate Agreement (“NDRA”): An agreement between a pharmaceutical manufacturer and HHS where the manufacturer agrees to provide Medicaid drug rebates in exchange for Medicaid coverage of most of the manufacturer’s drugs.

National Provider Identifier (“NPI”): The 10-digit unique-identifier numbering system for Providers created by the Centers for Medicare & Medicaid Services (CMS), through the National Plan and Provider Enumeration System.

NCPDP: The National Council for Prescription Drug Programs standard for pharmacy drug Claims Data files and Coordination of Benefits (“COB”).

Network Adequacy Standards: The Time and Distance Standards, or other requirements as may be specified by ASES, developed to measure the adequacy and appropriateness of the Contractor’s Pharmacy Network to meet the needs of the enrolled population.

Network Pharmacy: A Pharmacy under contract with the Contractor to provide Covered Pharmacy Services to Enrollees.

Network Provider: A Medicaid-enrolled Provider that has a Provider Contract with an MCO or Contractor under the GHP Program. The term Network Provider shall include Network Pharmacies.

Office of the Inspector General: The federal office within the Department of Health & Human Services tasked with protecting the integrity of federal health care programs as well as the health and welfare of program beneficiaries.

Orange Book: The publication of the FDA of approved of drug products with therapeutic equivalence evaluations which identify drug products approved by the FDA on the basis of safety and effectiveness.

Other Eligible Person: A person eligible to enroll in the GHP Program under Section 1.3.1.2 of this Contract who is not Medicaid or CHIP Eligible. This group is comprised of the State Population and certain public employees and pensioners.

Out-of-Network Pharmacy: A Pharmacy that does not have a contract with the Contractor under GHP.

Out-of-Network Provider: A Provider that does not have a contract with any of the MCOs or the Contractor under GHP.

Paid Claim: An occurrence of an authorized NCPDP formatted submission with a paid response in

Contractor's Claims processing system.

Patient's Bill of Rights Act: Act 194 of August 25, 2000, as amended, a law of the Government relating to patient rights and protection.

Patient Protection and Affordable Care Act ("PPACA"): Public Law 111-148 (2010) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152 (2010)).

Payment Hold: The situation when a Provider who owes funds to Puerto Rico, such Provider cannot be paid until the amounts owed to Puerto Rico are repaid or an acceptable repayment plan is in place, as determined by ASES.

Pharmacy: Any person, institution, corporation or any other business entity duly licensed by the Government under Act No. 247 of September 3, 2004, as amended, to dispense prescription drugs.

Pharmacy Call Center: A call center facility established by the Contractor to provide Information through a local toll-free telephone access to Pharmacies offering Covered Pharmacy Services to Enrollees.

Pharmacy Complaints and Appeal Process: The overall system that Contractor must have to address any complaints, grievances, and appeals of Network Pharmacies, as well as access to the Administrative Law Hearing process.

Pharmacy Contract: The written agreements to be entered into by the Contractor and Network Pharmacies forming part of the Pharmacy Network, as required under this Contract.

Pharmacy Financial Committee: Committee authorized by ASES to make formulary recommendations and include in the Formulary of Medications Covered (FMC) or List of Medication by Exception (LME) selections based on the drug review and recommendations of the P&T Committee to include or exclude prescription drugs.

Pharmacy Network: The Network Pharmacies contracted by the Contractor to provide Covered Pharmacy Services under the terms and conditions of this Contract to Enrollees.

Pharmacy and Therapeutics ("P&T") Committee: A multi-disciplinary, multi-specialty committee authorized by ASES consisting of independent health care professionals that provides advice regarding the efficacy and safety of prescription drugs.

Physician Administered Drug ("PAD"): An outpatient drug other than a vaccine that is typically administered by a health care provider in a physician's office or other outpatient clinical setting

Primary Medical Group ("PMG"): A grouping of associated Primary Care Physicians and other Providers for the delivery of services to GHP Enrollees using a coordinated care model. PMGs may be organized as Provider care organizations, or as another group of Providers who have contractually agreed to offer a coordinated care model to GHP Enrollees under the terms of this Contract.

Prior Authorization: Authorization granted by the Contractor to determine whether the service is Medically Necessary. In some instances, this process is a condition for receiving the Covered Pharmacy Service.

Protected Health Information ("PHI"): As defined in 45 CFR 160.103, individually identifiable health Information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium.

Provider Contract: Any written contract between the Contractor and a Provider that requires the Pharmacy to perform specific parts of the obligations for the provision of Covered Services under their respective contract. The execution of a Provider Contract makes the Provider a Network Provider. The term Provider Contract shall include Pharmacy Contracts.

Puerto Rico Health Department (“the Health Department”): The Single State Agency charged with administration of the Puerto Rico Medicaid Program, which (through the Puerto Rico Medicaid Program) is responsible for Medicaid and CHIP eligibility determinations.

Puerto Rico Medicaid Program: The subdivision of the Puerto Rico Health Department that conducts GHP eligibility determinations for Medicaid, CHIP, and the State Population.

Rebates: For any period, all discounts, rebates and other price concessions contracted for and received by ASES from a pharmaceutical manufacturer with respect to prescription drugs dispensed to Enrollees.

Referral: A request by a Provider for an Enrollee to be evaluated, treated or served by a different Provider.

Remedy: ASES’s means to enforce the terms of the Contract through liquidated damages and other sanctions.

Rural Area: Zip codes in which the population density is less than 1,000 individual per square mile.

Span of Control: Information Systems and telecommunications capabilities that the Contractor operates or for which it is otherwise legally responsible according to the terms and conditions of this Contract. The Contractor’s Span of Control also includes systems and telecommunications capabilities outsourced by the Contractor.

Specialty Drugs: A category of prescription drugs that may (i) treat specific, complex or chronic medical conditions or rare disease; (ii) require additional patient education, adherence or support; (iii) have high costs; (iv) have unique storage or shipment requirements; or (v) not be stocked at a majority of Pharmacies.

Subcontract: Any written contract between the Contractor and a Subcontractor to perform a specified part of the Contractor’s obligations under this Contract.

Subcontractor: Any organization or person, including the Contractor’s parent, subsidiary or Affiliate, who has a Subcontract with the Contractor to provide any function or service for the Contractor specifically related to securing or fulfilling the Contractor’s obligations to the Government under the terms of this Contract. Subcontractors do not include Providers unless the Provider is responsible for services other than providing Covered Services pursuant to a Provider Contract.

Suburban Area: Zip codes in which the population density is between 1,000 and 3,000 individuals per square mile.

System Unavailability: As measured within the Contractor’s Information Systems’ Span of Control, when a system user does not get the complete, correct full-screen response to an input command within three (3) minutes after depressing the “Enter” or any other function key.

Term or Contract Term: The duration of time that this Contract is in effect.

Termination Date of the Contract: The date designated by ASES as the date that Contracted Services shall end.

Third Party: Any person, institution, corporation, insurance company, public, private, or governmental entity who is or may be liable in contract, tort, or otherwise by law or equity to pay all or part of the medical cost of injury, disease, or disability of an Enrollee.

Third Party Liability (“TPL”): Legal responsibility of any Third Party to pay for health care services.

Time and Distance Standards: A standardized measure of mileage and travel time for Enrollees in Urban and non-Urban Areas to access Network Pharmacies as specified in Section 7.2.1.

Title XX Social Services Program: A social services block grant that is a capped entitlement program provided to counties and local social service programs, as enacted under Title XX of the Social Security Act.

Urban Area: Zip codes in which the population density is greater than 3,000 individuals per square mile. Urban Areas include San Juan, Carolina, Trujillo Alto, Caguas, Guaynabo, Bayamón, Toa Alta, Toa Baja, Vega Baja, Rio Grande, Humacao, Arecibo, Ponce, Aguadilla, Mayaguez. ASES will notify Contractor if this list of Urban Areas changes.

Utilization: The rate patterns of service usage or types of service occurring within a specified time.

Utilization Management (“UM”): A service performed by the Contractor or MCOs which seeks to ensure that Covered Services provided to Enrollees are in accordance with, and appropriate under, the standards and requirements established by the Contract, or a similar program developed, established, or administered by ASES.

Waste: Health care spending that can be eliminated without reducing quality of care.

Week: The traditional seven- (7-) day week, Sunday through Saturday.

Wholesale Acquisition Cost (WAC): The price paid by the Wholesaler for drugs purchased from the manufacturer, and/or supplier’s published Wholesaler price list for Puerto Rico, at the end of the covered quarterly period.

Wholesaler: Any licensed entity to which a pharmaceutical company or other distributor sells a drug, that does not re-label or re-package, and that sells such drug to a Pharmacy, hospital or other authorized retailer.

Withhold: A percentage of payments or set dollar amounts that ASES deducts from its payment to the Contractor as a penalty, or that a Contractor deducts from its payment to a Network Pharmacy, depending on specific predetermined factors.

ARTICLE 3 ACRONYMS

The acronyms included in this Contract stand for the following terms:

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| ACH | Automated Clearinghouse |
| AICPA | American Institute of Certified Public Accountants |
| ARRA | American Recovery and Reinvestment Act of 2009 |
| ASA | Average Speed to Answer |
| ASES | Administración de Seguros de Salud or Puerto Rico Health Insurance Administration |
| ASSMCA | The Mental Health and Against Addiction Services Administration or Administración de Servicios de Salud Mental y Contra la Adicción |
| ASUME | Minor Children Support Administration |
| BC-DR | Business Continuity and Disaster Recovery |
| CEO | Chief Executive Officer |
| CFO | Chief Financial Officer |
| CFR | Code of Federal Regulations |
| CHIP | Children's Health Insurance Program |
| CMS | Centers for Medicare & Medicaid Services |
| ECM | Electronic Claims Management |
| EDI | Electronic Data Interchange |
| EFT | Electronic Funds Transfer |
| EPLS | Excluded Parties List System |
| FAR | Federal Acquisition Regulation |
| FMC | Formulary of Medications Covered |
| FDA | Federal Food and Drug Administration |
| FQHC | Federally Qualified Health Center |
| FTP | File Transfer Protocol |
| GHP | Government Health Plan |
| HHS | US Department of Health & Human Services |
| HHS-OIG | US Department of Health & Human Services Office of the Inspector General |
| HIPAA | Health Insurance Portability and Accountability Act of 1996 |
| HITECH | The Health Information Technology for Economic and Clinical Health Act of 2009, 42 USC 17391 et. Seq |

| | |
|-----------|---|
| HIPAA | Health Insurance Portability and Accountability Act of 1996 |
| LEIE | List of Excluded Individuals and Entities |
| LME | List of Medications by Exception |
| MAC | Maximum Allowable Cost |
| MCO | Managed Care Organization |
| MDRP | Medicaid Drug Rebate Program |
| MMIS | Medicaid Management Information System |
| NDC | National Drug Code |
| NDRA | National Drug Rebate Agreement |
| NPI | National Provider Identifier |
| PAD | Physician Administered Drug |
| P&T | Pharmacy and Therapeutics |
| PBM | Pharmacy Benefit Manager |
| PHI | Protected Health Information |
| PMG | Primary Medical Group |
| PPACA | Patient Protection and Affordable Care Act |
| RA | Rebate Aggregator |
| RFP | Request for Proposals |
| SAS | Statements on Auditing Standards |
| SUDs | Substance Use Disorders |
| TPL | Third Party Liability |
| UM | Utilization Management |
| US or USA | United States of America |
| USC | United States Code |
| UM | Utilization Management |

ARTICLE 4 ASES RESPONSIBILITIES

4.1 General Provision

- 4.1.1 ASES will be responsible for administering all aspects of GHP. ASES will administer the Contract, monitor Contractor's performance, and provide oversight of all aspects of the Contractor's operations.

4.2 Legal Compliance

- 4.2.1 ASES will comply with and will monitor the Contractor's compliance with all applicable Puerto Rico and federal laws and regulations, including but not limited to those listed in Attachment 1 to this Contract.

4.3 Eligibility and Enrollment

- 4.3.1 The Puerto Rico Medicaid Program has sole authority to determine eligibility for GHP, as provided in federal law and Puerto Rico's State Plan, with respect to the Medicaid and CHIP Eligibles; and, with respect to the Other Eligible Persons, as provided in Article VI, Section 5 of Act No. 72 and other Puerto Rico law and regulation.
- 4.3.2 The Puerto Rico Medicaid Program will determine eligibility for the eligibility categories.
- 4.3.3 ASES shall provide or shall cause MCOs to provide eligibility and Enrollment Information as needed for Contractor to provide Contracted Services.

4.4 Setup Information

- 4.4.1 In the event of a required change to the benefit design of Covered Pharmacy Services, ASES shall timely provide or shall cause MCOs to provide the necessary Information for the Contractor to implement the change.

4.5 Covered Services

- 4.5.1 Given the objective of GHP to promote an integrated approach to physical and Behavioral Health, and to improve access to quality primary and specialty care services, ASES shall utilize all mechanisms set forth in this Contract to ensure that the Contractor performs the services and tasks assigned to advance the GHP program goals.
- 4.5.2 ASES shall provide to the Contractor, on an ongoing basis, updated Information on the operational policies, procedures, and regulations of GHP that affect the scope of the Contracted Services.

4.6 Information Systems and Reporting

- 4.6.1 ASES reserves the right to modify, expand, or delete Data that Contractor is required to submit to ASES, or to issue new requirements, subject to consultation with Contractor and to cost negotiation, if necessary. Unless otherwise stipulated in the Contract or mutually agreed upon by the Parties, the Contractor shall have ninety (90) Calendar Days from the day on which ASES issues notice of a required modification, addition, or deletion, to comply with the modification, addition, or deletion.
- 4.6.2 ASES will make available a secure FTP server, accessible via the Internet, for receipt of electronic files and reports from the Contractor. The Contractor shall provide a similar system for ASES to transmit files and reports deliverable by ASES to the Contractor. When such systems are not operational, ASES and the Contractor shall agree mutually on alternate methods for the timely exchange of files.

4.7 Implementation Review

- 4.7.1 ASES, or its designated third party, shall conduct an implementation review of the Contractor's operations beginning three (3) months before the Implementation Date of the Contract and whenever the Contractor will provide or arrange for the provision of Covered Pharmacy Services to new eligibility groups. Such review will include, at a minimum, one (1) onsite review, at dates and times to be determined by ASES. These reviews may include, but are not limited to, desk and onsite reviews of documents provided by the Contractor, walkthrough(s) of the Contractor's facilities, Information System demonstrations, Claims payment testing or audit, and interviews with the Contractor's staff. ASES will conduct the implementation review to confirm that the Contractor is capable and prepared to perform all Administrative Functions and to provide high-quality services to GHP Enrollees.
- 4.7.2 The Contractor shall submit policies and procedures and other Deliverables specified by ASES in accordance with Attachment 2 of this Contract. The Contractor shall make any changes requested by ASES to policies and procedures or other Deliverables in the timeframes specified by ASES.
- 4.7.3 ASES's review, or its designated third party, will document the status of the Contractor's compliance with the program standards set forth in this Contract. A multidisciplinary team appointed by ASES will conduct the implementation review. The scope of the implementation review will include, but not be limited to, the review and/or verification of:
 - 4.7.3.1 Implementation Plan, issue log documenting all implementation issues, actions, due dates and responsible parties;
 - 4.7.3.2 Staffing Plan, staff licensure and certification, and staff training;
 - 4.7.3.3 Financial management, including financial reporting and monitoring and financial solvency;
 - 4.7.3.4 Contractor litigation history, current litigation, audits and other government investigations both in Puerto Rico and in other jurisdictions;
 - 4.7.3.5 Information Systems management, including claims management, systems performance, interfacing capabilities, and security management functions and capabilities;
 - 4.7.3.6 The Pharmacy Provider Manual, Pharmacy Procedure and Billing Manual, System Process and Procedure Manuals, System User Manual, Standard Operating Procedure Manual for Rebates, and any other relevant manuals developed under this Contract; and
 - 4.7.3.7 All other matters that ASES may deem reasonable in order to determine the Contractor's compliance with the requirements of this Contract.
- 4.7.4 The implementation review may assess the Contractor's ability to meet any requirements set forth in this Contract and the documents referenced herein.

- 4.7.5 A Contractor's failure to pass the implementation review may result in immediate Contract termination. If the Contract is so terminated, ASES shall not make any payments to the Contractor and shall have no liability for any costs incurred by the Contractor.
- 4.7.6 ASES, or its designated third party, will provide the Contractor with a summary of findings from the implementation review, as well as areas requiring remedial action with the timeframes to correct the findings.

4.8 P&T Committee Responsibilities of ASES

4.8.1 The purpose, structure, composition, policies, and procedures of the P&T Committee are set forth and established by ASES in its sole discretion.

4.8.1.1 Powers and Responsibilities of ASES:

- 4.8.1.1.1 To appoint the chairperson of the P&T Committee, independent members and ad hoc members; and
- 4.8.1.1.2 To approve the structure, functions, and responsibilities of the P&T Committee thereby permitting its members to carry out the business of effective formulary management and cost containment.

4.8.1.2 ASES reserves the right to create, amend, and modify, at any time, the Policies and Procedures of the P&T Committee as attached in Attachment 3 hereto.

4.9 Quality Monitoring

4.9.1 ASES shall evaluate the delivery of the Contracted Services by the Contractor. Such quality monitoring shall include monitoring of all the Contractor's Quality Improvement programs described in this Contract.

4.9.1.1 ASES shall monitor the Contractor for its performance of Contracted PBM Services, including but not limited to:

- 4.9.1.1.1 The availability of Covered Pharmacy Services;
- 4.9.1.1.2 The adequacy of the Contractor's Pharmacy Network;
- 4.9.1.1.3 The Contractor's coordination with each MCO;
- 4.9.1.1.4 The Contractor's policies and procedures for selection, contracting and retention of Network Pharmacies;
- 4.9.1.1.5 The Contractor's compliance with Puerto Rico and federal privacy laws and regulations relative to confidentiality of Enrollee Information;
- 4.9.1.1.6 The Contractor's Pharmacy Complaints and Appeals Process;

- 4.9.1.1.7 The Contractor's oversight of all Subcontractor relationships and delegations;
 - 4.9.1.1.8 The Contractor's adoption of practice guidelines, including the dissemination of the guidelines to Providers, Network Pharmacies and, upon request, to Enrollees and Potential Enrollees, and Providers' and Network Pharmacies' application of the respective guidelines;
 - 4.9.1.1.9 The Contractor's quality assessment and performance improvement program; and
 - 4.9.1.1.10 The Contractor's Information Systems.
- 4.9.1.2 ASES shall, among others, monitor the Contractor for Contracted RA Services, including but not limited to:
- 4.9.1.2.1 The Contractor's adequacy of invoicing, processing, and reconciling of the MDRP Rebate, Supplemental Rebate and Other Enrollee Rebate, as applicable;
 - 4.9.1.2.2 The Contractor's system for manufacturer Rebate payment tracking and reconciliation;
 - 4.9.1.2.3 The Contractor's Rebate dispute resolution for Rebates related to unit and/or Utilization issues;
 - 4.9.1.2.4 The Contractor's Rebate dispute resolution for Supplemental Rebates, Other Enrollee Rebates and/or Value Based Purchasing arrangements, as applicable;
 - 4.9.1.2.5 The Contractor's method for ensuring 340B Claims received and paid from Pharmacies contracted as or by 340B covered entities are not submitted for Rebates; and
 - 4.9.1.2.6 The Contractor's handling of drug manufacturers' past-due Rebate payments and interest payments.

ARTICLE 5 MCO RESPONSIBILITIES

- 5.1** Each of the MCOs shall transfer to a zero balance bank account to be set up by the Contractor, sufficient funds to cover the total payment of Claims to Pharmacies that are required to be made by the Contractor under this Contract.
- 5.2** The Contractor must inform the MCOs in writing the amount of Claims to be paid, at least two (2) Business Days prior to the date when the actual payment will be made. The MCOs will automatically cause the transfer of the funds for the payment of the Claims to the Contractor's zero balance account upon presentation of payment instructions. The MCOs must provide adequate notice to Contractor and ASES as to the transfer of funds. The zero balance bank account shall be utilized by the Contractor exclusively for the purpose of paying Claims to Pharmacies.
- 5.3** As required in 42 CFR 447.511(c), MCOs are to provide Physician Administered Drug ("PAD") Encounter Data based on date of service to Contractor for DUR reporting and

Rebate processing and reporting within forty-five (45) Calendar Days after each quarterly Rebate period.

5.4 The MCOs will electronically submit on a daily basis a list of all MCO's Network Providers and a list of Enrollees to the PBM.

5.4.1 The notification will include all new Enrollees as of the Business Day before the notification is issued, and will be sent no later than the following Business Day after the Enrollment process has been completed (as signified by issuance of the Enrollee ID Card, either in person or by surface mail) or the Disenrollment process has been completed (as signified by the issuance of a Disenrollment notice). MCO shall also provide notice whenever an Enrollee previously enrolled with a different MCO selects another MCO as a new plan.

5.5 Consistent with the requirements of Section 1927(d)(5) of the Social Security Act, some or all prescription drugs may be subject to Prior Authorization. All clinical Prior Authorizations shall be managed by the MCO according to policies and procedures established by the ASES Pharmacy and Therapeutics ("P&T") Committee. Data regarding the approval or denial of clinical Prior Authorizations will be shared with the Contractor according to the timeframes established in the MCO contract with ASES.

5.6 The MCOs are responsible for Enrollee Appeals of Adverse Benefit Determinations related to prescription drugs as established in the MCO contract with ASES.

5.7 ASES will cause the MCOs to comply with the following responsibilities:

5.7.1 Provide written notification to ASES and to the Contractor regarding the procedure for prescribing drugs not included in the FMC or LME, as applicable;

5.7.2 Provide written notification to the ASES and to Contractor regarding Prior Authorization policies and procedures;

5.7.3 Provide written notification to ASES and to the Contractor regarding existing guidelines and protocols for Utilization Management;

5.7.4 Designate and maintain a representative to assist on the P&T Committee in developing the FMC and LME;

5.7.5 Accept the FMC and LME and to encourage and counsel their Network Providers to comply; and

5.7.6 Distribute among prescribing Network Providers the FMC and LME and any update thereof.

ARTICLE 6 CONTRACTED PBM SERVICES – GENERAL

6.1 General Provisions

6.1.1 PBM shall be responsible for implementing and offering to ASES and the MCOs a comprehensive Pharmacy Benefit Management Program including but not limited to the following programs and services:

- 6.1.1.1 Forming, credentialing and managing a Pharmacy Network that provides Access to Covered Pharmacy Services across Puerto Rico;
- 6.1.1.2 Maintaining a Pharmacy Call Center;
- 6.1.1.3 Adjudicating and processing accurately Pharmacy Claims and payment including handling Coordination of Benefits (“COB”) with other health insurance plans, including Medicare;
- 6.1.1.4 Developing, maintaining and updating the Maximum Allowable Cost (“MAC”) list for Pharmacy reimbursement for Generic Drugs and multi-source Brand Drugs, and if requested by ASES, coordinating with Puerto Rico’s Department of Consumer Affairs (“DACO”) to provide drug price Information for DACO’s drug price control list, as amended from time to time;
- 6.1.1.5 Providing a comprehensive Drug Utilization Review (“DUR”) program, including capabilities to identify potential opioid abuse and suspect prescribing and dispensing patterns, and to track drug utilization trends for specific prescription drugs identified by ASES for special monitoring;
- 6.1.1.6 Supporting ASES and the contracted MCOs with the HCHN Program and other care management programs;
- 6.1.1.7 Developing and implementing a compliance plan and Fraud, Waste and Abuse detection initiatives;
- 6.1.1.8 Assisting in the support and operation of formulary management through the P&T Committee and Pharmacy Financial Committee;
- 6.1.1.9 Managing the Academic Detailing program;
- 6.1.1.10 Maintaining an Information System, Information management processes and technical support to meet the GHP requirements;
- 6.1.1.11 Providing robust reporting and online reporting tool as described in this Contract;
- 6.1.1.12 Retaining and storing Data as required under this Contract;
- 6.1.1.13 Developing strategies to promote an active participation of the MCOs in the development of Enrollee and prescribing Provider educational activities;
- 6.1.1.14 Performing pharmacy audits; and
- 6.1.1.15 Providing an electronic platform to Pharmacies desiring to appeal MAC pricing in order to claim additional reimbursement for the difference between a Pharmacy’s drug acquisition cost and the amount eligible for reimbursement under the MAC list.

ARTICLE 7 PHARMACY NETWORK

7.1 General Provisions

- 7.1.1 The Contractor shall have an adequate Pharmacy Network of Network Pharmacies meeting all Contract requirements in order to: (i) to ensure timely access to Covered Pharmacy Services (including complying with all federal and Puerto Rico requirements concerning timeliness, amount, duration, and scope of services); and (ii) provide sufficient Network Pharmacies in the Pharmacy Network to satisfy the demand of Covered Pharmacy Services with adequate capacity and quality service delivery.
- 7.1.2 The Contractor shall ensure that its Pharmacy Network is adequate to assure Access to Covered Pharmacy Services, and that all Network Pharmacies are appropriately credentialed, maintain current licenses, and have appropriate locations to provide the Covered Pharmacy Services.
- 7.1.3 The Pharmacy Network shall not include a Pharmacy if the Pharmacy, or any person or entity that has an ownership or control interest in the Pharmacy, or is an Agent or managing employee of the Pharmacy, has been excluded from participation in Medicaid, Medicare, or CHIP by the Department of Health and Human Services, the DHHS Office of Inspector General, or who are on the OIG Excluded Parties List System ("EPLS") or on Puerto Rico's List of Excluded Providers.
- 7.1.3.1 Except for special arrangements that are approved in advance by ASES, the Contractor must only contract with and issue payment to Network Pharmacies that are enrolled with ASES as Medicaid Providers and are active Providers in the Contractor's Provider Network Management system.
- 7.1.3.2 The Contractor shall not pay a Provider for services provided when the Provider has been terminated or suspended by ASES or Medicare, Medicaid, or CHIP unless such a preapproved special arrangement exists.
- 7.1.4 The Contractor is responsible for checking the exclusions lists on a monthly basis and shall immediately terminate any Network Pharmacy found to be excluded. Upon such exclusion, the Contractor shall arrange for the Enrollee to be notified of the exclusion and to assist with any required prescription transfers to a non-excluded Network Pharmacy. The Contractor will also immediately notify ASES and the MCOs of any excluded Provider or Network Pharmacy that may appear on an MCO's Network Provider list.

7.2 Pharmacy Network Criteria

- 7.2.1 The Contractor shall form a Pharmacy Network meeting Network Adequacy requirements set forth in this Section no later than thirty (30) Calendar Days prior to the Implementation Date of the Contract, containing not less than the amount of Network Pharmacies indicated below:
- 7.2.1.1 The Contractor's Pharmacy Network shall include Network Pharmacies to ensure that Access for Enrollees residing in the municipalities comprising each region type as follows:

- 7.2.1.1.1 At least ninety percent (90%) of the Enrollees, on average, living in Urban Areas are within two (2) miles of a Network Pharmacy;
 - 7.2.1.1.2 At least ninety percent (90%) of the Enrollees, on average, living in Suburban Areas are within five (5) miles of a Network Pharmacy; and
 - 7.2.1.1.3 At least seventy percent (70%) of the Enrollees, on average, living in Rural Areas living within fifteen (15) miles of a Network Pharmacy.
 - 7.2.1.1.4 Exceptions shall be justified and documented by the Contractor and shall be subject to ASES's approval.
- 7.2.2 The provisions of this Section 7.2.2 shall not be construed to:
- 7.2.2.1 Require the Contractor to contract with Network Pharmacies beyond the number necessary to satisfy the obligations for Network Adequacy set forth in Section 7.2.1 or as otherwise required under this Contract; or
 - 7.2.2.2 Preclude the Contractor from establishing measures that are designed to maintain quality of services and control costs and are consistent with its responsibilities to Enrollees and to ASES.
- 7.2.3 If the Contractor declines to include a Pharmacy or group of Pharmacies that have requested inclusion in its Pharmacy Network, the Contractor shall give the affected Pharmacies written notice of the reason for its decision. The Contractor shall notify ASES of such a decision, and shall provide documentation of the denial of the Pharmacy's participation in the Pharmacy Network within twenty (20) Business Days of communicating the decision to the Pharmacy.
- 7.2.4 The Contractor shall cause the participation in the Pharmacy Network all Pharmacies located in or within FQHC, PHS300 or 340B eligible entities, in Centers of Diagnostic Treatment ("CDT"), and in the public hospitals owned by the Puerto Rico Government.
- 7.2.5 The Contractor shall submit upon implementation of the Contract and on an annual basis thereafter a copy of the approved and actual procedure for contracting with Network Pharmacies for auditing purposes. ASES agrees and acknowledges that the Information to be disclosed constitutes proprietary Information of the Contractor. Accordingly, ASES shall not duplicate, disclose or discuss any such Information with third parties without the prior written consent of the Contractor, subject to the terms of this Contract.
- 7.2.6 The Contractor shall submit to ASES a sample Pharmacy Contract or template used to contract with Network Pharmacies in its Pharmacy Network. Contractor shall also submit to ASES on a quarterly basis a complete list of all Network Pharmacies in its Pharmacy Network, containing such additional Information ASES may reasonably request from time to time.

7.3 Contractor Documentation of Network Adequacy

- 7.3.1 As of the Implementation Date of the Contract, and as a condition precedent for the Contract to take effect, the Contractor shall demonstrate to ASES's satisfaction that:
 - 7.3.1.1 The Pharmacy Network has sufficient Network Pharmacies in number, mix, and geographic distribution to meet the needs of the Enrollees, as indicated in Section 7.2.1 of this Contract.
- 7.3.2 The Contractor shall provide documentation of Network Adequacy as stated in this Section 7.3 upon implementation of this Contract and every six (6) months thereafter during the Term of this Contract.

7.4 Pharmacy Credentialing

- 7.4.1 The Contractor shall be responsible for Credentialing and re-Credentialing Network Pharmacies to ensure that all Network Pharmacies are qualified to provide services under this Contract.
- 7.4.2 At a minimum, each Network Pharmacy's file documenting the Contractor's Credentialing process shall include, as applicable, but shall not be limited to:
 - 7.4.2.1 A copy of the license issued by the Medical Pharmacy Examining Board of Puerto Rico;
 - 7.4.2.2 Biological Products License;
 - 7.4.2.3 A copy of the Puerto Rico license to dispense medications (ASSMCA);
 - 7.4.2.4 A copy of the federal license to dispense medications (DEA);
 - 7.4.2.5 Pharmacy registration certification;
 - 7.4.2.6 NCPDP evidence for pharmacy NABP and NPI number;
 - 7.4.2.7 Insurance liability insurance coverage, including for druggist liability;
 - 7.4.2.8 Certificate of incorporation, if applicable;
 - 7.4.2.9 Disclosure of the Information concerning the Network Pharmacy and fiscal Agents about participation and control including: name, address, participation percentage, familial relationships and others (as required by 42 CFR Part 455.104);
 - 7.4.2.10 Network Pharmacy's disclosure of the Information related to business transactions, in compliance with 42 CFR Part 455.105;
 - 7.4.2.11 Disclosure of the Information about criminal convictions of the Pharmacy or a person or entity with an ownership or control interest in the Network Pharmacy, or who is an Agent or managing employee of the Network Pharmacy, in compliance with 42 CFR Part 455.106; and

7.4.2.12 Evidence that the Network Pharmacy does not appear on the OIG Excluded Parties List System (“EPLS”) or other exclusion list, as set forth in Section 7.1.3.

7.4.3 The Contractor shall establish credentialing requirements for Network Pharmacies in full accordance with all applicable Puerto Rico and federal laws, statutes and regulations and CMS requirements. The Contractor warrants that it shall enforce its Network Pharmacy Credentialing requirements and monitor compliance of Network Pharmacies on an ongoing basis, including but not limited to re-Credentialing Network Pharmacies in full accordance with all applicable Puerto Rico and federal laws, statutes and regulations and CMS’s requirements.

7.4.4 The re-Credentialing process shall include, at a minimum, verification and/or updating of the above Section 7.4.2, as appropriate, to ensure continued adequacy of the Pharmacy Network.

7.4.5 If the Contractor determines, through the Credentialing or re-Credentialing process, or otherwise, that a Network Pharmacy could be excluded pursuant to 42 CFR 1001.1001 or if the Contractor determines that the Provider has failed to make full and accurate disclosures as required above, the Contractor shall deny the Network Pharmacy’s request to participate in the Pharmacy Network, or, for a current Pharmacy Network, terminate the Pharmacy Contract. The Contractor shall notify ASES of such a decision and shall provide documentation of the bar on the Pharmacy’s Network participation, within twenty (20) Business Days of communicating the decision to the Pharmacy. The Contractor shall screen its employees, Pharmacy Network, and other Subcontractors initially and on an ongoing monthly basis to determine whether any of them has been excluded from participation in Medicare, Medicaid, CHIP, or any other federal health care program (as defined in Section 1128B(f) of the Social Security Act). ASES or the Puerto Rico Medicaid Program shall, upon receiving notification from a plan that the plan has denied credentialing, notify the HHS OIG of the denial with twenty (20) Business Days of the date it receives the Information, in accordance with 42 CFR 1002.3.

7.5 Prohibited Actions

7.5.1 Any denial, unreasonable delay, or rationing of Medically Necessary services to Enrollees is expressly prohibited. The Contractor shall ensure compliance with this prohibition from Network Pharmacies or any other entity related to the provision of health care services to GHP Enrollees. Should the Contractor violate this provision, the Contractor will be subject to the provisions of Article VI, Section 6 of Act 72 and 42 CFR 438 Subpart I (Sanctions).

7.6 Required Provisions in Pharmacy Contracts

7.6.1 In general, the Contractor’s Pharmacy Contracts shall:

7.6.1.1 Include a section summarizing the Contractor’s obligations under this Contract.

- 7.6.1.2 Require that the Network Pharmacy cooperate and collaborate with the MCOs in serving Enrollees, and work to advance the integrated model of physical and Behavioral Health services;
- 7.6.1.3 Require that the Network Pharmacy comply with the applicable federal and Puerto Rico laws listed in this Contract, and with all CMS requirements;
- 7.6.1.4 Prohibit any unreasonable denial, delay, or rationing of Covered Pharmacy Services to Enrollees; and violation of this prohibition shall be subject to the provisions of Article VI, Section 6 of Act 72 and of 42 CFR Part 438, Subpart I (Sanctions).
- 7.6.1.5 Prohibit discrimination against an Enrollee on the basis of race, color, national origin, ancestry, religion, gender, marital status, sexual orientation, age, mental or physical disability;
- 7.6.1.6 Prohibit the Network Pharmacy from claiming for any non-allowed administrative expenses;
- 7.6.1.7 Prohibit the unauthorized sharing, transfer, selling or any other disposition whatsoever of ASES Data, as defined in this Contract;
- 7.6.1.8 Notify the Network Pharmacies that the terms of the Contract for services under GHP are subject to subsequent changes in legal requirements that are outside of the control of ASES;
- 7.6.1.9 Require the Network Pharmacy to comply with all reporting requirements contained in this Contract, and to report all instances of suspected Fraud, Waste or Abuse;
- 7.6.1.10 Require the Network Pharmacy to acknowledge that ASES Data belongs exclusively to ASES, and that the Network Pharmacy may not give Access to, assign, or sell such Data to third parties, without Prior Authorization from ASES. The Contractor shall include penalty clauses in its Network Pharmacy contracts to prohibit this practice, and require that the fines be paid to ASES; the foregoing notwithstanding, throughout the Contract Term, ASES Data may be shared to ensure compliance with the terms of certain Memoranda of Understanding between ASES and IQVIA Puerto Rico;
- 7.6.1.11 Prohibit the Network Pharmacy from seeking payment from the Enrollee for any Covered Pharmacy Services provided to the Enrollee within the terms of this Contract, and require the Network Pharmacy to look solely to the Contractor for compensation for services rendered to Enrollees;
- 7.6.1.12 Require the Network Pharmacy to cooperate with the Contractor's and MCO's quality improvement and Utilization Management activities;
- 7.6.1.13 Require Network Pharmacy to meet the timeframes for access to services pursuant to this Contract. In the event of a communications failure or systems interruption, the Network Pharmacy shall take all

necessary measures to ensure the Covered Pharmacy Services to Enrollees are rendered without interruption and on a timely basis;

- 7.6.1.14 Provide for continuity of services in the event that a Network Pharmacy's participation in the Contractor's Pharmacy Network terminates during the course of an Enrollee's treatment by that Network Pharmacy. The Contractor agrees to immediately notify the MCOs and ASES of a Pharmacy Contract cancellation;
- 7.6.1.15 Prohibit Network Pharmacies who do not have a Pharmacy license from dispensing medications, as required by the Puerto Rico Pharmacy Act;
- 7.6.1.16 Specify that the DHHS and its sub-agencies and ASES shall have the right to inspect, evaluate, and audit any pertinent books, financial records, documents, papers, and records of any Network Pharmacy involving financial transactions related to GHP;
- 7.6.1.17 Require that the Network Pharmacy attend promptly to requests for Prior Authorizations and Referrals, when Medically Necessary, in compliance with the timeframes set forth in this Contract and in 42 CFR 438.210 and the Puerto Rico Patient's Bill of Rights;
- 7.6.1.18 Specify rates of payment as provided in this Contract and require that Network Pharmacies accept such payment as payment in full for Covered Pharmacy Services provided to Enrollees, less any applicable Enrollee Co-Payments pursuant to this Contract;
- 7.6.1.19 Specify acceptable billing and coding requirements;
- 7.6.1.20 Require Network Pharmacies to collect Enrollee Co-Payments only as specified in this Contract. A Network Pharmacy shall, prior to rendering any Covered Pharmacy Services, advise Enrollees of their responsibility to cover applicable Co-Payment, if any, or any non-Covered Pharmacy services and collect and retain the Co-Payments. These amounts will be included and considered part of the Network Pharmacy's compensation for services rendered to Enrollees. The Contractor will ensure contracts with its Network Pharmacies will include that the retail pharmacy charges to the Enrollee are only the applicable Co-Payment according to the terms of the GHP.
- 7.6.1.21 Require Network Pharmacies to cooperate with requests by the Enrollees concerning Information relating to prescriptions or Co-Payment amounts.
- 7.6.1.22 Require that Network Pharmacies not employ or subcontract with individuals on the Puerto Rico or Federal Exclusions list, or with any entity that could be excluded from the Medicaid program under 42 CFR 1001.1001 (ownership or control in sanctioned entities) and 1001.1051 (entities owned or controlled by a sanctioned person);
- 7.6.1.23 Prohibit the Network Pharmacy from operating on a different schedule GHP Enrollees than for other patients, and from in any other way discriminating against GHP Enrollees;

- 7.6.1.24 Provide notice that the Contractor's negotiated rates with Network Pharmacies shall be adjusted in the event that ASES directs the Contractor to make such adjustments in order to reflect budgetary changes to the Medical Assistance program;
- 7.6.1.25 Impose fees or penalties if the Network Pharmacy breaches the Pharmacy Contract or violates federal or Puerto Rico laws or regulations;
- 7.6.1.26 Require that the Network Pharmacy make every effort to Cost Avoid Claims and identify and communicate to the Contractor available Third Party resources, as required in this Contract;
- 7.6.1.27 Provide that the Contractor shall not pay Claims for services covered under the Medicare Program, and that the Network Pharmacy may not bill both GHP and the Medicare Program for a single service to a Dual Eligible Beneficiary;
- 7.6.1.28 Require the Network Pharmacy to sign a release giving ASES access to the Network Pharmacy's Medicare billing data for GHP Enrollees who are Dual Eligible Beneficiaries, provided that such access is authorized by CMS compliant with all HIPAA requirements;
- 7.6.1.29 Require the Network Pharmacy to notify the Contractor Immediately if or whether the Network Pharmacy falls within the prohibition stated in this Contract or has been excluded from the Medicare, Medicaid, or Title XX Social Services Programs;
- 7.6.1.30 Include a penalty clause to require the return of public funds paid to a Network Pharmacy that falls within the prohibition stated in this Contract; and
- 7.6.1.31 Require that all Claims and any reports submitted by the Network Pharmacy to the Contractor include the Network Pharmacy's NPI.
- 7.6.1.32 Require the Network Pharmacy to maintain an appropriate record system for Covered Pharmacy Services and to retain records for ten (10) Calendar Years, after the Covered Pharmacy Services were rendered, unless a different period is required by law or agreed to in writing by ASES. The Contractor shall also require Network Pharmacies to cooperate with requests by ASES to prepare and provide, at no cost to ASES, or if applicable, the Enrollees, any records pertaining to Prescriptions or Co-Payment amounts.

7.7 Termination of Pharmacy Contracts

- 7.7.1 The Contractor shall comply with all Puerto Rico and federal laws regarding Network Pharmacy termination. Pharmacy Contracts shall:
 - 7.7.1.1 Contain provisions allowing immediate termination of the Pharmacy Contract by the Contractor "for cause". Cause for termination includes gross negligence in complying with the contractual considerations or obligations; insufficiency of funds of ASES or the Contractor, which

prevents them from continuing to pay for their obligations; and changes in federal law.

7.7.1.2 Specify that in addition to any other right to terminate the Pharmacy Contract, and notwithstanding any other provision of this Contract, ASES may demand Network Pharmacy termination Immediately, or the Contractor may Immediately terminate on its own, a Network Pharmacy's participation under the Pharmacy Contract if:

7.7.1.2.1 A Network Pharmacy fails to abide by the terms and conditions of the Pharmacy Contract, as determined by ASES, or, in the sole discretion of ASES, if the Network Pharmacy fails to come into compliance within fifteen (15) Calendar Days after a receipt of notice from the Contractor specifying such failure and requesting such Network Pharmacy to abide by the terms and conditions hereof; or

7.7.1.2.2 The Contractor or ASES learns that the Network Pharmacy:

7.7.1.2.2.1 Falls within the prohibition stated in Article 32.1 or 32.6, or has a criminal conviction as provided in Article 32;

7.7.1.2.2.2 Has been or could be excluded from participation in the Medicare, Medicaid, or CHIP Programs; or

7.7.1.2.2.3 Could be excluded from the Medicaid program under 42 CFR 1001.1001 (ownership or control in sanctioned entities) and 1001.1051 (entities owned or controlled by a sanctioned person).

7.7.1.3 Specify that any Network Pharmacy whose participation is terminated under the Pharmacy Contract for any reason shall utilize the applicable Pharmacy Complaints and Appeals Process outlined in the Pharmacy Contract. No additional or separate right of appeal to ASES or the Contractor is created as a result of the Contractor's act of terminating, or decision to terminate any Pharmacy Contract. Notwithstanding the termination of the Pharmacy Contract, a Contractor's Pharmacy Contract with all other Network Pharmacies shall remain in full force and effect.

7.7.2 The Contractor shall notify ASES at least forty-five (45) Calendar Days prior to the effective date of the suspension, termination, or withdrawal of a Network Pharmacy from participation in the Contractor's Pharmacy Network. If the termination was for cause, the Contractor shall provide to ASES the reasons for termination.

7.7.3 The Contractor shall, within fifteen (15) Calendar Days of issuance of a notice of termination to a Network Pharmacy, notify enrollees of the termination, and shall assist the Enrollee as needed in finding a new Network Pharmacy.

7.8 Out-of-Network Pharmacies

7.8.1 If the Contractor's Pharmacy Network is unable to provide Covered Pharmacy Services to an Enrollee, the Contractor may adequately and timely cover these

services by way of exception only using Pharmacies outside of its Pharmacy Network. Such special arrangements with Out-of-Network Pharmacy require ASES's prior written consent.

- 7.8.2 Except as provided with respect to Emergency Services or as provided under Section 7.8.1 above, if the Contractor offers the service through a Pharmacy in its Pharmacy Network but the Enrollee chooses to access the service from an Out-of-Network Pharmacy, the Contractor is not responsible for payment.
- 7.8.3 The Contractor must ensure that an Out-of-Network Pharmacy is paid at least at the average rate that the Contractor pays the same type of Network Pharmacy.
- 7.8.4 ASES shall ensure, in setting Co-Payments, that in the event that a Co-Payment is imposed on Enrollees for an Out-of-Network service permitted under Sections 7.8.1 or 7.8.2 above, the Co-Payment shall not exceed the Co-Payment that would apply if services were provided by a Network Pharmacy in the Pharmacy Network.

7.9 Hours of Service

- 7.9.1 The Contractor shall prohibit its Pharmacy Network from having different hours and schedules for GHP Enrollees than what is offered to commercial members.
- 7.9.2 The Contractor shall prohibit its Network Pharmacy from establishing specific days for the delivery of Referrals and requests for Prior Authorization for GHP Enrollees, and the Contractor shall monitor compliance with this rule.

7.10 Direct Relationship

- 7.10.1 The Contractor shall ensure that all Network Pharmacies in the Pharmacy Network have knowingly and willingly agreed to participate in the Contractor's Pharmacy Network.
- 7.10.2 ASES reserves the right to confirm and validate, through collection of Information, documentation from the Contractor and on-site visits to Network Pharmacies, the existence of a direct relationship between the Contractor and the Pharmacy Network.

7.11 Pharmacy Call Center

- 7.11.1 The Contractor shall operate a Pharmacy Call Center, which will be fully operational by the Implementation Date of Contract. The Pharmacy Call Center shall be located in Puerto Rico. The Pharmacy Call Center shall be adequately staffed to promptly respond to inquiries from Network Pharmacies about systems, Claims, administrative pharmacy edits, and any other inquiries related to the Covered Pharmacy Services under the GHP.
- 7.11.2 The Pharmacy Call Center shall be fully staffed between the hours of 7:00 am and 7:00 pm (Atlantic Time). Monday through Friday, excluding Puerto Rico holidays. The Contractor shall have an automated system available between the hours of 7:00 pm and 7:00 am (Atlantic Time) Monday through Friday and during all hours on weekends and holidays. This automated system must provide callers with operating instructions on what to do in case of an

emergency and shall include, at a minimum, a voice mailbox for callers to leave messages. The Contractor shall ensure that the voice mailbox has the required capacity to receive all messages. A Contractor's representative shall reply to one hundred percent (100%) of messages by the next Business Day. The designated staff shall include one (1) bilingual customer service unit (Spanish and English-speaking staff). Assigned personnel in this customer services unit must be fluent in Spanish.

- 7.11.3 The Pharmacy Call Center services will be offered by means of a toll-free access telephone number, facsimile and voicemail system. The Contractor shall be responsible for payment of all such telephone service charges.
- 7.11.4 The Contractor shall retrieve and respond to all messages received in the voice mailbox unit within twenty-four (24) hours after being received.
- 7.11.5 The Contractor shall provide an appropriate number of toll free lines, including telephone and facsimile and reasonable amount of customer service staff to maintain optimal performance guarantees for Average Speed to Answer, as required under this Contract. Abandon Rate will be in accordance with ASES standards as specified in Attachment 4 of this Contract.
- 7.11.6 The Contractor must be the first point of contact for Pharmacies and MCOs with questions, concerns and complaints and must implement and maintain a customer contact and problem resolution tracking system. The system must, at a minimum:
 - 7.11.6.1 Document and track contacts with Providers and MCOs;
 - 7.11.6.2 Identify issues and describe problem resolution; and
 - 7.11.6.3 Provide management reports and ad hoc reporting as requested by ASES.
- 7.11.7 The Contractor must review reports on usage of the Pharmacy Call Center, including but not limited to, number of inquiries, types of inquiries, and timeliness of responses and prepare an analysis of the issues. The analyses must be reviewed with ASES staff at regularly scheduled meetings.
- 7.11.8 The Pharmacy Call Center shall have efficient escalation process with a pharmacist onsite at all times, in order to be able to respond to escalated inquiries within one (1) hour or Immediately for emergencies.

7.12 Mail Order

- 7.12.1 The use of mail order pharmacies or the dispensing of prescription drugs by mail order is not permitted under GHP.

7.13 Network Pharmacy Communications

- 7.13.1 The Contractor shall create and maintain a Pharmacy Provider Manual that contains a compilation of all procedures to be used by Network Pharmacies and billing agents for all aspects related to the processing of Pharmacy Claims, Remittance advices, and explanation of benefits. The Pharmacy Provider Manual shall be reviewed and approved by ASES prior to distribution.

- 7.13.1.1 The Contractor shall update the Pharmacy Provider Manual regularly to ensure it reflects the most current polices, regulations, and system changes.
- 7.13.1.2 The Contractor shall be responsible for distributing the Pharmacy Provider Manual by appropriate delivery methods as required by ASES.
- 7.13.1.3 The Pharmacy Provider Manual shall be posted to a website maintained by the Contractor. The online manual shall include functionality to facilitate searches of the manual's content and be downloadable and formatted in a manner compatible with printing.
- 7.13.2 The Contractor shall develop and maintain a comprehensive, ASES-approved communication plan and strategies to ensure Pharmacies, Pharmacy billing agents, MCOs and other interested parties are kept informed about GHP Covered Pharmacy Services.
 - 7.13.2.1 The Contractor shall develop and disseminate ASES-approved communications, including but not limited to, bulletins, Information requests, provider manual changes, website content, provider letters, news articles, system alerts, user guides, technical documents and educational/training sessions.

ARTICLE 8 CLAIMS PROCESSING AND PAYMENT

- 8.1** With respect to the processing of Claims, the Contractor shall provide the following services and perform the following functions:
 - 8.1.1 Take the necessary steps to ensure the effective and smooth transition and execution of all Claims Processing functions.
 - 8.1.2 Process and adjudicate for payment all Claims in accordance with the prevailing NCPDP standards. The Contractor will be responsible for taking all necessary actions to correct any discrepancies, including but not limited to, collection efforts. The Contractor agrees to distribute to the MCOs a Claims rejection report, as required under this Contract.
 - 8.1.3 Charge or pay Network Pharmacies only for the dispensing to an Enrollee of a prescription covered by GHP. This payment shall include the Ingredient Cost, plus a Dispensing Fee less any deductible, Co-Payment or co-insurance paid by the Enrollee and less any amount paid or reimbursed, as the case may be, by another health plan under COB.
 - 8.1.4 Disburse payment of Claims to Network Pharmacies every two (2) Weeks exclusively from funds provided by either the MCOs or ASES, as the case may be, or within such other time period as may be agreed to by ASES and the Contractor, provided that such disbursement of payments of Claims will be made within twenty-one (21) days of their receipt by the Contractor. In no event shall the Contractor be liable to pay Claims other than with the funds provided by either the MCOs or ASES.
 - 8.1.5 Provide ASES with the adjudicated Claims Data and reports set forth in this Contract, in the media and format established in this Contract or in any other

form established by ASES, and provide the MCOs with the adjudicated Claims Data and the reports set forth in this Contract, as detailed in this Contract, in the media and format established in this Contract or in any other form mutually agreed to by the Parties.

- 8.1.6 The Contractor will adjudicate Claims submitted by Network Pharmacies based on the Pharmacy Contracts, including online edits for Prior Authorization regulation and other edits that may be necessary for the accurate payment of Claims and according to the Covered Pharmacy Services as determined by ASES. The Contractor's Claims Processing System will have the capacity to handle Coordination of Benefits ("COB") with another party which is or may be liable for payment and which provides the Contractor the necessary COB Information on a daily basis. The Contractor shall submit to ASES on the last Business Day of March, June, September, and December of each Year during the Term of this Contract a report in the format to be agreed upon by ASES and the Contractor containing the Information pertaining to all COB efforts and results.
- 8.1.7 The Contractor's Claims Processing System shall screen all Claims and apply all ASES approved and required Data validation procedures and edits. Consistency controls shall be in place to ensure that dates, types, and number of services are reasonable and comply with ASES policy and/or rules. Should ASES determine, in its sole discretion, that changes in the control measures are necessary, ASES may instruct the Contractor to modify the control measures. The Contractor shall perform any work necessary to effect a requested change in control measures at no additional cost to ASES.
- 8.1.8 The Contractor will classify drugs consistently based on Data provided by sources such as MediSpan® or First Databank, pharmaceutical manufacturers, and the FDA, or other sources disclosed to ASES. The Contractor's Claims Processing System shall permit ASES to override these values using its own policies and procedures.
- 8.1.9 The Contractor shall establish a Claims Processing System capable of adding, changing, or removing Claim adjudication processing rules or edits. At no additional cost to ASES, the Contractor shall add, change, or remove Claim adjudication rules in its system to accommodate changes that ASES determines, in its sole discretion, to be necessary or required.
- 8.1.10 ASES reserves the right to override any system edit whenever it deems appropriate and necessary.
- 8.1.11 Throughout the Term of this Contract, the Contractor shall be responsible for making recommendations to ASES regarding the need for the edits, associated criteria, and Call Center protocol development.
- 8.1.12 The Claims Processing System shall recognize all applicable Co-Payments and deduct that amount from the payment made to the Pharmacy.
- 8.1.13 For the purposes of this Contract, an adjudicated Claim shall not include a point-of-sale Transaction that was canceled by the sender or a Claim that was rejected before it could be fully adjudicated. ASES shall not pay the Contractor for reversed, voided or adjusted Claims.

- 8.1.14 The Contractor shall be responsible for the preparation of any applicable tax Information for service provider payments and the federal government (i.e., Form 1099).
- 8.1.15 The Contractor shall be able to support any and all changes to discount rates and standard pharmaceutical pricing methodologies and incorporate them into Pharmacy Claim Pricing policies at the sole discretion of ASES at no additional cost to ASES.
- 8.1.16 The Contractor shall develop, maintain, and distribute to Network Pharmacies a Pharmacy Procedure and Billing Manual. Manuals shall be posted on the Contractor's dedicated website and distributed to Network Pharmacies. The manuals shall provide instructions to Network Pharmacies regarding the process by which the Network Pharmacy receives payment, in order to diminish the potential for incorrect billing and the need for adjustments or recoupments. The content of the manuals shall be approved by ASES before distribution.

8.2 Electronic Transfer of Claims Processing and Other Data

8.2.1 Transmission of Enrollee Eligibility Information

8.2.1.1 ASES will cause the MCOs to, on a daily basis, electronically transfer to the Contractor in the format established by ASES, an updated file of the Enrollees in the GHP. The Contractor will update its Enrollees file for inquiry and Claims Processing purposes within the time parameters established by ASES. If the Contractor fails to update the file of Enrollees within the time parameters established by ASES, the Contractor will Immediately notify ASES and the MCOs in writing and the Contractor, with ASES prior written consent, shall establish an alternate procedure to ensure that Covered Pharmacy Services to Enrollees are not interrupted. If for any reason ASES and the MCOs are unable to provide to the Contractor the updated file of Enrollees enrolled in the GHP, on any given day, ASES and the MCOs will Immediately notify in writing to the Contractor and ASES and the MCOs shall establish an alternate procedure to provide such information to the Contractor. The Contractor shall have the obligation of reviewing and validating on a monthly basis these files and shall Immediately notify ASES of any discrepancies or errors such file may contain.

8.2.1.2 The Contractor shall reimburse ASES for any covered drug dispensed to an ineligible Enrollee reported by any of the MCOs, if such notification is received by the Contractor at least two (2) full Business Days prior to the dispensing date of such prescription.

8.3 Network Pharmacy Payment Management

8.3.1 The Contractor shall administer an effective, accurate, and efficient Network Pharmacy payment management function that (a) adjudicates and settles Pharmacy Claims for Covered Pharmacy Services that are filed within the timeframes specified by this Article and in compliance with all applicable Puerto Rico and federal laws, rules, and regulations; (b) performs third-party administration functions for Network Pharmacies, as specified by this Article 8.

- 8.3.2 The Contractor shall maintain a Claims Management System that can accurately identify the date of receipt (the date the Contractor receives the Claim as indicated by the date-stamp), real-time-accurate history of actions taken on each Pharmacy Claim (i.e. paid, denied, suspended, appealed, etc.), and the date of payment (the date of the check or other form of payment).
- 8.3.2.1 The system must allow a pharmacy to initiate a reversal (void) of a submitted Claim. The Contractor shall not charge Pharmacies or switching companies a transaction or system access fee. Network Pharmacies are responsible for purchasing point-of-sale hardware, software and all telecommunications linkages. Point-of-sale functionality shall be required of all Pharmacies.
- 8.3.2.2 The Contractor shall apply a unique identification number to each Claim and any supporting documentation regardless of submission format. The identification number shall be used to recognize the Claim for research or audit purposes.
- 8.3.3 To the extent feasible, the Contractor shall implement an Automated Clearinghouse (“ACH”) mechanism that allows Network Pharmacies to request and receive Electronic Funds Transfer (“EFT”) of Claims payments. The Contractor shall encourage its Network Pharmacy, as an alternative to the filing of paper-based Claims, to submit and receive Claims Information through Electronic Data Interchange (“EDI”), i.e., electronic Claims. Electronic Claims must be processed in adherence to Information exchange and Data management requirements specified in Article 19 of this Contract. As part of this Electronic Claims Management (“ECM”) function, the Contractor shall also provide online and phone-based capabilities to obtain Claims Processing status Information.
- 8.3.3.1 If the Contractor does not make payments through an ACH system, the Contractor shall either provide a central address to which Network Pharmacies must submit Claims; or provide to each Network Pharmacy a complete list, including names, addresses, and phone numbers, of entities to which the Network Pharmacies must submit Claims.
- 8.3.4 The Contractor shall notify Network Pharmacies in writing of any changes in the process for filing Claims at least thirty (30) Calendar Days before the effective date of the change. If the Contractor is unable to provide at least thirty (30) Calendar Days of notice, it must give Network Pharmacies a thirty (30) Calendar Day extension on their Claims filing deadline to ensure Claims are routed to the correct processing center.
- 8.3.5 All Claims submitted for payment, in order to be processed, shall comply with the Clean Claim standards as established by Federal regulation (42 CFR 447.45) and with the standards described in Section 8.7.2.1 of this Contract.
- 8.3.6 The Contractor shall generate explanations of benefits and remittance advices in accordance with ASES standards for formatting, content, and timeliness.
- 8.3.7 The Contractor shall not pay any Claim submitted by a Network Pharmacy who is excluded or suspended from the Medicare, Medicaid, or CHIP programs for

Fraud, Abuse, or Waste or otherwise included on the Department of Health and Human Services Office of the Inspector General exclusions list, or employs someone on this list. The Contractor shall not pay any Claim submitted by a Network Pharmacy that is on Payment Hold under the authority of ASES.

8.4 Payment Schedule

8.4.1 At a minimum, the Contractor shall run one (1) Network Pharmacy payment cycle every two (2) Weeks, on the same day every two (2) Weeks, as determined by the Contractor. The Contractor shall develop a payment schedule to be submitted to ASES for review and approval within ten (10) Calendar Days prior to the Effective Date of Contract.

8.5 Required Claims Processing Reports

8.5.1 The Contractor shall submit to ASES a monthly report not later than the fifth (5th) Calendar Day after the last day of the month listing all paid, pending, and denied Claims during that month. The Contractor shall provide to ASES, on a monthly basis, records or financial Data related to Claims submitted but not paid by reason of accounting or by reason of Contractor decision to deny the Claim. The report shall be made available in an electronic format and shall detail all paid, pending, and denied Claims for all Providers.

8.5.2 The report shall list, by Pharmacy, Claims from the preceding month, and those that are pending payment and the reason for the payment delay or the reason for the Contractor's decision to deny the Claim.

8.5.3 In the event that Network Pharmacies associated with a PMG consent to the disbursement of payment directly to the PMG, the Contractor shall so specify in its report.

8.5.4 The Contractor shall provide to PMGs, on a monthly basis, and through an electronic or machine readable media format, a detailed report classified by Enrollee, by Network Pharmacy, by date of service and by real cost, of all payments made by the Contractor to the PMG. The Contractor shall make this report available to ASES.

8.6 Relationship with MCOs

8.6.1 The Contractor shall work with the MCOs to facilitate the processing of Pharmacy Claims submitted.

8.6.2 To facilitate Claims Processing, the MCOs shall deliver for payment to the Contractor, on a daily basis, the Enrollee Data required to make such payments.

8.7 Timely Payment of Claims

8.7.1 The Contractor shall comply with the timely processing of Claims standards contained in Section 1902(a)(37) of the Social Security Act, Section 5001(f)(2) of the American Recovery and Reinvestment Act of 2009 (ARRA) and Federal regulations at 42 CFR 447.6.

- 8.7.2 Network Pharmacy Contracts shall include the following provisions for timely payment of Clean Claims.
- 8.7.2.1 A Clean Claim under 42 CFR 447.46(b), as defined in 42 CFR 447.45(b), is a Claim received by the Contractor for adjudication, which can be processed without obtaining additional Information from the Network Pharmacy of the service or from a third party. It includes a Claim with errors originating in the Contractor's Claims Processing System. It does not include a Claim from a Network Pharmacy who is under investigation for Fraud, Waste or Abuse, or a Claim under review for Medical Necessity.
- 8.7.2.2 Network Pharmacy contracts shall provide that ninety-five percent (95%) of all Clean Claims must be paid by the Contractor not later than thirty (30) Calendar Days from the date of receipt of the Claim (including Claims billed by paper and electronically), and one hundred percent (100%) of all Clean Claims must be paid by the Contractor not later than fifty (50) Calendar Days from the date of receipt of the Claim.
- 8.7.2.3 Any Clean Claim not paid within thirty (30) Calendar Days shall bear interest in favor of the Network Pharmacy on the total unpaid amount of such Claim, according to the prevailing legal interest rate fixed by the Puerto Rico Commissioner of Financial Institutions. Such interest shall be considered payable on the day following the terms of this Section, and interest shall be paid together with the Claim.
- 8.7.3 An Unclean Claim is any Claim that falls outside the definition of Clean Claim in Section 8.7.2.1. The Contractor shall include the following provisions in its Network Pharmacy Contracts for timely resolution of Unclean Claims:
- 8.7.3.1 Ninety percent (90%) of Unclean Claims must be resolved and processed with payment by the Contractor, if applicable, not later than ninety (90) Calendar Days from the date of initial receipt of the Claim. This includes Claims billed on paper or electronically.
- 8.7.3.2 Of the remaining ten percent (10%) of total Unclean Claims that may remain outstanding after ninety (90) Calendar Days.
- 8.7.3.2.1 Nine percent (9%) of the Unclean Claims must be resolved and processed with payment by the Contractor, if applicable, not later than six (6) Calendar Months from the date of initial receipt (including Claims billed on paper and those billed electronically);
- 8.7.3.2.2 One percent (1%) of the Unclean Claims must be resolved and processed with payment by the Contractor, if applicable, not later than one year (12 months) from the date of initial receipt of the Claim (including Claims billed on paper and those billed electronically).
- 8.7.4 The Contractor shall not establish any administrative procedures, such as administrative audits, authorization number, or other formalities under the

control of the Contractor, which could prevent the Network Pharmacy from submitting a Clean Claim.

- 8.7.5 The foregoing timely payment standards are more stringent than those required in the Federal regulations, at 42 CFR 447.45(d). The Contractor shall include the foregoing standards in each Pharmacy Contract and, per 42 CFR 447.46(c), ASES will submit proof of this alternative payment agreement to CMS.
- 8.7.6 The Contractor shall deliver to Network Pharmacies, within fifteen (15) Calendar Days of award of the Pharmacy Contract, Claims coding and processing guidelines for the applicable Pharmacy type, and the definition of a Clean Claim, as requested in this Article 8 to be applied.
- 8.7.7 The Contractor shall give Network Pharmacies ninety (90) Calendar Days' notice in advance of the effective date of any change in Claims coding and processing deadlines.

8.8 Contractor Denial of Claims and Resolution of Contractual and Claims Disputes

- 8.8.1 No later than the fifth (5th) Business Day after the receipt of a Network Pharmacy Claim that the Contractor has deemed not to meet the Clean Claim requirements, the Contractor shall suspend the Claim and request in writing (notification via email, the Contractor's website, or an interim remittance advice satisfies this requirement) all outstanding Information such that the Claim can be deemed clean. Upon receipt of all the requested Information from the Network Pharmacy, the Contractor shall complete processing of the Claim in accordance with the standards outlined in this Section.
- 8.8.2 Claims suspended for additional Information must be closed (paid or denied) such that compliance with the timely payment rules outlined in Section 8.7 is achieved.
- 8.8.3 The Contractor must process, and finalize, all appealed Claims to a paid or denied status within thirty (30) Calendar Days of receipt of the appealed Claim; for Claims for which the Contractor has requested further information, per Section 8.8.1, the Contractor shall pay or deny the Claim within thirty (30) Calendar Days of receipt of the requested Information.
- 8.8.4 The Contractor shall send Network Pharmacies written notice (notification via email, surface mail, the Contractor's website, or a remittance advice satisfies this requirement) for each Claim that is denied, including an explanation of the reason(s) for the denial, the date the Contractor received the Claim, and a reiteration of the outstanding Information required from the Network Pharmacy to adjudicate the Claim.
- 8.8.5 In situations in which the Contractor denies a Network Pharmacy's Claim for services, and the Network Pharmacy disputes the denial, as provided in this Contract, the Contractor shall not withhold payment pending final resolution of the dispute, but instead shall pay the Claim within thirty (30) Calendar Days of the Contractor's receipt of the Network Pharmacy's written Complaint and request for mediation. The Contractor shall seek recoupment of the Paid Claim

only in the event that the dispute is resolved, at the level of the mediation described in this Contract, in the Contractor's favor.

8.9 Network Pharmacy Dispute Resolution System

- 8.9.1 The Contractor shall establish and use a procedure to resolve billing, payment, and other administrative disputes between Network Pharmacies and the Contractor arising under Pharmacy Contracts including:
 - 8.9.1.1 A mediation system for resolution of Network Pharmacy disputes of denied Claims; and
 - 8.9.1.2 A Network Pharmacy Complaint resolution process implemented by the Contractor to address, among others, lost or incomplete Claims forms or electronic submissions; Contractor requests for additional explanation as to services or treatment rendered by a Network Pharmacy; and inappropriate or unapproved Referrals issued by Network Pharmacies.

8.10 Network Pharmacy Complaints Concerning Denied Claims

- 8.10.1 If there is no agreement between the Contractor and a Network Pharmacy on a Claim denied by the Contractor, a Third Party, external to the Contractor and the Network Pharmacy and chosen by mutual agreement, shall be appointed to adjudicate the denial, upon the Network Pharmacy's submission of a written Complaint and request for mediation. The Third Party shall render his or her decision no more than thirty (30) Calendar Days from the date of the Network Pharmacy's request for third-party mediation. If there is no agreement on the Third Party's selection, he or she shall be appointed by ASES, and, subject to the Appeal rights described in this section, the Parties will comply with the Third Party's decision. The party adversely affected shall pay for the Third Party's service fees. If both the Network Pharmacy and the Contractor have caused an error, the Third Party shall determine the percentage attributable to each party, and payment to the Third Party shall be in accordance with percentage of responsibility.
- 8.10.2 The party adversely affected by the mediator's decision may pursue an Administrative Law Hearing before ASES. The parties to the Administrative Law Hearing shall be the Contractor and the Network Pharmacy. ASES shall grant a Network Pharmacy or Contractor request for an Administrative Law Hearing, provided that the Network Pharmacy or Contractor, as the case may be, submits a written appeal, accompanied by supporting documentation, not more than thirty (30) Calendar Days following the Network Pharmacy's or Contractor's receipt of the mediator's written decision.

8.11 Other Disputes Arising Under the Pharmacy Contract

- 8.11.1 For any dispute between the Network Pharmacy and the Contractor arising under the Pharmacy Contract, other than a disputed denial of a Claim, the Contractor shall implement an internal dispute resolution system, which shall include the opportunity for an aggrieved Network Pharmacy to submit a timely written Complaint to the Contractor. The Contractor shall issue a written decision on the Network Pharmacy's Complaint within fifteen (15) Calendar

Days of receipt of the Network Pharmacy's written Complaint. A Contractor written decision that is in any way adverse to the Network Pharmacy shall include an explanation of the grounds for the decision and a notice of the Network Pharmacy's right to and procedures for an Administrative Law Hearing within ASES.

8.11.1.1 Network Pharmacies disputing the denial of payment for a submitted Claim, or the payment of an amount that is less than the amount for which the Claim was submitted, shall be afforded a term of fourteen (14) Calendar Days to submit a written complaint. Contractor shall issue a determination regarding such Claims within fourteen (14) Calendar Days.

8.11.1.2 If the Network Pharmacy is not satisfied with the decision on its Complaint within the Contractor's dispute resolution system, the Network Pharmacy may pursue an Administrative Law Hearing. The parties to the Administrative Law Hearing shall be the Contractor and the Network Pharmacy. ASES shall grant a Network Pharmacy request for an Administrative Law Hearing, provided that the Network Pharmacy submits a written appeal, accompanied by supporting documentation, not more than thirty (30) Calendar Days following the Network Pharmacy's receipt of the Contractor's written decision.

8.11.1.3 Judicial Review. A decision issued as a result of the Administrative Law Hearing provided for in this Section 8.11.1.3 shall be subject to review before the Court of Appeals of Puerto Rico.

8.12 Contractor Recovery from Network Pharmacies

8.12.1 When the Contractor determines after the fact that it has paid a Claim incorrectly or when the Contractor is entitled to seek recoupment after a mediation concerning a denied Claim has been resolved in the Contractor's favor, the Contractor may request applicable reimbursement from the Network Pharmacy through written notice, stating the basis for the request. The notice shall list the Claims and the amounts to be recovered.

8.12.2 The Network Pharmacy will have a period of ninety (90) Calendar Days to make the requested payment, to agree to the Contractor retention of said payment, or to dispute the recovery action following the process described in this Contract.

8.12.3 In the event the Contractor makes payment in excess or otherwise makes payments for ineligible Claims or Enrollees, the Contractor shall:

8.12.3.1 Take all steps necessary to recover the overpayments, including recoupment from Network Pharmacies or subsequent Claims payments.

8.12.3.2 Assume one hundred percent (100%) liability for erroneous payments, which result from policy or system errors attributable to the Contractor in whole or in part.

8.12.3.3 Refrain from initiating litigation to recover such overpayment unless notified in writing to ASES.

- 8.12.3.4 Provide ASES, and the MCOs with detailed reports, which itemize the amounts of any overpayments, the reason for the overpayment, a listing of payees with outstanding overpayment recoveries due, an accounting of (a) prior balances of recoveries due, (b) current month overpayments, (c) recoveries, (d) new balances, (e) percentage of overpayment dollars recovered, and (f) an aging of receivables report for thirty (30), sixty (60), ninety (90), one hundred twenty (120), one hundred eighty (180) and greater than one hundred eighty (181+) days.
- 8.12.3.5 Reimburse ASES for any covered drug dispensed to a former Enrollee reported by the MCOs as no longer a GHP Enrollee, if such notification is received by the Contractor at least two (2) full Business Days prior to the dispensing date of such prescriptions.

8.13 Network Pharmacy Payment

- 8.13.1 Payments to Network Pharmacy Owing Funds to the Government. Upon receipt of notice from ASES that ASES is owed funds by a Network Pharmacy, the Contractor shall reduce payment to the Network Pharmacy for all Claims submitted by that Network Pharmacy by one hundred percent (100%), or such other amount as ASES may elect, until such time as the amount owed to ASES is recovered. The Contractor shall promptly remit any such funds recovered to ASES in the manner specified by ASES. To that end, the Contractor's Pharmacy Contracts shall contain a provision giving notice of this obligation to the Network Pharmacy, such that the Network Pharmacy's execution of the Pharmacy Contract shall constitute agreement with the Contractor's obligation to ASES.
- 8.13.2 Payment Rates Subject to Change. The Contractor shall adjust its negotiated rates with Network Pharmacies to reflect budgetary changes, as directed by ASES, to the extent that such adjustments can be made within funds appropriated to ASES and available for payment to the Contractor. The Contractor's Pharmacy Contracts shall contain a provision giving notice of this obligation to the Network Pharmacy, such that the Network Pharmacy's execution of the Pharmacy Contract shall constitute agreement with the Contractor's obligation to ASES.
- 8.13.3 Payments for Services to Dual Eligible Beneficiaries. The Contractor shall include in its Pharmacy Contracts a notice that the Contractor shall not pay Claims for services covered under the Medicare Program. No Network Pharmacy may bill both the GHP and the Medicare Program for a single service to a Dual Eligible Beneficiary.
- 8.13.4 Payment for Pharmacy Services. The Contractor shall abide by and comply with following payment process hereby established:
 - 8.13.4.1 In covering Pharmacy services, the Contractor shall adhere to the Retail Pharmacy Reimbursement Levels established in this Contract.
 - 8.13.4.2 On a semi-monthly payment cycle to be set by the Contractor, the Contractor will provide the MCOs with the proposed Claims listing.

8.13.4.3 The MCOs shall submit funds for Claims payment to the Contractor's zero-balance account. The MCOs shall provide funds or wire transfers to a bank account established by the Contractor for the payment of the Claims, or otherwise submit payment, within two (2) Business Days of the date that the prescription was filled.

8.13.4.4 The Contractor, ASES, and each MCO shall cooperate to identify additional savings opportunities, including special purchasing opportunities, changes in network fees, etc.

8.13.5 The Contractor shall use appropriately licensed professionals to supervise all Prior Authorization decisions, and shall, in its policies and procedures, specify the type of personnel responsible for each type of Prior Authorization. Any decision to deny a Prior Authorization request or to authorize a service in an amount, duration, or scope that is less than requested shall be made by a health care professional who has appropriate clinical expertise in treating the Enrollee's condition.

8.14 Retail Pharmacy Reimbursement

8.14.1 The Contractor shall reimburse Network Pharmacies the amount that is the sum of (a) Ingredient Cost, plus (b) Dispensing Fee, as defined in Attachment 5. Generic Drugs that are Bioequivalent shall be reimbursed based on a MAC List, plus the Dispensing Fee.

8.14.2 The Contractor will maintain computerized control of ingredient pricing through the use of a single, Auditable industry resource, approved by ASES, such as MediSpan®, First Databank or other national compendia.

8.14.3 The payment to the Network Pharmacy is equal to the amount specified in Attachment 5, less any Co-Payment, when applicable.

8.15 Maximum Allowable Cost ("MAC") List

8.15.1 The Contractor shall be responsible for developing, maintaining and updating the MAC list for multi-source Brand Drugs and Generic Drugs.

8.15.2 The Contractor will review quarterly the entire MAC list and continually monitor the pharmaceutical market to identify opportunities to improve MAC pricing by:

8.15.2.1 Identifying products that become candidates for MAC prices. A MAC price shall be established for new generic products (i.e., blockbusters) within thirty (30) Calendar Days after market release.

8.15.2.2 Monitoring pricing of generic products to assure MAC list is updated with the most favorable prices.

8.15.2.2.1 The Contractor will process ad hoc updates as a result of the Pharmacy's cost of acquiring the drug, Wholesale Acquisition Cost, and any other pricing trends monitored by the Contractor or from Pharmacy inquiries.

8.15.2.2.2 The Contractor will accept Pharmacy inquiries through the Help Desk or via facsimile. All Provider inquiries will be

responded to within one (1) Business Day, and researched and resolved within five (5) Business Days of receipt.

- 8.15.2.2.3 If a MAC price update is a result of a Provider inquiry, the MAC price will be allowed to have a backdated effective date so Providers may reverse and resubmit Claims with the new MAC price applied.
- 8.15.3 The MAC price shall be established using Generic Code Number (GCN), Generic Sequence Number (GSN), or Generic Product Identifier (GPI). MAC price shall be applied to new NDCs in the marketplace on a Weekly basis.
- 8.15.4 The Contractor shall provide MAC price file upload quality assurance reports to ASES to confirm rates are loaded accurately into the Claims adjudication system.
- 8.15.5 The Contractor shall document the MAC program drug selection process and rate setting methodology for ASES review and approval. All subsequent changes to the MAC price setting methodology shall be reviewed and approved by ASES.

ARTICLE 9 PHARMACY AND THERAPEUTICS (P&T) COMMITTEE

9.1 General Provisions

- 9.1.1 The P&T Committee is a multidisciplinary, multispecialty group created by ASES, whose primary responsibility is to evaluate medications after FDA approval and make recommendations for inclusion or exclusion in the Formulary of Medications Covered (“FMC”) and the List of Medications by Exception (“LME”) including Prior Authorization criteria.
- 9.1.2 The Contractor’s responsibilities indicated in Article 9 shall be rendered by the Contractor throughout the Contract Term strictly in accordance with the current and all future updates of the Policies and Procedures of the P&T Committee document, attached hereto as Attachment 3.
 - 9.1.2.1 If requested by ASES, the Contractor shall provide P&T Committee support and services separately for the Medicaid/CHIP and Other Enrollee programs.

9.2 Contractor Responsibilities

- 9.2.1 The Contractor shall provide services and support to the P&T Committee as assigned by ASES and prescribed in the current and all future updates of the Policies and Procedures of the P&T Committee document, including but not limited to:
 - 9.2.1.1 As part of Contractor’s Contracted PBM Services:
 - 9.2.1.1.1 Responsible for all administrative support and coordination of the activities of the P&T Committee, including P&T meeting coordination and attending all P&T Committee meetings;

- 9.2.1.1.2 Responsible for preparing, providing, and presenting therapeutic class/drug clinical materials to support the topics to be evaluated by the P&T Committee;
- 9.2.1.2 Prepare and maintain, with copies to ASES, the minutes of the meetings held by the P&T Committee and audio recordings for ten (10) years from the date of issue;
- 9.2.1.3 Assist in the selection and appointment of independent, ad hoc and special committee members and support the credentialing process of Independent members every three (3) Calendar Years;
- 9.2.1.4 Administer and submit to ASES the Letters of Understanding, Confidentiality and Non-Disclosure Agreements, and maintain such copies of executed agreements for ten (10) years;
- 9.2.1.5 Update the processing and adjudication system according to the most recent ASES determination on P&T Committee recommendations. The Contractor will have a maximum of seven (7) Calendar Days to make the changes after receiving the instructions;
- 9.2.1.6 Coordinate activities and clinical presentations to the P&T Committee with pharmaceutical manufacturers as it pertains to supplemental rebates and or Value Based Purchasing options, if directed by ASES;
- 9.2.1.7 Monitor the market for adverse events, warnings, and contradictions related to existing medications included in the FMC and the LME, to update Prior Authorization and step therapy protocols, quantity limits and other related edits or changes; and
- 9.2.1.8 Assume reasonable costs and expenses of the P&T Committee, including stipends paid to independent and ad hoc members.
- 9.2.1.9 As part of Contractor's Contracted RA Services:
 - 9.2.1.9.1 Attend all P&T Committee meetings;
 - 9.2.1.9.2 Assist ASES by making pharmacoeconomic recommendations regarding FMC and LME medications and Prior Authorization, step therapy protocols, quantity limits and other cost containment related edits;
 - 9.2.1.9.3 Provide to the Contractor Pharmacy Utilization Data related to the products or therapeutic classes to be reviewed by the P&T Committee;
 - 9.2.1.9.3.1 The request for Utilization Data will be submitted by the Contractor at least eighteen (18) Business Days prior to the P&T Committee meeting, and the Contractor must provide the requested Information at least eight (8) Business Days prior to the meeting;
 - 9.2.1.9.4 Monitor the market for adverse events, warnings and contraindications related to existing medications included in

the FMC and LME and report findings to the P&T Committee;

- 9.2.1.9.5 Update and maintain the FMC and the LME documents (in Excel® format) based on ASES accepted recommendations and other P&T Committee recommendations, and submit them to ASES, the Contractor and MCOs on a quarterly basis, or whenever necessary;
- 9.2.1.9.6 Publish the FMC and LME on a webpage maintained by the Rebate Aggregator;
- 9.2.1.9.7 Add medications in the Claims adjudication system within five (5) business days of the P&T Committee decision; and
- 9.2.1.9.8 If directed by ASES, provide pharmacoeconomic recommendations that support Supplemental Rebate program or Value Based Purchasing arrangements.

ARTICLE 10 PHARMACY FINANCIAL COMMITTEE (PFC)

10.1 General Provisions

- 10.1.1 ASES's Pharmacy Financial Committee (PFC) is authorized by ASES and its Board of Directors to make formulary recommendations and include in the Formulary of Medications Covered (FMC) or List of Medication by Exception (LME) selections based on the drug review and recommendations of the P&T Committee to include or exclude drugs.
- 10.1.2 The primary purpose of the PFC is to recommend which drugs are to be included on the FMC and LME based on cost-effectiveness evaluation of drug therapies.
- 10.1.3 The PFC will also review the FMC and LME from time to time and evaluate additional recommendations on potential cost-saving pharmacy initiatives, including the evaluation of the utilization and Prior Authorization of high-cost specialty medications and orphan drugs and the exceptions process through which such drugs are approved, under the direction and approval of ASES.
- 10.1.4 If requested, the PFC will evaluate new treatment, including but not limited to new: technology, medical or surgical procedures, physical or behavioral therapies, drugs, Part B drugs and orphan drugs (collectively, "New Treatment"), that are Medically Necessary and are not expressly excluded from the GHP.
- 10.1.5 The Contractor's responsibilities shall be rendered throughout the Contract Term in strict accordance with the current and all future updates of ASES's Pharmacy Financial Committee Policies and Procedures document, attached hereto as Attachment 6.
- 10.1.6 If requested by ASES, the Contractor's shall provide PFC support and services separately for the Medicaid/CHIP and Other Enrollee programs.

10.1.7 The Contractor shall provide PFC support and services as assigned by ASES and prescribed in the current and all future updates of the Pharmacy Financial Committee Policies and Procedures document, including but not limited to:

10.1.7.1 As part of Contractor's Contracted RA Services:

10.1.7.2 Ensuring confidentiality of all drug manufacturer and/or Wholesaler financial and cost data and keeping separate this confidential financial Information for MDRP eligible and Other Enrollee populations;

10.1.7.3 Managing all administrative support and coordination of the activities of PFC with support and approval from the ASES's Pharmacy Department. These include, but are not limited to:

10.1.7.3.1 Present to the PFC all recommendations made by the P&T Committee that require further decisions by the PFC;

10.1.7.3.2 Include manufacturer Rebate opportunities in presentations to help in the decision process of selecting cost effective alternatives for inclusion on FMC and the LME;

10.1.7.3.3 Develop and disseminate the invitation and agenda for meetings;

10.1.7.3.4 Reserve meeting rooms and/or provide numbers for virtual meetings;

10.1.7.3.5 Keep the meeting attendance list and registry of the members' Letters of Understanding and Confidentiality Agreements;

10.1.7.3.6 Prepare, take and disseminate meeting minutes following every PFC meeting. The minutes of the meetings shall be sent to ASES and PFC members no later than eighteen (18) Business Days after the meeting date. The meeting minutes shall include a record of all votes taken at the meeting;

10.1.7.3.7 Follow-up on agreed upon action items and pending issues; and

10.1.7.3.8 Maintain copies of all the documentation listed above for ten (10) Years from the date of issue; and

10.1.7.4 As part of Contractor's Contracted PBM Services, providing the summary of the recommendations that were made by the P&T Committee meeting prior to the PFC meeting.

ARTICLE 11 FORMULARY MANAGEMENT

11.1 General Provisions

11.1.1 The Contractor shall distribute once a year the official edition of both the FMC and the LME and on an ongoing basis update letters (normative letters provided by ASES), to the Network Pharmacies.

- 11.1.2 The Contractor shall ensure the Claims system accurately applies all formulary Information and Pharmacy benefits coverage determined by ASES in the Claims system.
- 11.1.3 The Contractor shall monitor compliance by prescribing Providers and Pharmacies with ASES's FMC and LME, report that Information to ASES at least quarterly and provide suggestions for improving formulary compliance.

11.2 Prior Authorization

- 11.2.1 Consistent with the requirements of Section 1927(d)(5) of the Social Security Act, some or all prescription drugs may be subject to Prior Authorization, which shall be implemented and managed by the MCO or the Contractor.
- 11.2.2 All Prior Authorizations that require a clinical intervention shall be performed by the MCO. The Contractor must be able to accept historical and current Prior Authorization Information from the MCOs through an online portal and incorporate this Information into the Contractor's Claims system.
- 11.2.3 All Prior Authorizations that do not require a clinical intervention or other edits shall be the responsibility of the Contractor to process for accurate payment of Claims and according to the Covered Pharmacy Services determined by ASES.
 - 11.2.3.1 Contractor must supply ASES with a real-time, automated electronic Prior Authorization tool for Prior Authorization requests based on current and historical paid Pharmacy Claims, Enrollee eligibility, Provider eligibility, and reference medical Claims Data including but not limited to diagnosis codes and procedure codes.
 - 11.2.3.2 The Contractor must migrate, successfully, all existing automated Prior Authorizations into the Contractor's automated Prior Authorization application. The Contractor must import and honor for use in real-time Claims Processing all existing Prior Authorizations that have not expired regardless of whether they were manually or electronically approved.
- 11.2.4 The Contractor must maintain a current Prior Authorization Request Form for Network Pharmacies and prescribing Providers to access via web-download or fax-on-demand.
- 11.2.5 The Contractor must provide detailed monthly operational, clinical and financial reporting on all Prior Authorization activities including but not limited to: number of Prior Authorization's, Denial and Approval rates, number of automated vs. manual Prior Authorizations, cost savings, and return on investment. Reports shall be generated in a format approved by ASES and should be available by drug, drug class, Enrollee, Provider, and other parameters defined by ASES.

11.3 Therapeutic Substitution Overview

- 11.3.1 The Contractor and the Network Pharmacies in the Pharmacy Network are not allowed to initiate therapeutic substitution, without prior written approval of ASES.

ARTICLE 12 DRUG UTILIZATION REVIEW AND EVALUATION

12.1 General Provisions

- 12.1.1 The MCOs are responsible for a Drug Utilization Review (DUR) program that is consistent with federal law requirements. The Contractor shall provide many of the DUR functions and maintain effective clinical programs on behalf of ASES and the MCOs as directed by ASES. The Contractor shall provide a comprehensive DUR program that complies with Section 1927(g) of the Social Security Act. The DUR program assures that prescriptions: (1) are appropriate; (2) are Medically Necessary; and (3) are not likely to result in adverse medical results.
- 12.1.2 The DUR program shall include Prospective DUR, Retrospective DUR, Academic Detailing, and, upon request by ASES, reporting for the DUR Annual Report and any other DUR-related reporting approved by ASES.

12.2 DUR Program

- 12.2.1 The DUR program shall be developed and implemented as of the Implementation Date of the Contract.
- 12.2.2 The Contractor shall be responsible for conducting DUR services to provide the necessary Information to the P&T Committee for the evaluation of products and therapeutic classes of the FMC and LME. The P&T Committee shall function as the DUR Board and shall meet all federal law requirements related to the DUR Board.
- 12.2.3 The Contractor shall complete a DUR Annual Report, upon request and as directed by ASES. The Contractor shall meet all applicable deadlines for Deliverables related to the DUR Annual Report as established by ASES.
- 12.2.4 The Contractor shall furnish a fully automated system that meets all applicable federal managed care DUR requirements including those identified in the OBRA 1990 and OBRA 1993, Federal Drug Utilization Review regulations and the additional specifications in this section and be flexible enough to accommodate any future edit changes required by ASES.
- 12.2.5 Prior to implementation, the Contractor shall develop Prospective DUR edits to be used in the Claims adjudication system. The Contractor shall obtain ASES approval for those edits prior to implementing them in the Claims system. At least annually thereafter, the Contractor will review the disposition of Prospective DUR edits and review the pharmacist overrides to determine if they are appropriate and allowed. The Contractor will highlight new edits for ASES's review.
- 12.2.6 Claims that reject as a result of Prospective DUR processing shall include situation-specific messaging and error codes that enable the Pharmacy Provider to take appropriate actions.
- 12.2.7 The Contractor shall provide all necessary components of Retrospective DUR program consistent with the requirements contained in 42 CFR 456.709: including a periodic examination of Claims that involves pattern analysis, the use of predetermined standards of physician prescribing practices, drug use by

individual patients and, where appropriate, the dispensing practices of pharmacies.

- 12.2.8 The Contractor's Retrospective DUR system's intervention processes shall include, at a minimum, letter-based Information to providers and a system for tracking provider response to the interventions.
- 12.2.9 The Contractor shall prepare, for ASES's approval, Provider letters containing Information related to the operation of the Pharmacy program and Retrospective DUR-related findings.

12.3 Academic Detailing Program

- 12.3.1 The Contractor shall conduct an Academic Detailing Program customized to meet the needs of ASES's Pharmacy program under GHP through specialists strategically located to serve the Provider community of Puerto Rico. The main strategies of the Academic Detailing Program are to inform Providers about Enrollee prescription issues, Utilization Management issues, the FMC and LME, and other relevant ASES policies.
- 12.3.2 The Academic Detailing Program is divided into six elements:
 - 12.3.2.1 Identify Utilization gaps, issues and other areas of needed communication with prescribing Providers;
 - 12.3.2.2 Based on Claims Data, identify prescribing Providers that need to be contacted regarding the identified gaps;
 - 12.3.2.3 Coordinate visits with the prescribing Providers based on the agreed upon frequency of visits;
 - 12.3.2.4 Deliver the identified message and document such delivery;
 - 12.3.2.5 Use DUR to evaluate changes in prescribing patterns based on the Academic Detailing Program; and
 - 12.3.2.6 Develop Academic Detailing strategies in collaboration with the MCOs to meet the goals of the HCHN Program.
- 12.3.3 Education through the Academic Detailing Program shall be accomplished through the following methods:
 - 12.3.3.1 Group presentations;
 - 12.3.3.2 Letters and telephone calls to prescribing Providers; and
 - 12.3.3.3 Articles in local health related magazines and/or newspapers as feasible; and
- 12.3.4 The Contractor shall make available to ASES no later than forty-five (45) Calendar Days after the Implementation Date of the Contract, for ASES's approval, the Academic Detailing Program Plan that meets all of the requirements set forth in this Contract. In addition, the Contractor shall deliver to ASES no later than twenty-five (25) Calendar Days after the end of each

calendar quarter, a written report of all activities conducted by the Contractor during such calendar quarter pursuant to the Academic Detailing Program Plan and the provisions of this Contract.

ARTICLE 13 HCHN PROGRAM AND OTHER CARE MANAGEMENT

13.1 General Provisions

- 13.1.1 The HCHN Program is comprised of a set of Enrollee-centered steps to provide coordinated care to Enrollees with certain diseases.
- 13.1.2 The Contractor shall provide support, including development of strategies, to the MCOs' HCHN Programs or other programs specified by ASES to provide additional cost-containment efforts and mechanisms.
 - 13.1.2.1 The Contractor may recommend to ASES and the MCOs certain process improvements, in connection with the MCOs' HCHN Program and care management initiatives. Such obligations shall commence on the Implementation Date of the Contract.

ARTICLE 14 CONTRACTED RA SERVICES – MDRP PROGRAM

- 14.1 The Contractor shall provide comprehensive management of the Medicaid Drug Rebate Program ("MDRP") for all covered outpatient drugs in accordance with Section 1927(b)(1) of the Social Security Act and the terms of the Medicaid National Drug Rebate Agreement ("NDRA"). The Contractor shall provide MDRP Rebate support including but not limited to:
 - 14.1.1 Producing drug Rebate invoices for pharmaceutical manufacturers according to federal schedule requirements;
 - 14.1.2 Processing and submitting the CMS drug utilization and Information necessary for CMS-64 reporting;
 - 14.1.3 Providing reporting on Rebates on retail Pharmacy drugs and PADs to ASES and its designees on a quarterly basis;
 - 14.1.4 Reconciling and resolving drug Rebate disputes with pharmaceutical manufacturers;
 - 14.1.5 Ensuring quality control to validate accuracy of drug Rebate Data;
 - 14.1.6 Maintaining administrative, physical and technical safeguards to ensure security and confidentiality of all drug Rebate Information according to Puerto Rico and federal laws and industry standards;
 - 14.1.7 Updating and maintaining standard operating procedure manual(s) for Rebate program administration;
 - 14.1.8 Maintaining a Data repository system that interfaces with multiple Data sources;
 - 14.1.9 Maintaining a reporting database that can be accessed in real time by ASES to review and analyze Rebate Information and produce ad hoc reporting; and

- 14.1.10 Creating and maintaining a secure web portal for Data sharing with pharmaceutical manufacturers.
- 14.2** The Contractor shall process, invoice and report federal Rebates through the Contractor's Rebate administration system according to federal processing and schedule requirements. The process shall include, but not be limited to:
 - 14.2.1 Accepting files from ASES, CMS and other contracted partners for purposes of drug Rebate processing;
 - 14.2.2 Validating retail Pharmacy and PAD prescription drug Claim Data and identifying Data issues that may result in pharmaceutical manufacturer Rebate disputes;
 - 14.2.3 Summarizing Rebate-eligible Utilization Data based on date of service and according to multiple parameters and requirements as required by CMS or ASES;
 - 14.2.4 Performing Claim-level Rebate calculations, including unit conversions as necessary
 - 14.2.5 Preparing and sending invoices to pharmaceutical manufacturer within time limits required by CMS;
 - 14.2.6 Coordinating the Rebate accounting and payment procedures;
 - 14.2.7 Reconciling and resolving prior period adjustments and drug Rebate disputes, including follow-up and resolution of unpaid invoices according to the terms of the NDRA;
 - 14.2.8 Producing Rebate program reporting according to requirements in this Article 14;
 - 14.2.9 Updating and maintaining standard operating procedure manual(s) for Rebate administration.
- 14.3** The Contractor shall ensure all 340B Claims are excluded from Rebate processing and are reported separately according to ASES specifications.
- 14.4** The Contractor shall provide the ability to separate late payment interest payments in invoicing and Rebates received for reporting purposes.
- 14.5** ASES shall be copied on all past-due notifications to pharmaceutical manufacturers.
- 14.6** One hundred percent (100%) of all monies collected by ASES shall be remitted to ASES directly by the pharmaceutical manufacturers. Contractor agrees that all Rebates collected by ASES shall be collected for the sole benefit of ASES's share of costs, and that no other monies shall be collected by the Contractor based on ASES's program.
- 14.7** On Implementation Date of the Contract, Contractor shall assume all responsibilities for uncollected receivables for ASES's Rebate program.
- 14.8** The Contractor shall perform analysis and research necessary throughout the Contract Term to identify areas of improvement with the Rebate program administration, including

any approaches for invoicing, processing, and accounting of drug Rebates. The Contractor shall provide the suggested improvements to ASES for review and approval, as they are identified or defined.

14.9 The Contractor shall, when appropriate, refer potential Fraud, Waste, and Abuse issues to ASES.

14.10 Upon termination of this Contract for any reason, the Contractor shall, at no additional cost to ASES, transfer all existing pharmaceutical Rebate Data and Information to ASES's incoming RA to ensure that there is no gap in ASES receiving pharmaceutical Rebates. The Contractor shall also provide ASES with a final accounting of Rebates received through the Termination Date of this Contract and detailed Information regarding Rebates that will be payable following the Termination Date of the Contract.

ARTICLE 15 OTHER ENROLLEE REBATE INVOICING AND PROCESSING

15.1 The Contractor shall process, invoice and report Rebates for all populations not eligible to receive MDRP rebates (for example, Other Enrollees) according to ASES's processing and schedule requirements. The process shall include, but not be limited to:

15.1.1 Developing request for proposal ("RFP") of the Rebate program for all authorized therapeutic classes and conduct the RFP process, including evaluation and adjudicating the proposals, Rebate negotiations and contracts with the pharmaceutical manufacturers, supported by and under the instructions of ASES. The Contractor shall represent ASES in negotiating Rebate contracts with pharmaceutical manufacturers. Such Rebate agreements as executed by ASES shall be for the sole benefit of ASES and be subject to the terms and provisions of this Contract.

15.1.2 Accepting files from ASES and MCOs for purposes of drug Rebate processing;

15.1.3 Validating retail Pharmacy and PAD prescription drug Claim Data and identifying Data issues that may result in drug manufacturer rebate disputes;

15.1.4 Summarizing Rebate-eligible Utilization Data based on date of service and according to multiple parameters and requirements as required by ASES;

15.1.5 Performing Claim-level Rebate calculations, including unit conversions as necessary;

15.1.6 Preparing and sending quarterly invoices to pharmaceutical manufacturers within time limits required by ASES;

15.1.7 Coordinating the Rebate accounting and payment procedures;

15.1.8 Reconciling and resolving prior period adjustments and drug Rebate disputes, including follow-up and resolution of unpaid invoices;

15.1.9 Providing ASES with any original and/or copies of the pharmaceutical manufacturers' proposals and final negotiated agreements for ASES's execution thereof. These records shall also be submitted to ASES on a digital or electronic format.

- 15.1.10 Producing Rebate program reporting according to requirements in this Article 15;
- 15.1.11 Updating and maintaining standard operating procedure manual(s) for Rebate administration.
- 15.1.12 Contractor shall ensure all 340B Claims are excluded from Rebate processing and are reported separately according to ASES specifications.
- 15.1.13 Contractor shall provide the ability to separate interest in invoicing and Rebates received for reporting purposes.
- 15.1.14 ASES shall be copied on all past-due notifications to drug manufacturers.
- 15.1.15 One hundred percent (100%) of all monies collected by ASES shall be remitted to ASES directly by the drug manufacturers. The Contractor agrees that all Rebates collected by ASES shall be collected for the sole benefit of ASES's share of costs, and that no other monies shall be collected by the Contractor based on ASES's program.
- 15.1.16 The Contractor shall support all ASES' Accounting System requirements as directed by ASES.
- 15.1.17 At Implementation Date of the Contract, the Contractor shall assume all responsibilities for uncollected receivables for ASES's Rebate program.
- 15.1.18 The Contractor shall perform analysis and research necessary throughout the Contract Term to identify areas of improvement with the rebate program administration, including any approaches for invoicing, processing, and accounting of drug Rebates. The Contractor shall provide the suggested improvements to ASES for review and approval, as they are identified or defined.
- 15.1.19 The Contractor shall, when appropriate, refer potential Fraud, Waste, and Abuse issues to ASES.
- 15.1.20 The Contractor shall certify and provide assurances that all Rebate Information for the Other Enrollee Rebate program is regarded as confidential and proprietary and shall remain separate and independent of the MDRP Rebate program.
- 15.1.21 Upon termination of this Contract for any reason, the Contractor shall, at no additional cost to ASES, transfer all existing pharmaceutical Rebate Data and Information to ASES's incoming Contractor to ensure that there is no gap in ASES receiving pharmaceutical Rebates. The Contractor shall also provide ASES with a final accounting of Rebates received through the Termination Date of this Contract and detailed Information regarding rebates that will be payable following the Termination Date of the Contract.

ARTICLE 16 ADDITIONAL SERVICES – SUPPLEMENTAL REBATES, VBP AGREEMENTS

- 16.1** ASES reserves the right to exercise the option to join a Supplemental Rebate purchasing pool, implementing a supplemental Rebate and/or Value Based Purchasing (“VBP”)

Agreement program during the Contract Term. Upon written notice by ASES, Contractor shall assist ASES with the development, implementation and management of the optional service(s), including but not limited to:

- 16.1.1 Identifying the covered outpatient drugs or non-covered outpatient products that would qualify and benefit ASES for the supplemental rebate or Value Based Purchasing arrangements;
 - 16.1.2 Assisting ASES with the development, submission and approval of the required CMS State Plan Amendment;
 - 16.1.3 Implementing and managing the negotiation process with pharmaceutical manufacturers for the supplemental agreements and developing a competitive process thereby encouraging maximum participating among drug manufacturers. ASES shall review and approve all agreements before execution.
 - 16.1.4 Processing and invoicing pharmaceutical manufacturers according to CMS requirements and the supplemental agreement specifications;
 - 16.1.5 Establishing and operating a process for accurate reporting and monitoring of negotiated supplemental agreement payments and perform all supplemental dispute resolutions to maximize collections for ASES; and
 - 16.1.6 Providing ASES access to all supplemental agreement contracts and related documentation.
- 16.2** Contractor shall propose a plan for securing and maintaining the supplemental agreement contracts and related confidential Information in a format agreed to by ASES. ASES shall approve confidentiality agreements.
- 16.3** Contractor shall perform research and analysis throughout the Contract Term that consider a variety of potential supplemental strategies and shall compare and contrast for ASES the clinical and economic opportunities and ramifications of each strategy for the GHP program. Contractor shall present all offers from all manufacturers to ASES regardless of the significance of the offer.

ARTICLE 17 CMS REPORTING

- 17.1** Contractor shall generate CMS required reports as a condition of Puerto Rico's MDRP participation. This includes all of the following, but is not limited to:
- 17.1.1 Assist in the generating of the quarterly CMS 64 report for Puerto Rico within a mutually agreed timeline.
 - 17.1.2 Generate and upload the quarterly Drug Utilization Data to CMS's Drug Data Reporting for Medicaid (DDR), as well as adjustments and/or corrections to previously reported Drug Utilization Data within sixty (60) Calendar Days of the end of the Rebate period as required in Section 1927(b)(2)(A) of the Social Security Act, 42 CFR 447.511(b), and CMS guidance.
 - 17.1.2.1 The Contractor must exclude 340B Drug Utilization from 340B Providers from the quarterly Drug Utilization Data submission to CMS.

17.1.2.2 The Contractor must include MCO-provided, NDC-level PAD Utilization Data in the quarterly Drug Utilization Data submission to CMS.

17.1.2.3 The Contractor must take reasonable steps, prior to reporting the Drug Utilization Data, to review the Data for errors.

17.1.2.3.1 The Contractor shall collaborate with the Contractor and the MCOs to ensure system edits are in place to prevent Data outliers from being included in the Data submissions.

17.1.2.4 The Drug Utilization Data submitted to CMS must be the same Information submitted to the Drug Manufacturers for Rebates.

17.1.3 Address any errors or alerts on the CMS State Utilization Discrepancy Report within a mutually agreed timeline.

17.1.4 When CMS migrates from its current data submission platform, DDR, to its new platform, Medicaid Drug Rebate Program (MDRP) system, scheduled for 2021, the Contractor will update its processes accordingly and not charge ASES additional costs for the transition.

ARTICLE 18 FRAUD, WASTE, AND ABUSE

18.1 General Provisions

18.1.1 The Contractor shall have and implement a comprehensive internal administrative and management controls, policies, and procedures in place designed to prevent, detect, report, investigate, correct, and resolve potential or confirmed cases of Fraud, Waste, and Abuse in the administration and delivery of services detailed in this Contract.

18.2 Compliance Plan

18.2.1 The Contractor shall have a written Compliance Plan with stated program goals and objectives, program scope and methodology to evaluate performance against the requirements of this Contract. At a minimum, the Contractor's Compliance Plan shall:

18.2.1.1 Require the designation of a compliance officer and a compliance committee that are accountable to senior management. The compliance officer shall have express authority to provide unfiltered reports directly to the Contractor's most senior leader and governing body;

18.2.1.2 Describe standards of conduct that articulate the Contractor's commitment to comply with all applicable Puerto Rico and federal requirements and standards;

18.2.1.3 Maintain a system of dedicated staff with established and implemented procedures for routine internal monitoring and auditing of compliance risks, prompt response to compliance issues, investigations of potential compliance problems identified in the course of self-evaluation and audits, prompt and thorough correction

of identified compliance problems, and ongoing compliance with the requirements of this Contract;

- 18.2.1.4 Maintain designated staff responsible for administering the plan and clear goals, milestones or objectives, measurements, key dates for achieving identified outcomes, and an explanation of how the Contractor will determine the effectiveness of the Compliance Plan;
- 18.2.1.5 Ensure and describe effective training and education procedures for the compliance officer and the Contractor's employees;
- 18.2.1.6 Ensure that all of the Contractor's officers, directors, managers and employees know and understand the provisions of the Compliance Plan;
- 18.2.1.7 Ensure effective lines of communication between the compliance officer and the Contractor's employees to ensure employees understand and comply with the Contractor's Fraud, Waste, and Abuse program;
- 18.2.1.8 Ensure enforcement of standards of conduct through well-publicized disciplinary guidelines;
- 18.2.1.9 Ensure that no individual who reports internal or Provider misconduct, or a suspected case of Fraud, Waste, and Abuse is retaliated against. The Contractor's employee handbook shall include a specific discussion of its Fraud, Waste, and Abuse policies and procedures, the rights of whistleblowers, and the procedures for detecting and preventing Fraud, Waste, and Abuse; and
- 18.2.1.10 Establish and/or modify internal controls to ensure proper submission and payment of Claims.

18.3 Program Integrity Plan and Fraud, Waste and Abuse Investigations

- 18.3.1 The Contractor's Program Integrity Plan shall comply in all respects with the ASES Guidelines for the Development of Program Integrity Plan and this Contract and shall be updated at least annually. Upon review of the Contractor's Program Integrity Plan, ASES will promptly (within twenty [20] Business Days) notify the Contractor of any needed revisions or amendments in order for the Program Integrity Plan to comply with the Guidelines and with federal law. The Contractor, shall within twenty (20) Business Days of receipt of the ASES comments re-submit its Plan for ASES review and approval. The Program Integrity Plan shall at a minimum:
 - 18.3.1.1 Define Fraud, Waste, and Abuse;
 - 18.3.1.2 Specify methods to detect Fraud, Waste, and Abuse, or Credible Allegations of Fraud;
 - 18.3.1.3 Identify requirements to complete the preliminary investigation of Network Pharmacies and Enrollees;

- 18.3.1.4 Describe a process to perform investigations on each case of Credible Allegation of Fraud or any cases of suspected Fraud, Waste, or Abuse by Providers or Enrollees and promptly refer such cases to ASES or its designees;
- 18.3.1.5 Describe persons responsible for conducting these investigations;
- 18.3.1.6 Defines mechanisms to monitor frequency of Encounters and Covered Services rendered to Enrollees billed by Network Pharmacies;
- 18.3.1.7 Describe the specific controls in place for prevention and detection of potential or suspected Fraud, Waste, and Abuse, such as:
 - 18.3.1.7.1 A description of pre-payment review activities, including but not limited to a list of automated pre-payment Claims edits and Claim reviews, description of how the Contractor will manually review all Claims for Providers placed on prepayment review status as requested by ASES, and how the Contractor will identify Providers that should be placed on prepayment review and place them on prepayment review if approved by ASES;
 - 18.3.1.7.2 A list of automated post payment Claims edits;
 - 18.3.1.7.3 A list of Claims review algorithms;
 - 18.3.1.7.4 Frequency and type of desk Audits on post payment review of Claims;
 - 18.3.1.7.5 A list of reports of Provider profiling used to aid program and payment reviews;
 - 18.3.1.7.6 A list of surveillance and/or Utilization Management protocols used to safeguard against unnecessary or inappropriate use of Medicaid services;
 - 18.3.1.7.7 A description of how the Contractor will track and ensure that a minimum of 4% of retail Pharmacies are subject to a post-payment investigation;
 - 18.3.1.7.8 A description of how the Contractor will identify and correct Claims submission and billing activities that are potentially fraudulent including, but not limited to, double-billing and improper quantities;
 - 18.3.1.7.9 A description how the Contractor will use Utilization, service denial, Appeals, Provider Complaint and Provider dispute Data to detect potential Fraud, Waste, or Abuse;
 - 18.3.1.7.10 A description how the Contractor will identify and address over, under, or inappropriate Utilization of Covered Services, including but not limited to review of the Contractor's

Utilization Management criteria and processes, service denials, Appeals, and Utilization Data;

18.3.1.7.11 Work plans for conducting both announced and unannounced provider site visits for providers identified as high risk by the Contractor to ensure services are rendered and billed correctly.

18.3.1.7.12 A description of the Contractor's risk assessment tool and process for Pharmacy Claims review, including:

18.3.1.7.12.1 Processing one hundred percent (100%) of paid Pharmacy Claims through the Contractor's risk assessment tool on a quarterly basis;

18.3.1.7.12.2 The Information incorporated into the risk assessment review, including but not limited to current and historical Claims Data, reconsideration history, Claim review findings, historical overpayment amount, Fraud history, Fraud Referrals, and owner's/operator's history;

18.3.1.7.12.3 The areas reviewed during the risk assessment process, including, but not limited to the following: the total amount paid, number of Claims processed/paid, number or percentage of reversed Claims, high dollar Claims, denied Claims from non-Medicaid enrolled Providers, non FDA approved or identified NDCs, low reversal rates, Claims for Medicare Part D excluded products, Medicare Part D eligibility indicator, dosage form, route of administration code, generic Claims submitted, brand multi-source Claims submitted, controlled substances submitted, out of cycle reversals, package size errors, highest physician for Pharmacy, percentage of new vs. refill Claims, days' supply errors, outdated NDCs, average days' supply per Claim, number of Pharmacy originated overrides, number of unique prescriber NPI numbers, emergency overrides, unit dose NDCs, age violations, submissions other than drugs, claims with refills greater than three (3), and high dollar amount claims submitted at one time.

18.3.1.7.13 A risk-based assessment that includes the Contractor's evaluation of its Fraud, Waste, and Abuse processes and the risk for Fraud, Waste, and Abuse in the provision of services to enrollees; and

18.3.1.7.14 An outline of activities proposed by the Contractor for the next reporting year based on the results of the risk-based assessment, including the Contractor's top five (5) risk areas.

18.3.2 ASES will review all Fraud, Waste, and Abuse referrals to determine whether there is a Credible Allegation of Fraud or if the allegation evidences Waste or

Abuse. The Contractor shall inform ASES within twenty (20) Business Days of any initiated investigation of a suspected case of Fraud, Waste, or Abuse or any Credible Allegation of Fraud in accordance with the reporting elements specified in Section 18.3.1.4. The Contractor shall subsequently report preliminary results of such investigations activities to ASES and other appropriate Puerto Rico and federal entities. ASES will provide the Contractor with guidance during the pendency of the investigation and will refer the matter to the U.S. Department of Justice, if applicable, the Department of Justice of Puerto Rico.

- 18.3.3 The Contractor must not suspend, terminate or not renew a provider contract when the Contractor suspects Fraud, Waste, or Abuse until it receives permission from ASES to proceed.
- 18.3.4 The Contractor must attempt to recover any payment made to a terminated Pharmacy.
- 18.3.5 When ASES notifies the Contractor that a Pharmacy has been suspended, the Contractor must immediately suspend the Pharmacy, including any payments to the Pharmacy. The Contractor must continue to suspend the Pharmacy until it receives notice from ASES to lift the suspension. When ASES notifies the Contractor that a Pharmacy is no longer suspended, the Contractor must lift the suspension and begin to process Claims from the Pharmacy.
- 18.3.6 The Contractor and any Subcontractor must respond to all requests for additional Information by ASES or its designees promptly. The Contractor and all Subcontractors shall cooperate fully with federal and Commonwealth agencies in Fraud, Waste and Abuse investigations and subsequent legal actions. Such cooperation shall include providing, upon request, Information, access to records, and access to interview employees and consultants, including but not limited to those with expertise in the administration of the program and/or medical or pharmaceutical questions or in any matter related to an investigation.
- 18.3.7 In accordance with Section 6409 of the PPACA, the Contractor must have mechanisms in place to adhere to the requirements of the self-referral disclosure protocol, under which Providers of services and suppliers may self-disclose actual or potential violations of the physicians' self-referral statute (Section 1877 of the Social Security Act). The Contractor shall require Providers and suppliers to self-report and return overpayments by the later of: (i) the date which is sixty (60) Calendar Days after the date on which the overpayment was identified; or (ii) the date any corresponding cost report is due, if applicable. The Contractor shall ensure that disclosing parties provide a financial analysis that includes the total amount actually or potentially due and owing as a result of the disclosed violation, a description of the methodology used to determine the amount due and owing, the total amount of remuneration involved Pharmacies or pharmacists (or an immediate family member of such pharmacists) received as a result of an actual or potential violation, and a summary of audit activity and documents used in the Audit.

18.4 Pharmacy Auditing Program

- 18.4.1 The Pharmacy Auditing Program refers to a pharmacy monitoring procedure that includes in-Pharmacy reviews, online Audits, and desk Audits of Claims processing, subject to the scope and requirements set forth by ASES. The purpose of the Pharmacy Auditing Program is to verify the accuracy and appropriateness of Claims processing and to determine if the Network Pharmacies are in compliance with their contractual obligations.
- 18.4.2 The Contractor shall submit policies and procedures for the Pharmacy Auditing Program to ASES during the implementation review and upon material changes to such policies and procedures. ASES agrees and acknowledges that the Information to be disclosed constitutes proprietary Information of the Contractor, subject to the terms of this Contract.
- 18.4.3 If as a result of the auditing process the Contractor obtains Information of a Credible Allegation of Fraud, Waste or Abuse in the Utilization or provision of Covered Services by Network Pharmacies or Enrollees, such Information shall be promptly forwarded to ASES and the appropriate MCO.
- 18.4.4 The Contractor shall, in coordination with ASES, take measures to avoid repetition of any errors, abuses and wrongful Utilization and to recover, whenever possible, any unduly paid amounts. In providing its services hereunder, the Contractor shall implement all appropriate and required administrative practices, which must be approved by ASES.
- 18.4.5 The Contractor shall submit to ASES, on a quarterly basis, the Pharmacy Audit Report.

ARTICLE 19 INFORMATION MANAGEMENT AND SYSTEMS

19.1 General Provisions

- 19.1.1 Contractor shall have Information Management processes, Information System and technical support that enable it to meet the GHP requirements, ASES and federal reporting requirements, all other Contract requirements, and any other applicable Puerto Rico and federal laws, rules and regulations, including but not limited to, HIPAA and associated regulations 42 CFR Part 447, Subpart I and Terms of the Medicaid National Drug Rebate Agreement (“NDRA”).
- 19.1.2 Contractor’s Information System must possess capacity sufficient to handle the workload projected for the start of the program and will be scalable and flexible so it can be adapted or upgraded to more advanced levels of technology as needed, within negotiated timeframes, in response to Contract requirements, changes in enrollment and other program changes.
- 19.1.3 The Contractor’s Information System shall have the capability of adapting to any future changes necessary as a result of modifications to the service delivery system and its requirements, including Data collection, records and reporting to track services, Rebates, and expenditures across funding streams at no additional cost to ASES.
 - 19.1.3.1 The Information System shall be scalable and flexible so they can be adapted as needed, within negotiated timeframes, in response to

changes in Contract requirements, increases in Enrollment estimates, etc. Specifically, as it relates to the Contractor, the Information System architecture shall facilitate rapid application of the more common changes that can occur in the Contractor's operation, including but not limited to:

- 19.1.3.1.1 Changes in pricing methodology;
 - 19.1.3.1.2 Rate changes;
 - 19.1.3.1.3 Changes in Utilization Management criteria;
 - 19.1.3.1.4 Additions and deletions of Network Pharmacy and Provider;
 - 19.1.3.1.5 Additions and deletions of procedure, diagnosis and other service codes; and
 - 19.1.3.1.6 Updates to NCPDP standards
- 19.1.4 The Contractor shall provide ASES staff and their designees, including but not limited to MCOs and other entities, as allowed by law, individual access to the Contractor's Claims system, Prior Authorization system, decision support system and other Information Systems as necessary via online, real time connection at no additional cost. Contractor shall not impose limits on the number of licenses made available to ASES staff, designees, Puerto Rico and federal auditors, MCOs and other Puerto Rico entities.
- 19.1.5 ASES shall have access to the Rebate Data and Utilization Data (current and historical) reporting in an electronic format from the MDRP Contractor on a quarterly basis or whenever ASES may deem necessary.
- 19.1.6 ASES shall have real time access to Contractor's Rebate system to review and analyze Rebate and Drug Utilization Information and produce ad hoc reporting. The Contractor shall not impose limits on the number of licenses made available to ASES staff, designees, Puerto Rico and federal auditors, MCOs and other Puerto Rico entities.
- 19.1.7 ASES will make available an FTP server accessible via the Internet for receipt of electronic files and reports from the MCOs and Contractor. Contractor shall provide a similar compatible system to which ASES can transmit files and reports deliverable by ASES to MCOs and Contractor.
- 19.1.8 The Contractor shall participate in systems work groups organized by ASES. The systems work groups will meet on a designated schedule as agreed to by ASES, the Contractor, and the MCOs.
- 19.1.9 The Contractor shall provide a continuously available electronic mail communication link (e-mail system) with ASES. This system shall be:
- 19.1.9.1 Available from the workstations of the designated Contractor Authorized representative; and
 - 19.1.9.2 Capable of attaching and sending documents created using software products other than Contractor systems, including the ASES's

currently installed version of Microsoft Office and any subsequent upgrades as adopted.

- 19.1.10 ASES reserves the right to Audit the Contractor's compliance with policies and procedures, manuals and protocols related to its Information System in accordance with applicable Puerto Rico and federal laws, statutes and regulations, including requirements set forth by CMS.
- 19.1.11 Contractor must possess all necessary software licenses for the provision of all the services required by this RFP and agrees to keep them updated for the duration of the Contract. This is a material condition and failure to comply may be cause for the termination of the Contract and/or the imposition of sanctions and/or other penalties.
- 19.1.12 In case of a Third-Party allegation of infringement in the use of the software and technology used by the Contractor to provide the service objective of this RFP, the Contractor will Immediately take, at its sole expense, all necessary measures to avoid an interruption of, or adversely affecting, the execution of the contract activities.

19.2 Global System Architecture and Design Requirements

- 19.2.1 The Contractor shall comply with federal and Puerto Rico policies, standards, laws, rules, and regulations in the design, development and/or modification of the Information System it will employ to meet the requirements and in the management of Information contained in those systems. Additionally, the Contractor shall adhere to ASES and Puerto Rico-specific system and Data architecture standards and/or guidelines.
- 19.2.2 The Contractor's Information Systems shall meet federal and industry standards of architecture, including but not limited to the following requirements:
 - 19.2.2.1 Be SQL and ODBC compliant and/or employ a relational Data model in the architecture of its databases and relational database management system (RDBMS) to operate and maintain them;
 - 19.2.2.2 Adhere to Internet Engineering Task Force/Internet Engineering Standards Group standards for Data communications, including TCP and IP for Data transport;
 - 19.2.2.3 Conform to HIPAA standards for Data and document management;
 - 19.2.2.4 Contain controls to maintain Information integrity. These controls shall be in place at all appropriate points of processing. The controls shall be tested in periodic and spot audits following a methodology to be developed jointly by and mutually agreed upon by the Contractor and ASES; and
 - 19.2.2.5 Partner with ASES in the development of Transaction/event code set, Data exchange and reporting standards not specific to HIPAA or other federal efforts and will conform to such standards as stipulated in the plan to implement the standards.

- 19.2.3 Where web services are used in the engineering of applications, the Contractor's Systems shall conform to World Wide Web Consortium (W3C) standards such as XML, UDDI, WSDL and SOAP so as to facilitate integration of these Systems with ASES and other Puerto Rico systems that adhere to a service-oriented architecture.
- 19.2.4 Audit to be traced through the processing stages to the point where the Information is finally recorded. The Audit trails shall:
 - 19.2.4.1 Contain a unique log-on or terminal ID, the date, and time of any create/modify/delete action and, if applicable, the ID of the system job that effected the action;
 - 19.2.4.2 Have the date and identification stamp displayed on any on-line inquiry;
 - 19.2.4.3 Have the ability to trace Data from the final place of recording back to its source Data file and/or document shall also exist;
 - 19.2.4.4 Be supported by listings, Transaction reports, update reports, Transaction logs, or error logs;
 - 19.2.4.5 Facilitate Auditing of individual Claim records as well as batch Audits; and
 - 19.2.4.6 Be maintained for ten (10) Years in either live and/or archival systems. The duration of the retention period may be extended at the discretion of and as indicated to the Contractor by ASES as needed for ongoing audits or other purposes.
- 19.2.5 The Contractor shall house indexed images of documents used by Enrollees, Network Pharmacies, and Providers to transact with the Contractor in the appropriate database(s) and document management systems so as to maintain the logical relationships between certain documents and certain Data. The Contractor shall follow all applicable requirements for the management of Data in the management of documents.
- 19.2.6 The Contractor shall institute processes to ensure the validity and completeness of the Data it submits to ASES. At its discretion, ASES will conduct general Data validity and completeness audits using industry-accepted statistical sampling methods. Data elements that will be audited include but are not limited to: Enrollee ID, date of service, Network Pharmacy ID, Provider ID, category and subcategory (if applicable) of service, diagnosis codes, procedure codes, revenue codes, date of Claim processing, and date of Claim payment.
- 19.2.7 Where a System is herein required to, or otherwise supports, the applicable batch or on-line Transaction type, the system shall comply with HIPAA-standard transaction code sets.
- 19.2.8 The Contractor shall assure that all Contractor staff is trained in all HIPAA requirements, as applicable.
- 19.2.9 The layout and other applicable characteristics of the pages of Contractor websites shall be compliant with Federal Section 508 standards and Web

Content Accessibility Guidelines developed and published by the Web Accessibility Initiative.

19.3 System and Data Integration Requirements

- 19.3.1 The Contractor's systems shall be able to transmit, receive and process Data in HIPAA-compliant and NCPDP-compliant formats that are in use as of the Implementation Date of the Contract. This capability shall include the use, receipt and processing of electronic prescriptions.
- 19.3.2 The Contractor shall institute processes to ensure the validity and completeness of the Data, including reports, it submits to ASES. At its discretion, ASES will conduct general Data validity and completeness Audits using industry-accepted statistical sampling methods. Data elements that will be audited include, but are not limited to: enrollee ID, date of service, assigned Medicaid Provider ID, category and subcategory (if applicable) of service, diagnosis codes, procedure codes, revenue codes, date of Claim processing, and (if and when applicable) date of Claim payment. Control totals shall also be reviewed and verified.
- 19.3.3 The Contractor's applications shall be able to interface with ASES's systems for purposes of Data exchange and will conform to standards and specifications set by ASES. These standards and specifications are subject to change.
- 19.3.4 The Contractor's System(s) shall be able to transmit and receive Transaction Data to and from ASES's systems as required for the appropriate processing of Claims.
- 19.3.5 The Contractor will be required to perform any necessary changes to update interfaces to ASES's systems, including those required by the Medicaid Management Information System (MMIS) as well as the Eligibility and Enrollment processes. These interface changes may require changes in the Contractor's core systems.
- 19.3.6 Each month the Contractor shall generate Data files from its Claims Management System(s) and/or other sources. Such files must be submitted in standardized Accredited Standards Committee (ASC) X12N 837 and National Council for Prescription Drug Programs (NCPDP) formats, and the ASC X12N 835 format as appropriate. The files will contain settled Claims and Claim adjustments and Data from Network Pharmacies and Providers for the most recent month for which all such Transactions were completed. The Contractor shall provide these files electronically to ASES and/or its Agent at a frequency and level of detail to be specified by CMS and ASES based on program administration, oversight, and program integrity needs, and in adherence to the procedure, content standards and format indicated in this Contract. The Contractor shall make changes or corrections to any systems, processes or Data transmission formats as needed to comply with Encounter Data quality standards as originally defined or subsequently amended.
- 19.3.7 The Contractor's System(s) shall be capable of generating files in the prescribed formats for upload into ASES Systems used specifically for program integrity and compliance purposes.

- 19.3.8 The Contractor's System(s) shall possess mailing address standardization functionality in accordance with US Postal Service conventions.

19.4 System Access Management and Information Accessibility Requirements

- 19.4.1 The Contractor's System shall employ an access management function that restricts access to varying hierarchical levels of system functionality and Information. The Access Management function shall:
 - 19.4.1.1 Restrict access to Information on a "need-to-know" basis, e.g. users permitted inquiry privileges only will not be permitted to modify Information;
 - 19.4.1.2 Restrict access to specific system functions and Information based on an individual user profile, including inquiry only capabilities; global access to all functions will be restricted to specified staff jointly agreed to by ASES and the Contractor; and
 - 19.4.1.3 Restrict attempts to access system functions to three (3), with a system function that automatically prevents further access attempts and records these occurrences.
- 19.4.2 The Contractor shall make System Information available to duly Authorized representatives of ASES and other Puerto Rico and federal agencies to evaluate, through inspections or other means, the quality, appropriateness and timeliness of services performed.
- 19.4.3 The Contractor shall have procedures to provide for prompt transfer of System Information upon request to other Network Pharmacy or General Network or Out-of-Network Providers for the medical management of the Enrollee in adherence to HIPAA and other applicable requirements.
- 19.4.4 All Information, whether Data or documents, and reports that contain or make references to said Information, involving or arising out of this Contract, are owned by ASES. The Contractor is expressly prohibited from sharing or publishing ASES Information and reports without the prior written consent of ASES. In the event of a dispute regarding the sharing or publishing of Information and reports, ASES's decision on this matter shall be final and not subject to appeal.

19.5 Systems Availability and Performance Requirements

- 19.5.1 The Contractor shall ensure that critical systems, are available to the applicable System users twenty-four (24) hours a day, seven (7) Days a Week, except during periods of scheduled System unavailability agreed upon by ASES and the Contractor. Unavailability caused by events outside of a Contractor's Span of Control is outside of the scope of this requirement.
- 19.5.2 The Contractor shall ensure that at a minimum all non-critical system functions and Information is available to the applicable system users between the hours of 7:00 am and 7:00 pm (Atlantic Time) Monday through Friday.

- 19.5.3 The Contractor shall develop an automated method of monitoring critical Systems on at least a thirty (30) minute basis twenty-four (24) hours a Day, seven (7) Days per Week.
- 19.5.4 Upon discovery of any problem within its Span of Control that may jeopardize System availability and performance as defined in this section of the Contract, the Contractor shall notify the applicable ASES staff in person, via phone, and/or email. The Contractor shall deliver notification as soon as possible but no later than 7:00 pm (Atlantic Time) if the problem occurs during the Business Day and no later than 9:00 am (Atlantic Time) the following Business Day if the problem occurs after 7:00 pm (Atlantic Time).
- 19.5.5 Where the operational problem results in delays in report distribution or problems in online Access during the Business Day, the Contractor shall notify the applicable ASES staff within fifteen (15) minutes of discovery of the problem, in order for the applicable work activities to be rescheduled or be handled based on System Unavailability protocols.
- 19.5.6 The Contractor shall provide to appropriate ASES staff Information on System Unavailability events, as well as status updates on problem resolution. These updates shall be provided on an hourly basis and made available via email, telephone and, if applicable, the Contractor's website.
- 19.5.7 The following rules govern unscheduled System Unavailability.
- 19.5.7.1 **Electronic Claims Management (ECM) Functions.** Unscheduled System Unavailability of ECM functions caused by the failure of systems and technologies within the Contractor's Span of Control will be resolved, and the restoration of services implemented, within sixty (60) minutes of the official declaration of System Unavailability, if Unavailability occurs during normal business hours; or within sixty (60) minutes of the start of the next Business Day, if Unavailability occurs outside business hours.
- 19.5.7.2 **All Other Contractor System Functions.** Unscheduled System Unavailability of all other Contractor System functions caused by systems and telecommunications technologies within the Contractor's Span of Control shall be resolved, and the restoration of services implemented:
- 19.5.7.2.1 Within four (4) hours of the official declaration of Unscheduled System Unavailability, when Unavailability occurs during business hours; and
- 19.5.7.2.2 Within two (2) hours of the start of the next Business Day, when Unavailability occurs during non-business hours.
- 19.5.7.3 Cumulative System unavailability caused by systems and telecommunications technologies within the Contractor's Span of Control shall not exceed one (1) hour during any continuous five (5) Calendar Day period for functions that affect GHP Enrollees and services. For functions that do not affect GHP Enrollees, Cumulative System Unavailability caused by systems and telecommunications

technologies within the Contractor's Span of Control shall not exceed four (4) hours during any continuous five (5) Business Day periods.

19.5.7.4 The Contractor shall not be responsible for the availability and performance of systems and telecommunications technologies outside of the Contractor's Span of Control.

19.5.7.5 For any System outage that is not corrected within the required time limits, the Contractor shall provide full written documentation that includes a Corrective Action Plan, describing how the problem will be prevented from occurring again, within five (5) Business Days of the problem's occurrence.

19.5.8 Regardless of the architecture of its Systems, the Contractor shall develop and be continually ready to invoke a Business Continuity and Disaster Recovery ("BC-DR") plan that at a minimum addresses the following scenarios: (i) the central computer installation and resident software are destroyed or damaged; (ii) System interruption or failure resulting from network, operating hardware, software, or operational errors that compromises the integrity of Transactions that are active in a live system at the time of the outage; (iii) System interruption or failure resulting from network, operating hardware, software or operational errors that compromises the integrity of Data maintained in a live or archival system; and (iv) System interruption or failure resulting from network, operating hardware, software or operational errors that does not compromise the integrity of Transactions or Data maintained in a live or archival system but does prevent access to the System, i.e. causes unscheduled System Unavailability. This BC-DR plan must be prior approved by ASES.

19.5.9 The Contractor shall on an annual basis test its BC-DR plan through simulated disasters and lower level failures in order to demonstrate to ASES that it can restore System functions per the standards outlined elsewhere in this Section 19.5 of the Contract. The results of these tests shall be reported to ASES within thirty (30) Calendar Days of completion of said tests.

19.5.10 In the event that the Contractor fails to demonstrate in the tests of its BC-DR plan that it can restore system functions per the standards outlined in this Contract, the Contractor shall be required to submit to ASES a Corrective Action Plan that describes how the failure will be resolved. The Corrective Action Plan will be delivered within five (5) Business Days of the conclusion of the test.

19.6 System Testing and Change Management Requirements

19.6.1 The Contractor shall pass System testing at least fifteen (15) Calendar Days prior to Implementation Date of the Contract.

19.6.2 The Contractor shall absorb the cost of routine maintenance, inclusive of defect correction, System changes required to effect changes in Puerto Rico and federal statute and regulations, and production control activities, of all Systems within its Span of Control.

19.6.3 The Contractor shall respond to ASES reports of System problems not resulting in System Unavailability according to the following timeframes:

- 19.6.3.1 Within five (5) Calendar Days of receipt, the Contractor shall respond in writing to notices of System problems.
- 19.6.3.2 Within fifteen (15) Calendar Days, the correction will be made or a requirements analysis and specifications document will be due.
- 19.6.4 The Contractor shall correct the deficiency by an Effective Date to be determined by ASES.
- 19.6.5 The Contractor's Systems will have a system-inherent mechanism for recording any change to a software module or subsystem.
- 19.6.6 The Contractor shall put in place procedures and measures for safeguarding ASES from unauthorized modifications to the Contractor's Systems.
- 19.6.7 Unless otherwise agreed to in advance by ASES, scheduled System Unavailability to perform System maintenance, repair and/or upgrade activities to Contractor's CCE systems shall take place between 11 pm on a Saturday and 6 am on the following Sunday (Atlantic Time).
- 19.6.8 The Contractor shall work with ASES pertaining to any testing initiative as required by ASES.
- 19.6.9 The Contractor shall provide sufficient System Access to allow verification of System functionality, availability and performance by ASES during the times required by ASES prior to the Implementation Date of the Contract, and as subsequently required during the Contract Term.

19.7 17.7 System Security and Information Confidentiality and Privacy Requirements

- 19.7.1 The Contractor shall provide for the physical safeguarding of its Data processing facilities and the Systems and Information housed therein. The Contractor shall provide ASES with access to Data facilities upon ASES's request. The physical security provisions shall be in effect for the life of this Contract.
- 19.7.2 The Contractor shall restrict perimeter access to equipment sites, processing areas, and storage areas through a card key or other comparable system, as well as provide accountability control to record access attempts, including attempts of unauthorized Access.
- 19.7.3 The Contractor shall include physical security features designed to safeguard processor site(s) through required provision of fire retardant capabilities, as well as smoke and electrical alarms, monitored by security personnel.
- 19.7.4 The Contractor shall ensure that the operation of all of its Systems perform in accordance with Puerto Rico and federal regulations and guidelines related to security and confidentiality of the protected Information managed by the Contractor, and shall strictly comply with HIPAA Privacy and Security Rules, as amended, and with the Breach Notification Rules under the HITECH Act.
- 19.7.5 The Contractor will put in place procedures, measures and technical security to prohibit unauthorized access to the regions of the Data communications network inside of a Contractor's Span of Control.

- 19.7.6 The Contractor shall ensure compliance with:
 - 19.7.6.1 42 CFR Part 431 Subpart F (confidentiality of Information concerning applicants and Enrollees of public medical assistance programs);
 - 19.7.6.2 42 CFR Part 2 (confidentiality of alcohol and drug abuse records); and
 - 19.7.6.3 Special confidentiality provisions in Puerto Rico or federal law related to people with HIV/AIDS and mental illness.
- 19.7.7 The Contractor shall provide its Enrollees with its HIPAA Notice of Privacy Practices that conforms to all applicable federal and state laws. The Contractor shall provide ASES with a copy of this Notice.

19.8 Information Management Process and Information Systems Documentation Requirements

- 19.8.1 The Contractor shall ensure that written System Process and Procedure Manuals document and describe all manual and automated system procedures for its Information management processes and Information Systems. These manuals shall be provided to ASES Immediately upon request.
- 19.8.2 The System User Manuals shall contain Information about, and instructions for, using applicable System functions and accessing applicable system Data.
- 19.8.3 When a System change that would alter the conditions and services agreed upon in this Contract is subject to ASES sign off, the Contractor shall draft revisions to the appropriate manuals prior to ASES sign-off of the change.
- 19.8.4 Updates to the electronic version of these manuals shall occur in real time; updates to the printed version of these manuals shall occur within ten (10) Business Days of the update taking effect.

ASES reserves the right to Audit the Contractor's policies and procedures, manuals and protocols compliance related to its Information Systems.

19.9 Reporting Functionality Requirements

- 19.9.1 The Contractor's Systems shall have the capability of producing a wide variety of reports that support program management, policymaking, quality improvement, program evaluation, analysis of fund sources and uses, funding decisions and assessment of compliance with federal and Puerto Rico requirements.
- 19.9.2 The Contractor shall support a mechanism for obtaining service and expenditure reports by funding source, Provider, Provider type or other characteristic; and Enrollee, Enrollee group/category or other characteristic.
- 19.9.3 The Contractor shall extend Access to this mechanism to select ASES personnel in a secure manner to Access Data, including program and fiscal Information regarding Enrollees served, services rendered, etc. and the ability for said personnel to develop and/or retrieve reports. This requirement could be met by the provision of Access to a decision support system/Data

warehouse. The Contractor shall provide training in and documentation on the use of this mechanism.

- 19.9.4 Within five (5) Calendar Days upon ASES's request, the Contractor will deliver a copy of the then current ASES's System Information to ASES in a mutually acceptable form and format.

19.10 17.10 Disaster Recovery, Disaster Declaration, Data Content Delivery to ASES

- 19.10.1 The Contractor shall maintain a disaster recovery and business recovery plan in effect throughout the Term of the Contract. The disaster recovery plan shall be subject to ASES review upon reasonable notice to the Contractor. The Contractor shall maintain reasonable safeguards against the destruction, loss, intrusion and unauthorized alteration of printed materials and Data in its possession. At a minimum, the Contractor shall perform (i) incremental daily backups, (ii) Weekly full backups, and (iii) such additional backups as the Contractor may determine to be necessary to maintain such reasonable safeguards.
- 19.10.2 Both ASES and the Contractor recognize that a failure by the Contractor's Network may adversely impact ASES business and operations, as the responsible party for the GHP. Therefore, in the event that the Contractor's Network designed to deliver the services herein contemplated becomes unable, or is anticipated to become unable, to deliver such services on a timely basis, Contractor shall Immediately notify ASES by telephone, and shall work closely with ASES to fix the problem. In the event that Contractor fails to provide such required notice to ASES and such delay in the notification has a material and adverse effect upon ASES and/or Enrollees, ASES may terminate this Contract for cause as provided in Article 38 of this Contract.
- 19.10.3 Within five (5) Calendar Days upon ASES's request, the Contractor will deliver a copy of the then current ASES Data to ASES in a mutually acceptable form and format which is useable and readable and understandable by ASES.

ARTICLE 20 STAFFING AND KEY PERSONNEL

20.1 General Provisions

- 20.1.1 The Contractor shall have sufficient qualified, experienced, and knowledgeable staff and personnel to efficiently administer program requirements and provide all required direct and indirect services for the duration of the Contract.
- 20.1.2 The Contractor must receive ASES's approval of the Contractor's staffing and key personnel organizational chart prior to implementation. Any changes to the approved organizational chart shall be submitted and prior approved by ASES.
- 20.1.3 At a minimum, the Contractor must provide the key personnel required in Section 20.2.4.
- 20.1.4 All staff must be properly trained, demonstrate competency, and have the appropriate credentialing, if required.
- 20.1.5 The Contractor must employ a sufficient number of staff who are fluent in English and Spanish and who are culturally competent.

- 20.1.6 The Contractor shall, at a minimum, emphasize nondiscrimination in its personnel policies and procedures as it relates to hiring, promoting, operational policies, contracting processes and participation on advisory/planning boards or committees.
- 20.1.7 ASES reserves the right, at any time during this Contract, to refuse or reject, in its sole discretion and notwithstanding any prior approval, any of Contractor's staff, including key personnel, based on performance deficiencies and/or lack of knowledge, skills or demonstrated expertise necessary to perform contracted activities. ASES will document, in the written notice of rejection that it sends to the Contractor, the reason(s) for the rejection of Contractor's staff.

20.2 Staff Responsibilities and Requirements

20.2.1 Staffing Plan

20.2.1.1 The Contractor shall provide a final Staffing Plan for review and approval by ASES within sixty (60) Calendar Days of Implementation Date of the Contract. The Staffing Plan shall include, at a minimum, the following key personnel positions identified below and any necessary supervisory and support staff:

20.2.1.1.1 The work location, work schedule, and reporting structure for all key personnel and support staff.

20.2.1.1.2 Copies of resumes and job descriptions for all key personnel assigned to this Contract.

20.2.1.2 The Contractor shall provide ASES with a revised Staffing Plan within three (3) Business Days of any key personnel change.

20.2.2 Staff Licensing and Certification Requirements

20.2.2.1 The Contractor shall provide ASES with documentation verifying that all Staff requiring licensure or certification are licensed and/or certified to practice in his/her area of specialty. This documentation shall be supplied to ASES within sixty (60) Calendar Days of the Implementation Date of the Contract, and annually thereafter, as directed in writing by ASES.

20.2.2.2 The Contractor shall provide staff that are current and knowledgeable in their respective areas of expertise and are able to provide quality consultation and technical assistance services regarding all matters pertaining to Pharmacy benefits and/or drug Rebating.

20.2.3 Staff Training

20.2.3.1 The Contractor shall provide a Staff Training Plan to ASES for approval within sixty (60) Calendar Days of the Implementation Date of the Contract.

20.2.3.2 The Contractor shall prepare all staff training materials and submit them to ASES for review and approval prior to beginning staff training. The Contractor shall be responsible for providing training to all staff

prior to those individuals performing any PBM and/or Rebate services. All staff shall receive annual refresher training covering their job responsibilities. ASES reserves the right, at any time during the Term of this Contract, to require the Contractor to provide remedial training to specific staff members or groups of staff members, if their performance indicates such training is needed.

20.2.4 Key personnel

20.2.4.1 The Contractor must provide the following key personnel for this Contract, to perform, at a minimum, the duties established in this Contract. The Contractor shall provide, in writing to ASES, the names, positions, and contact information (telephone numbers and fax numbers, and email addresses) of the staff designated as Key personnel within sixty (60) Calendar Days of the Implementation Date of the Contract. If the Contract is awarded to multiple Contractors, each Contractor must provide these key personnel unless otherwise noted:

- 20.2.4.1.1 An Account Manager whose duties shall include, but are not limited to, having day-to-day authority to manage all Contract requirements and services, being the primary business contact during implementation and throughout ongoing operations and shall be responsible for delivery of all Deliverables required by in this Contract. This position shall be filled and active ninety (90) Calendar Days before the Implementation Date of the Contract.
- 20.2.4.1.2 An Implementation Manager who will provide assistance during the transition/pre-implementation and implementation process. This position shall be filled and active ninety (90) Calendar Days before the Implementation Date of the Contract.
- 20.2.4.1.3 A Clinical Pharmacist, who is licensed by Puerto Rico and whose duties shall support clinical Contract activities.
- 20.2.4.1.4 An Information Systems Coordinator responsible for oversight of all Data systems and coordination of Data sharing between ASES and other parties identified in this Contract.
- 20.2.4.1.5 A Program Data Research Analyst who shall be responsible to generate daily, weekly, monthly, quarterly and yearly reports required by the Contract and all ad hoc report requests made by ASES.
- 20.2.4.1.6 A Compliance Officer who is responsible for all Fraud and Abuse detection activities for the PBM programs.
- 20.2.4.1.7 A Pharmacy Call Center Manager who is responsible for oversight of the Pharmacy Call Center.

20.2.4.2 All permanent key personnel positions shall be hired and trained no less than sixty (60) Calendar Days before the Implementation Date of the Contract.

20.2.4.3 Transition Period: All key personnel need to be available on-site and ready to begin performing the scope of work sixty (60) Calendar Days before the Implementation Date of the Contract or earlier during the transition period, if necessary.

20.2.5 Contract Management

20.2.5.1 The Contractor must work with ASES and all stakeholders of the GHP to be good stewards of Government funds. Accordingly, the Contractor's Account Manager, unless otherwise specified by ASES, will be responsible for the following activities:

20.2.5.1.1 Status calls with ASES during implementation to discuss operational and technical issues;

20.2.5.1.2 Hold regular meetings with internal partners of ASES, the Medicaid Program, and other stakeholders as identified by ASES;

20.2.5.1.3 Act as a liaison between ASES, corresponding team leaders and supervisors, and other personnel of the Contractor;

20.2.5.1.4 Submit regular reports, as requested by ASES regarding services and activities under this Contract to keep ASES and key stakeholders informed about matters concerning the services provided;

20.2.5.1.5 Attend regular meetings with key personnel of ASES as requested;

20.2.5.1.6 Review compliance, and work with ASES to implement required improvements;

20.2.5.1.7 Arrange meetings, set agendas, and perform any necessary follow-up activities;

20.2.5.1.8 Gather, analyze, and report statistical Data, in a timely manner to ASES and other key stakeholders, as required; and

20.2.5.1.9 Conduct other related tasks as requested by ASES.

20.3 Substitution of Key Personnel

20.3.1 The Contractor must not substitute key personnel without prior written approval by ASES.

20.3.2 The Contractor must notify ASES of any desired substitution of key personnel, including the name, role, resume, and other Information requested by ASES for the recommended substitute.

- 20.3.3 Within ten (10) Calendar Days of the request, ASES will notify the Contractor if the recommended substitute is acceptable. If ASES does not accept the recommended substitute, the Contractor will have ten (10) Calendar Days to make another recommendation. At no time, however, may a key personnel role be vacant. It is the responsibility of the Contractor to keep the role filled until ASES approves a substitution.

ARTICLE 21 ASES REPORTING

21.1 General Provisions

- 21.1.1 The Contractor shall comply with all the reporting requirements established by ASES in this Article 21 and in Article 26. ASES may, at its discretion, require the Contractor to submit additional reports or any other Data, documentation or Information relating to the performance of the Contractor's obligations both on an ad hoc and recurring basis as required by ASES or CMS. If ASES requests any revisions to the reports already submitted, the Contractor shall make the changes and resubmit the reports, according to the time period and format specified by ASES.
- 21.1.2 All reports containing Information about a Network Pharmacy must include the Network Pharmacy's NPI, unless indicated otherwise by ASES.
- 21.1.3 The Contractor shall submit all reports to ASES, unless indicated otherwise in this Contract, according to the schedule in Attachment 7. Failure to report timely may result in intermediate sanctions, liquidated damages and/or fines in accordance with Article 37.
- 21.1.4 If a report due date falls on a weekend or a Puerto Rico holiday, receipt of the report the next Business Day is acceptable.
- 21.1.5 The Contractor shall submit all reports to ASES in the manner and format prescribed by ASES.
- 21.1.6 The Contractor shall transmit to and receive from ASES all transactions and code sets in the appropriate standard formats as specified under HIPAA and as directed by ASES.
- 21.1.7 ASES's requirements regarding reports, report content, and frequency of submission are subject to change at any time during the Term of the Contract. ASES shall notify the Contractor in writing, of changes to existing required report content, format or schedule at least fourteen (14) Calendar Days prior to implementing the reporting change. ASES shall notify the Contractor, in writing, of new reports at least forty-five (45) Calendar Days prior to implementing the new report. The Contractor shall be held harmless if ASES fails to meet this requirement for any changes for existing reports. However, the Contractor is not otherwise relieved of any responsibility for the submission of late, inaccurate or otherwise incomplete reports. The first submission of a report revised by ASES to include a change in Data requirements or definition will not be subject to penalty for accuracy.
- 21.1.8 The Contractor shall submit reports timely and in proper format. The submission of late, inaccurate, or otherwise incomplete reports constitutes

failure to report. "Timely submission" shall mean that the report was submitted on or before the date it was due. "Accuracy" shall mean the report was prepared according to the specific written guidance, including report template, provided by ASES to the Contractor. All elements must be met for each required report submission. Therefore, the report must be timely, accurate and contain an analysis. If any portion of the report element is not met, the report is deemed in "error" and the Contractor will be considered to not be in compliance with the Contract and will be subject to intermediate sanctions and or liquidated damages and/or fines in accordance with Article 37 of this Contract. The Contractor shall not be penalized if an error in a previously submitted report is identified by the Contractor and reported to ASES prior to ASES's identification of the error. Corrected reports in this type of situation will be submitted to ASES in a timeframe determined by ASES after consulting with the Contractor. Failure to comply with the agreed upon timeframes for correction and resubmission shall be subject to intermediate sanctions and or liquidated damages and/or fines in accordance with Article 37 of this Contract.

- 21.1.9 Each report must include an analysis, which shall include, at a minimum: (i) identification of any changes compared to previous reporting periods as well as trending over time; (ii) an explanation of said changes (positive or negative); (iii) an action plan or performance improvement activities addressing any negative changes; and (iv) any other additional Information pertinent to the reporting period. All quantitative reports shall include a summary table that presents Data over time including monthly, quarterly and/or year-to-date summaries as directed by ASES. ASES may assess intermediate sanctions, liquidated damages and/or fines in accordance with Article 37 of this Contract for failure to address any of these requirements. The above Data requirements may be represented in charts, graphs, tables and any other Data illustrations to demonstrate findings.
- 21.1.10 The Contractor shall review, as part of its continuous improvement activities, timeliness and accuracy of reports submitted to ASES to identify instances and patterns of non-compliance. The Contractor shall perform an analysis identifying any patterns or issues of non-compliance and shall implement quality improvement activities to improve overall performance and compliance.
- 21.1.11 Extensions to report submission dates will be considered by ASES after the Contractor has contacted the ASES designated point of contact via email at least twenty-four (24) hours in advance of the report due date. Extension for submission of reports should be under rare and unusual circumstances. If ASES grants an extension, and the report is submitted before the extended deadline, the report(s) will be considered timely and not subject to penalty for timeliness. Not requesting an extension within at least twenty-four (24) hours of the report due date is considered failure to report timely.
- 21.1.12 Anytime a report is rejected for any reason by ASES and ASES provides the reason for the rejection, the Contractor shall resubmit the report within ten (10) Business Days from notification of the rejection or as directed by ASES.
- 21.1.13 The Contractor shall submit all reports electronically to ASES's FTP site unless directed otherwise by ASES. ASES shall provide the Contractor with access to the FTP site. The email generated by the FTP upload will be used as the time stamp for the submission of the report(s).

- 21.1.14 ASES shall provide feedback, as necessary, to the Contractor regarding format and timeliness of reports within forty-five (45) Calendar Days from the due date of the report.
- 21.1.15 All reports in the reporting templates provided to the Contract require Contractor certification. The Authorized Certifier or an equivalent position as delegated by the Contractor and approved by ASES, shall review the accuracy of language, analysis, and Data in each report prior to submitting the report to ASES. The Authorized Certifier shall include a signed attestation each time the report is submitted. The attestation must include a certification, based on best knowledge, Information, and belief, as to the accuracy, completeness and truthfulness of the Data in the report. Reports will be deemed incomplete if an attestation is not included.
- 21.1.16 The Contractor Data transfers shall occur in standard format as prescribed by ASES and will be compliant with HIPAA and federal regulations. The Contractor shall submit in formats as prescribed by ASES so long as ASES's direction does not conflict with any federal law.

21.2 Minimum Reporting Requirements for Contractor

- 21.2.1 The Contractor shall produce and deliver to ASES and the MCOs the minimum reporting requirements set forth in Attachment 7, and according to the timeframes established therein.

21.3 Actuarial and Special Reporting

- 21.3.1 The Contractor shall be available and shall cooperate to provide any reliable Data or Information related to, or in connection with, this Contract to ASES's qualified consulting actuary on insurance matters, as its Agent. The consulting actuary assists and advises ASES on the GHP design, proposal review, and in any additional administrative need to confirm fee analysis. ASES staff or the consulting actuary may, from time to time, request the Contractor to provide additional Information. Contractor shall cooperate with, and act in good faith to work and provide assistance to the consulting actuary and shall respond to these requests promptly, as required by ASES, on a timely basis at no additional cost to ASES.

21.4 Fraud, Waste, and Abuse Reporting

- 21.4.1 On quarterly basis, the Contractor shall report all instances of suspected Network Pharmacy Fraud, Waste, or Abuse, or Enrollee Abuse of the Covered Pharmacy Services under this Contract, using a format and Data elements prescribed by ASES.
- 21.4.2 At a minimum, the Contractor shall include in each report, with respect to individual investigations of Fraud, Abuse, or Waste:
 - 21.4.2.1 Enrollee name and ID number;
 - 21.4.2.2 Network Pharmacy name and NPI;
 - 21.4.2.3 Source of complaint;

- 21.4.2.4 Type of Network Pharmacy;
- 21.4.2.5 Nature of complaint, including alleged persons or entities involved, category of services, factual explanation of the allegation, and dates of the conduct;
- 21.4.2.6 All communication between the Contractor and the Network Pharmacy about the Complaint;
- 21.4.2.7 Date of the Complaint;
- 21.4.2.8 Approximate dollars involved, or amount paid to the Network Pharmacy during the past three (3) years, whichever is greater;
- 21.4.2.9 Disciplinary measures imposed, including recoupment, if any;
- 21.4.2.10 Contact Information for a Contractor staff person with relevant knowledge of the matter;
- 21.4.2.11 Legal and administrative disposition of the case;
- 21.4.2.12 The Contractor shall also include in the report a summary (not specific to an individual case) of the following:
 - 21.4.2.12.1 Investigative activities, corrective actions, prevention efforts, and results; and
 - 21.4.2.12.2 Trending and analysis of Utilization Management and Network Pharmacy payment management.

ARTICLE 22 KEY SERVICE LEVEL METRICS

- 22.1** The Contractor shall meet all service/performance metrics set forth in Attachment 4. Such key service level metrics must be reported on a quarterly and annual basis, except as otherwise previously agreed between the Parties in writing.

ARTICLE 23 AUTHORIZATION, FINANCIAL PERFORMANCE AND INSURANCE

23.1 Authorization

- 23.1.1 The Contractor represents and warrants that it is duly organized and authorized to conduct business under the laws of the Commonwealth, and that it has been duly authorized to execute this Contract. To the extent any of the Contractor's subsidiaries also provide Contracted Services, the Contractor represents and warrants that they are duly organized and authorized to conduct business under the laws of the Commonwealth. Contractor shall not be owned nor controlled by, nor own or control a pharmaceutical manufacturer, pharmacy nor any MCO or Provider that contracts with the GHP, unless ASES in its sole discretion waives such independence and conflict of interest safeguards.

23.2 Payment and Performance Bond Guarantees

- 23.2.1 The Contractor must provide prior to signing the Contract and maintain throughout the term of the Contract a Performance Bond in the amount of thirty

percent (30%) of the maximum annual contract amount for itself and any Subcontractors, if any. The Performance Bond must be issued by an insurance company duly authorized to do business in Puerto Rico, duly certified by the Office of the Insurance Commissioner of Puerto Rico and approved by ASES.

23.2.1.1 At the conclusion of each Contract Year and no later than the last day of the first month of the following Contract Year, the Contractor must provide ASES evidence of the renewed Performance Bond in the corresponding maximum amount for said Contract Year. ASES shall not process any pending invoices for Administrative Fees if Contractor fails to maintain a Performance Bond.

23.2.2 If the maximum annual Contract amount for a given contract year is increased, prior to the signing of the corresponding amendment to the Contract, the Contractor must provide an amended Performance Bond to cover the increase in the new maximum annual Contract amount.

23.3 Insurance

23.3.1 The Contractor shall prior to the commencement of work, procure the insurance policies identified below at the Contractor's own cost and expense and shall furnish ASES with proof of coverage in the amounts indicated. It shall be the responsibility of the Contractor to require any Subcontractor to secure the same insurance coverage as prescribed herein for the Contractor, and to obtain a certificate evidencing that such insurance is in effect. In the event that any such insurance is proposed to be reduced, terminated or cancelled for any reason, the Contractor shall provide to ASES at least sixty (60) Calendar Days prior written notice. Prior to the reduction, expiration and/or cancellation of any insurance policy required hereunder, the Contractor shall secure replacement coverage upon the same terms and provisions as required in this Contract, to ensure no lapse in coverage, and shall furnish, at the request of ASES, a certificate of insurance indicating the required coverage. The provisions of this Section shall survive the expiration or termination of this Contract for any reason. In addition, the Contractor shall indemnify and hold harmless ASES and the Government from any liability arising out of the Contractor's or its Subcontractor's untimely failure in securing insurance coverage as prescribed herein:

23.3.2 Workers' Compensation Insurance: The Contractor shall have the required policy(ies) to insure the statutory limits established by the law of Puerto Rico, which must also be extended to employees and contractors who are not considered their own employer due to the degree of control exercised over them by the Contractor in terms of supervision, provision of materials and work conditions. The Contractor must also have Employer's Liability Insurance with the following limits:

23.3.2.1 Bodily injury by accident: five hundred thousand dollars (\$500,000) each accident;

23.3.2.2 Bodily injury by disease: five hundred thousand dollars (\$500,000) each employee and contractor who is not considered their own employer due to the degree of control exercised over them by the

Contractor in terms of supervision, provision of materials and work conditions; and

- 23.3.2.3 One million dollars (\$1,000,000) policy limits.
- 23.3.2.4 The Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Worker's Compensation Coverage.
- 23.3.3 The Contractor shall have commercial general liability policy(ies) as follows:
 - 23.3.3.1 Combined single limits Bodily Injury and Property Damage of one million dollars (\$1,000,000) per occurrence and in the aggregate including personal and advertising injury and contractual liability; and
 - 23.3.3.2 On an "occurrence" basis.
- 23.3.4 The Contractor shall have commercial auto liability insurance with limits of one million dollars (\$1,000,000) and the following forms: Non-Owned Autos and Hired Autos.
- 23.3.5 The Contractor shall have professional liability insurance with limits not less than [five million dollars (\$5,000,000)].
- 23.3.6 The Contractor shall have excess liability insurance respect to the commercial general liability policy described above, in an umbrella form and on an occurrence basis with limits of at least one million dollars (\$1,000,000) per occurrence and in the aggregate;
- 23.3.7 The Contractor shall have Cyber Security Liability Insurance with limits of at least five million dollars (\$5,000,000).
- 23.3.8 The Contractor shall have Electronic Data Processes Error and Omissions Insurance with limits of at least five million dollars (\$5,000,000) and a Miscellaneous Error & Omissions Insurance covering the Pharmacy Call Center and in person/on site choice counseling operation with limits of at least five million dollars (\$5,000,000);
- 23.3.9 The commercial general liability policies must have an endorsement naming the ASES and the Department of Health of Puerto Rico as additional insureds and a hold harmless agreement in favor of ASES and the Department of Health of Puerto Rico.
- 23.3.10 The excess liability, the commercial auto liability insurance policies must include the ASES and the Department of Health of Puerto Rico as an additional insured.
- 23.3.11 Policies cannot be cancelled or modified without providing sixty (60) Calendar Days prior written notice to ASES and the Department of Health, Office of Insurance and Risks ("Oficina de De Seguros y Riesgos"), P.O. Box 709184, San Juan, Puerto Rico 00936-8184.
- 23.3.12 Insurance companies affording coverage hereunder must be duly authorized to do business in Puerto Rico and duly certified by the Insurance Commissioner

of Puerto Rico, excluding those offering excess liability, and have an A.M. Best's rating of A-VII or better.

23.3.13 Contractor shall be responsible for any damages and injuries caused by the negligent handling or the abandonment of the responsibilities under this Contract and will thus exempt ASES and the Department of Health from any obligation or responsibility from such actions.

ARTICLE 24 CONTRACT TERM

24.1 Subject to and upon the terms and conditions herein, this Contract shall be in full force and effect on the Effective Date of Contract and shall terminate on [REDACTED]. The Contractor shall begin providing services identified in this Contract on February 1, 2022, which shall be deemed to be the Implementation Date of the Contract. The foregoing notwithstanding, ASES, subject to Article 38 reserves the right, prior written notice of ninety (90) Calendar Days, to amend or partially terminate the Contract at any time to implement a demonstrative plan to incorporate the new public health policies and/or strategies of the Government. Upon written notice of amendment or partial termination of this Contract pursuant to this Article 24, ASES will evaluate in good faith a renegotiation of Administrative Fees payable under this Contract.

24.2 The Contractor shall begin providing Contracted Services on the Implementation Date of the Contract at 12:01 a.m., Atlantic Time. Accordingly, invoices for these services may not be submitted prior to this Implementation Date of the Contract. The Contract shall expire at the close of the Contract Term unless earlier terminated under Article 38.

24.3 ASES is hereby granted the option to renew this Contract for an additional Term of up to one (1) Contract Year, which shall begin on [REDACTED] and end at midnight on [REDACTED]. The Terms of the renewal shall be negotiated, but any increase in Administrative Fees shall be subject to ASES's determination that the proposed new amount is appropriate. The option to renew the Contract shall be exercisable solely and exclusively by ASES.

ARTICLE 25 PAYMENT FOR SERVICES

25.1 General Provisions

25.1.1 The Contractor shall be paid for Contracted PBM Services in the amount of [\$REDACTED] per Paid Claim for all Contracted PBM Services provided under this Contract, while the Contractor shall be paid for Contracted RA Services in the amount of [\$REDACTED] per month for all Contracted RA Services provided under this Contract, (collectively, the "Administrative Fee"). The due date for the Administrative Fee to the Contractor shall be within fifteen (15) Business Days of invoice date.

25.1.2 The compensation set forth in Section 24.1.1 includes all direct and indirect costs for the provision of Contracted Services. Contractor agrees that this Total Ownership Cost Method is an essential condition of this Contract and that pricing includes not only the direct costs of the specific Deliverables required for the provision of the Contracted Services but also all indirect costs that would be logically attributed to the provision such Services. Compensation includes, but it is not limited to:

25.1.2.1 Personnel/resources costs and required equipment for the Pharmacy Call Center and other service locations;

- 25.1.2.2 All support or infrastructure activities such as recruiting, training of new personnel, individual training other than system-specific training;
- 25.1.2.3 Fees for the use of any online portals, applications or websites, including all the design and programming of systems specific to the requirements of ASES, any and all the required changes and updates necessary to make the system work and properly perform the Contracted Services, and costs of providing these systems on secure servers or integration for use on the internet;
- 25.1.2.4 Hardware costs and the cost of personnel related to updating and maintaining ASES Information and Data;
- 25.1.2.5 All charges and costs related to the maintenance of the equipment and infrastructure to be dedicated to the project and systems refresh required to keep them updated and running to perform and fulfill the Contracted Services, responsibilities and obligations; and
- 25.1.2.6 Operating costs, management and ongoing support, communications, as well as all instances of compliance and contract oversight.
- 25.1.3 Contractor assumes all risks, including but not limited to any fluctuation in the volume of claims or utilization of services throughout the Calendar Year.
- 25.1.4 Payment for services under this Contract will not commence before Implementation Date of the Contract.
- 25.1.5 Payments for the first month of program operations under this Contract will be made only upon a determination by ASES that the Contractor has complied with all of its obligations for the implementation of this Contract, including a finding by ASES that the Contractor has satisfied the implementation review, and the Contractor's submission of initial Deliverables as specified in Attachment 2 to this Contract.
- 25.1.6 In order to receive payments from ASES, the Contractor shall provide to ASES, and keep current, its tax identification number, billing address, and other contact information, as required by ASES.
- 25.1.7 The Contractor acknowledges that the Payments agreed to under the terms of this Contract constitute full payment for obligations under this Contract. ASES will have no responsibility for Payment beyond that amount unless the Contractor has obtained prior written approval, in the form of a Contract amendment, authorizing an increase in the total Payment. ASES shall have no responsibility to reimburse the Contractor for any additional costs Contractor may incur in connection with the satisfaction of all responsibilities under this Contract.
- 25.1.8 Pursuant to the terms of this Contract, should ASES assess liquidated damages or other Remedies for the Contractor's noncompliance or deficiency with the terms of this Contract, such amount may be withheld from the Administrative Fee for the following month, and for continuous consecutive months thereafter until such noncompliance or deficiency is corrected at ASES's satisfaction.

- 25.1.9 The Contractor shall maintain all the Utilization and financial Data related to this Contract duly segregated from its regular accounting system including, but not limited to, the general ledger.
- 25.1.10 The Contractor shall report all of the profit of its partially- or wholly-owned subsidiaries or Affiliates realized from services rendered in relation to this Contract (the "Affiliated Profit"), unless the Contractor demonstrates and ASES agrees that the Affiliated Profit did not result from preferential contractual Terms included in the Contractor's contracts or arrangements with its partially- or wholly-owned subsidiaries and Affiliates.
- 25.1.10.1 Preferential Contract Terms are those that result in a cost or expense that exceeds fair market value, or those that exceed other Terms for the provisioning of same or similar goods and services as would be agreed to by a reasonable person under the same or similar circumstances prevailing at the time the decision was made for the same or similar good or service. In determining whether preferential Contract Terms exist, consideration must be given to factors including "sound business practices," "arm's length bargaining" and "market prices for comparable goods and services for the geographical area." Contractual Terms shall also be deemed preferential if the Contractor's partially- or wholly-owned subsidiaries or Affiliates charge the Contractor a higher price for the same or similar goods or services than the lowest price charged by the Contractor's partially- or wholly-owned subsidiaries or Affiliates to any and all other clients.
- 25.1.10.2 The Contractor shall report to ASES's Office of Finance all related-party Transactions within thirty (30) Calendar Days and provide a copy of the contract for each Transaction detailing the amounts paid or to be paid, charged, or transferred and goods or services to be provided under the contract. A certification under penalty from criminal perjury from the Contractor's President, Vice-President, Chief Financial Officer, or Treasurer specifying what are the "at cost" and/or "fair market value" amounts of the contract, as applicable, shall be included with each submission.

25.2 Contractor's Objections to Payment

- 25.2.1 If the Contractor wishes to contest the amount of Payments made by ASES in accordance with the terms set forth in this Contract, the Contractor shall submit to ASES all relevant documentation supporting the Contractor's objection no later than thirty (30) Calendar Days after payment is made. Once this Term has ended, the Contractor forfeits its right to claim any additional amounts.
- 25.2.2 After the Contractor's submission of all relevant Information, the Contractor and ASES will meet to discuss the matter. If after discussing the matter and analyzing all relevant Data it is subsequently determined that an error in payment was made, the Contractor and ASES will develop a plan to Remedy the situation, which must include a timeframe for resolution agreed to by both parties, within a time period mutually agreed upon by both parties.

ARTICLE 26 FINANCIAL MANAGEMENT

26.1 General Provisions

- 26.1.1 The Contractor shall be responsible for the sound financial management of Puerto Rico and federal funds provided to the Contractor under the GHP program.
- 26.1.2 The Contractor shall notify ASES in writing of any loans or other special financial arrangements made between the Contractor and any Network Pharmacy or any other Provider. Any such loans shall strictly conform to the legal requirements of federal and Puerto Rico anti-Fraud and anti-kickback laws and regulations.
- 26.1.3 The Contractor shall provide ASES with copies of its Audited financial statements following Generally Accepted Accounting Principles (“GAAP”), at its own cost and expense, within ninety (90) Calendar Days following the end of each Contract Year during the Contract Term as specified in Article 24. The statements shall be provided in a format specified by ASES.
- 26.1.4 The Contractor shall provide to ASES unaudited financial statements for each quarter during the Contract Term, not later than thirty (30) Calendar Days after the close of each quarter in a format specified by ASES.
- 26.1.5 The Contractor shall provide to ASES a copy of the annual corporate report of its parent company at the close of the Calendar Year.
- 26.1.6 The Contractor shall maintain adequate procedures and controls to ensure that any payments pursuant to this Contract are properly made. In establishing and maintaining such procedures, the Contractor shall provide for separation of the functions of certification and disbursement.
- 26.1.7 The Contractor acknowledges, and shall incorporate in contracts with Subcontractors, that the GHP is a government-funded program. As such, the administrative costs that are deemed allowable shall be in accordance with cost principles permissible, and with federal and Puerto Rico applicable guidelines, including Office of Management and Budget Circulars, primarily recognizing that: (i) a cost shall be reasonable if it is of the type generally recognized as ordinary and necessary, and if in its nature and amount, and taking into consideration the purpose for which it was disbursed, it does not exceed that which would be incurred by a prudent person in the ordinary course of business under the circumstances prevailing at the time the decision was made to incur the cost; and (ii) a cost shall be reasonable if it is allocable to or related to the cost objective that compels cost association.
- 26.1.8 The Contractor shall maintain an accounting system for GHP separate from the rest of its commercial activities. This system will only include GHP Data.
- 26.1.9 The Contractor shall provide, throughout the Contract Term, any other necessary and related Information that is deemed necessary by ASES in order to evaluate the Contractor’s financial capacity and stability.

26.2 Third Party Liability and Cost Avoidance

- 26.2.1 General Provisions

- 26.2.1.1 The GHP shall be the payer of last resort for all Covered Services rendered on behalf of Medicaid and CHIP Enrollees in accordance with federal regulations at 42 CFR 433 Subpart D; ASES will enforce this rule with respect to all GHP Enrollees.
- 26.2.1.2 The Contractor shall exercise full assignment rights as applicable and shall be responsible for making every reasonable effort to determine the legal liability of Third Parties to pay for services rendered to Enrollees under this Contract and to cost avoid or recover any such liability from the Third Party. "Third Party," for purposes of this section, shall mean any person or entity that is or may be liable to pay for the care and services rendered to a GHP Enrollee. Examples of a Third Party include, but are not limited to, an Enrollee's health insurer, casualty insurer, a managed care organization, and Medicare.
- 26.2.1.3 The Contractor, and by extension its Providers and Subcontractors, hereby agree to utilize for Claims Cost Avoidance purposes, within thirty (30) Calendar Days of learning of such sources, other available public or private sources of payment for services rendered to Enrollees in the Contractor's plan. If Third Party Liability ("TPL") exists for part or all of the services provided directly by the Contractor to an Enrollee, the Contractor shall make reasonable efforts to recover from TPL sources the value of services rendered. If TPL exists for part or all of the services provided to an Enrollee by a Subcontractor or a Provider, and the Third Party will make payment within a reasonable time, the Contractor may pay the Subcontractor or Provider only the amount, if any, by which the Subcontractor's or Provider's allowable Claim exceeds the amount of TPL.
- 26.2.1.4 The Contractor shall deny payment on a Claim that has been denied by a Third Party payer when the reason for denial is the Provider's failure to follow prescribed procedures, including, but not limited to, failure to obtain Prior Authorization, failure to file Claims timely, etc.
- 26.2.1.5 The Contractor shall, within five (5) Business Days of issuing a denial of any Claim based on TPL, provide TPL Data to the Provider.
- 26.2.1.6 The Contractor shall treat funds recovered from Third Parties as offsets to Claims payments. The Contractor shall report all Cost Avoidance values to ASES in accordance with federal guidelines and as provided for in this section.
- 26.2.1.7 The Contractor shall post all Third Party payments or recoveries to Claim-level detail by Enrollee.
- 26.2.1.8 If the Contractor operates or administers a non-GHP program or other lines of business, the Contractor shall access the resources of those entities to assist ASES with the identification of Enrollees with access to other insurance or sources of payment.
- 26.2.1.9 The Contractor shall audit and review its Network Pharmacies' Claims, using monthly the reports submitted pursuant to Section 8.7 of this Contract or other pertinent Data, to ensure that Network

Pharmacies are not receiving duplicate payment for services billable to Third Parties. The Contractor shall report to ASES on a quarterly basis its findings regarding Claims, invoices, or duplicate or inappropriate payments. According to the timeframe specified in Attachment 12 to this Contract, the Contractor shall submit to ASES for its review and prior written approval a plan for such routine Audits.

- 26.2.1.10 The Contractor shall demonstrate, upon request, to ASES that reasonable effort has been made to seek, including through collaboration with Providers, to collect and report Third Party recoveries. ASES shall have the sole responsibility for determining whether or not reasonable efforts have been demonstrated. Said determination shall take into account reasonable industry standards and practices.
- 26.2.1.11 The Contractor shall comply with 42 CFR 433 Subpart D – Third Party Liability and 42 CFR 447.20 Provider Restrictions: State Plan Requirements, and work cooperatively with ASES to assure compliance with the requirements therein, as it relates to the Medicaid and CHIP populations served by the Contractor’s plan and its TPL and Cost Avoidance responsibilities.
- 26.2.2 **Legal Causes of Action for Damages.** ASES or its designee will have the sole and exclusive right to pursue and collect payments made by the Contractor when a legal cause of action for damages is instituted on behalf of a GHP Enrollee against a Third Party, or when ASES receives notices that legal counsel has been retained by or on behalf of any Enrollee.
- 26.2.3 The Contractor shall cooperate with ASES in all collection efforts, and shall also direct its Providers to cooperate with ASES in these efforts.
- 26.2.4 **Estate Recoveries.** ASES (or another agency of the Government) will have the sole and exclusive right to pursue and recover correctly paid benefits from the estate of a deceased Enrollee who was Medicaid Eligible in accordance with federal and Puerto Rico law. Such recoveries will be retained by ASES.
- 26.2.5 Subrogation
 - 26.2.5.1 Third Party resources shall include subrogation recoveries. The Contractor shall be required to seek subrogation amounts regardless of the amount believed to be available as required by Federal Medicaid guidelines and Puerto Rico law.
 - 26.2.5.2 The amount of any subrogation recoveries collected by the Contractor outside of the Claims Processing system shall be treated by the Contractor as offsets to expenses for the purposes of reporting.
 - 26.2.5.3 The Contractor shall conduct diagnosis and trauma code editing to identify potential subrogation Claims. This editing should, at minimum, identify Claims with a diagnosis of 900.00 through 999.99 (excluding 994.6) or Claims submitted with an accident trauma indicator of ‘Y.’
- 26.2.6 Cost Avoidance

- 26.2.6.1 When the Contractor is aware of health or casualty insurance coverage before paying for a Covered Service, the Contractor shall avoid payment by rejecting the Network Pharmacy's Claim at the time of adjudication and directing that the Claim be submitted first to the appropriate Third Party.
- 26.2.7 Sharing of TPL Information by ASES
 - 26.2.7.1 By the fifth (5th) Calendar Day after the close of the month during which ASES learns of such Information, ASES will provide the Contractor with a list of all known health insurance Information on Enrollees for the purpose of updating the Contractor's files.
 - 26.2.7.2 Additionally, by the fifteenth (15th) Calendar Day after the close of the calendar quarter, ASES will provide to the Contractor a copy of a report containing all of the health insurers licensed by Puerto Rico as of the close of the previous quarter, and any other related Information that is needed to file TPL Claims.
- 26.2.8 Sharing of TPL Information by the Contractor
 - 26.2.8.1 The Contractor shall submit a monthly report to ASES (following ASES file content, format and transmission specifications) by the fifth (5th) Calendar Day after the close of the month during which the Contractor learns that an Enrollee has new health insurance coverage, or casualty insurance coverage, or of any change in an Enrollee's health insurance coverage. The Contractor shall impose a corresponding requirement on its Providers to notify the Contractor of any newly discovered coverage.
 - 26.2.8.2 When the Contractor becomes aware that an Enrollee has retained counsel, who either may institute or has instituted a legal cause of action for damages against a Third Party, the Contractor shall notify ASES in writing, including the Enrollee's name and GHP Enrollee identification number, the date of the accident/incident, the nature of the injury, the name and address of the Enrollee's legal representative, copies of the pleadings, and any other documents related to the action in the Contractor's possession or control. This shall include, but not be limited to, the name of the Provider, the Enrollee's diagnosis, the Covered Service provided to the Enrollee, and the amount paid to the Provider for each service.
 - 26.2.8.3 The Contractor shall notify ASES within thirty (30) Calendar Days of the date it becomes aware of the death of one of its Medicaid Eligible Enrollees age fifty-five (55) or older, giving the Enrollee's full name, Social Security Number, and date of death. ASES will then determine whether it can recover correctly paid Medicaid benefits from the Enrollee's estate.
 - 26.2.8.4 The Contractor agrees to share with ASES instances of Enrollee non-cooperation with the Contractor's and with Network Providers' efforts to determine sources of Third Party Liability.

26.2.8.5 The Contractor agrees to cooperate with ASES in its oversight and monitoring reviews of all Third Party Liability activities.

26.3 Financial Reporting Requirements

26.3.1 The Contractor shall submit to ASES all of the reports as indicated in Article 21.

26.3.2 Failure to submit the reports within the established timeframes, or failure to submit complete, accurate reports, may result in the imposition of liquidated damages and/or fines as outlined in Article 37 of this Contract.

26.3.3 The Contractor, at its sole expense, shall submit by May 15 (or a later date if approved by ASES) of each year a Report on Controls Placed in Operation and Tests of Operating Effectiveness, meeting all standards and requirements of the SSAE 18 for the Contractor's operations performed for ASES under the GHP Contract.

26.3.3.1 The Audit shall be conducted by an independent auditing firm, with prior Audit experience using AICPA Statements on Auditing Standards. The auditor shall meet all AICPA standards for independence. The selection of, and contract with the independent auditor shall be subject to the prior written approval of ASES. ASES reserves the right to, at the Contractor's expense; designate other auditors or reviewers to examine the Contractor's operations and records for monitoring and/or stewardship purposes.

26.3.3.2 The Contractor will deliver to ASES, along with the Report on Controls Placed in Operation and Tests of Operating Effectiveness, the findings and recommendations of the independent audit firm encountered in the preparation of such a report. The Audit shall be conducted and the report shall be prepared in accordance with generally accepted auditing standards for such Audits as defined in the publications of the AICPA, entitled Statements on Auditing Standards (SAS). In particular, SSAE 18 is to be used.

26.3.3.3 The Contractor shall respond to the Audit findings and recommendations within thirty (30) Calendar Days of receipt of the final audit report. Also, the Contractor must submit a Corrective Action Plan to ASES which will be subject to ASES' prior review and written approval within twenty (20) Calendar Days of the notification of the Audit. The Contractor must implement the Corrective Action Plan, as a maximum, within fifteen (15) Calendar Days of its approval by ASES. The entity should request an extension by formal written request addressed to the Office of Compliance of ASES who will evaluate the request and provide the specific timeframe for the extension.

26.3.4 The Contractor shall submit to ASES a Disclosure of Information on Annual Business Transactions. This report shall include:

26.3.4.1 **Definition of A Party in Interest.** As defined in Section 1318(b) of the Public Health Service Act, a party in interest is:

- 26.3.4.1.1 (i) Any director, officer, partner, or employee responsible for management or administration of the Contractor; (ii) any person or legal entity that is directly or indirectly the beneficial owner of more than five percent (5%) of the equity of the Contractor; (iii) any person or legal entity that is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than five percent (5%) of the Contractor; or, (iv) in the case of a Contractor organized as a nonprofit corporation, an incorporator or enrollee of such corporation under applicable Puerto Rico corporation law; or
- 26.3.4.1.2 Any organization in which a person or a legal entity described in Section 26.3.4.1.1 is director, officer or partner; has directly or indirectly a beneficial interest of more than five percent (5%) of the equity of the Contractor; or has a mortgage, deed of trust, note, or other interest valuing more than five percent (5%) of the assets of the Contractor;
- 26.3.4.1.3 Any person directly or indirectly controlling, controlled by, or under common control with the Contractor; or
- 26.3.4.1.4 Any spouse, child, or parent of an individual described in Sections 26.3.4.1.1 to 26.3.4.1.3.

26.3.4.2 Types of Transactions Which Must Be Disclosed. Business Transactions which must be disclosed include:

- 26.3.4.2.1 Any sale, exchange or lease of any property between the Contractor and a party in interest;
 - 26.3.4.2.2 Any lending of money or other extension of credit between the Contractor and a party in interest; and
 - 26.3.4.2.3 Any furnishing for consideration of goods, services (including management services) or facilities between the Contractor and the party in interest. This does not include salaries paid to employees for services provided in the normal course of their employment.
- 26.3.4.3 The Information which must be disclosed in the Transactions listed in this Section 26.3.4.3 between the Contractor and a party of interest includes:
- 26.3.4.3.1 The name of the party in interest for each Transaction;
 - 26.3.4.3.2 A description of each Transaction and the quantity or units involved;
 - 26.3.4.3.3 The accrued dollar value of each Transaction during the Fiscal Year; and
 - 26.3.4.3.4 Justification of the reasonableness of each Transaction.

26.3.4.4 As per 42 CFR 455.105 the Contractor, within thirty-five (35) Calendar Days of the date of request by the HHS Secretary, ASES or the Puerto Rico Medicaid agency, and on an annual basis to ASES and the Puerto Rico Medicaid agency, shall report full and complete Information about:

26.3.4.4.1 The ownership of any Subcontractor with whom the Provider has had business Transactions totaling more than \$25,000 during the twelve- (12-) month period ending on the day of the request; and

26.3.4.4.2 Any significant business Transactions between the Provider and any wholly owned supplier, or between the Provider and any Subcontractor, during the five (5) year period ending on the date of the request.

26.3.4.5 Disclosures of Information on Annual Business Transactions or other reports of Transactions between the Contractor and parties in interest provided to ASES or other agencies must be made available to Enrollees upon reasonable request.

ARTICLE 27 PAYMENT OF TAXES

27.1 The Contractor certifies and guarantees that at the time of execution of this Contract:

27.1.1 It is an entity duly authorized to conduct business in Puerto Rico and has filed income tax returns for the previous five (5) years;

27.1.2 It complied with and paid unemployment insurance tax, disability insurance tax (Law 139), social security for drivers (“seguro social choferil”), if applicable;

27.1.3 It filed State Department reports for the five (5) previous years; and

27.1.4 It does not owe any kind of taxes to Puerto Rico.

27.2 The Contractor will forthwith pay all taxes lawfully imposed upon it with respect to this Contract or any product delivered in accordance herewith. ASES makes no representation whatsoever as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity.

27.3 Notwithstanding the above, if, as a result of the enactment of any federal, state, local or municipal legal provision, administrative regulation, or government directive, the Contractor is burdened with a requirement to pay a fee, tax, imposition, levy, or duty with regards to any of the proceeds of this Contract, including but not limited to the imposition of any fees pertaining to the existence of any government contracts, or any sales and use tax (IVU, for its Spanish acronym), ASES will evaluate, in good faith, an adjustment to the Administrative Fee under this Contract, among other possible alternatives.

ARTICLE 28 RELATIONSHIP OF PARTIES

28.1 Neither party is an Agent, employee, or servant of the other. It is expressly agreed that the Contractor and any Subcontractors and Agents, officers, and employees of the Contractor or any Subcontractor in the performance of this Contract shall act as independent contractors and not as officers or employees of ASES. The parties

acknowledge, and agree, that the Contractor, its Agent, employees, and servants shall in no way hold themselves out as Agent, employees, or servants of ASES. It is further expressly agreed that this Contract shall not be construed as a partnership or joint venture between the Contractor or any Subcontractor and ASES.

ARTICLE 29 INSPECTION OF WORK

29.1 ASES, the Puerto Rico Medicaid Program, other agencies of the Government, the US Department of Health and Human Services, the General Accounting Office, the US Comptroller General, the Comptroller General of Puerto Rico, if applicable, or their Authorized representatives, shall have the right to enter into the premises of the Contractor or all Subcontractors, or such other places where duties under this Contract are being performed for ASES, to inspect, monitor or otherwise evaluate the services or any work performed pursuant to this Contract. All inspections and evaluations of work being performed shall be conducted with prior notice and during normal business hours. All inspections and evaluations shall be performed in such a manner that will not unduly delay work.

ARTICLE 30 GOVERNMENT PROPERTY

30.1 The Contractor agrees that any papers, materials, and other documents that are produced or that result, directly or indirectly, from, under or in connection with the Contractor's provision of the services under this Contract shall be the property of ASES upon creation of such documents, for whatever use that ASES deems appropriate, and the Contractor further agrees to prepare any and all documents, including the Deliverables listed in Attachment 2 to this Contract, or to take any additional actions that may be necessary in the future to effectuate this provision fully. In particular, if the work product or services include the taking of photographs or videotapes of individuals, the Contractor shall obtain the consent from such individuals authorizing the use by ASES of such photographs, videotapes, and names in conjunction with such use. The Contractor shall also obtain necessary releases from such individuals, releasing ASES from any and all Claims or demands arising from such use.

30.2 The Contractor shall be responsible for the proper custody and care of any ASES-owned property furnished for the Contractor's use in connection with the performance of this Contract. The Contractor will reimburse ASES for its loss or damage, normal wear and tear excepted, while such property is in the Contractor's custody or use.

ARTICLE 31 OWNERSHIP AND USE OF DATA AND SOFTWARE

31.1 Ownership and Use of Data

31.1.1 All Information created from Data, documents, messages (verbal or electronic), reports, or meetings involving or arising out of or in connection with this Contract is owned by ASES (the Information will be hereinafter referred to as "ASES Data and Information"). The Contractor shall make all Data and Information available to ASES, which will also provide the Data to CMS or other pertinent government agencies and authorities upon request. The Contractor is expressly prohibited from sharing, distributing, disseminating, or publishing ASES Data and Information without the express prior written consent of ASES. In the event of a dispute regarding what is or is not ASES Data and Information, ASES's decision on this matter shall be final and not subject to appeal.

31.1.2 ASES acknowledges that before executing this Contract and in contemplation of the same, the Contractor has developed and designed certain programs and systems such as standard operating procedures, programs, business plans, policies and procedures, which ASES acknowledges are the exclusive property of the Contractor. Nevertheless, in case of default by the Contractor, ASES is hereby authorized to use to the extent allowable by any applicable commercial software and hardware licensing that exists at that moment or with which agreement can be reached at that moment with the vendor to modify such licensing to permit its use by ASES, at no cost to ASES, such properties for a period of one hundred twenty (120) Calendar Days to effect an orderly transition to any new Contractor or Service Provider. In any cases where the use of such systems from an operational perspective would also impact other lines of the Contractor's business or where licensing restrictions cannot be remedied, they shall operate such systems on behalf of ASES. Such operation by the Contractor on behalf of ASES can occur at ASES' discretion under the full supervision of their employees or appointed third party personnel. Under such a scenario, ASES' access to Data will be restricted through the most efficient means possible to the Contractor's Data segment. If the Contractor fails to operate such systems on ASES' behalf in a timely manner per normal previous operating schedule, ASES may claim ownership of such systems and operate them for its own purposes.

31.1.3 The Contractor shall not deny access to ASES's Data under any case or circumstances, nor retain ASES's Data while controversies between ASES and the Contractor are resolved and finally adjudicated

31.2 Responsibility for Information Technology Investments

31.2.1 The parties understand and agree that the cost of any newly acquired or developed software programs or upgrades or enhancements to existing software programs, hardware, or other related Information technology equipment or infrastructure component, made in order to comply with the requirements of this Contract shall be borne in its entirety by the Contractor.

31.3 Transfer of Data upon Contract Termination

31.3.1 Contractor is required to share or transfer certain knowledge requested by ASES on a continuous basis with ASES personnel. At least thirty (30) days prior to the expiration of the Contract Term, or within the first ten (10) days of the date on which a notice of termination is issued by either party, the Contractor must have completed a transfer of knowledge that will guarantee an orderly continuity of services and labor. The final payment to Contractor will not be issued by ASES until such transfer of knowledge is completed. Such Information shall include, but is not limited to, source codes, program manuals and instructions, and any other materials required by ASES to ensure that ASES personnel knows and understands completed and uncompleted tasks prior to any transition, as well as the status and items pending to complete unfinished tasks.

ARTICLE 32 CRIMINAL BACKGROUND CHECKS

32.1 ASES is prohibited by law from entering into contracts with any person or entity that has been, or whose affiliated subsidiary companies, or any of its shareholders, partners,

officers, principals, managing employees, subsidiaries, parent companies, officers, directors, board members, or ruling bodies have been, under investigation for, accused of, convicted of, or sentenced to imprisonment, in Puerto Rico, the other USA jurisdictions, or any other jurisdiction, for any crime involving corruption, fraud, embezzlement, or unlawful appropriation of public funds, pursuant to Act No. 2 of 2018.

- 32.2** Before the Effective Date of this Contract, and in order for the Contract to take effect, the Contractor shall provide to ASES a certification that neither the Contractor nor the affiliated persons/entities listed in Section 32.1 falls under the prohibition stated in Section 30. In addition, the Contractor shall provide to ASES a certification as to whether, to the best of its knowledge after inquiry, any Network Provider, or any shareholder, partner, officer, principal, managing employee, subsidiary, parent company, officer, director, board member, or ruling body of a Network Provider, falls under the prohibition stated in Section 32.1.
- 32.3** ASES may terminate this Contract if ASES determines that the Contractor, or any of the natural persons listed in Section 32.1, falls within the prohibition stated in Section 32.1, or failed to provide an accurate certification as required in Section 32.1. In addition, the Contractor shall terminate a Pharmacy Contract if it determines that a Pharmacy, or any of the natural persons listed in Section 32.1, falls within the prohibition stated in Section 32.1 as applied to such Pharmacies.
- 32.4** During the Contract Term, the Contractor shall promptly (within twenty (20) Business Days of the date it receives the Information) report any significant fact or event related to the rule stated in this Article.
- 32.5** In cases in which none of the events listed in Section 32.1 has occurred, but statements or admissions of crimes have been made by or against the Contractor or one of its shareholders, partners, officers, principals, subsidiaries, or parent companies, ASES shall provide all pertinent Information about the matter, within twenty (20) Business Days from the date it receives the Information, to the Secretary of Justice of Puerto Rico, who will make the pertinent findings and recommendations concerning the Contract.
- 32.6** In addition, as provided in 42 CFR 455.106(c), ASES may refuse to enter into or renew an agreement with any entity if any person who has an ownership or control interest in the entity, or is an Agent or managing employee of the entity, has ever been convicted of a criminal offense related to the person's involvement in any program established under Medicare, Medicaid, or the Title XX Social Services programs. Before the Effective Date of this Contract, pursuant to 42 CFR 455.106(a), the Contractor shall disclose to ASES the identity of any person who has ever been convicted of a criminal offense related to the Medicare, Medicaid, or Title XX Social Services programs. The Contractor shall collect the same Information on criminal conviction for Network Pharmacies during the Credentialing process, as provided in Section 7.4 and shall, Immediately upon receipt of such Information relating to a Provider, disclose the Information to ASES. ASES will notify the HHS Inspector General of any disclosures related to criminal convictions within twenty (20) Business Days from the date that ASES receives the Information, as required by 42 CFR 455.106.

ARTICLE 33 SUBCONTRACTS

33.1 Use of Subcontractors

- 33.1.1 Neither this Contract, nor the services to be provided hereunder, may be assigned or subcontracted without the prior written approval of ASES, in its sole discretion. The request to contract a Third Party must specify the matters in which he/she will intervene and must be submitted in writing. This request must be submitted in writing, and include the same documents and certifications required for government contracting that were required from the Contractor prior to the granting of this Contract. The delegation of services without the mentioned authorization will be sufficient cause to terminate this contract. Failure to comply with this clause will hold the Contractor responsible for any damages or losses that may be caused to ASES, whether directly or indirectly.
- 33.1.2 The Contractor shall assume sole responsibility for all functions performed by any Subcontractor, as well as any payments to a Subcontractor for services related to this Contract. In the event that a Subcontractor is incapable of performing the service contracted for by the Contractor, the Contractor shall (i) notify ASES Immediately and (ii) assume responsibility for providing the services that the Subcontractor is incapable of performing. The Contractor shall remain obligated to provide any services that the Subcontractor is incapable of performing.
- 33.1.3 If the Contractor becomes aware of a Subcontractor's failure to comply with this Contract, the Contractor shall correct the failure within five (5) Business Days of becoming aware of the failure and shall inform ASES of the same.
- 33.1.4 All Subcontracts between the Contractor and Subcontractor must be in writing, must comply with all applicable Medicaid laws and regulations, including sub-regulatory guidance and provisions set forth in this Contract, as applicable, and must specify the activities and responsibilities delegated to the Subcontractor containing terms and conditions consistent with the applicable requirements that pertain to the service or activity performed by the Subcontractor. The Subcontracts must also include provisions for revoking delegation or imposing other sanctions if the Subcontractor's performance is inadequate. The Contractor and the Subcontractor must also make reference to a business associate agreement between the parties.
- 33.1.5 All Subcontracts between the Contractor and Subcontractor must ensure that the Contractor evaluates the prospective Subcontractor's/Subcontractors' ability to perform the activities to be delegated; monitors the Subcontractor's/Subcontractors' performance on an ongoing basis and subjects it to formal review according to a periodic schedule established by ASES and consistent with industry standards or Puerto Rico laws and regulations; and identifies deficiencies or areas for improvement, ensuring that corrective action is taken as appropriate or required. The Contractor must provide to ASES, on behalf of the Subcontractor, any and all materials required under Puerto Rico law to enter into a contract with the Puerto Rican government.
- 33.1.6 The Contractor shall not engage nor contract with a person or entity that is debarred or suspended or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation (FAR) or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549, or a person or entity that is an Affiliate, as defined in FAR, of a such

a person or entity (see 42 CFR 438.610). Neither shall the Contractor engage nor contract for the provision of the services under this Contract with a person or entity that is, or whose affiliated subsidiary companies, or any of its shareholders, partners, officers, principals, managing employees, subsidiaries, parent companies, officers, directors, board members, ruling bodies have been convicted of, or sentenced to imprisonment, in Puerto Rico, the other US jurisdictions, or any other jurisdiction, for any crime involving corruption, fraud, embezzlement, or unlawful appropriation of public funds, pursuant to Act No. 2 of 2018, as amended

- 33.1.7 ASES shall have the right to review all financial or business transactions between the Contractor and Subcontractor at any time upon request. ASES, CMS, or Office of Inspector General may inspect, evaluate and audit the Subcontractor at any time if ASES, CMS or Office of Inspector General determines there is a reasonable possibility of fraud or similar risk. ASES shall also retain the right to review all criminal background checks for all employees of the Subcontractor, as referenced in Article 32, as well as any past exclusions from federal programs.
- 33.1.8 The Contractor shall provide ASES Immediate notice by certified mail, of any action or suit filed and of any claim made against the Contractor by the Subcontractor or against a Subcontractor that, in the opinion of the Contractor, may result in litigation related in any way to this Contract. The Contractor shall provide notification in writing as to how this action or suit may affect the overall provision of Contracted Services and the Contractor's plan to mitigate such effect.
- 33.1.9 The Contractor shall give ASES Immediate notice in writing by registered mail or certified mail of any action or suit filed by any Subcontractor and prompt notice of any claim made against the Contractor by any Subcontractor or vendor that, in the opinion of Contractor, may result in litigation related in any way to this Contract.
- 33.1.10 Any Subcontractor must provide ASES an attestation that it is free of any Conflicts of Interest.
- 33.1.11 ASES shall not be responsible for fulfillment of the Contractor's obligations to its Subcontractors.

33.2 Cost or Pricing by Subcontractors

- 33.2.1 The Contractor shall submit to ASES, and shall require any Subcontractors hereunder to submit to ASES, cost or pricing Data for any Subcontract to this Contract prior to award. The Contractor shall also certify that the Information submitted by the Subcontractor is, to the best of the Contractor's knowledge and belief, accurate, complete and current as of the date of agreement, or the date of the negotiated price of the Subcontract or amendment to the Contract. The Contractor shall insert the substance of this section in each Subcontract hereunder.
- 33.2.2 If ASES determines that any price, including profit or fee negotiated in connection with this Contract, or any cost reimbursable under this Contract was increased by any significant sum because of the inaccurate cost or pricing

Data, then such price and cost shall be reduced accordingly and this Contract and the Subcontract shall be modified in writing to reflect such reduction.

ARTICLE 34 CERTIFICATION

34.1 The Contractor shall provide to ASES within fifteen (15) Calendar Days of the Effective Date of this Contract, and thereafter by January 10 of each Calendar Year during the Contract Term, the certifications and other documents set forth below, according to the timeframe specified below. If any certification, document, acknowledgment, or other representation or assurance on the Contractor's part under this Article, or elsewhere in this Contract, is determined to be false or misleading, ASES shall have cause for termination of this Contract or to Withhold the amount of any existing debt owed to the Government of Puerto Rico in order to make a payment on behalf of the Contractor. In the event that the Contract is terminated based upon this Article, the Contractor shall reimburse ASES all sums of monies received under the Contract; provided, however, that the amount reimbursed shall not exceed the amount of outstanding debt, less any payments made by the Contractor in satisfaction of such debt.

34.2 The Contractor shall submit the following certifications:

- 34.2.1 Current Unique Certification of Professional Services Providers issued by the Puerto Rico General Services Administration (Administración de Servicios Generales) or "ASG" for its Spanish acronym).
- 34.2.2 Certification of current municipal license tax ("Patentes Municipales"), if applicable;
- 34.2.3 Certification issued by the Minor Children Support Administration ("ASUME", by its Spanish acronym) of no outstanding alimony or child support debts, if applicable;
- 34.2.4 A sworn statement certifying that the Contractor has no debt with the Government, or with any State agencies, corporations or instrumentalities that provide or are related to the provision of health services; or that such debt is subject to a payment plan with which the Contractor is in compliance, a work plan to reconcile amounts in controversy with which the Contractor is in compliance, or pending administrative review under applicable law or regulations; and
- 34.2.5 Certification from the Puerto Rico Administration of Medical Services ("ASEM", its Spanish acronym) certifying that there is no outstanding debt or, if a debt exists, that such debt is subject to a payment plan with which the Contractor is in compliance, a work plan to reconcile amounts in controversy with which the Contractor is in compliance, or pending administrative review under applicable law or regulations.

34.3 The Contractor shall, in addition, provide the following documents:

- 34.3.1 A list of all contracts the Contractor has with government agencies, public corporations or municipalities, including those contracts in the process of being executed;
- 34.3.2 A letter indicating if any of its directors serves as member of any governmental board of directors or commission;

A certificate of the Corporate Resolution, or appropriate resolution, authorizing the person signing this Contract to appear on behalf of the Contractor; and

34.3.3 A copy of the Insurance Coverage Certificate as required in Article 23.3.

34.4 If the Contractor fails to meet the obligations of Sections 34.2 and 34.3 within the required timeframe, ASES shall cease payment to the Contractor until the documents have been delivered to the ASES's satisfaction, or adequate evidence is provided to ASES that reasonable efforts have been made to obtain the documents.

ARTICLE 35 RECORDS REQUIREMENTS

35.1 General Provisions

35.1.1 The Contractor and its Subcontractor, if any, shall preserve and make available all of its records pertaining to the performance under this Contract for inspection or audit, as provided below, throughout the Contract Term, for a period of ten (10) years from the date of final payment under this Contract, and for such period, if any, as is required by applicable statute or by any other section of this Contract. If the Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for period of ten (10) years from the Termination Date of the Contract or of any resulting final settlement. The Contractor is responsible to preserve all records pertaining to its performance under this Contract, and to have them available and accessible in a timely manner, and in a reasonable format that assures their integrity. Records that relate to appeals, litigation, or the settlements of Claims arising out of the performance of this Contract, or costs and expenses of any such agreements as to which exception has been taken by the Contractor or any of its duly Authorized representatives, shall be retained by Contractor until such appeals, litigation, Claims or exceptions have been disposed of.

35.2 Records Retention and Audit Requirements

35.2.1 Since funds from the Puerto Rico Plans under Title XIX and Title XXI of the Social Security Act Medical Assistance Programs (Medicaid and CHIP) are used to finance this project in part, the Contractor shall agree to comply with the requirements and conditions of the Centers for Medicare & Medicaid Services (CMS), the US Comptroller General, the Comptroller of Puerto Rico and ASES, as to the maintenance of records related to this Contract.

35.2.2 Puerto Rico and federal standards for Audits of ASES Agents, contractors, and programs are applicable to this section and are incorporated by reference into this Contract as though fully set out herein.

35.2.3 Pursuant to the requirements of 42 CFR 434.6(a)(5) and 42 CFR 434.38, ASES, CMS, the Office of Inspector General, the Comptroller General, the Medicaid Fraud Control Unit, and their respective designees shall have the right at any time to inspect, evaluate, and Audit any pertinent records or documents of the Contractor and Subcontractor, and may inspect the premises, physical facilities, equipment, computers or other electronic systems where activities or work related to the GHP program is conducted. The right to audit exists for ten (10) years from the final date of the Contract Period or from the date of completion of any Audit, whichever is later. Any records requested hereunder

shall be produced Immediately for on-site review or sent to the requesting authority by mail within fourteen (14) Calendar Days following a request. All records shall be provided at the sole cost and expense of the Contractor. ASES shall have unlimited rights to use, disclose, and duplicate all Information and Data in any way relating to this Contract in accordance with applicable Puerto Rico and federal laws and regulations.

35.2.4 In certain circumstances, as follows, the authorities listed in Section 35.2.3 shall have the right to inspect and Audit records in a timeframe that exceeds the timeframe set forth in Section 35.1.1.

35.2.4.1 ASES determines that there is a special need to retain a particular record or group of records for a longer period and notifies the Contractor at least thirty (30) Calendar Days before the expiration of the timeframe set forth in Section 35.1.1.

35.2.4.2 There has been a contract termination, dispute, fraud, or similar fault by the Contractor, resulting in a final judgment or settlement against the Contractor, in which case the retention may be extended to three (3) years from the date of the final judgment or settlement.

35.2.4.3 ASES determines that there is a reasonable possibility of Fraud, and gives the Contractor notice, before the expiration of the timeframe set forth in Section 35.1.1, that it wishes to extend the time period for retention of records.

35.2.4.4 There has been, during the time period set forth in Section 35.1.1, an Audit initiated by CMS, the Comptroller of Puerto Rico, the US Comptroller General, and/or ASES, in which case the timeframe for retention of records shall extend until the conclusion of the Audit and publication of the final report.

35.2.5 All records retention requirements set forth in this Article or in any other Article shall be subject at all times and to the extent mandated by law and regulation, to the HIPAA regulations described elsewhere in this Contract.

35.2.6 The Contractor shall assist and cooperate with ASES in any and all matters and activities related to or arising out of any Audit or review, whether federal, private, or internal in nature, at no cost to ASES.

35.2.7 The parties also agree that the Contractor shall be solely responsible for any costs it incurs for any Audit related inquiries or matters. Moreover, the Contractor may not charge or collect any fees or compensation from ASES for any matter, activity, or inquiry related to, arising out of, or based on an Audit or review.

ARTICLE 36 CONFIDENTIALITY

36.1 General Confidentiality Requirements

36.1.1 The Contractor shall protect all Information, records, and Data collected in connection with the Contract from unauthorized disclosures. In addition, the Contractor shall agree to guard the confidentiality of Enrollee Information. Access to all individually identifiable Information relating to Medicaid Enrollees

that is obtained by the Contractor shall be limited by the Contractor to Subcontractors, consultants, advisors or agencies that require the Information in order to perform their duties in accordance with this Contract, and to such others as may be authorized by ASES in accordance with applicable law, including individuals seeking access to their own Protected Health Information, as defined by HIPAA (PHI).

- 36.1.2 The Contractor is responsible for understanding the degree to which Information obtained through the performance of this Contract is confidential under Puerto Rico and federal law, rules, and regulations.
- 36.1.3 Any other individual or entity shall be granted access to confidential Information only after complying with the requirements of Puerto Rico and federal law pertaining to such access and the Terms of this Contract. ASES shall have absolute authority to determine if and when any other individual or entity has properly obtained the right to have access to this confidential Information. The Contractor is permitted to de-identify PHI or create limited Data Sets, but such de-identification and use of de-identified Data and limited Data Sets must be in full compliance with 45 CFR 164.514. Nothing herein shall prohibit the disclosure of Information in summary, statistical, or other form that does not identify particular individuals if the Information is de-identified in accordance with applicable laws and regulations. The Contractor shall retain the right to use Information for its quality and Utilization Management and research purposes subject to the Data ownership and publicity requirements defined within the Contract. Notwithstanding the foregoing, Contractor may not use or disclose PHI for research unless such use or disclosure is in full compliance with applicable law, including HIPAA.
- 36.1.4 The Contractor, its employees, Agents, Subcontractors, consultants or advisors must treat all information that is obtained through Providers' performance of the services under this Contract, including, but not limited to, Information relating to Enrollees, Potential Enrollees, as confidential Information to the extent that confidential treatment is provided under Puerto Rico and federal law, rules, and regulations.
- 36.1.5 Any disclosure or transfer of confidential Information by the Contractor, including Information required by ASES, will be encrypted or otherwise secured in accordance with applicable law. If the Contractor receives a request for Information deemed confidential under this Contract, the Contractor will Immediately notify ASES of such request, and will make reasonable efforts to protect the Information from public disclosure.
- 36.1.6 In accordance with the timeframes outlined in Attachment 2 to this Contract, the Contractor shall develop and provide to ASES for review and approval written policies and procedures for the protection of all records and all other documents deemed confidential under this Contract including Medical Records/Enrollee Information and adolescent/sexually transmitted disease appointment records. All Enrollee Information, Medical Records, Data and Data elements collected, maintained, disclosed, transmitted, disposed or used in the administration of this Contract shall be protected by the Contractor from unauthorized disclosure per the HIPAA Privacy and Security standards codified at 45 CFR Part 160 and 45 CFR Part 164, Subparts A, C and E, and in accordance with Law 111 of September 7, 2005. The Contractor must provide

safeguards that restrict the use, access, management, transmittal, disposal or disclosure of PHI concerning Enrollees to purposes directly connected with the administration of this Contract and as permitted by the HIPAA Business Associate Agreement.

36.1.7 The Contractor must comply with HIPAA notification requirements, including those set forth in HITECH. The Contractor must notify ASES's Privacy Officer and Director of Compliance by secure email of all Breaches or suspected Breaches of unspecified PHI, as defined by HITECH and Law 111 of September 7, 2005, without unreasonable delay and in no event later than twenty-four (24) hours, if so directed by ASES or required by law, must also notify individuals and the federal Department of Health and Human Services and provide any other notices required by law. If, in ASES's determination, the Contractor has not provided notice in the manner or format prescribed by HITECH, then ASES may require the Contractor to provide such notice or be subject to sanctions for non-compliance.

36.1.8 Assurance of Confidentiality

36.1.8.1 The Contractor shall take reasonable steps to ensure the physical security of Data under its control, including, but not limited to: fire protection; protection against smoke and water damage; alarm systems; locked files, guards, or other devices reasonably expected to prevent loss or unauthorized removal of manually held Data; passwords, access logs, badges, or other methods reasonably expected to prevent loss or unauthorized access to electronically or mechanically held Data; limited terminal access; limited access to input documents and output documents; and design provisions to limit use of Enrollee names.

36.1.8.2 The Contractor shall inform and provide quarterly trainings to each of its employees having any involvement with personal Data or other confidential Information, whether with regard to design, development, operation, or maintenance, of the Puerto Rico and federal law relating to confidentiality. The Contractor shall also set forth training requirements for its agents, Subcontractors, consultants, advisors and Providers.

36.1.9 Return of Confidential Data

36.1.9.1 The Contractor shall return all Personal Health Information Data furnished or obtained pursuant to this Contract promptly at the request of ASES in whatever form it is maintained by the Contractor and Subcontractor, if any. Upon the termination or completion of the Contract, the Contractor and Subcontractor, if any, may not use any such Data or any material derived from the Data for any purpose not permitted by Puerto Rico or federal law or regulation. Where so instructed by ASES, the Contractor shall destroy such Data or material if permitted and required by Puerto Rico or federal law or regulation in the presence of ASES personnel. ASES Data and Information must be destroyed or returned to ASES in accordance with ASES' instructions. It is understood and accepted by the Contractor and its Subcontractor(s), if any, that ASES will have

unrestricted access to all technological equipment used by Contractor to provide services under this contract for auditing purposes and/or in order to certify that all ASES Data has been properly eliminated from said equipment.

36.1.10 Publicizing Safeguarding Requirements

36.1.10.1 The Contractor shall comply with 42 CFR 431.304. The Contractor agrees to publicize provisions governing the confidential nature of information about Enrollees, including the legal sanctions imposed for improper disclosure and use. The Contractor must include these provisions in the Enrollee handbook and provide copies of these provisions to Enrollees and to other persons and agencies to which information is disclosed.

36.1.10.2 In addition to the requirements expressly stated in this Article, the Contractor must comply with any policy, rule, or reasonable requirement of ASES that relates to the safeguarding or disclosure of Information relating to Enrollees, the Contractor's operations, or the Contractor's performance of this Contract.

36.1.10.3 In the event of the expiration of this Contract or termination thereof for any reason, all confidential Information disclosed to and all copies thereof made by the Contractor must be returned to ASES or, at ASES's exclusive option and prior written approval, permanently erased or destroyed in accordance with ASES' specific instructions. The Contractor must provide ASES certificates evidencing such permanent deletion and destruction. Notwithstanding, ASES retains the right to fully examine all equipment used by Contractor or Subcontractor, if any, to provide services under this Contract for auditing purposes and/or to corroborate the permanent deletion and destruction of ASES Data. Accordingly, the Contractor accepts to provide ASES unrestricted access without any recourse to allegations of Third Party confidentiality.

36.1.10.4 Pharmacy Contracts and any other of Contractor's relevant agreements shall explicitly state expectations about the confidentiality of ASES's confidential Information and Enrollee records.

36.1.10.5 The Contractor shall afford Enrollees and/or their Authorized representatives the opportunity to approve or deny the release of identifiable personal Information by the Contractor to a person or entity outside of the Contractor, except to duly authorized Subcontractors, Providers or review organizations, or when such release is required by law, regulation, or quality standards or as otherwise permitted in the HIPAA Business Associate Agreement.

36.1.10.6 This Article 36 does not restrict the Contractor from making any disclosure pursuant to any applicable law, or under any court or government agency, provided that the Contractor, prior to the disclosure, Immediately provides notice to ASES of such order.

36.2 Disclosure of ASES's Confidential Information

- 36.2.1 The Contractor shall Immediately report to ASES any and all suspected and actual unauthorized disclosures (Breaches) or uses of confidential Information of which it or its Subcontractors, consultants, or Agents are aware or have knowledge of. The Contractor acknowledges that any publication or disclosure of confidential Information to unauthorized persons may cause immediate and irreparable harm to ASES and may constitute a violation of Puerto Rico or federal statutes. If the Contractor, its Subcontractors, consultants, or Agents should publish or disclose confidential information to others without authorization, ASES will Immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity. ASES will have the right to recover from the Contractor all damages and liabilities caused by or arising from the Contractor's, its Subcontractors', Network Pharmacies', representatives', consultants', or agents' failure to protect confidential Information. The Contractor will defend with counsel approved by ASES, indemnify and hold harmless ASES from all damages, costs, liabilities, and expenses caused by or arising from the Contractor's, or its Subcontractors', Providers', representatives', consultants' or Agents' failure to protect confidential Information. ASES will not unreasonably Withhold approval of counsel selected by the Contractor.
- 36.2.2 The Contractor shall remove any person from performance of services hereunder upon notice that ASES reasonably believes that such person has failed to comply with the confidentiality obligations of this Contract. The Contractor shall replace such removed personnel in accordance with the staffing requirements of this Contract.
- 36.2.3 ASES, the Government, federal officials as authorized by federal law or regulations, or the Authorized representatives of these parties shall have access to all confidential Information in accordance with the requirements of Puerto Rico and federal laws and regulations.
- 36.2.4 The confidentiality provisions contained in this Contract survive the termination of this Contract and shall bind the Contractor, and its PMGs and Network Providers, so long as they maintain any PHI relating to Enrollees.

36.3 HIPAA Compliance

- 36.3.1 The Contractor shall assist ASES in its efforts to comply with HIPAA and its amendments, rules, procedures, and regulations. To that end, the Contractor shall cooperate with and abide by any Data privacy, security or other requirements mandated by HIPAA or any other applicable laws. The Contractor acknowledges that HIPAA requires the Contractor and ASES to sign documents for compliance purposes, including but not limited to a business associate agreement. The parties agree to the Terms of the HIPAA Business Associate Agreement included as Attachment 8 to this Contract, which is incorporated by reference. The Contractor shall cooperate with ASES on these matters and sign whatever documents may be required for HIPAA compliance and abide by their Terms and conditions. This Contract, including the HIPAA Business Associate Agreement, shall be construed in a manner that allows ASES to comply with applicable law. The Contractor shall be responsible for ensuring that individuals have the right to access and amendment of PHI and accounting of disclosures, with respect to PHI created, received, maintained or

transmitted by Contractor. The Contractor shall ensure that Enrollees receive a Notice of Privacy Practices as required by HIPAA.

36.4 Data Breach

36.4.1 The Contractor shall Immediately report to ASES, as required in Section 13402 of the HITECH Act, of any actual or suspected event where ASES's Data could be exposed in a non-authorized or illegal circumstance, and/or when any Data Breach occurs. The Contractor must take all reasonable steps to mitigate the Breach, notify actual or potentially impacted Enrollees, and provide appropriate notice to the applicable state and federal regulatory agencies as required by law.

36.4.2 The Contractor agrees that without unreasonable delay, but no later than twenty-four (24) hours after it suspects or has determined that a Data Breach occurred, the Contractor shall notify ASES of such Breach. The notification shall include sufficient Information for ASES to understand the nature of the Breach. For instance, such notification must include, at a minimum, and to the extent available at the time of the notification, the following Information:

36.4.2.1 One or two sentence description of the event;

36.4.2.2 Description of the roles of the people involved in the Breach (e.g., employees, participant users, Service Providers, unauthorized persons, etc.)

36.4.2.3 The type of Data/Information as well as PHI that was Breached;

36.4.2.4 Enrollees likely impacted by the Breach;

36.4.2.5 Number of individuals or records impacted/estimated to be impacted by the Breach;

36.4.2.6 Actions taken by the Contractor to mitigate the Breach;

36.4.2.7 Current status of the Breach (under investigation or resolved);

36.4.2.8 Corrective action taken and steps planned to be taken to prevent a similar Breach.

36.4.3 The Contractor shall have a duty to supplement the Information contained in the notification as it becomes available and to cooperate with ASES.

ARTICLE 37 ENFORCEMENT – LIQUIDATED DAMAGES AND OTHER REMEDIES

37.1 General Provisions

37.1.1 ASES may impose intermediate sanctions, liquidated damages, and/or fines pursuant to Puerto Rico Act No. 72-1993 and ASES Regulation No. 8446 (as indicated in Article 37 of this Contract).

37.1.2 In the event the Contractor is in default as to any applicable term, condition, or requirement of this Contract, and in accordance with any applicable provision of 42 CFR 438 Subpart I and Section 1932(d) of the Social Security Act, at any

time following the Effective Date of this Contract, the Contractor agrees that, in addition to the terms of Section 37.1.1 of this Contract, ASES may assess liquidated damages against the Contractor for any such default, in accordance with this Article 37. The parties further acknowledge and agree that the specified liquidated damages are reasonable and the result of a good faith effort by the parties to estimate the anticipated or actual harm caused by the Contractor's breach and are in lieu of any other financial remedies to which ASES may otherwise have been entitled. The assessment or non-assessment of liquidated damages under the Contract cannot and will not limit the power or authority of ASES to impose fines, civil money penalties, sanctions, or otherwise under Puerto Rico or federal laws or regulations, including but not limited to Puerto Rico Act No. 72-1993 and ASES Regulation No. 8446.

- 37.1.3 Notwithstanding any sanction, including liquidated damages, imposed upon the Contractor, other than Contract termination, the Contractor shall continue to perform all obligations under this Contract.
- 37.1.4 The Contractor's breach or failure to comply with the terms and conditions of this Contract for which liquidated damages may be assessed under this Article 37 shall be divided into four (4) categories of events. ASES retains the discretion to impose liquidated damages or other sanctions for Contractor's non-compliance with an obligation of the Contractor under this Contract or Puerto Rico Law that is not specified under the categories in Sections 37.2, 37.3, 37.4 or 37.5.

37.2 Category 1

- 37.2.1 Liquidated damages in accordance with any applicable provision of this Contract of up to one hundred thousand dollars (\$100,000) per violation, Incident or occurrence may be imposed for Category 1 events. The following constitute Category 1 events:
 - 37.2.1.1 Material non-compliance with an ASES or CMS directive, determination or notice to cease and desist not otherwise described in this Article 37, provided that the Contractor has received prior written notice with respect to such specific material non-compliance, and afforded an opportunity to cure within a reasonable period to be determined by ASES in its sole discretion.

37.3 Category 2

- 37.3.1 Liquidated damages in accordance with any applicable provision of this Contract of up to twenty-five thousand dollars (\$25,000) per violation, incident, or occurrence may be imposed for Category 2 events. The following constitute Category 2 events:
 - 37.3.1.1 Subject to ASES compliance with its obligations under Article 22 of this Contract, repeated noncompliance by the Contractor with any material obligation that adversely affects the services that the Contractor is required to provide under this Contract;
 - 37.3.1.2 Failure of the Contractor to assume its duties and obligations in accordance with the transition timeframes specified in this Contract;

- 37.3.1.3 Failure of the Contractor to terminate a Provider that imposes Co-Payments or other cost-sharing on Enrollees that are in excess of the fees permitted by ASES. ASES will deduct the amount of the overcharge and return it to the affected Enrollees);
- 37.3.1.4 Failure of the Contractor to address Provider disputes, within the timeframes specified in this Contract;
- 37.3.1.5 Failure of the Contractor to comply with the confidentiality provisions in accordance with 45 CFR 160 and 164; and
- 37.3.1.6 Failure of the Contractor to comply with a Subcontracting requirement in the Contract.

37.4 Category 3

- 37.4.1 Liquidated damages in accordance with any applicable provision this Contract of five thousand dollars (\$5,000) per day may be imposed for Category 3 events. The following constitute Category 3 events:
 - 37.4.1.1 Failure to submit required reports in the timeframes prescribed in Article 21;
 - 37.4.1.2 Submission of incorrect or deficient Deliverables or reports in accordance with Article 21 of this Contract;
 - 37.4.1.3 Failure to comply with the Claims Processing standards as follows:
 - 37.4.1.3.1 Failure to process and finalize to a paid or denied status ninety-five percent (95%) of all Clean Claims within thirty (30) Calendar Days of receipt;
 - 37.4.1.3.2 Failure to process and finalize to a paid or denied status one hundred percent (100%) of all Clean Claims within fifty (50) Calendar Days of receipt; and
 - 37.4.1.3.3 Failure to process Unclean Claims as specified in Section 8.7.3 of this Contract;
 - 37.4.1.4 Failure to pay Providers interest at the rate identified in and otherwise in accordance with Section 8.7.2.3 of this Contract when a Clean Claim is not adjudicated within the Claims Processing deadlines;
 - 37.4.1.5 Failure to provide the Actuarial Report Information required in Section 21.3 of this Contract;
 - 37.4.1.6 Failure to seek, collect and/or report TPL Information as provided in Section 26.2.8 of this Contract; and
 - 37.4.1.7 Failure of Contractor to issue written notice to Enrollees upon Network Pharmacy's termination of a Network Pharmacy as described in Section 7.7.3 of this Contract.

37.5 Category 4

37.5.1 Liquidated damages as specified below may be imposed for Category 4 events. The following constitute Category 4 events:

37.5.1.1 Failure to implement the BC-DR plan as follows:

37.5.1.1.1 Implementation of the BC-DR plan exceeds the proposed time by two (2) or less Calendar Days: five thousand dollars (\$5,000) per day up to Day Two (2);

37.5.1.1.2 Implementation of the BC-DR plan exceeds the proposed time by more than two (2) and up to five (5) Calendar Days: ten thousand dollars (\$10,000) per each day beginning with Day Three (3) and up to Day Five (5);

37.5.1.1.3 Implementation of the BC-DR plan exceeds the proposed time by more than five (5) and up to ten (10) Calendar Days, twenty-five thousand dollars (\$25,000) per Day beginning with Day Six (6) and up to Day Ten (10);

37.5.1.1.4 Implementation of the BC-DR plan exceeds the proposed time by more than ten (10) Calendar Days: fifty thousand dollars (\$50,000) per each day beginning with Day Eleven (11).

37.5.1.2 Unscheduled System Unavailability in violation of Article 19, in ASES's discretion, two hundred fifty dollars (\$250) for each thirty (30) minute period or portions thereof;

37.5.1.3 Failure to make available to ASES or its Agent, valid extracts of Claims Data Information for a specific month within fifteen (15) Calendar Days of the close of the month: five hundred dollars (\$500) per Day. After thirty (30) Calendar Days of the close of the month: two thousand dollars (\$2,000) per Calendar Day;

37.5.1.4 Failure to correct a System problem not resulting in System Unavailability within the allowed timeframe, where failure to complete was not due to the action or inaction on the part of ASES as documented in writing by the Contractor:

37.5.1.4.1 One (1) to fifteen (15) Calendar Days late: two hundred and fifty dollars (\$250) per Calendar Day for Day One (1) through Day Fifteen (15);

37.5.1.4.2 Sixteen (16) to thirty (30) Calendar Days late: five hundred dollars (\$500) per Calendar Day for Days Sixteen (16) through Thirty (30); and

37.5.1.4.3 More than thirty (30) Calendar Days late: one thousand dollars (\$1,000) per Calendar Day for Day Thirty-one (31) and beyond; and

37.5.1.5 Failure to meet the Pharmacy Call Center performance standards:

- 37.5.1.5.1 One thousand dollars (\$1,000) for each percentage point that is below the target answer rate of eighty percent (80%) in thirty (30) seconds;
- 37.5.1.5.2 One thousand dollars (\$1,000) for each percentage point that is above the target of a three percent (3%) Blocked Call rate; and
- 37.5.1.5.3 One thousand dollars (\$1,000) for each percentage point that is above the target of a five percent (5%) Abandoned Call Rate.

37.6 Other Remedies

- 37.6.1 Subject to Article 38 of this Contract, in lieu of imposing a Remedy allowed under this Article 37, ASES may elect to terminate this Contract, without any liability whatsoever (but subject to making any payments due, if any, under this Contract through any such date of termination), if the terms of a Corrective Action Plan implemented pursuant to this Article 37 to address a failure specified in Category 1 or Category 2 of this Article 37 are not implemented to ASES's satisfaction or if such failure continues or is not corrected, to ASES's sole satisfaction.
- 37.6.2 In the event of non-compliance by the Contractor with Article 20 of this Contract, ASES shall have the right to Withhold, with respect to Article 20, a sum not to exceed ten percent (10%) of the Administrative Fee paid for the following month and for continuous consecutive months thereafter until such noncompliance is cured and corrected to ASES' satisfaction in lieu of imposing any liquidated damages, penalties or sanctions against the Contractor hereunder. ASES shall release the Withhold of the Administrative Fee to the Contractor within two (2) Business Days after the corresponding event of noncompliance is cured to ASES's sole satisfaction.

37.7 Notice of Administrative Inquiry regarding Liquidated Damages and/or Other Article 37 Remedies

- 37.7.1 **Administrative Inquiry.** ASES may issue the Contractor a notice of imposition of liquidated damages and/or other Article 37 remedies in lieu of a notice of administrative inquiry regarding liquidated damages and/or other Article 37 remedies if ASES determines, in its sole discretion, that the Contractor's non-compliance will not be cured with a Corrective Action Plan. In all other cases, ASES shall issue a notice of administrative inquiry informing the Contractor about ASES's compliance, monitoring, and auditing activities regarding potential non-compliance as described in this Article 37. This notice of administrative inquiry shall include the following:
 - 37.7.1.1 A brief description of the facts;
 - 37.7.1.2 Citations to Puerto Rico and federal laws and regulations, or Contract provision(s) the Contractor has breached;
 - 37.7.1.3 The Contractor's non-compliance with Puerto Rico and federal laws and regulations or Contract provisions;

- 37.7.1.4 The Contractor's breach of applicable Contract provisions and event categories that could result in remedies or liquidated damages pursuant to this Article 37;
- 37.7.1.5 ASES's authority to determine and seek liquidated damages or other remedies against the Contractor under this Article 37;
- 37.7.1.6 The amount of potential, or Contractor's exposure to liquidated damages, or other Article 37 remedies, when they will be imposed and how they were computed; and
- 37.7.1.7 If applicable, a statement requiring the Contractor to submit a Corrective Action Plan within fifteen (15) Calendar Days of receipt of the notice of administrative inquiry under this Article 37.
- 37.7.2 The Contractor shall submit a Corrective Action Plan within fifteen (15) Calendar Days of receipt of the notice of administrative inquiry issued pursuant to this Article 37.
- 37.7.3 A notice of administrative inquiry shall not constitute ASES's final or partial determination of liquidated damages. Thus, any administrative inquiries made are not subject to administrative review under Section 37.7.6 and would be construed to be premature rendering any administrative examiner without jurisdiction to review the matter.
- 37.7.4 If the Contractor fails to comply with any material provision under a Corrective Action Plan submitted to ASES pursuant to Section 37.7.2 above, ASES may impose:
 - 37.7.4.1 A daily amount of five thousand dollars (\$5,000) in liquidated damages, up to a maximum total amount of one hundred thousand dollars (\$100,000), for the Contractor's failure to comply with any material provision part or condition of the Corrective Action Plan; and/or
 - 37.7.4.2 The applicable Article 37 Remedy for any or all behavior that resulted in the submission of Corrective Action Plan pursuant to Section 37.7.2 above.
- 37.7.5 Notice of Imposition of Liquidated Damages and/or Other Remedies
 - 37.7.5.1 Prior to the imposition of liquidated damages and/or any other remedies under this Article 37, ASES will issue a notification, delivered through US Postal Service Certified Mail, to the Contractor that includes the following:
 - 37.7.5.1.1 A brief description of the facts;
 - 37.7.5.1.2 Citations to Puerto Rico and federal laws and regulations, or Contract provision(s) the Contractor has breached;
 - 37.7.5.1.3 ASES's determination to assess and impose liquidated damages and/or any other Article 37 Remedy;

37.7.5.1.4 Liquidated damages and/or any other Article 37 Remedy imposed and their Effective Date;

37.7.5.1.5 Methodology for the liquidated damages and/or any other Article 37 Remedy calculation; and

37.7.5.1.6 A statement that the Contractor has a right to object and request an administrative review of the imposition of liquidated damages and other Article 37 Remedies pursuant to the procedures in ASES Regulation 8446 and Puerto Rico Act No. 38-2017, as amended.

37.7.5.2 The Contractor shall submit a Corrective Action Plan to ASES within thirty (30) Calendar Days of receipt of a notice of liquidated damages or other remedies pursuant to this Article 37.

37.7.6 **Administrative Review.** The Contractor has the right to object and seek administrative review of the imposition of liquidated damages and/or any other Remedy under this Article 37.7, pursuant to the procedures in ASES Regulation No. 8446.

37.7.6.1 As part of the administrative review, the parties shall cooperate with the examining officer, and follow all applicable procedures for the administrative review.

37.7.6.2 Once the sanction becomes final ASES shall deduct the amount of the sanction from the Administrative Fee or the Retention Fund.

37.8 Judicial Review

37.8.1 The Contractor has the right to seek reconsideration and judicial review of ASES's determination pursuant to the procedures in ASES Regulation No. 8446 and Puerto Rico Act No. 389-2017, as amended.

ARTICLE 38 TERMINATION OF CONTRACT

38.1 General Procedures

38.1.1 In addition to any other non-financial Remedy set forth in this Contract or available by law, or in lieu of any financial Remedy contained in Article 37 of this Contract or available by law, and subject to compliance with the termination procedures set forth in Section 38.8 below, ASES may terminate this Contract for any or all of the following reasons:

38.1.1.1 Default by the Contractor, upon thirty (30) Calendar Days' notice, unless ASES, in its reasonable discretion, determines that the Contractor has cured the default to ASES's satisfaction within the notice period;

38.1.1.2 Immediately, in the event of insolvency or declaration of bankruptcy by the Contractor;

38.1.1.3 Immediately, when sufficient appropriated funds no longer exist for the payment of ASES's obligation under this Contract; or

- 38.1.1.4 In the event that the Contractor or any of its shareholders, director, officers, or employees fall under the prohibition stated in Section 32.1 or 32.6 of this Contract.
- 38.1.2 A decision by ASES not to renew this Contract, per Article 24.3, shall not constitute a Termination of the Contract.
- 38.1.3 The Contractor shall have a limited right of termination of this Contract only in the events described in Section 38.10 of this Contract.
- 38.1.4 Each Party shall have the opportunity to cure any default alleged in a termination notice sent pursuant to this Article 38 upon receiving a written termination notice the other party. With respect to termination by ASES, the Contractor shall have the right to submit to ASES a written Corrective Action Plan containing terms and conditions acceptable to ASES in its sole discretion to cure such default or an explanation of non-default in the thirty (30) Calendar Day period from the date of receipt of ASES' written termination notice and such plan or explanation of non-default is accepted by ASES, in ASES' sole discretion, which acceptance shall not be unreasonably withheld, conditioned or delayed.
- 38.1.5 Notwithstanding the termination of this Contract pursuant to this Article 38 for any reason, the Contractor shall remain obligated to provide Administrative Functions, including but not limited to the payment of Claims for Covered Services provided to Enrollees prior to the Termination Date and as specified in the Patient's Bill of Rights Act through the Runoff Period.
- 38.1.6 Continuing Obligations of ASES. Notwithstanding the termination of this Contract for pursuant to this Article 38 for any reason, ASES shall remain obligated to pay to the Contractor the Administrative Fee through the Termination Date (inclusive of the Transition Period).
- 38.1.7 Termination Procedures to be Strictly Followed. No termination of this Contract shall be effective unless the termination procedures under Article 38 of this Contract have been strictly followed or waived by the parties.

38.2 Termination by Default

- 38.2.1 In the event ASES determines that the Contractor has defaulted by failing to carry out the terms or conditions of this Contract or by failing to meet the applicable requirements in sections 1932 and 1903(m) of the Social Security Act, or in the event that ASES determines that the Contractor falls within the prohibitions stated in Sections 32.1 or 32.6, ASES may terminate the Contract and place Enrollees with a different Contractor or provide GHP benefits through another state plan authority, in addition to or in lieu of any other remedies set out in this Contract or available by law.
- 38.2.2 Before terminating this Contract, ASES will:
- 38.2.2.1 Provide written notice of the intent to terminate at least thirty (30) Calendar Days prior to the Termination Date, stating the reason for the termination and the time and place of a hearing, to take place at least fifteen (15) Calendar Days after the date of mailing of the notice

of intent to terminate, to give the Contractor an opportunity to appeal the determination or cure the default;

38.2.2.2 Provide written notice of the decision affirming or reversing the proposed termination of the Contract, and for an affirming decision, the Effective Date of the termination; and

38.2.2.3 For an affirming decision, give Enrollees of the Contractor notice of the termination and information consistent with 42 CFR 438.10 on their options for receiving services following the Termination Date of the Contract.

38.3 Termination for Convenience

38.3.1 ASES may terminate this Contract for convenience and without cause upon thirty (30) Calendar Days written notice. Termination for convenience shall not be a breach of the Contract by ASES. The Contractor shall be entitled to receive and shall be limited to just and equitable compensation for any satisfactory authorized work performed as of the Termination Date of the Contract.

38.4 Termination for Insolvency or Bankruptcy

38.4.1 The Contractor's insolvency, or the Contractor's filing of a petition in bankruptcy, shall constitute grounds for termination for cause. In the event of the filing of a petition in bankruptcy, the Contractor shall immediately advise ASES. If ASES reasonably determines that the Contractor's financial condition is not sufficient to allow the Contractor to provide the services as described herein in the manner required by ASES, ASES may terminate this Contract in whole or in part, Immediately or in stages.

38.4.2 In the event that this Contract is terminated because of the Contractor's insolvency, the Contractor shall guarantee that Enrollees shall not be liable for:

38.4.2.1 The Contractor's debts;

38.4.2.2 The Covered Services provided to the Enrollee, for which ASES does not pay the Contractor or its Providers Network;

38.4.2.3 The Covered Services provided to the Enrollee, for which ASES or the Contractor does not pay a Provider who furnishes the services under a contractual, Referral, or other arrangement; or

38.4.2.4 Payment for Covered Services furnished under a contractual, Referral, or other arrangement, to the extent that those payments are in excess of the amount that the Enrollee would owe if the Contractor provided the services directly.

38.4.3 The Contractor shall cover continuation of services to Enrollees for the duration of the period for which payment has been made by ASES, as well as for inpatient admissions up to discharge.

38.5 Termination for Insufficient Funding

- 38.5.1 In the event that federal and/or Puerto Rico funds to finance this Contract become unavailable or insufficient, ASES may terminate the Contract in writing, unless both parties agree, through a written amendment, to a modification of the obligations under this Contract.
- 38.5.2 The Termination Date of the Contract when the Contract is terminated due to insufficient funding shall be ninety (90) Calendar Days after ASES delivers written notice to the Contractor, unless available funds are insufficient to continue payments in full during the ninety (90) Calendar Day period, in which case ASES shall give the Contractor written notice of an earlier date at which the Contract shall terminate.
- 38.5.3 Upon termination, the Contractor shall comply with the phase-out obligations established in Article 39 of this Contract.
- 38.5.4 In the event of termination for insufficient funding, the Contractor shall be entitled to receive, and shall be limited to, just and equitable compensation for any satisfactory authorized work performed as of the Termination Date of the Contract.
- 38.5.5 Availability of funds shall be determined solely by ASES.

38.6 Termination under Section 38.3

- 38.6.1 If any of the events specified in Section 32.3 of this Contract occur, ASES may terminate this Contract as required under Act 2 of 2018.
- 38.6.2 Upon Termination, the Contractor shall comply with the phase-out obligations established in Article 39 of this Contract.

38.7 ASES may terminate this Contract for any other just reason upon thirty (30) Calendar Days written notice.

38.8 Termination Procedures

- 38.8.1 ASES will issue a written notice of termination to the Contractor by certified mail, return receipt requested, or in person with evidence of delivery. The notice of termination shall cite the provision of this Contract giving the right to terminate, the circumstances giving rise to termination, and the Termination Date of the Contract. Termination shall be effective at 11:59 pm (Atlantic Time) on the Termination Date of the Contract.
- 38.8.2 Upon receipt of notice of termination or on the date specified in the notice of termination and as directed by ASES, the Contractor shall:
 - 38.8.2.1 Stop work under the Contract on the date and to the extent specified in the notice of termination;
 - 38.8.2.2 Place no further orders or Subcontract for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract prior to termination that is already in process;

- 38.8.2.3 Terminate all orders and Subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
- 38.8.2.4 Assign to ASES, in the manner and to the extent directed by ASES, all of the right, title, and interest of Contractor under the orders or Subcontracts so terminated, in which case ASES will have the right, at its discretion, to settle or pay any or all Claims arising out of the termination of such orders and Subcontracts;
- 38.8.2.5 With the prior written approval of ASES, settle all outstanding liabilities and all Claims arising out of such termination or orders and Subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Contract;
- 38.8.2.6 Complete the performance of such part of the work that was not terminated by the notice of termination;
- 38.8.2.7 Take such action as may be necessary, or as ASES may direct, for the protection and preservation of any and all property or Information related to the Contract that is in the possession of the Contractor and in which ASES has or may acquire an interest;
- 38.8.2.8 Promptly make available to ASES, or to another MCO acting on behalf of ASES, any and all records, whether medical or financial, related to the Contractor's activities undertaken pursuant to this Contract. Such records shall be provided at no expense to ASES;
- 38.8.2.9 Promptly supply all Information necessary to ASES, or another ASES plan acting on behalf of ASES, for reimbursement of any outstanding Claims at the time of termination; and
- 38.8.2.10 Submit a termination/transition plan to ASES for review and prior written approval that includes commitments to carry out at minimum the following obligations:
 - 38.8.2.10.1 Provide Enrollees continuation of all the Covered Services and Benefits during a defined transition period, such transition period to be determined by ASES;
 - 38.8.2.10.2 Comply with all duties and/or obligations incurred prior to the actual Termination Date of the Contract, including but not limited to, the Grievance and Appeal process;
 - 38.8.2.10.3 Maintain Claims Processing functions as necessary for ten (10) consecutive months from the Termination Date of the Contract in order to complete adjudication of all Claims;
 - 38.8.2.10.4 Transfer of all Rebate Data and files to ASES or its designee.
 - 38.8.2.10.5 Create a task force to reconcile and certify any pending and outstanding balances in connection with services rendered by the Contractor under the Contract and previous contracts between ASES and the Contractor.

- 38.8.2.10.6 File all reports concerning the Contractor's operations during the term of the Contract in the manner described in this Contract;
 - 38.8.2.10.7 Assist ASES in making all necessary notices to Network Pharmacies at least thirty (30) Calendar Days prior to the Effective Date of change and as may be required under the Contract, or otherwise required under applicable law, regarding notices to Enrollees;
 - 38.8.2.10.8 Ensure the efficient and orderly transition of Enrollees from coverage under this Contract to coverage under any new arrangement developed or agreed to by ASES, including cooperation with another contractor, as provided in Article 39;
 - 38.8.2.10.9 Ensure the proper identification of the Enrollees requiring the authorization for prescription medications to avoid any interruptions in services by providing such Data to ASES as contemplated in the transition plan;
 - 38.8.2.10.10 Submit to ASES all scripts used at Call Centers to communicate with Network Pharmacies during the transition period;
 - 38.8.2.10.11 Maintain the financial requirements and insurance set forth in this Contract until ASES provides the Contractor written notice that all continuing obligations of this Contract have been fulfilled;
 - 38.8.2.10.12 Submit reports to ASES as directed but no less frequently than every thirty (30) Calendar Days, detailing the Contractor's progress in completing its continuing obligations under this Contract, until completion; and
 - 38.8.2.10.13 Meet with ASES personnel, as requested, to ensure satisfactory completion of all obligations under the termination plan.
- 38.8.3 This termination plan shall be subject to review and approval by CMS.
- 38.8.4 Upon completion of these continuing obligations, the Contractor shall submit a final report to ASES describing how the Contractor has completed its continuing obligations. ASES will advise, within twenty (20) Calendar Days of receipt of this report, if all of the Contractor's obligations are discharged. If ASES finds that the final report does not evidence that the Contractor has fulfilled its continuing obligations, then ASES will require the Contractor to submit a revised final report to ASES for approval, and take any other action necessary to discharge all of its duties under this Contract, as directed by ASES.
- 38.8.5 Except as provided in this Article 38, a notification that ASES intends to terminate this Contract shall not release the Contractor from its obligations to pay for Covered Services rendered or otherwise to perform under this Contract.

38.9 Termination Claims

- 38.9.1 After receipt of a notice of termination, the Contractor shall submit to ASES any termination Claim in the form, and with the certification prescribed by, ASES. Such Claim shall be submitted promptly but in no event later than ten (10) months from the Termination Date of the Contract. Upon failure of the Contractor to submit its termination Claim within the time allowed, ASES may determine, on the basis of Information available, the amount, if any, due to the Contractor by reason of the termination and shall thereupon cause to be paid to the Contractor the amount so determined.
- 38.9.2 Upon receipt of notice of termination, the Contractor shall have no entitlement to receive any amount for lost revenues or anticipated profits or for expenditures associated with this Contract or any other contract. Upon termination the Contractor shall be paid in accordance with the following:
- 38.9.2.1 At the Contract price(s) for services delivered to and accepted by ASES; and/or
- 38.9.2.2 At a price mutually agreed upon by the Contractor and ASES for partially completed services.
- 38.9.3 In the event the Contractor and ASES fail to agree in whole or in part as to the amounts with respect to costs to be paid to the Contractor in connection with the total or partial termination of work pursuant to this Article, ASES will determine, on the basis of Information available, the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.

38.10 Limited Right of Termination by the Contractor

- 38.10.1 Subject to compliance with the termination procedures set forth in Section 38.8, the Contractor may terminate this Contract under the following circumstances:
- 38.10.1.1 **Termination Due to ASES's Financial Breach.** Upon fifteen (15) Calendar Days written notice, in the event ASES defaults in making payment of three (3) consecutive monthly Payments and fails to cure such breach within the notice period. For purposes of this section, a default in making payment does not include instances where ASES has made any Withhold payments pursuant to the terms of this Contract, provided that ASES has given the Contractor advance written notice of any such Withhold.
- 38.10.2 **Termination Due to Insufficient Funding.** Immediately, upon receipt from ASES of a written notice pursuant to Section 38.5 that appropriated federal and/or Puerto Rico funds become unavailable or that such funds will be insufficient for the payment of ASES's obligation under this Contract when due, unless both parties agree, through a written amendment, to a modification of the obligations under this Contract.
- 38.10.3 If forty-five (45) Calendar Days before the last day of each Fiscal Year covered under the Contract, the Contractor and ASES have not (as provided in Section 25) agreed to Administrative Fee for the succeeding Contract Year, the Contractor may exercise an option to terminate the Contract by giving ASES

written notice of the Contractor's intent not to continue to provide services under the Contract no later than forty-five (45) Calendar Days prior to the termination of the corresponding Contract Year. Once the Contractor has given ASES such written notice, the Contractor shall fully discharge the termination phase-out obligations listed in Section 36.8. At any time before the end of the Contract Year, the Contractor may rescind its notice of termination, if the parties reach an agreement on fees for the following Contract Year.

ARTICLE 39 PHASE-OUT AND COOPERATION WITH OTHER CONTRACTORS

- 39.1** If in the best interest of Enrollees of GHP, ASES develops and implements new projects that impact the scope of services, the Contractor shall assist in the transition process, after receiving at least ninety (90) Calendar Days written notice from ASES of such change, and pursuant to written amendment of the Contract, if required. Payments shall be adjusted accordingly.
- 39.2** In the event that ASES has entered into, or enters into, agreements with other contractors for additional work related to the obligations rendered hereunder, the Contractor agrees to cooperate fully with such other contractors. The Contractor shall not commit any act or omission that will interfere with the performance of work by any other contractor, or actions taken by ASES to facilitate the work.
- 39.3** If ASES chooses not to renew this Contract, pursuant to Article 24.3, the Contractor agrees that it will not engage in any behavior or inaction that prevents or hinders the work of another contractor or ASES, as the case may be. Upon receiving ASES's notice that it does not intend to renew the Contract, the Contractor agrees to submit a written termination/transition plan to ASES within thirty (30) Calendar Days of receiving the notice. The turn-over plan shall include all the elements listed in Section 38.8.2.10. The Parties agree that the Contractor has not successfully met this obligation until ASES accepts its turn-over plan and/or transition plan, required under this Article 39.

ARTICLE 40 COMPLIANCE WITH ALL LAWS

40.1 Nondiscrimination

- 40.1.1 The Contractor shall comply with applicable federal and Puerto Rico laws, rules, and regulations, and the Puerto Rico policy relative to nondiscrimination in employment practices because of political affiliation, religion, race, color, sex, physical handicap, age, or national origin. Applicable federal nondiscrimination law includes, but is not limited to, Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972, as amended; the Age Discrimination Act of 1975, as amended; Equal Employment Opportunity and its implementing regulations (45 CFR 74 Appendix A (1), Executive Order 11246 and 11375); the Rehabilitation Act of 1973; and the Americans with Disabilities Act of 1993 and its implementing regulations (including but not limited to 28 CFR § 35.100 et seq.). Nondiscrimination in employment practices is applicable to employees for employment, promotions, dismissal and other elements affecting employment.
- 40.1.2 The Contractor shall comply with all provisions of the Puerto Rico Patient's Bill of Rights and the implementing regulation, which prohibits discrimination against any patient.

40.2 Compliance with All Laws in the Delivery of Service

- 40.2.1 The Contractor agrees that all work done under this Contract will comply fully with and abide by all applicable federal and Puerto Rico laws, rules, regulations, statutes, policies, or procedures that may govern the Contract, including but not limited to those listed in Attachment 1 to this Contract.
- 40.2.2 All applicable Puerto Rico and federal laws, rules, and regulations, consent decrees, court orders, policy letters and normative letters, and policies and procedures, including but not limited to those described in Attachment 1 to this Contract, are hereby incorporated by reference into this Contract. Any change in those applicable laws and requirements, including any new law, regulations, policy guidance, or normative letter, shall be automatically incorporated into this Contract by reference as soon as it becomes effective.
- 40.2.3 At the request of either party, ASES will evaluate any enacted federal, state or local legislative or regulatory changes with applicability to the GHP program that materially impact the Payment. If after a process of actuarial evaluation, using credible Data, ASES determines that the enacted legislative and/or regulatory changes materially impact the Payment, ASES will adjust the rates to reflect the above-referenced changes after the adjusted rates are approved by CMS. Any revisions to the Payments under this Section would be applicable from February 1, 2022 to [REDACTED], or from the Effective Date of any new law or regulation, whichever is later.
- 40.2.4 To the extent that applicable laws, rules, regulations, statutes, policies, or procedures require the Contractor to take action or inaction, any costs, expenses, or fees associated with that action or inaction shall be borne and paid by the Contractor solely. Such compliance-associated costs include, but are not limited to, attorneys' fees, accounting fees, research costs, or consultant costs, where these costs are related to, arise from, or are caused by compliance with any and all laws. In the event of a disagreement on this matter, ASES's determination on this matter shall be conclusive and not subject to appeal.
- 40.2.5 The Contractor shall include notice of grantor agency requirements and regulations pertaining to reporting and patient rights under any contracts involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in Data.
- 40.2.6 The Contractor certifies and warrants to ASES that at the time of execution of this Contract: (i) it is a corporation or entity duly authorized to conduct business in Puerto Rico, and has filed all the required income tax returns for the preceding five (5) years; and (ii) it filed its report due with the Office of the Commissioner of Insurance during the five (5) years preceding the Execution Date of this Contract.

ARTICLE 41 CONFLICT OF INTEREST AND CONTRACTOR INDEPENDENCE

- 41.1** The duty to provide Information about conflicts of interests extends throughout the Contract Term.

- 41.2** The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any material manner or degree with or have a material adverse effect on the performance of Contracted Services hereunder. The Contractor further covenants that in the performance of the Contract no person having any such interest shall be employed. The Contractor shall submit a conflict of interest form, attesting to these same facts, by January 10 of each Calendar Year; and at any time, within fifteen (15) Calendar Days of request by ASES.
- 41.3** It shall be the responsibility of the Contractor to maintain independence and to establish necessary policies and procedures to assist the Contractor in determining if the actual individuals performing work under this Contract have any impairment to their independence.
- 41.4** The Contractor further agrees to take all necessary actions to eliminate threats to impartiality and independence, including but not limited to reassigning, removing, or terminating Providers or Subcontractors.

ARTICLE 42 CHOICE OF LAW OR VENUE

- 42.1** This Contract shall be governed in all respects by the laws of Puerto Rico. Any lawsuit or other action brought against ASES or the Government based upon or arising from this Contract shall be brought in a court of competent jurisdiction in Puerto Rico. Nothing in this Section shall be construed as a restriction on the ability of the Contractor to discuss matters relating to this Contract in ASES's administrative forum.

ARTICLE 43 ATTORNEY'S FEES

- 43.1** In the event that either party deems it necessary to take legal action to enforce any provision of this Contract, and in the event ASES prevails, the Contractor agrees to pay all expenses of such an action including reasonable attorney's fees and costs at all stages of litigation as awarded by the court, a lawful tribunal, a hearing officer, or an administrative law judge. The term legal action shall be deemed to include administrative proceedings of all kinds, as well as all actions regarding the law or equity.

ARTICLE 44 SURVIVABILITY

- 44.1** The terms, provisions, representations, and warranties contained in this Contract shall survive the delivery or provision of all services hereunder.

ARTICLE 45 PROHIBITED AFFILIATIONS WITH INDIVIDUALS DEBARRED & SUSPENDED

- 45.1** The Contractor certifies that it is not presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any federal or Puerto Rico agency. In addition, the Contractor certifies that it does not employ or Subcontract with any person or entity that could be excluded from participation in the Medicaid Program under 42 CFR 1001.1001 (exclusion of entities owned or controlled by a sanctioned person) or 1001.1051 (exclusion of individuals with ownership or control interest in sanctioned entities), and that Contractor screens for such exclusions on a monthly basis. Any violation of this Article shall be grounds for termination of the Contract.

ARTICLE 46 WAIVER

- 46.1** No covenant, condition, duty, obligation, or undertaking contained in or made a part of the Contract shall be waived except by the written agreement of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, conditions, duties, obligations, and undertakings to be kept, performed, or discharged by the party to which the same may apply. Notwithstanding any such forbearance or indulgence, the other party shall have the right to invoke any Remedy available under law or equity until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings.
- 46.2** The waiver by ASES of any breach of any provision contained in this Contract shall not be deemed to be a waiver of such provision or any subsequent breach of the same or any other provision contained in this Contract and shall not establish a course of performance between the parties contradictory to the terms hereof. No term or condition of the Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties thereto.

ARTICLE 47 FORCE MAJEURE

- 47.1** Neither party of this Contract shall be held responsible for delays or failures in performance resulting from acts beyond the control of each party. Such acts shall include, but not be limited to, acts of God, strikes, riots, lockouts, acts of war, epidemics, fire, earthquakes, or other disasters.

ARTICLE 48 BINDING

- 48.1** This Contract and all of its terms, conditions, requirements, and amendments shall be binding on ASES and the Contractor and for their respective successors and permitted assigns.

ARTICLE 49 TIME IS OF THE ESSENCE

- 49.1** Time is of the essence in this Contract. Any reference to "days" shall be deemed Calendar Days unless otherwise specifically stated.

ARTICLE 50 AUTHORITY

- 50.1** ASES has full power and authority to enter into this Contract as does the person acting on behalf of and signing for the Contractor. Additionally, the person signing on behalf of the Contractor has been properly authorized and empowered to enter into this Contract on behalf of the Contractor and to bind the Contractor to the terms of this Contract. Each party further acknowledges that it has had the opportunity to consult with and/or retain legal counsel of its choice and read this Contract. Each party acknowledges that it understands this Contract and agrees to be bound by it.

ARTICLE 51 ETHICS IN PUBLIC CONTRACTING

- 51.1** The Contractor understands, states, and certifies that it made its Proposal without collusion or Fraud and that it did not offer or receive any kickbacks or other inducements from any other Contractor, supplier, manufacturer, or Subcontractor in connection with its Proposal.

51.2 The Contractor understands, states, and certifies that it will comply with the requirements of the Code of Ethics for Contractors, Suppliers and Applicants of Economic Incentives of the Government of Puerto Rico, as described in Title III of Act 2 of January 4, 2018, known as the "Anticorruption Code for the New Puerto Rico."

ARTICLE 52 CONTRACT LANGUAGE INTERPRETATION

52.1 The Contractor and ASES agree that in the event of a disagreement regarding, arising out of, or related to, Contract language interpretation, ASES's interpretation of the Contract language in dispute shall control and govern.

ARTICLE 53 ARTICLE AND SECTION TITLES NOT CONTROLLING

53.1 The Article and Section titles used in this Contract are for reference purposes only and shall not be deemed to be a part of this Contract.

ARTICLE 54 LIMITATION OF LIABILITY/EXCEPTIONS

54.1 Nothing in this Contract shall limit the Contractor's indemnification liability or civil liability arising from, based on, or related to Claims brought by ASES or any third party or any Claims brought against ASES or the Government by a third party or the Contractor.

ARTICLE 55 OWNERSHIP AND FINANCIAL DISCLOSURE

55.1 As per 42 CFR 455.104, disclosure by the Contractor will include the following Information on ownership and control provided to ASES in accordance with the timeframes in 42 CFR 455.104(c)(2):

55.1.1 The name and address of any person (individual or corporation) with an ownership or control interest in the disclosing entity, fiscal Agent, or Contractor. The address for corporate entities must include as applicable primary business address, every business location, and P.O. Box address;

55.1.2 Date of birth and Social Security Number (in the case of an individual);

55.1.3 Other tax identification number (in the case of a corporation) with an ownership or control interest in the disclosing entity (or fiscal Agent or managed care entity) or in any Subcontractor in which the disclosing entity (or fiscal Agent or managed care entity) has a five percent (5%) or more interest.

55.1.4 Whether the person (individual or corporation) with an ownership or control interest in the Contractor is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any Subcontractor in which the disclosing entity (or fiscal Agent or managed care entity) has a five percent (5%) or more interest is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling.

55.1.5 The name of any other disclosing entity (or fiscal Agent or MCO) in which an owner of the disclosing entity (or fiscal Agent or managed care entity) has an ownership or control interest.

55.1.6 The name, address, date of birth, and Social Security Number of any managing employee of the disclosing entity (or fiscal Agent or managed care entity).

ARTICLE 56 AMENDMENT IN WRITING

56.1 No amendment, waiver, termination, or discharge of this Contract, or any of the terms or provisions hereof, shall be binding upon either party unless confirmed in writing by ASES and any other appropriate governmental agency. Additionally, CMS approval shall be required before any such amendment is effective. Any agreement of the parties to amend, modify, eliminate, or otherwise change any part of this Contract shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be in full force and effect as set out herein.

56.2 ASES reserves the authority to seek an amendment to this Contract at any time if such an amendment is necessary in order for the terms of this Contract to comply with federal law, the laws of Puerto Rico or the Government of Puerto Rico Fiscal Plan as certified by the Financial Oversight and Management Board for Puerto Rico pursuant to the Puerto Rico Oversight, Management and Economic Stability Act of 2016. The Contractor shall consent to any such amendment.

ARTICLE 57 CONTRACT ASSIGNMENT

57.1 The Contractor shall not assign this Contract, in whole or in part, without the prior written consent of ASES, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect.

ARTICLE 58 SEVERABILITY

58.1 If any article, section, paragraph, term, condition, provision, or other part of this Contract (including items incorporated by reference) is judged, held, declared, or found to be voidable, illegal, unenforceable, invalid or void, then both ASES and the Contractor shall be relieved of all obligations arising under such provision. However, if the remainder of the Contract is capable of being performed, it shall not be affected by such declaration or finding, and those duties and tasks shall be fully performed. To this end, the provisions of the Contract are declared to be severable.

ARTICLE 59 ENTIRE AGREEMENT

59.1 This Contract constitutes the entire agreement between the parties with respect to the subject matter herein and supersedes all prior negotiations, representations, or contracts. No written or oral agreements, representatives, statements, negotiations, understandings, or discussions that are not set out, referenced, or specifically incorporated in this Contract shall in any way be binding or of effect between the parties.

59.2 The terms of the Request for Proposals and of the Contractor's Proposal are incorporated by reference, except as otherwise provided in this Contract. However, in the event of a conflict between the terms of this Contract and the terms of the Request for Proposals or the terms of the Contractor's Proposal, the terms of this Contract shall prevail.

59.3 All applicable laws are incorporated by reference into this Contract, as provided in Article 40.

59.4 Subject to Section 56, the Contractor acknowledges that it may be necessary or convenient during the Contract Term to clarify or supplement certain terms and conditions of this Contract so that it conforms to the terms of the Request for Proposals or otherwise in order to incorporate CMS requirements. In any of these events, the Contractor agrees that ASES shall have the right to issue from time to time normative letters which shall be then incorporated into the Contract. Such normative letters are advisory in nature, and shall not, absent an amendment to the Contract, effect a change in the Contractor's substantive obligations under this Contract.

ARTICLE 60 INDEMNIFICATION

60.1 The Contractor hereby releases and agrees to indemnify and hold ASES, the Government, and its departments, agencies, and instrumentalities harmless from and against any and all claims, demands, liabilities, losses, costs or expenses, and attorneys' fees, caused by, growing out of, or arising from this Contract, due to any act or omission on the part of the Contractor, its Agents, employees, customers, invitees, licensees, or others working at the direction of the Contractor or on its behalf, or due to any breach of this Contract by the Contractor, or due to the application or violation of any pertinent federal, Puerto Rico or local law, rule or regulation. This indemnification extends to the successors and assigns of the Contractor and survives the termination of the Contract and the dissolution or, to the extent allowed by the law, the bankruptcy of the Contractor.

ARTICLE 61 NOTICES

61.1 All notices, consents, approvals, and requests required or permitted shall be given in writing and shall be effective for all purposes if hand delivered or sent by (i) personal delivery, (ii) expedited prepaid delivery service, either commercial or US Postal Service, with proof of attempted delivery, (iii) telecopies, or (iv) email. All communications under this section shall be addressed as follows:

Mailing Address:

Administración de Seguros de Salud
P.O. Box 195661
San Juan, PR 00919-5661

Physical Address:

Administración de Seguros de Salud
Urb. Caribe 1549
Ave. Ponce de León, Sec. El Cinco
San Juan, PR 00926-2706

Attention: Executive Director

Mailing Address:

Physical Address:

Attention: President

61.2 All notices, elections, requests, and demands under this Contract shall be effective and deemed received upon the earliest of (i) the actual receipt of the item by personal delivery or otherwise, (ii) two (2) Business Days after being deposited with a nationally recognized overnight courier service as required above, (iii) three (3) Business Days after being deposited in the US mail as required above or (iv) on the day sent if sent by facsimile with voice confirmation on or before 4:00 pm (Atlantic Time) on any Business Day or on the next Business Day if so delivered after 4:00 pm (Atlantic Time) or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver

because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

ARTICLE 62 OFFICE OF THE COMPTROLLER

62.1 ASES will file this Contract in the Office of the Comptroller of Puerto Rico within fifteen (15) Calendar Days from the Effective Date of the Contract.

ARTICLE 63 OTHER MANDATORY GOVERNMENT CLAUSES

63.1 The present contract constitutes an inherent and mandatory component of the Government Health Plan, for which reason it is exempted from Act No. 66 of 2014 and Act No. 3 of 2017, as amended, and corresponding government memorandums.

63.2 Parties recognize and acknowledge that the contracted services can be rendered to any entity of the Executive Branch, with which ASES execute an interagency agreement or by direct disposition of the Governor's Chief of Staff (Secretario de la Gobernación). These services shall be rendered under the same terms and conditions specified on the present Contract, as for work hours and compensation. Although this contract is exempted from this requirement, it is included for purposes of uniformity.

63.3 For purposes of this Section, the term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as instrumentalities and public corporations, and the Office of the Governor.

63.4 The Governor's Chief of Staff shall have the power to cancel this Agreement at any moment. Although this contract is exempted from this requirement, it is included for purposes of uniformity.

According to the dispositions specified in Section VI of the Memorandum Number 001-2021, the Governor's Chief of Staff shall have discretion to take any necessary steps in those situations when a breach or potential breach with the public policy established by the Governor is observed.

63.5 Contract Review Policy of the Financial Oversight and Management Board for Puerto Rico:

The Parties acknowledge that the Contractor has submitted the certification entitled "Contractor Certification Requirement" required in accordance with the Contract Review Policy of the Financial Oversight and Management Board for Puerto Rico and in force as of November 6, 2017 and as amended on October 30, 2020, signed by the Contractor's Executive Director (or other official with a position or authority equivalent to issue such certifications). A signed copy of the Contractor Certification Requirement is included as an annex to this Contract. (Attachment 9 to this Contract). The Contractor represents and warrants that the information included in the Contractor Certification Requirement is complete, accurate and correct, and that any misrepresentation, inaccuracy or falseness in such Certification will render the contract null and void and the Contractor will have the obligation to reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under this Contract.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties state and affirm that they are duly authorized to bind the respected entities designated below as of the day and year indicated.

ADMINISTRACIÓN DE SEGUROS DE SALUD DE PUERTO RICO (ASES)
Employer Identification Number: 66-0500678

Executive Director

Date

NAME OF CONTRACTOR
Employer Identification Number:

President

Date

**Puerto Rico's Reformed Procurement Processes
October 2021**

The following chart reflects the standards used by GAO in its February 2021 Report on Puerto Rico's Medicaid procurement actions.

COMPETITIVE STANDARDS

Process for multiple offers and fixed price or cost-reimbursement contracts

| GAO Recommendations (GAO final report to Congress, Feb 2021) | PR's PBM Procurement Processes | |
|--|--|--|
| Develop a documented process for competitive procurements that includes all evaluation factors and their relative importance, a written method for conducting technical evaluations of the proposals received as well as a method for selection recipient – referenced at <i>45 C.F.R. § 75.329(d)</i> | RFP Sections 4 & 5, as amended by the fourth and fifth amendments. See, Folder #1. | |
| (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical – referenced at <i>45.F.R. § 75.329(d)[1]</i> | A public notice was published in the government of Puerto Rico's Unique Bid Registry or RUS ("Registro Unico de Subastas"), two newspapers of general circulation in Puerto Rico and PRHIA's website. See Folder #6. Evaluation factors and methodology is included in RFP Section 5, as amended by the fourth and fifth amendments. See, Folder #1. | |
| (2) Proposals must be solicited from an adequate number of qualified sources – referenced at <i>45.F.R. § 75.329(d)[2]</i> | Invitations were sent to twenty (20) companies. See Folder #6. | |
| (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients – referenced at <i>45.F.R. § 75.329(d)[3]</i> | ASES has in place an Administrative Order that establishes the internal evaluation process and rules of conduct of the Evaluation Committee for | |

| | | |
|--|---|--|
| | <p>the RFPs. Evaluators are also trained and provided detailed evaluation tools to perform their analysis and evaluation of proposals. RFP Sections 4 & 5, as amended - Folder #1; Administrative Order #21-0701, as amended - Folder #7; Presentations for Evaluator's Training and Evaluation Reports -Folder #8A. See also Folder #8 - Evaluation Worksheets under each proponent.</p> | |
| <p>(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered – referenced at <i>45.F.R. § 75.329(d)[4]</i></p> | <p>The Executive Committee received the evaluation input of all the evaluation subcommittees and made a holistic evaluation to present their recommendation to the Board of Directors. There are reports and presentations made to the Board of Directors, minutes of the meetings of the Board of Directors and the Notice of Intent to Award the Contract. See Sections 5-8 of the RFP - Folder #1; Minutes of Evaluation Phase and Evaluation Reports - Folders #4 & 8; Notice of Award - Folder #9.</p> | |
| <p>(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort – referenced at <i>45.F.R. § 75.329(d)[5]</i></p> | <p>N/A</p> | |

NONCOMPETITIVE STANDARDS

Sole source or when one or more following circumstances apply: referenced at 45 C.F.R. § 75.329(f)

| GAO Recommendations (GAO final report to Congress, Feb 2021) | PR's Procurement Processes | CMS Comments (the degree to which Puerto Rico's incorporated the GAO standards referenced in the February 2021 report) |
|---|---|--|
| (1) The item is available only from a single source-45 C.F.R. § 75.329(f1) | N/A | |
| (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.- referenced in 45 C.F.R. § 75.329(f2) | N/A | |
| (3) The Centers for Medicare & Medicaid Services (CMS) expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity – referenced in 45 C.F.R. § 75.329(f3) | N/A | |
| (4) After solicitation of a number of sources, competition is determined to be inadequate – referenced in 45 C.F.R. § 75.329(f4) | N/A | |
| Conflict of Interest Standards: The procurement process must be governed by written standards covering conflicts of interest, such as when employees awarding procurements have financial interests in companies being considered for procurement – referenced in 45 C.F.R. § 75.327 (C) (1) | See Folder #3. The Agreement includes a certification of no conflict of interest. We have this agreement and certification in both Spanish and English. | |
| | | |