

SENATE, No. 3074

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED OCTOBER 15, 2018

Sponsored by:

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Co-Sponsored by:

Assemblyman Conaway

SYNOPSIS

Provides for procurement by State of pharmacy benefits manager, automated reverse auction services, and claims adjudication services.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/30/2018)

1 AN ACT providing for the procurement by the State of a pharmacy
2 benefits manager, automated reverse auction services, and claims
3 adjudication services.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. a. Notwithstanding the provisions of any other law to the
9 contrary, a contract for the services of a Pharmacy Benefits
10 Manager (PBM) for the State Health Benefits Plan (SHBP) and the
11 School Employees' Health Benefits Plan (SEHBP) shall be
12 procured in an expedited process and in the manner provided by this
13 section.

14 The Division of Purchase and Property in the Department of the
15 Treasury shall conduct a reverse auction for pharmacy benefit
16 manager services. In order to optimize potential savings to the
17 State and expedite compliance with the May 11, 2018 order of the
18 New Jersey Superior Court, Appellate Division, in In re Request for
19 Proposals ##17DPP00144, 454 N.J. Super. 527 (App. Div. 2018),
20 the reverse auction process and award of a contract to a PBM shall
21 be completed by January 15, 2019.

22 b. The division shall procure the technology platform required
23 for conduct of the reverse auction and related professional services
24 either by extension of a contract in effect on the effective date of
25 P.L. , c. (pending before the Legislature as this bill), or,
26 alternatively, through the expedited process as provided herein no
27 later than November 1, 2018. The contract for such services shall
28 not be awarded to a vendor that is a PBM, is a subsidiary or affiliate
29 of a PBM, is managed by a PBM, or receives remuneration from a
30 PBM for aggregating clients into a contractual relationship with a
31 PBM. The vendor may not outsource any part of the reverse auction
32 or the automated, real-time, electronic, line-by-line, claim-by-claim
33 review of invoiced PBM prescription drug claims.

34 c. Except as otherwise provided in subsection b. of this section,
35 the division shall procure, without the need for formal
36 advertisement, but through the solicitation of proposals from
37 professional services vendors, from qualified vendors the following
38 services based upon price and other factors:

39 (1) technical assistance to the State to evaluate the qualifications
40 of bidders on a PBM procurement, to provide online automated
41 reverse auction services to support the Department of the Treasury
42 in comparing the pricing for the PBM procurement, and to perform
43 related professional services.

44 The technology platform shall, at a minimum, possess the ability
45 to:

46 conduct an automated, online, reverse auction of PBM services;
47 automate re-pricing of PBM proposals for the SHBP and SEHBP
48 prescription drug spending using 100 percent of annual SHBP and

- 1 SEHBP prescription drug claims data and utilizing code-based
- 2 classification of drugs from nationally-accepted data sources for
- 3 comparisons of the costs of PBM proposals;
- 4 produce an automated report and analysis of PBM bids,
- 5 including the ranking of bids, based on the comparative costs and
- 6 qualitative aspects thereof, within a 48-hour time period following
- 7 close of each round of reverse auction bidding; and
- 8 perform real-time, electronic, line-by-line, claim-by-claim
- 9 review of invoiced PBM prescription drug claims using an
- 10 automated claims adjudication technology platform that allows for
- 11 online comparison of PBM invoices and auditing of other aspects of
- 12 the services provided by the PBM; and
- 13 (2) a PBM and related services.
- 14 d. Notwithstanding the provisions of any other law to the
- 15 contrary, for the purpose of expediting the procurements, the
- 16 following provisions shall apply as modifications to law or
- 17 regulation that may interfere with the expedited award of the above
- 18 services:
 - 19 (1) the timeframes for challenging the specifications shall be
 - 20 modified as determined by the division;
 - 21 (2) in lieu of advertising in accordance with sections 2, 3, and 4
 - 22 of P.L.1954, c.48 (C.52:34-7, C.52:34-8, and C.52:34-9), the
 - 23 division shall advertise the request for proposals for the above
 - 24 services and any addenda thereto on the division's website;
 - 25 (3) the period of time that the State Comptroller has to review
 - 26 the request for proposals for these professional services
 - 27 procurements for compliance with applicable public contracting
 - 28 laws, rules and regulations, pursuant to section 10 of P.L.2007, c.52
 - 29 (C.52:15C-10), shall be 10 business days or less if practicable, as
 - 30 determined by the State Comptroller;
 - 31 (4) the timeframes for submission under section 4 of P.L.2012,
 - 32 c.25 (C.52:32-58) and section 1 of P.L.1977, c.33 (C.52:25-24.2)
 - 33 shall be extended to prior to the issuance of a Notice of Intent to
 - 34 Award;
 - 35 (5) the provisions of section 1 of P.L.2005, c.92 (C.52:34-13.2)
 - 36 shall not apply to technical and support services, under this section,
 - 37 provided by a vendor using a "24/7 follow-the-sun model" as long
 - 38 as the contractor is able to provide such services in the United
 - 39 States during the business day; and
 - 40 (6) the term "bids" in subparagraph (f) of subsection a. of
 - 41 section 7 of P.L.1954, c.48 (C.52:34-12) shall not include pricing
 - 42 which will be revealed to all responsive bidders during the
 - 43 negotiation process.
- 44 e. The division may, to the extent necessary, waive or modify
- 45 any other law or regulation that may interfere with the expeditious
- 46 procurement of these services.
- 47 f. For the purposes of this section:

1 “Reverse auction” means an automated bidding process
2 conducted online that starts with an opening price and allows
3 qualified bidders to counter offer a lower price, for as many rounds
4 of bidding as determined by the division.

5 “Price” means the projected cost of a PBM bid for providing
6 prescription drug benefits to the SHBP and SEHBP based on
7 automating re-pricing of PBM bids for purposes of comparison of
8 PBM proposal costs to the State over the duration of the contract.

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10 2. This act shall take effect immediately.

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STATEMENT

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15 This bill provides that the State will procure, in an expedited
16 manner, professional services contracts for: (1) technical assistance to
17 the State to evaluate the qualifications of bidders on a PBM
18 procurement, to provide online automated reverse auction services to
19 support the Department of the Treasury in comparing the pricing for
20 the PBM procurement, and to perform related professional services,
21 the vendor for which may not be a PBM, be a subsidiary or affiliate of
22 a PBM, be managed by a PBM, or receive remuneration from a PBM
23 for aggregating clients into a contractual relationship with a PBM. The
24 vendor may not outsource any part of the reverse auction or the
25 automated, real-time, electronic, line-by-line, claim-by-claim review
26 of invoiced PBM prescription drug claims; and (2) a PBM for the State
27 Health Benefits Plan and the School Employees’ Health Benefits Plan.

28 The reverse auction process and award of a contract to a PBM is to
29 be completed by January 15, 2019.

30 The bill requires the Division of Purchase and Property to procure
31 the technology platform required for the reverse auction and related
32 services either by extension of a contract in effect on the effective date
33 of the bill, or, alternatively, through the expedited process provided in
34 the bill. If the division chooses to procure those services through the
35 expedited process, the services must be procured by November 1,
36 2018.

37 The bill authorizes the Division of Purchase and Property in the
38 Department of the Treasury, to the extent necessary, to waive or
39 modify any other law or regulation that may interfere with the
40 procurement of these services.

41 The New Jersey Superior Court, Appellate Division, decided the
42 matter of In re Request for Proposals ##17DPP00144, 454 N.J.
43 Super. 527 (App. Div. 2018) on May 11, 2018. In this case, the
44 court determined that the winning bid for the PBM contract
45 awarded in 2017 contained a substantial, material deviation from a
46 non-waivable term of the Solicitation for Bids, and thus, the court
47 ordered the PBM contract rebid as expeditiously as possible.
48 However, the court found no error in the conduct of the PBM

1 reverse auction. The technology platform contracted by the State
2 and deployed to conduct the reverse auction strategy to create
3 dynamic competition for PBM services has produced unprecedented
4 prescription drug cost reductions for New Jersey taxpayers, State
5 and local governments, and public school districts.

6 Moreover, the automated, line-by-line, 100-percent-of-claims
7 electronic bill review conducted with the same technology platform
8 has identified tens of millions of dollars in PBM invoice
9 overcharges, some of which may be recovered by the State. In fact,
10 in the first nine months of reduced prescription drug costs resulting
11 from the reverse auction, savings to New Jersey taxpayers, State
12 and local governments, and public school districts have exceeded
13 projections; State and local government spending on prescription
14 medicines has fallen by 25 percent.

15 State, local government, and public school employees will
16 experience a reduction in overall healthcare premiums in 2019 due
17 in substantial part to the reduced costs of prescription drugs
18 achieved through the PBM reverse auction conducted in 2017.

19 It is anticipated that expeditious execution of the PBM reverse
20 auction to award a new PBM contract will save the State of New
21 Jersey, local governments, and public school districts substantial
22 additional amounts of public funds.