

DATE: February 1, 2007

SUBJECT: Process for Manufacturer Appeal of Nonconforming State Supplemental Drug Rebate Offers

The following information outlines the process for manufacturer appeal of nonconforming state supplemental drug rebate offers:

- I. Mail that is marked with a Procurement Identification and received by the bid deadline and identified as a drug rebate bid will be routed to a screener designated by the Director of the Division of Medical Services (DMS) to determine, using the criteria set forth in the bid letter, whether the bid conforms to the bid request. This screener shall have no input in any drug rebate decision.
- II. Within three business days of identifying a bid that does not conform to all bid requirements, DMS will send one dated written notice of the nonconformity. If the bidder supplies an e-mail address, DMS will notify by e-mail. If the bidder does not supply an e-mail address but does supply a fax number, DMS will notify by fax. If the bidder does not supply an e-mail address or fax number, notice will be by certified mail to the address stated on the bid. DMS will use only the numbers and addresses supplied by the bidders.
- III. The party that tendered a nonconforming drug rebate bid may:
 - A. Submit a written exception to the DMS director or his reviewing designee in accordance with the following:
 1. The written exception shall be received by the DMS director or a person designated to review bid nonconformity decisions within seven (7) calendar days from the date of receipt by the tendering party of the DMS notice that the bid is nonconforming. The deadline will be 7 days from the date of receipt, or if the 7th day is a holiday, the next business day. This reviewer shall have no input into the original determination of nonconformity or any drug rebate decision;
 2. The written exception shall state, and provide any supporting documentation to establish, how and why the bid conformed to all applicable bid requirements;
 3. After the time for filing written exceptions has expired, the DMS director or his reviewing designee shall consider all exceptions. The DMS director or his reviewing designee shall notify the tendering party of the results of the review. If the DMS director or his reviewing designee finds that a bid was conforming, the bidder shall be notified and the bid shall be considered on an equal basis with other bids. The decision of the DMS director or his designee is final.
 - B. Submit a bid amendment to correct the conformity to the DMS director or his reviewing designee in accordance with the following: (The designee shall have no input into the original determination of nonconformity or serve on the cost committee)

1. Each bid amendment shall be received by the DMS director or the person designated to decide bid conformity within seven (7) calendar days after the date of the DMS notice to the tendering party that the bid is nonconforming.
 2. Each bid amendment will replace and supplant all bid contents that were identified as nonconforming. If the nonconformity resulted from an omission, the bid amendment will add to the previously submitted bid contents.
 3. The tendering party may not appeal either failure to supply a Procurement Identification or failure to timely submit a bid by the bid deadline per the criteria set forth in the bid letter.
 4. Only one bid amendment per bid submission is permitted. Upon receiving the amendment the deciding official will determine if the bid as amended conforms to the bid request. If the bid as amended conforms to the bid request, the bidder shall be notified and the bid as amended considered on an equal basis with other bids.
 5. If the bid as amended is determined to be nonconforming, the tendering party may follow the procedure set forth in section III, sub-section A.
- IV. After considering all conforming bids and the recommendation(s) of the drug cost committee, the DMS director or his designee shall issue a final determination accepting a bid or rejecting all bids. The decision of the DMS director or designee is final.