



DEPARTMENT OF VETERANS AFFAIRS
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DETERMINATION AND FINDINGS
FOR BUNDLING VISN/LOCAL PHARMACY CONTRACTS WITHIN THE
COMMUNITY CARE NETWORK

Upon the basis of the following, the contracts resulting from this Request for Proposals (RFP), and as described below, the Community Care Office may bundle the Department of Veterans Affairs (VA) urgent/emergent prescription fulfillment requirements of VA providers with the urgent/emergent prescription requirements for the Community Care Network (CCN) in accordance with FAR subpart 7.107.

- a. Identification of the agency/contracting activity. The Denver Acquisition and Logistics Center (DALC) is the contracting office responsible for this procurement on behalf of the Veterans Health Administration's (VHA) Community Care Office (CCO).
- b. Description of the action being approved. The DALC is seeking approval to bundle VA provider urgent/emergent prescription fulfillment services into the CCN acquisition. The bundled portion of this requirement will allow VA providers to write prescriptions for fulfillment within the CCN contractors' pharmacy network.

The existing local contracts allow Community Based Outpatient Clinics (CBOCs) to send prescriptions to non-VA pharmacies in the community. These services are also commonly referred to as "first fill" contracts. The "first fill" contracts are used to provide Veterans with a fourteen (14) day supply of urgent/emergent medication. Urgent/emergent medications are medications that a VA provider or CCN provider determines to be needed and required to start drug therapy as soon as possible to achieve the optimum outcome for the Veteran.

The 14-day supply is considered sufficient to allow VA the time needed to provide medication through strategically sourced Consolidated Mail Outpatient Pharmacy contracts (CMOP). The current Patient Centered Community Care (PCCC) contracts have requirements for a pharmacy network for urgent/emergent prescriptions, but the current PCCC contracts do not allow VA providers to use the contractors' pharmacy network for urgent/emergent prescription fulfillment. The CCN will improve upon the requirements in PCCC to benefit the Veteran. The primary change between PCCC and CCN is the ability for VA providers to prescribe urgent/emergent medications within the CCN. This bundled requirement will allow VA to use one program for urgent/emergent prescription fulfillment services for all enrolled Veterans, regardless of whether the Veteran receives care from a VA provider or through the CCN.

The estimated total value of the urgent/emergent prescription fulfillment services is [REDACTED]; this accounts for all four regions for three months of full healthcare delivery in option period one and six one-year option periods. VA does not anticipate any savings will begin until the CCN requirements are fully implemented twelve (12) months after award. VA expects the base period to be three months. Existing contracts will be used until this same capability is demonstrated by the CCN contractors as part of the implementation requirements listed in section 2.2.1 of the CCN performance work statement. [REDACTED]

[REDACTED] VA expects most contractors would require approximately twelve (12) months to implement healthcare, dental and pharmacy networks. The calculations listed in the table in d.5 below do not include estimated termination costs or any estimated cost savings during the first twelve (12) months of performance.

- c. Market Research Activities. The DALC and CCO conducted significant market research for the CCN acquisition between November 2015 and September 2016. Market research activities included internet searches within VA's VIP Database, issuance of a Request for Information (RFI) and a draft Request for Proposals (RFP) through the Governmentwide point of entry (GPE) located at www.fedbizopps.gov as well as conferences and one-on-one meetings with industry. RFI VA791-16-N-0006 requested interested companies to submit responses to questions and to demonstrate capabilities related to establishing and maintaining healthcare networks. Draft RFP VA791-16-R-0016 provided industry with VA's initial performance work statement (PWS) which included the bundled urgent/emergent prescription fulfillment services and a questionnaire that asked potential offerors to identify areas within the PWS where additional information was needed. No small businesses responded to the RFI or draft RFP with capability statements that demonstrated an ability to fulfill the CCN requirements in one or more regions. [REDACTED]

VHA currently procures urgent/emergent prescription fulfillment services through local contracts. A significant number [REDACTED] of the local contracts were awarded to small businesses, including approximately [REDACTED]. [REDACTED] is a verified Service-Disabled Veteran-Owned Small Business (SDVOSB) through VA's VIP Database and identified as a small business in the System for Award Management (SAM) under NAICS code 524114 (direct health and medical insurance carriers) and 446110 (pharmacies and drug stores). Market research conducted within the Federal Procurement Data System (FPDS) during September 2016 revealed one other SDVOSB, [REDACTED] that provides urgent/emergent prescription fulfillment services to VA. [REDACTED] is a verified SDVOSB according to VA's VIP Database, but [REDACTED] was not registered in SAM as of September 23, 2016. [REDACTED] have capability to fulfill urgent/emergent prescription fulfillment services in localized areas, but they have not demonstrated an ability to fulfill all of the CCN requirements in one or more regions.

The contracting officer acknowledges the fact that two SDVOSBs [REDACTED] are currently performing urgent/emergent prescription fulfillment services for VA at individual VAMCs or for multiple VAMCs and CBOCs. The requirements within CCN are not limited to prescription fulfillment services and conducting a partial set-aside for urgent/emergent prescription fulfillment services would result in duplicate costs to VA and increase the complexity of the program. The CCN requirements must include urgent/emergent prescription fulfillment services since certain healthcare services within CCN will result in the need for a Veteran to start medications prior to VA's ability to provide the medication. Issuing a separate solicitation as a partial set-aside would result in CCN networks that include urgent/emergent prescription fulfillment services and separate regional contracts that only provide urgent/emergent prescription fulfillment services for prescriptions written by VA providers. The only cost effective solution to fulfill this requirement is to consolidate existing requirements into the CCN solicitation. The contracting officer has determined that urgent/emergent prescription fulfillment services cannot be separated into two or more lots since doing so would unnecessarily duplicate efforts and cost to VA.

The contracting officer also acknowledges the need to comply with the Surface Transportation and Veterans Healthcare Choice Improvement Act of 2015 (Public Law 114-41) in which Congress required the Department to "develop a plan to consolidate all non-Department provider programs by establishing a new, single program to be known as the 'Veterans Choice Program' to furnish hospital care and medical services to Veterans enrolled in the system of patient enrollment established under §1705(a) of title 38, United States Code, at non Department facilities." A key provision in the law was for VA to include requirements that would serve all Veterans enrolled in the system and not limit the capabilities only to Choice eligible Veterans. This provision supports VA's system of systems approach for non-Department care and its determination to

bundle VA provider urgent/emergent prescription fulfillment services into the CCN acquisition since doing so will allow VA to provide pharmacy services to all enrolled Veterans in a uniform and consistent manner.

VA's response to Congress on October 30, 2015 (*Plan to Consolidate Programs of Department of Veterans Affairs to Improve Access to Care*) indicated VA would use a system of systems approach to deliver non-Department care to Veterans. VA's response to Congress and plan is consistent with Public Law 114-41 which requires "A standardized method to furnish such care and services that incorporates the strengths of the non-Department provider programs into a single streamlined program that the Secretary administers uniformly in each Veterans Integrated Service Network (VISN) and throughout the medical system of the VHA." The program office considered multiple contracts for the delivery of pharmacy benefits to Veterans but ultimately determined the only feasible method to fulfill the requirements within Public Law 114-41, including the requirement to administer benefits uniformly across all VISNs is to include sufficient requirements in regional contracts.

The "Rule of Two" as established in the Veterans Benefits, Health Care, and Information Technology Act of 2006 at 38 U.S.C. §8127 was applied to this acquisition. In this acquisition, market research did not reveal two or more veteran-owned small business concerns that would be capable of fulfilling all of the required CCN services in any of the identified regions at fair and reasonable prices.

Market research did reveal two veteran-owned small business concerns that would be capable of performing the urgent/emergent prescription fulfillment services in one or more regions. However, the urgent/emergent prescription fulfillment services cannot be separated from the CCN requirements and conducting a partial set-aside specifically for urgent/emergent prescription fulfillment services would result in duplicate networks and unnecessary costs to VA. Issuing a separate solicitation for urgent/emergent prescription fulfillment services would likely result in unique terms and conditions when compared to CCN terms and conditions which would eliminate VA's ability to comply with Public Law 114-41 in which the VA was required to develop a plan to furnish care and services "uniformly in each Veterans Service Integrated Network."

- d. Regulatory authority. Federal Acquisition Regulation (FAR) subpart 7.107(b) provides the agency the authority to determine that bundling is necessary and justified when the expected benefits meet the dollar thresholds in FAR subpart 7.107(b).
- e. Findings to support the determination. The applicable threshold of 5% (of measurably substantial benefits) in FAR 7.107(b)(2) applied to the estimated value of the bundled requirement results in a need for VHA to derive [REDACTED] in benefits from bundling. VHA has a critical need to standardize healthcare contracts providing urgent/emergent prescription fulfillment services for CCN and VA providers. VHA has determined that it is also necessary to bundle the requirements into CCN in order to acquire a more robust network of retail pharmacies that will increase access for Veterans that reside far distances from CBOCs and VA medical centers. To administer the CCN prescription benefit program efficiently and economically, the CCN providers and VA healthcare providers must have the same access to a standardized urgent/emergent formulary, provide timely pharmacy access to Veterans, and deliver a large retail pharmacy network for enrolled Veterans throughout the country.

In accordance with FAR subpart 7.107(b) measurably substantial benefits include quality improvements that will save time or improve performance or efficiency, cost savings or price reductions, better terms and conditions and other benefits as identified by the agency. Standardized terms and conditions for urgent/emergent prescription fulfillment will improve quality and enhance Veteran satisfaction. All existing urgent/emergent or "first fill" contracts for VA providers are administered at VA facilities, Veterans Integrated Service Network (VISN) level, or at the regional level. Not every VA facility or VISN has a "first fill" contract established. The urgent/emergent formularies and prior authorization processes for non-formulary

medications vary among VHA locations. To achieve standardization and realize quality improvements, the available drug listing on the urgent/emergent formulary and the prior authorization process for non-formulary medication must be identical throughout the country. The CCN solicitation includes Attachment M (Urgent/Emergent Drug Formulary). Compliance with Attachment M will be achieved by measuring quarterly performance and application of an incentive or disincentive based on actual performance. This approach will maximize delivery of pharmacy benefits to Veterans throughout the country.

In accordance with FAR subpart 7.107(e), this pharmacy requirement meets the thresholds to be classified as substantial bundling. Furthermore, in accordance with FAR Subpart 7.107(b) the following are specific benefits anticipated to be derived from bundling:

1. *Timely Access:* Current expectations of Veterans, Congress, and the public demand Veterans have timely access to medical services including urgent/emergent medications in their communities just like every other American citizen. By allowing VA providers to order prescriptions for fulfillment within the CCN, VA's ability to meet current expectations will improve. All of the existing "first fill" contracts reviewed contain a limited number of retail pharmacies. This in turn makes access to services after normal operating hours a challenge for enrolled Veterans and their VA providers. For example, in areas where a single retail pharmacy is a supermarket or one chain, the pharmacies do not always provide 24 hours service; therefore, a VA provider must call in the prescriptions and the Veteran must arrive during operating hours for urgent/emergent prescription fulfillment services. In this example, a VA provider and Veteran cannot use other local retail pharmacies that might have more convenient locations and/or hours.
2. *A More Robust Network:* Bundling will result in installation of a national robust pharmacy network. The intention is to obtain adequate participation of retail chains and privately owned pharmacies so a Veteran can receive his or her urgent/emergent medications without undue burden of travelling long distances that might adversely affect the outcome of patient care. This will increase Veteran's satisfaction, and lower compensated travel costs in situations where the Veteran is travelling long distances. The requirements in the CCN solicitation specific to distance for urgent/emergent pharmaceutical access locations are focused on the Veteran's residence versus a VA facility. This improvement over the existing local "first fill" contracts establishes the ability for VA providers to prescribe and Veterans to obtain the urgent/emergent medications closer to their residence versus having to travel to within a close distance of a VA facility.
3. *National Performance Metrics:* Currently financial and medication utilization tracking of the many different "first fill" contracts are very difficult as they are dispersed throughout the Department. There is no visibility or electronic mechanism to retrieve needed information to conduct national monitoring or to respond to national level inquiries regarding non-VA pharmacy services. This lack of centralization means that uniform, national performance metrics have not been established; and oversight and accountability of these local and regional contracts have been lacking. One centralized program office and regional contracts with uniform performance metrics will mean that national performance metrics can be established, utilized, and increase quality care over time to Veterans.
4. *Standardization:* The urgent/emergent medications currently available through VA medical facilities or VISN "first fill" contracts have significant variations. There are restricted "first fill" formularies that may only have antibiotics, pain, or symptomatic medications available, while other VA facility or VISN urgent/emergent formularies are more extensive and may include maintenance or routine use medications and vaccines. The "first fill" prior authorization process for non-formulary drugs also differs significantly; one contract may allow the dispensing of non-formulary medications at the contracted retail pharmacy while another will not. VA has gone through an evolution of only providing medications through VA pharmacies to extensive use of Community Based Outpatient Clinics and limited local

pharmacy access near those clinics. Local "first fill" contracts met this limited need. As expectations for timely access and uniformity of benefits for all Veterans regardless of where they live and receive care have increased, the need for standardization becomes as important as timely and close access to services. Uniformity of formularies and the prior authorization process will enhance efficiency and performance throughout VA and ensure Veterans have timely access to life saving medications.

5. *Buying power.* VA will have a stronger position to negotiate more favorable terms and conditions for prescription drug costs and dispensing fees with regional CCN contracts. VA's buying power is currently limited due to the fragmented approach to fulfill the requirements. This fragmented buying power results in higher dispensing fees and higher prescription drug costs. The contracting officer reviewed [REDACTED] existing first fill contracts with small businesses and determined the average dispensing fee is [REDACTED]. The average discount to average wholesale price (AWP) for brand name drugs was [REDACTED] and the average discount to AWP for generic drugs was [REDACTED]. Through market research activities, VA expects the dispensing fee to average [REDACTED] in the CCN contracts. VA expects the discount to AWP for brand name drugs and generic drugs to be [REDACTED] and [REDACTED], respectively. The estimated dispensing fee and discount for brand name drugs was based on market research. To calculate the [REDACTED] discount for generic medications, VA took an existing Maximum Allowable Charge (MAC) from a VA revenue operations reimbursement agreement and compared that to AWP pricing from Medispan, to which VA Revenue Operations subscribes. The MAC list (individual unit basis) divided by AWP (individual unit base) minus 100% equals the discount expected from AWP in CCN. The table below summarizes the cost savings analysis as required by FAR 7.107(g) for this bundled requirement.

		Discounts observed on existing contracts	Expected price
IGE Generic Drugs	[REDACTED]	[REDACTED]	[REDACTED]
IGE Brand Name Drugs	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]
		Discounts expected on bundled contracts	Expected price
IGE Generic Drugs	[REDACTED]	[REDACTED]	[REDACTED]
IGE Brand Name Drugs	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]
Cost Savings on Drugs			[REDACTED]
Estimated quantity of dispensing fees (6.25 years)	[REDACTED]		Expected price

Current Average Dispensing Fee				
Expected Average Dispensing Fee				
Estimated average pharmacy per member per month fee in CCN				
Cost Savings on Dispensing Fees				
Cost Savings of personnel costs	Estimated value	Assumptions		
Number of personnel assigned for all existing small business contracts				
Annual hours for contract administration				
Estimated burdened labor rate				
Estimated annual personnel costs for existing small business contracts				
Number of years				
Estimated Cost Savings on personnel costs				
Estimated Total Cost Savings				

The contracting officer expects to achieve costs savings in the amount of [REDACTED] through bundling. The savings result from lower expected prices for prescription medications and a reduction in personnel costs to administer a significant number existing small business contracts. The expected cost savings of [REDACTED] does not meet the 5% threshold established in FAR 7.107(b)(2). FAR 7.107(c) provides the Deputy Secretary of VA the authority to approve bundled acquisitions when the benefits expected do not meet the threshold in FAR 7.107(b)(2) and when the acquisition strategy provides for maximum practicable participation by small businesses.

- f. Mitigation Efforts. The contracting officer attempted to reduce the negative effects bundling would have on small businesses by taking actions to comply with FAR 7.107(e) as summarized below.
1. FAR 7.107(e)(3) and FAR 7.107(e)(4) requires information pertaining to efforts undertaken to maximize small business participation as [prime] contractors and subcontractors, respectively. The contracting office used a variety of methods to communicate the requirements of the CCN to small businesses. An RFI was issued on November 24, 2015 that requested capability statements and responses to specific questions regarding CCN requirements. The RFI also announced an Industry Day where VA officials discussed the requirements within CCN. VA also allowed interested vendors to schedule one-on-one sessions in conjunction with the Industry Day. Finally, VA posted a list of Industry Day attendees to FBO.gov to promote small business teaming.

A draft performance work statement (PWS) was posted to FBO.gov on February 2, 2016 to allow all interested parties to understand the entire scope and magnitude of services sought through the CCN acquisition. This posting was followed by a draft PWS conference on April 8, 2016. VA officials answered questions from interested parties during the PWS conference. Finally, a webinar was held on August 26, 2016. VA officials discussed PWS requirements and answered questions from industry.

The CCN solicitation will include a list of services that VA considers realistic for small business subcontracting participation. The list will include urgent/emergent prescription fulfillment services. The suggested list and minimum requirements for small business subcontracting goals will maximize small business participation. The CCN solicitation will also include an evaluation preference for subcontracting with VOSBs and SDVOSBs.

2. FAR 7.107(e)(6) requires the agency to identify alternative strategies that would reduce the scope of bundling and the rationale for not choosing those alternatives. The only alternative to bundling the requirements are listed below with the required rationale for not choosing the listed alternative.

Alternative #1. Continue to use existing small business contracts. The multiple local contracts were developed with differing requirements and many without key data and reporting requirements. The existing contracts were written to fulfill a much smaller need prior to the attention paid to access and equal benefits for Veterans by Congress and key stakeholders. This alternative will result in unequal access to retail pharmacies for Veterans that receive care through the Choice program and Veterans that receive care from VA directly. Veterans who receive care from the CCN will have access to pharmacies closer to their residence and will not have to pay first and request reimbursement from VA. This alternative would directly conflict with Public Law 114-41 and VA's plan to use a system of systems approach to deliver care to Veterans within the community. This alternative will increase dissatisfaction with VA services and potentially provide an incentive for Veterans to receive care through the Choice program as more Veterans become aware of improved access to pharmacy benefits through the Choice program. This alternative would result in lower utilization of VA physicians and facilities as more and more Veterans seek care through the Choice program. Finally, the administrative cost of maintaining multiple networks (those in CCN which are required in addition to the networks established by local VAMCs) for urgent/emergent prescription fulfillment services will reduce available funding for other Veteran healthcare services. Bundling will result in standardized requirements, lower administrative costs, lower prescription drug costs due to volume purchasing, better reporting and data availability, and increased points of access for Veterans.

Alternative #2. Develop and issue a national or regional solicitation for urgent/emergent prescription fulfillment services. This alternative would significantly delay the benefits identified with the bundled requirement. This alternative would likely result in offers that exceed a price that would be considered fair and reasonable. VA has numerous existing contracts with small businesses and it is clear that

prices for the same service through an unrestricted competition would result in significant savings to VA. This alternative would also result in overlapping capability since the urgent/emergent prescription fulfillment requirement must still exist for CCN providers. Overlapping capability will reduce available funding for other Veteran healthcare services. Overlapping capabilities would also increase complexity of the program for Veterans and result in inconsistent administration of benefits to Veterans which is contrary to the provisions in Public Law 114-41.

In accordance with FAR 7.107(e)(5), the contracting officer considered the specific benefits identified above sufficient to justify bundling. The contracting officer acknowledges that all existing contracts with small businesses will be phased out to coincide with implementation of the CCN requirements. Use of small businesses will be maximized through monitoring compliance with accepted subcontracting plans.

Determination

Based upon the above findings, it is hereby determined that bundling is necessary and justified. The benefits that are expected to be achieved through bundling are significant but not expected to meet the threshold established in FAR 7.107(b)(2). This action is critical to the agency's mission success, and the acquisition strategy provides for maximum practicable participation by small business concerns.

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