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|  | **State of South Carolina**  **Request for Proposal**  **Amendment Number Four** | Solicitation Number:  Date Issued:  Procurement Officer:  Phone:  E-Mail Address: | PEBA0202018RFP  10/7/2019  David H. Quiat  803.737.0562  [dquiat@](mailto:dquiat@)mmo.sc.gov |

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| DESCRIPTION: **Benefits Administration System**    USING GOVERNMENTAL UNIT: **South Carolina Public Employee Benefit Authority** |

SUBMIT OFFER BY (Opening Date/Time):   **10/23/2019 11:00 AM**

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| *The Term “Offer” Means Your “Proposal”. Your offer must be submitted in a sealed package. The Solicitation Number & Opening Date should appear on the package exterior. See the clause entitled “Submitting Your Offer or Modification.”* |

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

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| MAILING ADDRESS:  SFAA, Div. of Procurement Services, MMO  PO Box 101103 Columbia SC 29211 | PHYSICAL ADDRESS:  SFAA, Div. of Procurement Services, MMO  1201 Main Street, Suite 600 Columbia SC 29201 |

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| AWARD & AMENDMENTS | Award will be posted on **12/10/2019.**  The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <https://procurement.sc.gov/vendor/contract-opps/other-solicitations/peba> |

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| You must submit a signed copy of this form with Your Offer. By submitting a proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of one hundred twenty (120) calendar days after the Opening Date.    (See the clause entitled “Signing Your Offer.”) | | |
| NAME OF OFFEROR      (Full legal name of business submitting the offer) | | Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc. |
| AUTHORIZED SIGNATURE    (Person must be authorized to submit binding offer to contract on behalf of Offeror.) | |  |
| TITLE    (Business title of person signing above) | | STATE VENDOR NO.    (Register to obtain S.C. Vendor No. at www.procurement.sc.gov) |
| PRINTED NAME    (Printed name of person signing above) | DATE SIGNED | STATE OF INCORPORATION    (If you are a corporation, identify the state of incorporation.) |

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| OFFEROR’S TYPE OF ENTITY:   (Check one)                                                                   (See “Signing Your Offer” provision.)      \_\_\_ Sole Proprietorship                                  \_\_\_ Partnership                                  \_\_\_ Other\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_      \_\_\_ Corporate entity (not tax-exempt)          \_\_\_ Corporation (tax-exempt)            \_\_\_ Government entity (federal, state, or local) |

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| HOME OFFICE ADDRESS (Address for offeror’s home office / principal place of business) | NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.)          \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Area Code  -  Number  -  Extension                    Facsimile    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  E-mail Address |

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| PAYMENT ADDRESS (Address to which payments will be sent.)            \_\_\_\_Payment Address same as Home Office Address  \_\_\_\_Payment Address same as Notice Address   **(check only one)** | ORDER ADDRESS (Address to which purchase orders will be sent)            \_\_\_\_Order Address same as Home Office Address  \_\_\_\_Order Address same as Notice Address   **(check only one)** |

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| ACKNOWLEDGMENT OF AMENDMENTS  Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See the clause entitled “Amendments to Solicitation”) | | | | | | | |
| Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date |
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| DISCOUNT FOR PROMPT PAYMENT  (See the clause entitled “Discount for Prompt Payment”) | 10 Calendar Days (%) | 20 Calendar Days (%) | 30 Calendar Days (%) | \_\_\_\_\_Calendar Days (%) |

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**REQUEST FOR PROPOSAL (RFP)**

**SOLICITATION NUMBER PEBA0202018RFP**

**RESPONSES TO FOLLOW-UP QUESTIONS**

The following questions were submitted as follow-up questions, October 1, 2019 (11:00 am).

**Q.1.** **Follow-up to Amendment # 3, Question # 13**RFP Section 4.1.7.1(a) requests the inclusion of terms of service required by the Government Cloud provider. Where those terms of service may have provisions that modify or conflict with certain terms in the RFP, including in RFP Section 3.2, will you describe the process of how and when PEBA will resolve conflicts between the RFP and the Cloud Vendor Terms of Service Agreement?

**Response: Offerors should submit proposals in accordance with all requirements and/or terms outlined in the Request for Proposal and Amendments Number One, Two, Three and Four. PEBA considers any proposal which includes provisions that modify or conflict with requirements and/or terms in the Request for Proposal and Amendments Number One, Two, Three and Four RFP as unacceptable and the proposal may be deemed as nonresponsive.**

**Q.2.** **Follow-up to Amendment # 3, Question # 35**We note that certain provisions of the RFP appear conflicting relative to approach to procuring third party software. Can PEBA confirm that (a) PEBA is willing to execute license agreements directly with the necessary third party software vendors as contemplated in 6.3.1(c), and (b) accordingly, that the use and performance of the third party software would be pursuant to those license agreements, and (c) that PEBA would be open to reconciling the RFP terms to reflect the above as part of the “contract clean up” that was referenced in the bidders conference?

**Response: Please see the response to question number 1.**

**Q.3.** **Follow-up to Amendment # 3, Question # 35**Regarding RFP Section 3.18, can PEBA clarify the following:

1. What does “resolved” mean in the following Service Level: “Percentage of Help Desk call resolved within 24 hours”? Can PEBA confirm it is intended to mean the service request has been closed in the service ticketing system, as the request has either been (a) resolved with the end-user, (b) assigned to level 2 support or (c) a Defect has been opened in the Defect tracking system? Can PEBA confirm the intent to measure this service level on a monthly basis?

2. Can PEBA clarify how the “service interruption” performance guarantee is measured? This seems to be intended as an uptime metric, but then also speaks to a response time measure that doesn’t map to any of the prior Service Levels.

3. Can PEBA confirm that the Contractor will be excused from a failure to meet any Service Level, and will not owe any credits, where the failure is caused by factors outside of Contractor’s control? We note that RFP Section 3.18.1 speaks to this, but that section is limited to the availability metric.

**Response: PEBA does not consider these questions to be follow-up questions to Amendment Number Three, Question Number 35.**

**Q.4.** **Follow-up to Amendment # 3, Question # 35**Regarding RFP Section 3.19, can PEBA clarify the following?

1. Under RFP Section 3.19.1, can PEBA confirm that Contractor’s obligations of compliance apply only to the extent applicable to Contractor in its performance of the services?

2. Under RFP Section 3.19.1, can PEBA confirm that a Type 2 SOC 2 report covering Contractor’s infrastructure would satisfy this requirement and that the provision to PEBA of a copy of this report would be protected from disclosure to any other entity? If additional audits would be required, can PEBA clarify what those would be, who would conduct them, and what the process would be for mutually agreeing to the scope and timing for those audits? For example, we would not expect that PEBA would need to audit or inspection Contractor’s software, hardware (including laptops or other devices), workpapers or access Contractor information/computer systems, if Contractor provides the SOC2 report and otherwise makes individuals available to answer questions and meet with PEBA to discuss the results.

3. Can PEBA confirm that the obligations under RFP Section 3.19.5 apply only to networks and sites maintained by Contractor and house PEBA sensitive data and that this was not intended to extend, for example, to any PEBA or PEBA third party network or systems?

**Response: PEBA does not consider these questions to be follow-up questions to Amendment Number Three, Question Number 35.**

**Q.5.** **Follow-up to Amendment # 3, Question # 35**Regarding RFP Sections 6.1.1, 6.1.5 and all other RFP sections that reference transfer of title or license grants, we expect that licenses and IP rights transfers are subject to payment for the applicable license/Deliverable. Can PEBA confirm this expectation?

**Response: PEBA does not consider this question to be a follow-up question to Amendment Number Three, Question Number 35.**

**Q.6.** **Follow-up to Amendment # 3, Question # 88**We note that PEBA agreed to remove RFP Section 6.1.2, leaving escrow per RFP Section 6.1.3 as the only option to provide PEBA with the requested Source Code Materials. However, if an offeror was willing to provide all Source Code Materials directly to PEBA, would PEBA agree to that as an alternative to the escrow requirement in RFP Section 6.1.3?

**Response: It would be acceptable for the Contractor to provide directly to PEBA all the information and materials required to be deposited into an escrow account in Section 6.1.3 under the same terms as the same information and materials would be deposited into an escrow account and updated.**

**Q.7.** **Follow-up to Amendment # 3, Question # 35**Regarding RFP Section 6.3.3, can PEBA confirm that payments under this Contract will be subject to [S.C. Code Ann. § 11-35-45?](https://advance.lexis.com/api/document/collection/statutes-legislation/id/8TYW-5JW2-8T6X-70F7-00000-00?cite=S.C.%20Code%20Ann.%20%C2%A7%209-4-10&context=1000516)

**Response: PEBA does not consider this question to be a follow-up question to Amendment Number Three, Question Number 35.**

**Q.8.** **Follow-up to Amendment # 3, Question # 35**Will PEBA agree to the following clarifications relative to change orders and delays?

1. Under RFP Section 6.3.8, clarify that the Contractor is not obligated to perform changes to the contract scope absent an agreed change order to address any impacts (scope, schedule, price) associated therefore.

2. Under RFP Section 6.4.3, clarify that if delays are jointly caused by both PEBA and Contractor, the Contractor will be entitled to adjustments to schedule and charges that is limited to the proportional fault of PEBA as compared to the total delay.

**Response: PEBA does not consider these questions to be follow-up questions to Amendment Number Three, Question Number 35.**

**Q.9.** **Follow-up to Amendment # 3, Question # 35**Regarding the warranty obligations under RFP Section 6.7, will PEBA make the following clarifications?

1. Add the following industry standard exceptions to the end of RFP Section 6.7.2:

Contractor shall have no obligation to make warranty modifications or provide any associated warranty services under this Section 6.7.2 or Section 6.7.3, below, attributable to any of the follow: (i) modification of the BAS System other than by Contractor or its subcontractors, or use thereof in a manner not contemplated by this Agreement; (ii) PEBA’s failure to use any corrections or modifications made available by Contractor; (iii) a failure to fulfill any PEBA obligation under the Agreement with respect to such BAS System; (iv) PEBA’s failure to reasonably cooperate with Contractor in the resolution of the Defect; (v) the quality or integrity of data from other automated or manual systems with which the BAS System interfaces; (vi) hardware or software that is supplied by a third party to PEBA; or (vii) hardware, software, networks or systems not a part of the Deliverable which is inadequate to allow proper operation of the Deliverable.

2. Regarding RFP 6.7.16 - modify the language as follows to clarify that the intent is limited to changes in federal requirements: “… federal law or other federal legal requirements…” We understand that the change control process will be followed to identify and compensate the contractor for applicable impacts to the BAS program scope resulting from State law changes to PEBA administration.

3. Regarding RFP Section 6.7.17, clarify that this warranty applies during the Warranty Period and is subject to the process described in RFP Sections 6.7.1-6.7.3.

**Response: PEBA does not consider these questions to be follow-up questions to Amendment Number Three, Question Number 35.**

**Q.10.** **Follow-up to Amendment # 3, Question # 35**Regarding termination:

1. We request an exception to RFP Section 6.7.19, if PEBA materially breaches the Contract and fails to cure the material breach within sixty (60) days following written notice by Contractor of the breach. Is this acceptable to PEBA?

2. Regarding RFP Section 6.11.2(c), can PEBA clarify how the Contractor would be compensated for the continued use of the BAS System following termination? And confirm the intent is that these terms and conditions of the Contract would continue to apply during that period of time?

3. Similar to subsections (ii) and (iii), we request that RFP Section 6.11.5(a)(1)(i) be subject to the cure period described in paragraph (a)(2) of the same clause. Is this acceptable to PEBA?

**Response: PEBA does not consider these questions to be follow-up questions to Amendment Number Three, Question Number 35.**

**Q.11.** **Follow-up to Amendment # 3, Question # 35**Regarding RFP Section 6.9, are the following changes acceptable to PEBA?

1. RFP Section 6.9.2(d):

Prior to commencement of the work, the Contractor will furnish the State with original certificates and amendatory blanket endorsements. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning will not waive the Contractor’s obligation to provide them. The State reserves the right to require blanket endorsements required by this section, at any time.

2. RFP Section 6.9.3(e):

Coverage will have limits no less than ten million ($10,000,000.00) dollars per claim for wrongful act and ten million ($10,000,000.00) dollars aggregate. The Contractor’s Information Security and Privacy policy is embedded in their Professional Liability coverage form.

3. RFP Section 6.9.3(h):

4. RFP Section 6.9.3(j):

Prior to commencement of the work, the Contractor will furnish the State with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer before work commences. However, failure to obtain the required documents prior to the work beginning will not waive the Contractor’s obligation to provide them. The State reserves the right to require blanket endorsements required by this section, at any time.

**Response: PEBA does not consider these questions to be follow-up questions to Amendment Number Three, Question Number 35.**

**Q.12.** **Follow-up to Amendment # 3, Question # 35**Can PEBA clarify the how the term in RFP Section 6.11.1 relates to the initial term and indefinite renewal of the Maintenance and Support described in RFP Section 6.2.3? Is it correct that renewal of the Maintenance & Support beyond the Maximum Contract Term would require mutual agreement, including as to pricing?

**Response: PEBA does not consider these questions to be follow-up questions to Amendment Number Three, Question Number 35.**

**Q.13.** **Follow-up to Amendment # 3, Question # 35**Regarding Attachment 4 (Business Associate Agreement), will PEBA make the following clarifications?

1. Will PEBA confirm that once executed, the BAA becomes attached to and part of the overall contract?

2. Will PEBA confirm that access to the Business Associate’s books and records by Covered Entity under Section 2(d) is only to the extent required by applicable law?

3. Will PEBA confirm that the reference to “information” under Section 2(i) is intended to mean Electronic PHI?

4. Will PEBA clarify that the Business Associate would provide notifications under Section 2(j) directly to individuals if (a) the notifications were required by law, and (b) applicable law also requires that the notifications be provided directly by the Business Associate, and otherwise PEBA would provide the notifications, and the Business Associate would reimburse PEBA for the costs associated with those notifications that are required by law?

5. Will PEBA confirm that PEBA will not disclose any PHI to Business Associate if such disclosure would violate the HIPAA Rules, HITECH Act or any applicable federal or state law or regulation?

**Response: PEBA does not consider these questions to be follow-up questions to Amendment Number Three, Question Number 35.**

**Q.14.** **Follow-up to Amendment # 3, Question # 91**Was it PEBA’s intent in the prior edits not to include the breach of confidentiality indemnification in the 3x limitation of liability cap? Will PEBA clarify the Indemnification and Limitation of Liability obligations as shown below?

1. Section 6.7.18(c) (first paragraph):

**Contractor’s Liability.** Except for (i) damages that arise from Contractor’s breach of its confidentiality obligations or resulting from Contractor’s bad faith or willful misconduct; or (ii) Contractor’s indemnification obligations set forth in Sections 6.8.2, 6.8.3 and 6.8.4, the Parties agree the Contractor’s liability for all claims, liabilities (including liabilities expressly set forth elsewhere in this Contract), and expenses relating under this Contract will be limited to an aggregate amount equal to two (2) times the awarded Contract value, including the amount posted on the Intent to Award and any modifications due to Change Orders. For damages that arise from Contractor’s breach of its confidentiality obligations and for Contractor’s indemnification obligations under Section 6.8.3, the Parties agree the Contractor’s liability under this Contract will be limited to an amount equal to three (3) times the awarded Contract value, including the amount posted on the Intent to Award and any modifications due to Change Orders. In no event will this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.

2. Section 6.8.3(a):

Without limitation, Contractor will defend, indemnify, and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter “action”) of any character (and all related damages, settlement payments, attorneys’ fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection with an unauthorized disclosure of Government Information (as defined in the clause titled Information Security - Definitions) by any act or omission of Contractor, its Subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, but only if the act or omission constituted a failure to perform some obligation imposed by the Contract or the law.

3. Section 6.8.3(c):

Notwithstanding any other provision, Contractor’s obligations pursuant to this clause are subject to the limitation of liability as provided in Section 6.7.18(c). Contractor’s obligations under this clause will survive the termination, cancellation, rejection, or expiration of the Contract. This provision will be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

4. Section 6.8.4(c):

Contractors obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor’s compliance with specifications furnished by the State unless Contractor knew its compliance with the State’s specifications would infringe an IP right, or (ii) that the claim is caused by Contractor’s compliance with specifications furnished by the State if the State knowingly relied on a third-party’s IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor, or (iii) that the claim is caused by (A) modification of an acquired item other than by Contractor or its subcontractors, or use thereof in a manner not contemplated by this Agreement, (B) the failure of the State to use any corrections or modifications made available by Contractor, or (C) the use of the Deliverable in combination with any platform, product, network or data not provided by Contractor.

**Response: PEBA does not accept these revisions.**

**Q.15.** **Follow-up to Amendment # 3, Question # 13**

We understand it is in PEBA’s best interest and desire for the selected contractor to be responsible for the implementation of the solution to meet the RFP requirements. Relative to the cloud managed services, would PEBA be willing to discuss other options, besides a sub-contractor arrangement, where the selected contractor has contractual responsibility for the cloud services without requiring a sub-contracting arrangement with the cloud hosting vendor?

**Response: PEBA does not consider this question to be a follow-up question to Amendment Number Three, Question Number 13.**

**Q.16.** **Follow-up to Amendment # 3, Question # 8**Please provide some additional information regarding the legacy systems. Is there a further breakdown of the code inventory between Retirement and Insurance applications by functional area? Are there any additional technologies other than Natural/Adabas that constitute the Retirement and Insurance applications?

**Response: There is no further breakdown available.**

**Q.17.** **Follow-up to Amendment # 2, Question # 62**Can PEBA extend the opening date and time for submission of proposals until 11/18/19 to align proposal elements to answers provided in Amendment #3 and the future Amendment #4 expected on 10/8/19?

**Response: No.**