

Attachment 8 – Questions and Answers

The following questions were submitted in writing by Vendor A. (Answers follow.)

1. Please provide the rate history of the plan over the last five years.

A: See the rate information provided as Attachment 7.

2. Part 3 – Scope of Work: In Claims Processing, item f., would the selected Contractor have to take over administration of BLTD claims on September 1, 2020? If so, approximately how many claims would that entail?

A: Yes. See claims info.

3. Part 3 – Scope of Work: Claims Processing, item e., Would PEBA agree to semi-annual billing and collection from employers of the FICA and Medicare payments made by Contractor on their behalf?

A: Yes.

4. Part 7 – Terms and Conditions – A. General, 7.1: By way of clarification, would PEBA agree that this consent requirement only applies to delegation of performance obligations solely and exclusively for PEBA?

A: No. The consent requirement applies to the Contractor's assignment of the Contract, its rights, obligations, or any other interest arising from the Contract, or the delegation of its performance obligations under the Contract.

5. Part 7 – Terms and Conditions – A. General, 7.4: Will PEBA agree that the selected Contractor's Supplemental Group LTD policy and the State's Basic LTD plan are made part of this Contract? That the terms of the group insurance policy and plan will govern eligibility for insurance and benefits, and the Contractor's right to underwrite and terminate its group insurance policy?

A: See Clause 7.4 Contract Documents & Order of Precedence for what forms the contract. PEBA determines eligibility.

6. Part 7 – Terms and Conditions – A. General, 7.6 Disputes: By way of clarification, would PEBA agree that this applies to disputes between the parties and not disputes brought by claimants?

A: Yes.

7. Part 7 Terms and Conditions – B. Special, 7.33 Default, part (e): Agreed as to the Basic LTD records.

a. Will PEBA agree that all proprietary business records created in the ordinary course of business including, but not limited to sales, underwriting and claim files remains the property of the selected Contractor?

A: All information created for PEBA by Contractor, provided to Contractor by PEBA, or originating from PEBA and acquired or accessed by Contractor as a result of the Contractor's work under the Contract remains the property of PEBA, including participant information and BLTD claims files.

b. Will PEBA agree that the Contractor's obligation to provide copies of records be subject to applicable law and the selected Contractor's confidentiality policies?

A: No.

c. Will PEBA agree that any intellectual property and associated ownership rights that the selected now holds or develops in the future shall remain the property of the selected Contractor?

A: Yes.

8. Part 7 – Terms and Conditions – B. Special, 7.36 Lawsuit Notification and Cooperation: Contractor will notify the State of any class action lawsuits asserted or brought against us relating to our Contract with the State. We will provide such data, information, and documents subject to applicable law. Is this acceptable to PEBA?

A: No. However, PEBA does not require notification of appeals on denials of SLTD benefits unless the appeal contains allegations of wrongdoing by or liability on behalf of PEBA.

9. Part 7 – Terms and Conditions – B. Special, 7.42 Information Use and Disclosure, part (b): Does PEBA agree that Contractor may disclose information at the request of the person about whom the information relates (i.e. the claimant) without notifying the using governmental unit?

A: Yes.

10. Part 7 – Terms and Conditions – B. Special, 7.42 Information Use and Disclosure, part (e): Does PEBA agree that the terms “subcontractor” and “third party” applies to those entities with whom Contractor contracts to provide services solely and exclusively to the State?

A: No. It applies to all entities with whom the Contractor contracts/subcontracts that provides services to PEBA under this contract.

11. Part 7 – Terms and Conditions – B. Special, 7.42 Information Use and Disclosure, part (f): Does PEBA agree that Contractor may retain records beyond termination of the Contract as required with applicable law and consistent with Contractor’s Records Retention Policies and Procedures?

A: Yes, provided the Contractor informs PEBA which information will be retained and pursuant to which law. Please provide your records retention policy related to PEBA. Upon deletion, records must be destroyed in line with the requirements set forth in the contract.

12. Part 7 – Terms and Conditions – B. Special, 7.42 Information Use and Disclosure, part (h): Contractor requests three business days after discovery to provide notification. Contractor will cooperate with the State to provide the remedies and needed and mutually agreed upon under the circumstances, which may include identity theft protection, payment of fines/penalties, or reimbursement of communication costs. Is this acceptable to PEBA?

A: No.

13. Part 7 – Terms and Conditions – B. Special, 7.45: Would it be permissible for a worker to be offshore, but who can only access data through Contractor’s system, so long as the data itself always remains onshore within the US? This arrangement is consistent with industry best practices.

A: Offshore contractors can access sanitized data and may also access systems and system code that is not considered to be PII and/or PHI. Contractors outside the United States cannot access PEBA information that is classified as PII/PHI. See paragraph 7.41.

14. Part 7 – Terms and Conditions – B. Special, 7.50 Pricing Data – Audit – Inspection:

a. Will PEBA agree that any audits by PEBA or a selected third party auditor shall be subject to reasonable negotiation between PEBA and the selected Contractor, including an agreement that no competitor of the selected Contractor shall be an acceptable third party auditor?

A: PEBA will attempt to negotiate any audit, but the terms of this clause and Section 11-35-2220 of the SC Consolidated Procurement Code controls.

b. Will PEBA agree that the selected Contractor’s obligation to retain records is only subject to applicable law and the Contractor’s records retention policies based on applicable law?

A: No.

c. Will PEBA agree that the selected Contractor is only required to extend this provision to subcontractors that the Contractor retains to provide service solely to PEBA?

A: No.

15. Part 7 – Terms and Conditions – B. Special, 7.52: Our privacy policy is in compliance with applicable law. Would PEBA agree that handling data in this manner is not in violation of this clause?

A: Paragraph 7.52 prohibits the Contractor from requiring participants to agree to additional policies or terms and from offering additional services to participants. It does not address the Contractor’s handling of data.

Proposed Deviations and Clarifications

16. 7.31 Contractor’s Liability Insurance – Information Security and Privacy:

We propose the following redline edits:

(a) Without limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A-: VII, and maintain for the duration of the contract, a policy or policies of insurance

against claims which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible.

(b) Coverage must include claims for:

(i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, ~~worms, logic bombs, etc.~~, into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;

(ii) privacy risks, including (A) failure to properly handle, manage, store, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations;

(iii) contractual liability for the contractor's obligations described in the clauses titled "Indemnification - Third Party Claims – Disclosure Of Information" and "Information Use And Disclosure;" and

(iv) errors, omissions, or negligent acts in the performance, by the contractor or by any entity for which the contractor is legally responsible, of professional services included in the work.

(c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged ~~infringement of intellectual property rights~~, invasion of privacy, as well as advertising, media and content offenses.

~~(d) — If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)~~

(e) Coverage shall have limits no less than five million (\$5,000,000.00) dollars per occurrence and ten million (\$10,000,000.00) dollars aggregate.

(f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.

(g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims- made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.

~~(h) — PEBA and its officers, officials, employees, and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.~~

(i) For any claims related to this Contract, the insurance coverage required by

this clause shall be primary insurance as respects PEBA and its officers, officials, employees, and volunteers of any of them. Any insurance or self-insurance maintained by PEBA and its officers, officials, employees, and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(j) Prior to commencement of the work, the Contractor shall furnish PEBA 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 shall not waive the Contractor's obligation to provide them. PEBA reserves the right to require complete, certified copies of all required insurance policies, including policy declarations and any endorsements required by this section, at any time.

(k) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify PEBA immediately upon receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced.

(l) Contractor hereby grants to PEBA a waiver of any right to subrogation which any insurer of said Contractor may acquire against PEBA by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not PEBA has received a waiver of subrogation endorsement from the insurer.

(m) Any deductibles or self-insured retentions must be declared to and approved by PEBA. PEBA may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

A: PEBA does not accept the redline edits.

17. 7.33 Default, part (b): Contractor does not agree to be responsible to pay for replacement coverage (the difference between the contract and purchase price) or the cost to obtain replacement coverage. We also do not agree that charges can be deducted from the existing premium due.

A: Offeror did not ask a question; however, PEBA declines to waive this material requirement of the RFP. See the information under "Statement of Acceptance" in paragraph 5.1.2, Executive Summary.

18. 7.35 Illegal Immigration: Contractor agrees to this provision as it relates to "subcontractors" provided the term in this provision applies to those entities with whom Contractor contracts to provide services solely and exclusively to the State.

A: It applies to all entities with whom the Contractor contracts/subcontracts that provides services to PEBA under this contract.

19. 7.37 Indemnification – Third Party Claims – General:

Contractor’s group insurance policies include a provision that reads:

Individuals selected by the Policyholder or by any Employer to secure coverage under the Group Policy or to perform their administrative function under it, represent and act on behalf of the person selecting them, and do not represent or act on behalf of Contractor. The Policyholder, Employer and such individuals have no authority to alter, expand or extend our liability or to waive, modify or compromise any defense or right we may have under the Group Policy. The Policyholder and each Employer hereby release, hold harmless and indemnify Contractor from any liability arising from or related to any negligence, error, omission, misrepresentation or dishonesty of any of them or their representatives, agents or Employees.

Our group insurance policies do not contain a provision providing indemnification running from the Contractor to the policyholder. However, Contractor will agree to indemnify The State of South Carolina for any negligent, reckless or willful acts of the Contractor’s employees or officers in the performance of this contract through a separate contract or administrative agreement.

A: Offeror did not ask a question; however, PEBA does not accept that limitation. See the information under “Statement of Acceptance” in paragraph 5.1.2, Executive Summary.

20. 7.37 Indemnification – Third Party Claims – Disclosure of Information: Agreed, if this section is revised to say “...they may be liable, arising out of this Contract, regardless of whether or not...”

A: Offeror did not ask a question; however, PEBA does not accept this revision because the “arising out of” limitation already exists earlier in this sentence.

21. 7.39 Information Security Definitions:

We propose the following redline edits:

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred **and such disclosure is likely to result in harm. Without limitation, the term “compromise” includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation**

imposed by this contract.

Contractor also proposes this section should exclude proprietary business records created in the ordinary course of business including but not limited to sales, claims, marketing and underwriting files.

A: PEBA does not accept the redline edits.

22. 7.43 Information Use and Disclosure – Standards: We agree to abide by applicable privacy, confidentiality, security and breach notification laws and regulations.

A: PEBA intends for the Contractor to follow the terms and conditions as written for section 7.43. See the information under “Statement of Acceptance” in paragraph 5.1.2, Executive Summary.

23. 7.47 Price Adjustments: Contractor reserves the right to negotiate contract changes. Changes in the group insurance policy are subject to the terms of the policy and Contractor’s normal underwriting practices. If the plan is changed by amendment or by law, or if there is a significant change in the size of the group, we reserve the right to re-rate the group. At renewal, rates are developed using the group’s experience.

A: Rates must be fixed and guaranteed through the initial term. Increase may be requested 1/1/2022, but cannot exceed the CPI for the previous 24 months and must be supported by actuarial experience.

24. 7.49 Price Adjustments – Limited by CPI “Other Goods & Services”: Contractor reserves the right to negotiate contract changes. Changes in the group insurance policy are subject to the terms of the policy and Contractor’s normal underwriting practices. If the plan is changed by amendment or by law, or if there is a significant change in the size of the group, we reserve the right to re-rate the group. At renewal, rates are developed using the group’s experience.

A: Rates must be fixed and guaranteed through the initial term. Increase may be requested 1/1/2022, but cannot exceed the CPI for the previous 24 months and must be supported by actuarial experience

- 25. Attachment 5 – Business Associate Agreement: Contractor will comply with HIPAA to the extent it is applicable. Our preference is to not sign a BAA. However, we are open to signing if required by the State so long as we are able to negotiate verbiage to align with our processes and obligations under the law.**

The HIPAA Privacy and Security rules define “covered entities” as health plans, health care clearinghouses and certain health care providers. “Health plan” is defined to include an individual or group plan that provides or pays the cost of medical care, including dental and vision insurance. Health plan does not include disability, life or AD&D insurance. Consequently, Contractor is not a covered entity or a business associate in relation to our life and disability products and services. Meaning, the HIPAA privacy and security rules do not apply to the coverage and services quoted on. Accordingly, we are not required to nor will we agree to comply with HIPAA with respect to our life and disability insurance products.

Contractor takes seriously our obligation to protect personal information received in connection with insurance transactions. We comply with applicable federal and state laws addressing privacy and do distribute annually to our policyholders our Privacy Policy.

- A: PEBA agrees that life and disability insurance products are not covered under HIPAA. However, the LTD Contractor’s responsibilities regarding the incapacitated child determinations is in furtherance of PEBA’s health care operations and thus requires the Contractor to sign a BAA. PEBA has attached an amended BAA for the portion of products and services that is covered under HIPAA.**

The following questions were submitted in writing by Vendor B. (Answers follow.)

- 26. Given that data will be provided after the window for questions closes, will there be any opportunity to ask clarifying questions once the data is received?**

- A: Yes. Follow-up questions based on data received are due by COB on Thursday, October 17, 2019.**

- 27. Will questions from all carriers be consolidated and responses shared with all bidding carriers?**

- A: Yes. See clause 1.21 Questions from Offerors.**

28. Please provide any existing performance guarantees.

A: The Offeror is expected to propose performance guarantees along with any specifically detailed in the RFP.

29. As was required in previous SC PEBA RFPs and as noted as current carrier industry standards, please confirm that the State will be requiring, as a minimum mandatory requirement, that carriers be able to provide a SOC 2 Type 2 report.

A: Offerors must have and submit a SOC 1 Type 2 report. A SOC 2 Type 2 report is preferred, but not required.

30. Can you describe the appeals coordination process between PEBA and your current carrier for the BLTD claims? What steps does your current carrier handle and what information do they provide to you?

A: Once PEBA's Insurance Appeals Division (IAD) receives an appeal from a subscriber or their authorized representative, the IAD emails the Contractor to confirm the appeal is ready for PEBA's review. If the request is not ready for PEBA's review, then the Contractor reviews the request and issues a decision directly to the subscriber or their authorized representative.

If the request is ready for PEBA's review, the Contractor confirms and begins preparing the file information. The file information is in a bookmarked PDF format. The file information consists of:

- A cover letter confirming the subscriber's coverages, reasons for the Contractor's denials, and what the subscriber is appealing. The cover letter also confirms whether or not the subscriber has been awarded Social Security Disability Benefits and South Carolina Retirement System disability retirement benefits.
- An index with the name and page number of each document.
- All of the information submitted to the Contractor. This includes all calls, emails, letters, medical records, and any other financial, vocational, or medical documentation.
- All of the reviews conducted by the Contractor. This includes copies of the contents of independent medical and vocational reviews, along with documentation of their credentials.
- All of the communications sent from the Contractor to the subscriber, their authorized representative, or any other people or entities involved in the subscriber's request.

Once the Contractor has prepared the file information, the Contractor emails the file to the IAD. The IAD then begins the process of preparing the file for review by its designee. If the IAD, designee, or PEBA needs any additional information or clarification, they may contact

the Contractor throughout PEBA's appeal process. When PEBA issues its determination, a copy is sent to the carrier.

After PEBA issues a determination, the subscriber may appeal to the Administrative Law Court. If the subscriber appeals to the Administrative Law Court, the IAD emails the Contractor to confirm the assistance of legal counsel. During the appeals process at the Administrative Law Court or at a higher-level court if appealed, the Contractor continues to assist with providing information as requested by counsel and PEBA.

In particular, each month the IAD conducts an audit and requests confirmation from the Contractor about the status of each open request. On an annual basis, the Contractor provides an update to PEBA about its trends and data.

31. Is the ASO plan an ERISA plan?

A: No.

32. Please provide copies of all LTD plan documents, including the State Health Plan with the criteria for determining if a covered dependent child is eligible to continue coverage in the medical program.

A: Both the LTD and SLTD certificates were posted with the RFP. Please see the following link for the State Health Plan: <http://peba.sc.gov/assets/planofbenefits.pdf>

33. Please confirm that if answers to carrier questions are not clear, that carriers can ask follow up questions?

A: Yes, but only as it relates to the latest Amendment.

34. As was found acceptable in previous SC PEBA RFPs, namely the 2015 Dental and Disability RFPs, please confirm that in lieu of completing the Security Questionnaire, that carriers could provide a SSAE-16 SOC 2 Type 2 report from an independent auditor.

A: No.

35. As was found acceptable in previous SC PEBA RFPs, namely the 2018 Life RFP, please confirm that the requirements of HIPAA do not apply to the coverages requested, and therefore, the Business Associate Agreement included in Part 8, Attachment 5 (pages 64-69), would not be required? We would call to the State’s attention that disability income insurance is specifically excepted from the definition of “health plan” by the HIPAA Administrative Simplification regulations, which specifically exclude from the definition of a “health plan” any policy, plan, or program to the extent that it provides, or pays for the cost of, excepted benefits, which are listed in section 2791(c)(1) of the Public Health Service Act, 42 U.S.C. 300gg-91(c)(1). See 45 CFR 160.103. <https://www.hhs.gov/hipaa/for-professionals/faq/364/which-insurances-are-covered-under-hipaa/index.html>

A: PEBA agrees that life and disability insurance products are not covered under HIPAA. However, the LTD Contractor’s responsibilities regarding the incapacitated child determinations is in furtherance of PEBA’s health care operations and thus requires the Contractor to sign a BAA. PEBA has attached an amended BAA for the portion of products and services that is covered under HIPAA.

Incapacitated Child Administration

36. Please provide submission incidence data for the incapacitated child administration.

A:	9/1/13 - 8/31/14	45
	9/1/14 - 8/31/15	67
	9/1/15 - 8/31/16	49
	9/1/16 - 8/31/17	56
	9/1/17 - 8/31/18	55

37. What does the PEBA pay to The Standard for this service?

A: This service is included as part of the admin fee.

38. Please provide information on the incapacitated child review process with your current carrier. Are they providing an initial recommendation against the criteria or ongoing recommendations (e.g., annually, every 2 years, etc.)?

A: The Contractor provides a recommendation of denial, permanent approval, or temporary approval. For the temporary approval recommendation, 1 year or 2 years are the most common recommendations. If PEBA agrees with the temporary recommendation and the subscriber meets all other requirements, they would be responsible for reapplying at the end of the recommended timeframe. If the subscriber does reapply, we will review again based on the new application.

39. Under the current incapacitated child review process, it is indicated that “the Contractor shall gather documentation from the medical provider, review it, and make a timely written recommendation to PEBA, no later than thirty-one (31) days after receipt”. Please confirm if this is receipt of the request or receipt of all necessary information. If the latter, what is the current process if all necessary information is not received?

A: The Contractor currently processes incapacitated dependent applications within 7 business days of the date all necessary information is received, including any necessary Nurse Case Manager or Physician Consultant reviews. That means they will provide the recommendation within 7 business days of the receipt of the application provided no additional information is necessary to complete the review. When the Contractor needs to request information from the subscriber prior to completing the review, the Contractor asks them to return the information within 30 days. If the subscriber is nonresponsive, the Contractor may send a follow-up request. If the subscriber remains nonresponsive, the Contractor may recommend denial on the basis of insufficient information to determine incapacitation.

LTD

40. What are the current employer contributions for each plan? We assume BLTD is fully funded by the participating entity employers while the SLTD is fully funded by individual employees through payroll deductions.

A: Please See Attachment 7 for employer contributions. Confirmed.

41. Have the employer contributions changed within the last 60 months?

A: No.

42. Have there been any plan design changes over the past 60 months? If so, please provide the details and dates of any change(s). If the rates were impacted, please provide details.

A: No.

43. Do employees in the PEBA plan participate in and contribute to Social Security?

A: Yes.

44. Please confirm the pre-ex provision is a 12/12.

A: The pre-ex provision is 6/12.

Experience and Claim Questions

45. Please provide claim data for takeover claims.

A: This information will be provided to the successful Offeror.

46. Please provide the annual claim volume for incapacitated child reviews.

A: See answer to Question 36.

47. LTD: Please provide experience data broken down between BLTD and SLTD, wherever possible.

a. Last 5 years of premium and claims experience broken out by class/plan as needed:

- **Premium**
- **Average Monthly Volume**
- **Average Monthly Lives – Eligible and Enrolled**
- **Monthly Rates or Administrative Fees**
- **Claims Paid**
- **Claim Count**
- **Paid and Incurred Analysis**

A: Please see confidential information sent under separate cover.

b. Open and Closed detailed claim listing for the experience period that includes the following:

- **Date of Disability**
- **Benefit Start Date**
- **Termination Date**
- **Date of Birth or Age at Disability**
- **Gender**
- **Monthly Gross Benefit**
- **Monthly Net Benefit**
- **Accumulated Benefits Paid**
- **Social Security Status and offset amount, if approved**
- **Claim Status (active, terminated, pending, etc.)**
- **Class/Plan indicator**
- **Reserve For Each Open Claim**

- **PERS/STRS (PEBA retirement) offset amounts for each claim (if applicable)**

A: Please see confidential information sent under separate cover.

Census Questions

48. Please provide a census file that includes the run date as well as the following key information:

- **Gender**
- **Zip Code**
- **State of Residence (if not SC)**
- **Plan Election (SLTD participation)**
- **Date of Birth**
- **Annual Salary**
- **Descriptions of abbreviations in any of the provided fields (such as "Status", "Coverage Option", etc.)**

A: Please see confidential information sent under separate cover.

Rate Questions

49. What are the current rates (or fees) for both the BLTD and SLTD plans?

A: See answer to Vendor A, Question 1.

50. Please provide any rate changes in the past 5 years along with the reason behind the rate changes (plan change vs renewal experience change)

A: The State permitted an increase in SLTD rates effective with the September 2018 renewal because of the adverse experience attributable to a change in the State's retirement disability standards to align with Social Security Disability Standards.

51. Are there any pass-through or explicit administrative charges included in the current and historical rates that were not specified in the RFP that should be included in our quote?

A: No.

52. Is a recent billing invoice available including the lives and current rates?

A: See confidential information sent under separate cover.

53. For the SLTD, do employees pay premiums on a pre-tax or post-tax basis?

A: Employees pay premiums on a post-tax basis.

54. Given that PEBA must bill participating entities each month, do you expect to pay premiums within a 30 day grace period?

A: PEBA bills each month and remits to the Contractor the amount billed. The remittance is by the 15th working day of the month. Ex. January premium remitted by January 21st

Contractual Items

Please confirm that PEBA finds the following edits acceptable:

Vendor B lists below the deviations it is submitting with respect to its response to the Request for Proposal by the South Carolina Public Employee Benefit Authority (“Customer”).

55. I. GENERAL COMMENT (INSURED)

Insurance policies (the “Group Contract”) will be issued by Vendor B in accordance with state law. The Group Contract governs the terms and conditions of the insurance coverage being provided, and, considering this, with respect Part 7.4 (page 38), the Group Contract governs in the event of any conflict with any other documents. With respect to the last sentence of Part 7.2 (page 38) and Part 7.33(a)(2) (pages 45-46), please note that there are termination provisions in the Group Contract, and we note that the Customer has the right to terminate coverage without cause.

A: Please comply with the terms as stated.

56. GENERAL COMMENT (SELF-FUNDED)

With respect to self-funded LTD business, we have an Administrative Services Agreement (“ASA”) specifically tailored to these services. A template copy of this agreement is attached to our response for your review. If awarded the business, the ASA will be the governing contractual document and we will work with you to incorporate any mutually agreed upon terms from the RFP Requirements into the ASA.

A: PEBA does not accept this restriction. The Offeror must comply with paragraph 7.4 of the RFP. See the information under “Statement of Acceptance” in paragraph 5.1.2, Executive Summary.

57. II. CERTIFICATION (INSURED AND SELF-FUNDED)

With respect to Part 1.9 (pages 8-9), given that Vendor B is a publicly-held company with hundreds of thousands of shareholders (owners), we would not be able to make the requested certifications on behalf of our “owners”, as requested by the definition of “Principals” in subsection (a)(2).

A: PEBA does not expect general shareholders owning stock in a publicly traded company to be considered “Principals,” as that term is defined in 1.9(a)(2), solely on the basis of their stock ownership. Shareholders may be considered “Principals” if they hold a role within the company that otherwise meets the definition in 1.9(a)(2).

58. III. CLAIMS SETTLEMENT (SELF-FUNDED)

With respect to Part 3.A.g. (page 19), Vendor B will make every reasonable effort to obtain PEBA approval in advance of settling program benefits litigation, and PEBA shall not unreasonably deny Vendor B authority to settle the lawsuit. For more details, please refer to the Program Benefits Litigation Section of the template sample ASA provided as part of this RFP response.

With respect to Part 5.14.A.n. (page 29), we will act in accordance with the terms of the Program in administering claims. Our standard offering is to assume responsibility for initial claim determinations and for you to retain responsibility for appeal determinations (if an appeal is provided under the terms of the Program). However, we are willing to assume the obligation of performing appeal determinations consistent with the terms of the Program, if requested. In the event of litigation, you are always responsible for the payment of Program benefits and for the payment of any legal fees and costs awarded to a Program participant. With respect to defense costs, we assume the cost of defending any litigation in which a claim determination is challenged where we are named as a defendant. If Vendor B and the Customer and/or the Program are named as defendants, we assume responsibility for the defense of the litigation but split the costs of such defense with you and/or the Program. For more details, please refer to the Program Benefits Litigation Section of the sample Administrative Services Agreement ("ASA") provided with this proposal.

A: See Clause 7.4 Contract Documents & Order of Precedence for what forms the contract. Please comply with the terms as stated.

59. IV. OVERPAYMENTS (SELF-FUNDED)

With respect to the last sentence of Part 3.H.d. “Responsibility for BLTD Benefits” (page 23) and recovering overpayments, please refer to the Program Benefits Overpayment Section of the template sample ASA provided as part of this RFP response. Given this, we propose the following revision,

d. The Contractor shall provide PEBA a monthly *Aging Accounts Receivable Report* for claims overpayments. ~~If the Contractor issues an overpayment of benefits for any reason, the Contractor will be responsible for indemnifying PEBA.~~

With respect to Part 5.14.A.o. (page 29), please refer to the Program Benefits Overpayment Section of the template sample ASA provided as part of this RFP response.

A: See Clause 7.4 Contract Documents & Order of Precedence for what forms the contract. PEBA determines eligibility. PEBA does not accept the suggested revision.

60. V. HIPAA (INSURED AND SELF-FUNDED)

With respect to Part 8, Attachment 5 (pages 64-69), Vendor B is in full compliance with all applicable privacy laws. We note that the requirements of HIPAA do not apply to the coverages requested, and therefore, a Business Associate Agreement would neither be required nor appropriate.

A: PEBA agrees that life and disability insurance products are not covered under HIPAA. However, the LTD Contractor’s responsibilities regarding the incapacitated child determinations is in furtherance of PEBA’s health care operations and thus requires the Contractor to sign a BAA. PEBA has attached an amended BAA for the portion of products and services that is covered under HIPAA.

61. VI. SUBCONTRACTORS (INSURED AND SELF-FUNDED)

With respect to delegating the Contractor’s performance obligations in Part 7.1 (page 37), we use subcontractors for various workflow activities across our entire disability book of business. Our proposal is connected to the use of these subcontractors and we would be glad to provide a list of its subcontractors utilized at the time the contract is entered into and agree to provide reasonable notice of any additional subcontractors utilized.

A: Agreed.

62. With respect to the requirement that we flow-down certain obligations to our subcontracts, Vendor B can agree to comply with these requirements with respect to third-party subcontracts entered into exclusively to perform services related to the South Carolina Public Employee Benefit Authority's LTD insurance and administrative services. As examples, we note Parts 7.35 (page 46), 7.42 (c) (page 50), and 7.50 (page 53).

A: It applies to all entities with whom the Contractor contracts/subcontracts that provides services to PEBA under this contract.

63. **VII. ATTORNEY'S FEES (SELF-FUNDED)**

With respect to Part 7.22 (page 41), we propose the following revisions,

~~In the event that PEBA brings suit or action to compel performance of or recover for any breach of any stipulation, covenant, term, or condition of this Contract, or is required to defend itself against a suit or action brought by a third party for claims related to the supplies or services acquired under this Contract, PEBA may seek attorneys' fees from the Contractor and the Contractor will pay to the State such attorneys' fees as the court may award. Contractor will, in all instances, bear its own attorneys' fees and expenses.~~

A: PEBA does not accept the suggested revision.

64. **VIII. CONTRACTOR'S LIABILITY INSURANCE**

With respect to Part 7.30 (page 43), we propose the following revisions,

(e) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify XXXX **within 30 days immediately** upon receiving any information that any of the coverages required by this section are or will be **changed**, cancelled, or **replaced**.

A: PEBA does not accept the suggested revision.

65. **IX. DEFAULT (INSURED AND SELF-FUNDED)**

With respect to Part 7.33(b) (page 45), we propose the following revision,

If, as the result of a default by Contractor, PEBA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to PEBA for any excess costs for those supplies or services.

A: PEBA does not accept the suggested revision.

66. X. LITIGATION (INSURED)

With respect to Part 7.36 (page 47), we have no practical way to notify the State within the time frame requested. We propose the following revisions,

The Contractor shall notify PEBA of any lawsuit ~~or legal claim asserted~~, brought, filed, or served against the Contractor arising out of or in connection with the goods or services acquired hereunder. Notification shall be made ~~within two (2) business days~~ promptly after the date Contractor first learns, by any means, of the ~~legal claim or lawsuit~~. The Contractor will keep PEBA apprised of all documents filed in the lawsuit, ~~and, to the extent possible, allow PEBA the opportunity to review and provide input on the Contractor's draft documents before they are filed.~~ If PEBA is made a party to the lawsuit ~~or legal claim~~, Contractor agrees to defend PEBA and pay any settlement or judgment to the extent that the allegations against PEBA concern obligations which Contractor is obligated to perform under this Agreement. The Contractor also agrees to cooperate with PEBA and provide to PEBA data, information, and documentation that Contractor maintains to perform its obligations for PEBA under this Agreement, that is necessary to pursue litigation filed by or on behalf of PEBA against any party other than the Contractor.

A: PEBA does not accept the suggested revision.

67. LITIGATION (SELF-FUNDED)

With respect to Part 7.36 (page 47), we have no practical way to notify the State within the time frame requested. With respect to the indemnification provision, Vendor B's standard Administrative Services Agreement ("ASA") for these services, a template copy of which is attached to this response to Request for Proposal for your review, specifically addresses the indemnification obligations Vendor B is willing to assume for these services. Given these facts, we propose the following revisions,

The Contractor shall notify PEBA of any lawsuit ~~or legal claim asserted~~, brought, filed, or served against the Contractor arising out of or in connection with the goods or services acquired hereunder. Notification shall be made ~~within two (2) business days~~ promptly after the date Contractor first learns, by any means, of the ~~legal claim or lawsuit~~. The Contractor will keep PEBA apprised of all documents filed in the lawsuit, ~~and, to the extent possible, allow PEBA the opportunity to review and provide input on the Contractor's draft documents before they are filed. If PEBA is made a party to the lawsuit or legal claim, whether voluntarily or involuntarily, the Contractor shall indemnify PEBA and pay all PEBA's attorney's fees incurred relating to and during the course of the lawsuit or legal claim.~~ The Contractor also agrees to cooperate with PEBA and provide to PEBA data, information, and documentation that Contractor

maintains to perform its obligations for PEBA under this Agreement, that is necessary to pursue litigation filed by or on behalf of PEBA against any party other than the Contractor.

A: PEBA does not accept the suggested revision.

68. XI. INDEMNIFICATION (INSURED)

With respect to Part 7.37 (page 47), we propose the following revisions,

Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses, or liabilities) by a third party which are arising out of or in connection with the goods or **Contractor's grossly negligent performance of the** services acquired hereunder or caused in whole or in part by any **grossly negligent** act or omission of Contractor, its Subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, ~~regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee;~~ however, **if to the extent** an Indemnitee's negligent act or omission is subsequently determined to be ~~the sole~~ a proximate cause of a suit or claim, the Indemnitee will not be entitled to indemnification hereunder. Contractor will be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause will not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph will survive termination, cancelation, or expiration of the parties' agreement. This provision will be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means PEBA, the State of South Carolina and its instrumentalities, agencies, departments, boards, political subdivisions, and all their respective officers, agents, and employees. **This provision does not apply to any action taken by PEBA or at its direction.**

A: PEBA does not accept the suggested revision.

69. INDEMNIFICATION (SELF-FUNDED)

With respect to Part 7.37 (page 47), Vendor B's standard Administrative Services Agreement ("ASA") for these services, a template copy of which is attached to this response to Request for Proposal for your review, specifically addresses the indemnification obligations Vendor B is willing to assume for these services. Vendor B is happy to discuss this issue further to address any customer concerns.

A: Please comply with the terms as stated.

70. XII. INFORMATION SECURITY (INSURED AND SELF-FUNDED)

With respect to Part 7.40 (c)(5) (page 49), we propose the following revisions,

(5) Sanitization. At a minimum, clear information on media that have been used to process government information before external release or disposal. Overwriting is an acceptable means of clearing media in alignment ~~accordance~~ with National Institute of Standards and Technology 800-88, Guidelines for Media Sanitization, at http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf.

A: PEBA does not accept the redline changes.

71. XIII. PRIVACY BREACH (INSURED AND SELF-FUNDED)

With respect to Part 7.42(h) (page 51), we propose the following revisions,

With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by Contractor, and if not (e.g., if legally required of PEBA), Contractor shall reimburse PEBA for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, and (4) pay any related fines or penalties imposed on PEBA, ~~and (5) reimburse PEBA all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use.~~

A: PEBA does not accept the redline changes.

72. The claims list we received is missing crucial data. Still missing from the claim list:

- **Offsets – Amounts, application status, and source (SS, PERS, WC, etc.)**

A: This information was provided in the offset reports submitted confidentially under separate cover.

- **Net monthly benefit**

A: This information was provided in the offset reports submitted confidentially under separate cover.

- **Something to distinguish the 90 day EP claims from the 180 day EP claims. (Originally listed as Class/Plan indicator)**

A: See information provided confidentially under separate cover.

These items are critical since The Standard's customary claim list only contains gross benefit rather than gross AND net benefits as well as offsets.

73. Also in the data delivery was premium in the aggregate- we are requesting the premium broken out by the two elimination periods along with the rate changes, plan changes, etc., so that we can adjust the paid premium to constant premium (i.e. premium adjusted to the current level).

A: See the rate history provided as Attachment 7.

74. The census data we received contains only summary data. We require a full census with a record for each employee containing all the requested data elements..

A: See confidential information sent under separate cover.

75. Is it possible to get this data in Excel?

A: See confidential information sent under separate cover.

76. Please provide a key for the codes contained in this report.

A: See confidential information sent under separate cover.

77. Is this list for open claims only or for both open and closed claims?

A: This list is for open claims only.

78. For those claims that have multiple lines, but one claim #, what does that represent?

A: Claims that have multiple lines, but one claim # means there is more than one offset type.

79. Can we get the SLTD exhibit with the 90 day EP indicator and 180 day EP indicator?

A: This information is not available in this report.

80. Census DataElements

- **Please provide a census file that includes the run date as well as the following key information:**

- 1. Gender**
- 2. Zip Code**
- 3. State of Residence (if not SC)**
- 4. Plan Election (SLTD participation)**
- 5. Date of Birth**
- 6. Annual Salary**
- 7. Descriptions of abbreviations in any of the provided fields (such as "Status", "Coverage Option", etc.)**

A: See confidential census information sent under separate cover.

The following questions were submitted in writing by Vendor C. (Answers follow.)

**81. Whether companies from Outside USA can apply for this?
(like,from India or Canada)**

A: See page 51 of the RFP documents, clause entitled 7.45 Offshore Contracting Prohibited (2015).

82. Whether we need to come over there for meetings?

A: Meetings during Contract Term are in-person meetings. Additionally, the Contractor is expected to attend, in-person, the Benefits at Work Conference in August of each year and may be requested to attend Benefits Fairs hosted by employers.

**83. Can we perform the tasks (related to RFP) outside USA?
(like, from India or Canada)**

A: See the answer to question 72.

84. Can we submit the proposals via email?

A: See page 13, clause **1.27 Submitting Your Offer or Modification.**