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## Protest Decision

**Matter of:** Metropolitan Life Insurance Company

**Case No.:** 2020-128

**Posting Date:** March 27, 2020

**Contracting Entity:** South Carolina Public Employee Benefit Authority

**Solicitation No.:** PEBA0262019

**Description:** Basic and Supplemental Long-Term Disability Insurance

### DIGEST

Protest alleging evaluator mistakes is denied. The protest letter of Metropolitan Life Insurance Company (Metlife) is included by reference. (Attachment 1)

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on materials in the procurement file and applicable law and precedents.

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<sup>1</sup> The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

## **BACKGROUND**

Solicitation Issued	09/26/2019
Amendment 1 Issued	10/31/2019
Amendment 2 Issued	11/05/2019
Amendment 3 Issued	11/13/2019
Amendment 4 Issued	11/20/2019
Intent to Award Posted	02/19/2020
Revised Intent to Award Posted	02/19/2019
Intent to Protest Received	02/27/2020
Protest Received	03/04/2020

The South Carolina Public Employee Benefit Authority (PEBA) issued this Request for Proposals under a delegation from the Chief Procurement Officer to obtain Basic and Supplemental Long-Term Disability Insurance. Proposals were received from Standard Insurance Company (Standard) and Metlife. An Intent to Award was posted to Standard on February 19, 2020. Metlife timely filed an intent to protest on February 27, 2020 and timely filed its protest on March 4, 2020. Metlife protests that, based on evaluator scores and comments for evaluation criterion 5, two of the evaluators failed to understand the superiority of its performance guarantees resulting in inappropriately low scores and an erroneous contract award.

There were six evaluation criteria published in the solicitation in relative order of importance and evaluated on a 100-point scale. The weightings for each criterion were not published in the solicitation. Evaluation criteria 5 was weighted at 6 points and provides:

5) Offeror's Performance Standards and Guarantees (Liquidated Damages). Each evaluation panel member will assign points to this criterion subjectively.

Four evaluators awarded between 1 and 6 points for criteria 5 and made written comments.

## **ANALYSIS**

Metlife puts forth three arguments as evidence that two of the evaluators failed to understand the value of its offering and the award should be overturned. First, Metlife argues that the financial impact of its performance guarantees was misunderstood. Standard proposed flat fees of \$15,000 each for 5 categories, and \$7,500 for each of their last two guarantees for a total of \$90,000 in guarantees. Metlife proposed 10% of the Basic Long Term Disability (BLTD)

Insurance fees and 2% of the Standard Long Term Disability (SLTD) Insurance premiums which, based on its total proposed pricing, would total \$460,874.40. Evaluator 1 awarded Standard 6 points and Metlife 3 points and had the following comment about Metlife's proposal:

Guarantees seem based more on volume (enrollment) than flat dollar amounts.

Commenting about Standard's proposal, Evaluator 1 observed:

Fixed amounts and Standards in accordance to promote excellence in service.

Evaluator 2 awarded Standard 6 points and Metlife 2 points and had the following comment about Metlife's proposal:

Damages are percentage based and samples are used. Payment timeliness not addressed.

Commenting about Standard's proposal, Evaluator 2 observed:

Clearly listed the required areas, amounts at issue, and reporting methods.

Evaluator 3 awarded Standard 5 points and Metlife 6 points and had the following comment about Metlife's proposal:

Performance guarantees of 2% of SLTD premiums seems preferable to a flat fee

Commenting about Standard's proposal, Evaluator 3 observed:

Annual dollars at risk approach could potentially result in fewer damages than an approach based on a percentage of premiums.

Evaluator 4 awarded both proposals 6 points for this criterion without meaningful comment.

After adding up all scores, MetLife scored a total of 340.92 points, while Standard scored a total of 349.48 points. Even if each of the evaluators had awarded MetLife a perfect "6" in the criterion for "Offeror's Performance Standards and Guarantees (Liquidated Damages), it would not have changed the result, as MetLife would have scored 347.92. Thus, any alleged "errors" are harmless and would not affect the final ranking. *See Appeal by Excent Corp.*, Panel Case No. 2013-2 ("Even if PCG had been awarded a "perfect" score of 125 points for criterion 3, it would have gained only 58 additional points and would still have lost to Excent by 15 points.").

Further, Metlife points to the scores and comments of Evaluators 1 and 2 as evidence they misunderstood the financial impact of its performance guarantees. While these comments acknowledge the difference between the two offerings, they do not indicate a misunderstanding of their impact or offer any insight into the evaluator's award determination. These evaluators' scores could also mean that MetLife was not clear in its proposal, or that hard dollars are not necessarily inferior to percent of premium.

Examining the scoring, three of the evaluators awarded standard the maximum points allowed and the fourth awarded Standard one point less than the maximum. Clearly all four evaluators felt Standard's offering was more than acceptable. Two evaluators awarded Metlife the maximum points available, but two evaluators were not as impressed with Metlife's proposal and awarded it less than half of the available points. Evaluator 2 observed that Metlife had not addressed payment timeliness. Even Evaluator 3, who gave MetLife 6 points compared to Standard's 5, characterized Standard's approach as one that "could potentially result in fewer damages." The difference between the numerical scoring is seems more indicative of the subjective nature of the evaluation process than a misunderstanding of the offering.

Metlife next points to the superiority of its proposal arguing that it proposed six performance guarantees that Standard did not address and of those performance guarantees that were simultaneously offered by both Metlife and Standard, Metlife consistently outpaced and out-guaranteed Standard. Metlife is effectively asking the CPO to re-evaluate proposals or substitute its judgment for that of the evaluators. In the *Appeal by Santee Wateree Regional Transportation Authority*, Case 2000-5, the Procurement Review Panel had the following observations about evaluator conduct and claims of superiority:

In the *Coastal Rapid Public Transit Authority* case, the Panel established the basic framework for review of challenges to evaluators' conduct:

The determination by the State who is the most advantageous offeror is final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law .... The burden of proof is on [the protestant] to demonstrate by a preponderance of the evidence that the determination in this case has such flaws .... The Panel will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields,

or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased.

The Panel has held that the evaluation process does not need to be perfect so long as it is fair. *NBS Imaging Systems, Inc.*, cited above. Further, because the Panel will not re-evaluate proposals or substitute its judgment for that of the evaluators, the Panel has held that a claim of superiority by a vendor in certain areas of evaluation, however valid, does not compel the finding that the vendor is the most advantageous to the State. See, *Protest of First Sun EAP Alliance, Inc.*, and *Protest of Coastal Rapid Public Transit Authority*, cited above.

Metlife makes no claim that the evaluators were arbitrary or capricious in their evaluation or that the evaluation violates the law. Metlife's argument, essentially, is that it offered a better product than Standard and that the CPO should re-evaluate the proposals in light of MetLife's protest. The CPO, however, will not re-evaluate the proposals nor substitute his judgement for that of the evaluators.

Finally, Metlife argues that Standard failed to meet solicitation reporting requirements:

Specifically, PEBA clearly requested that group claims experience reports be provided by its carrier, *on a monthly basis*. Solicitation at 22-23. This was a simple requirement for the kind of performance guarantees it needed. Standard, however, failed to meet this standard and explained that it would only offer these reports *annually*. Standard Technical Proposal at Section 5.1.6. As a result, PEBA offered performance guarantees that were clearly below even PEBA's basic expectations.

The requirement cited by Metlife is actually found in Section H of the Scope of Work, pertaining to financial arrangements, specifically Responsibility for BLTD Benefits and states:

- e. The Contractor shall provide PEBA a monthly group claims experience report that includes individual benefit amounts paid for current period, total paid for claim, reserve at end of period, reserve at beginning of period.

[Solicitation, Page 24]

The Standard response identified by Metlife is found in Section 5.1.6, dealing with Performance Standards and Guarantees (Liquidated Damages). It is actually a commitment by Standard to provide an annual performance guarantee report for an annual plan review meeting. [Standard proposal, page 56]

Standard's response to the solicitation requirement cited in the protest is actually found on page 46 of its proposal and states:

**Group Benefits Activity Report:** This report details the long term disability payments and claim determinations we made during the previous month. We generate the report on a monthly basis and we can report in aggregate or by employer location or affiliate.

In addition, in its Executive Summary, Standard lists each section of the solicitation and states:

The Standard fully understands and agrees to, and will comply with all provisions, requirements and terms in each of these parts.

The burden of proof is on Metlife to demonstrate by a preponderance of the evidence that the evaluation failed to meet the requirements of the Code. Metlife failed to meet its burden.

Protest Decision, page 7

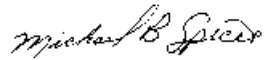
Case No. 2020-128

March 27, 2020

## **DECISION**

For the reasons stated above, the protest of Metropolitan Life Insurance Company is denied.

For the Materials Management Office

A handwritten signature in cursive script that reads "Michael B. Spicer".

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Michael B. Spicer  
Chief Procurement Officer



1200 Abernathy Road NE  
Building 600, Suite 1450  
Atlanta, GA 30328

**Michael McDermott**  
Vice President – National Accounts  
MetLife Group Benefits  
Registered Principal

Office (770) 407-2474  
Fax (770) 407-2495  
mmcdermott3@metlife.com

March 4, 2020

**Via Electronic Mail & U.S. Mail**

Mike Spicer  
Chief Procurement Officer  
S.C. Budget \* Control  
1201 Main Street, Suite 600  
Columbia, S.C. 29201

Re: Protest by MetLife of Intent to Award Solicitation No. PEBA0262019

Dear Mr. Spicer:

Metropolitan Life Insurance Company ("MetLife") formally submits its protest below in connection with the above-referenced solicitation. Pursuant to Section 11-35-4210(1)(b) of the South Carolina Consolidated Procurement Code, MetLife hereby protests the Revised February 19, 2020 Intent to Award issued in favor of Standard Insurance Company ("Standard"). As a bidder in this procurement, MetLife has standing under Section 11-35-4210 to pursue a protest.

**I. Background**

On September 26, 2019 the South Carolina Public Employee Benefit Authority ("PEBA") issued Solicitation No. PEBA0262019 for State Employee Disability Insurance ("Solicitation") as a Request for Proposal ("RFP"). The Solicitation requested bids for both Basic Long-Term Disability ("BLTD") and Supplemental Long-Term Disability ("SLTD"). On October 31, 2019, PEBA issued Amendment 1 to the Solicitation, which issued new solicitation updates that included changes made under Amendment 1. On November 5, 2019, PEBA issued Amendment 2 to the Solicitation, which issued new solicitation updates that included changes made under Amendment 2. On November 13, 2019, PEBA issued Amendment 3 to the Solicitation, which issued new solicitation updates that included changes made under Amendment 3. Finally, on November 20, 2019, PEBA issued Amendment 4 to the Solicitation, which issued new solicitation updates that included changes made under Amendment 4. Amendment 4 contains the final version of the Solicitation and required bidders to submit their bids by 11:00am on December 3, 2019.

Two bidders responded to the RFP: MetLife and Standard. On 2/19/2020, MetLife submitted a FOIA, requesting all relevant information pertaining to this procurement. Based on a review of the information received, MetLife hereby protests the intended award to Standard on the grounds that some PEBA evaluators misunderstood the performance guarantees offered by MetLife and Standard, scoring each in a manner that reflected this misunderstanding, and effectively reversed the scoring for the party whose RFP would be most advantageous to PEBA.



## II. Grounds for Protest

MetLife's position regarding this RFP is quite simple: There was a fundamental misunderstanding among two evaluators with regard to each party's performance guarantees. This led to clearly incorrect scoring on the fifth category in the Panel Score Sheet, entitled "Offeror's Performance Standards and Guarantees (Penalties)." This fundamental misunderstanding is not one based upon subjective standards, but an objective mistake that ultimately resulted in PEBA's Intent to Award being granted to Standard.

The crux of the misunderstanding at issue here was the assumption that the "flat fee" offered by Standard was somehow greater or more certain than MetLife's offer to put a certain percent of fees or premium at risk. This was based on a mistaken perception that MetLife's percent of premium could be illusory or less than Standard's, whereas the performance guarantees provided by MetLife were the exact opposite. Evaluator 1 stated that MetLife's "Guarantees seem based more on volume (enrollment) than flat dollar amounts" and Evaluator 2 claimed that "Damages are percentage based and samples are used." MetLife Panel Score Sheet at 1-9. This should be contrasted with the correct understanding by Evaluator 3, who stated MetLife's "Performance guarantees of 2% of SLTD premiums seems preferable to a flat fee." *Id.* When reviewing Standard's performance guarantees, this mistaken understanding permeated the comments once again. Evaluator 1 was impressed by Standard's "Fixed amounts," Evaluator 2 felt their performance guarantees "clearly listed the... amounts at issue," whereas Evaluator 3 once again properly understood what these fixed amounts actually meant when compared to MetLife's higher performance guarantee, and stated "annual dollars at risk approach could potentially result in fewer damages tha[n] an approach based on a percentage of premiums." Standard Panel Score Sheet at 1-9.

The fundamental misunderstanding, which is reflected in the difference in Evaluator 1 and 2's commentary, is that MetLife was putting less premium at risk than Standard, because it wasn't offering a flat fee. However, the exact opposite is the case. Standard offered disability performance guarantees of \$15,000 each for 5 categories, and \$7,500 at risk for their last two guarantees, totaling \$90,000 in penalties. Standard Technical Proposal at Section 6, Pages 1-2. MetLife by contrast made clear that it would "place 10% of the BLTD Insurance fees and 2% of the SLTD Insurance premiums at risk." MetLife Technical Proposal at Section 6, Page 1. But while this is a percentage and not a flat fee, it must be calculated using the total quote MetLife provided, which was \$4,608,744 in BLTD insurance fees and \$7,755,160.56 in SLTD premiums. Using MetLife's 10% and 2% amounts at risk respectively, this meant that it was offering performance guarantees in the amount of \$460,874.40 for BLTD and \$155,103.21 for SLTD, totaling \$615,977.61 in money at risk. This is almost seven (7) times the flat fee offered by Standard, something Evaluator 3 fully understood, but two others unfortunately had not.

This, and of itself, should lead to an automatic reversal of the performance guarantee scores awarded to MetLife and Standard, however, there were further mistakes made when analyzing Standard's performance guarantees. First, there were six (6) performance guarantees MetLife addressed, that Standard did not, including critical ones such as Decisional Accuracy, Procedural Accuracy, Claim Acknowledgment, Statistical Coding Accuracy, Any Occupation Decisions, and Account Management Satisfaction. These are the kinds of claims administration measures that are fundamental to maintaining top-notch customer satisfaction, and indeed potentially even avoiding regulatory concern. Second, of those performance guarantees that were simultaneously offered by both MetLife and Standard, it is worth noting that MetLife consistently outpaced and out-guaranteed Standard: With regard to LTD Decision Timeliness, MetLife offered 5 business days as its standard, whereas Standard offered less than 30 business days; with regard to Incapacitated Child Determinations, MetLife proposed a metric of 5 business days, whereas Standard put forward 7 business days; with regard to Payment Accuracy and/or Financial Accuracy, MetLife offered 99% accuracy as its standard,

Metropolitan Life Insurance Company, New York, NY 10166. Auto and home insurance is offered by Metropolitan Property and Casualty Ins. Co. and affiliates, Warwick, RI 02886. Variable products distributed by MetLife Investors Distribution Company ("MLIDC") (member FINRA). All are MetLife companies.

whereas Standard could only provide 98%; and with regard to Member Satisfaction, MetLife was committed to 85% either satisfied or very satisfied, whereas Standard offered 3.5/5 satisfied, or 70%. Given the above, not only were MetLife's performance guarantees greater, they were also more substantial and stringent, something clearly missed during the evaluation period.

Finally, it is worth noting that Standard's performance guarantees weren't simply less in number or less stringent in their commitments to excellence. Their performance guarantees in fact sometimes fell short of the very requirements put forward by PEBA. Specifically, PEBA clearly requested that group claims experience reports be provided by its carrier, *on a monthly basis*. Solicitation at 22-23. This was a simple requirement for the kind of performance guarantees it needed. Standard, however, failed to meet this standard and explained that it would only offer these reports *annually*. Standard Technical Proposal at Section 5.1.6. As a result, PEBA offered performance guarantees that were clearly below even PEBA's basic expectations.

In the end, MetLife scored a 17/24 on the "Offeror's Performance Standards and Guarantees (Penalties)", whereas Standard scored 23/24. Given the above, these scores should be the exact opposite. With these scores switched, MetLife would have scored 346.920 in its proposal, whereas Standard would be 343.480, with MetLife having the highest score and being awarded PEBA's disability contract.

### III. Relief Requested

For the reasons set forth above, MetLife requests that the decision of the Procurement Officer to award the contract for PEBA to Standard be overturned, and the contract be awarded to MetLife.

Thank you for considering MetLife's position herein. MetLife respectfully requests that the Chief Procurement Officer conduct a hearing in this matter as part of his administrative review. We look forward to hearing from you on our protest.

Very truly yours,



Michael McDermott  
Vice President-National Accounts

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised June 2019)*

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. *[The Request for Filing Fee Waiver form is attached to this Decision.]* If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel  
Request for Filing Fee Waiver  
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

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Business Phone

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1. What is your/your company's monthly income? \_\_\_\_\_

2. What are your/your company's monthly expenses? \_\_\_\_\_

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public of South Carolina

\_\_\_\_\_  
Requestor/Appellant

My Commission expires: \_\_\_\_\_

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For official use only: \_\_\_\_\_ Fee Waived      \_\_\_\_\_ Waiver Denied

\_\_\_\_\_  
Chairman or Vice Chairman, SC Procurement Review Panel

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
Columbia, South Carolina

**NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.**