

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

In Re: Protest of Metropolitan Life  
Insurance Company

Protest of Intent to Award to Minnesota  
Life Insurance Company for State  
Employee Life Insurance for the Public  
Employee Benefit Authority, Solicitation  
No. 5400008083

**BEFORE THE CHIEF PROCUREMENT OFFICER**

**DECISION**

CASE NO. 2015-116

POSTING DATE: October 30, 2014

MAILING DATE: October 30, 2014

The South Carolina Consolidated Procurement Code (the Code) grants the right to protest to any actual bidder who is aggrieved in connection with the intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation is for State Employee Life Insurance for the Public Employee Benefit Authority. (PEBA). Metropolitan Life Insurance Company (MetLife) protests the intended award of a contract to Minnesota Life Insurance Company. [Attachment 1] MetLife amended its protest within the prescribed time. [Attachment 2] The Chief Procurement Officer issues this ruling without a hearing.

**Findings of Fact**

Invitation For Bids Published:	07/23/2014
Amendment One Issued	08/20/2014
Amendment Two Issued	08/27/2014
Amendment Three Issued	09/02/2014
Intent to Award Posted:	10/02/2014
Revised Intent to Award Posted	10/10/2014
Protest Received	10/13/2014
Intent to Award Suspended	10/14/2014
Amended Protest Received	10/16/2014

**Discussion**

The award to Minnesota Life results from an Invitation for Bids issued by the Materials Management Office (MMO) on behalf of PEBA. Section 11-35-1520(10) states that, unless there is a compelling reason to reject bids, award will be made to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids. Bids were received from Minnesota Life,

MetLife, Standard Insurance Company (Standard), and Hartford Life and Accident Insurance Company (Hartford) in response to this solicitation.

MetLife protests the following:

- a. Minnesota's bid was non responsive to the material requirement of the solicitation,
  - i. Minnesota failed to provide information and documents required by the solicitation
  - ii. Minnesota failed to affirmatively agree to the contract terms
  - iii. Minnesota does not provide fixed pricing for the entire initial term and option terms
- b. Minnesota failed to agree to the substance of the solicitation,
- c. Minnesota's Plan Enhancements ignore or contradict solicitation requirements
- d. The solicitation was inherently flawed because it does not take into account the services currently provided to PEBA under the existing contract and the risks incurred by PEBA and the State employees incurred by undertaking the solicitation of a contract of this magnitude based on price alone, and
- e. Bids received from Standard and Hartford were non responsive.

The first issue of protest is that Minnesota's bid was non responsive to the material requirements of the solicitation. MetLife alleges that Minnesota failed to provide information and documents requested in "parts II.B. Special Instructions; III. Scope of Work; IV. Information for Offerors to Submit, V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations" required by the following:

**INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (JAN 2006)**

Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations. [04-4010-1]

Bidders shall submit the following:

- A signed Cover Page
- All of the information requested in Section III, Mandatory Minimum Qualifications; and,
- The Bidding Schedule below, completed in its entirety.

By submitting a bid, Bidder hereby agrees to provide the basic, optional and dependent life insurance programs as described in this Invitation for Bid for the fixed rates established below for each Employee for the initial contract term from 12:00:01 am January 1, 2015 through 12:00 midnight December 31, 2017 (3 years).

[Amendment 3, Page 42]

In its letter of protest MetLife acknowledges that Minnesota did submit the Bidding Schedule, the Cover Sheet and Page Two, the Mandatory Minimum Requirements, the Minority Participation form, an Executive Summary, and a certificate of authority from the Department of Insurance and alleges that Minnesota failed to provide some unspecified information and documents from the other sections of the solicitation. Minnesota submitted all the information and documents required by the paragraph above.

MetLife alleges that Minnesota failed to submit information and documents from part II.B. of the solicitation. Part II.B. contains Special Instructions to bidders under the following paragraph headings:

CLARIFICATION (NOV 2007)  
MAGNETIC MEDIA – REQUIRED FORMAT (JAN 2006)  
MAIL PICKUP (JAN 2006)  
ON-LINE BIDDING INSTRUCTIONS (NOV 2007)  
PROTEST - CPO - MMO ADDRESS (JUNE 2006)  
UNIT PRICES REQUIRED (JAN 2006)

There are no requirements for the bidder to submit any information or documents in response to this section of the solicitation.

Section 11-35-4210(2)(b) requires that “A protest, including amendments, must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.” MetLife’s allegation that Minnesota failed to provide “information and documents” from various sections of the solicitation without identifying the missing information or documents fails to provide enough particularity for the CPO to determine the validity of the claim. This issue of protest is dismissed for lack of specificity.

MetLife also alleges that Minnesota’s bid contains no substantive information other than price and did not affirmatively agree to the contract terms established in the solicitation or agree to provide the services requested. Minnesota completed the Bid Schedule as required by the solicitation. The signed cover page of Minnesota’s bid contains the following statement:

By submitting a bid or proposal, You agree to be bound by the terms of the solicitation.

[Attachment 3]

Amendment 3 also includes the following language:

Bid/Proposal as Offer to Contract

By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; “joint bids” are not allowed. [02-2A015-1]

[Amendment 3, Page 6]

This was an Invitation For Bids and award is made to the lowest responsive and responsible bidder. A responsive bidder is one that meets all the material and essential requirements of the solicitation. Minnesota submitted a signed bid, a completed bid schedule, and all information requested for a determination of responsibility. By submission of the bid, Minnesota agreed to all provide the required services under the terms and conditions established by the solicitation. There is no need for any additional affirmations. This issue of protest is denied.

MetLife alleges that Minnesota does not provide fixed pricing for the entire initial term and option terms. The initial term of this contract is three years. In its Executive Summary, Minnesota states: “Premium rates are guaranteed for three years.” There is no indication that Minnesota planned to request a rate increase in the option years. The contract allows the successful contractor to request a rate increase after the initial term.<sup>1</sup> The contract also allows for either party to opt out of the option years of the contract.<sup>2</sup> Minnesota’s bid pricing is in compliance with the solicitation. This issue of protest is denied.

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<sup>1</sup> Amendment 3, Page 59:

Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Any request for a premium increase must be received by the Procurement Officer **no later than March 31<sup>st</sup> of each year prior to the expiration of the applicable term** and must be accompanied by sufficient documentation to justify the increase. The first request for a premium increase must be received no later than March 31, 2016. If approved, a premium increase becomes effective starting with the term beginning after approval. A premium increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase.

(emphasis in original)

<sup>2</sup> Amendment 3, Page 61: “Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least **270 days** prior to the expiration of the then current term. [07-7B250-1]” (emphasis in original)

MetLife protests that Minnesota included “Plan Enhancements” as part of its bid that ignore or contradict solicitation requirements as follows:

Additionally, the “Plan Enhancements” offered in Minnesota Life’s bid response ignore or contradict the requirements of the Solicitation. For instance, Minnesota Life offers to develop a marketing campaign (Minnesota Life Bid, Plan Enhancements, p. 1), but PEBA is clear on how it expects the contractor to handle marketing, communications, and training. (IFB, p. 37.) Minnesota Life also offers extended child life insurance eligibility from live birth to age 26 (Minnesota Life Bid, Plan Enhancements, p. 1), but this age range does not match the age ranges specifically requested by PEBA (IFB, p. 30) (outlining PEBA’s eligibility criteria for dependent coverage as older than 14 days but younger than 19 years, or older than 19 years but younger than 25 years if attending school full-time and dependent upon the enrolled employee for support). Lastly, Minnesota Life offers “Portability,” which would allow an employee who is no longer eligible under the group policy to have coverage under a group plan. (Minnesota Life Bid, Plan Enhancements, p. 1.) This option, however, contradicts the requirements of the Solicitation, which requires the contractor to allow an employee who is no longer eligible under the group policy to convert to an individual policy. (IFB, pp. 19, 29, and 36.)

Minnesota offered these services with the following language: “In addition to matching the requested plan design, our proposal offers the following plan enhancements at no additional cost.” The solicitation established the minimum requirements for these services. Minnesota stated that it would match the requested plan design. There is no prohibition against a bidder offering the State additional or enhanced services above and beyond the minimum requirements stated in the IFB. This is especially true if the additional or enhanced services are at no cost to the State or its employees. Finally, Minnesota did not condition its bid upon the State’s acceptance of these additional or enhanced services. MetLife’s protest that the inclusion of the “Plan Enhancements” renders Minnesota’s bid non responsive is denied.

MetLife protests that the Solicitation inherently is flawed, which is a detriment to the State employees, imposes a burden upon PEBA and the State, and should be re-solicited as a Request for Proposals. Section 11-35-4210(2)(b) allows any actual bidder, offeror, contractor, or subcontractor to protest “within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.” This issue could have been raised as a protest of the solicitation. The CPO lacks jurisdiction to hear this issue and it is consequently this issue of protest is dismissed.

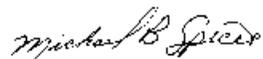
MetLife also protests that two bidders, Standard and Hartford, are non-responsive to the IFB, thus any award to either of them would be clearly erroneous, arbitrary and capricious, and contrary to law. Section 11-35-4210(2)(b) authorizes the protest of the intended award or award of a contract. Since no award was

made to Standard or Hartford, the CPO lacks jurisdiction to consider MetLife's protest of these bids and this issue of protest is denied

### **Determination**

For the reasons stated above, the protest of MetLife is denied.

For the Information Technology Management Office



Michael B. Spicer  
Chief Procurement Officer

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised October 2014)*

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>

**FILE BY CLOSE OF BUSINESS:** Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

**FILING FEE:** Pursuant to Proviso 108.1 of the 2014 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  
1105 Pendleton Street, Suite 202, Columbia, SC 29201**

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

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: \_\_\_\_\_

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.**



David B. Summer, Jr.  
*Partner*  
Telephone: 803.253.8910  
Direct Fax: 803.255.8017  
davidsummer@parkerpoe.com

Charleston, SC  
Charlotte, NC  
Columbia, SC  
Raleigh, NC  
Spartanburg, SC

RECEIVED BID CONTROL  
OCT 13 14 10 41:29PM

October 13, 2014

John White  
Chief Procurement Officer  
S.C. Budget & Control Board  
1201 Main Street, Suite 600  
Columbia, S.C. 29201

**Re: Protest by MetLife of Intent to Award Solicitation No. 540008083, State Employee Life Insurance**

Dear Mr. White,

This firm has been retained to represent Metropolitan Life Insurance Company (MetLife) 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 October 2, 2014 Intent to Award issued in favor of the Minnesota Life Insurance Company (Minnesota Life) in the above-reference solicitation. As a bidder in this procurement, MetLife has standing under Section 11-35-4210 to pursue a protest.

**I. Background**

On July 23, 2014, the Public Employee Benefit Authority (PEBA) issued Solicitation No. 540008083 for State Employee Life Insurance (Solicitation) as an Invitation for Bid (IFB). On August 27, 2014, PEBA issued Amendment 2 to the Solicitation, which issued a new solicitation document that included changes made under Amendment 2. On September 2, 2014, PEBA issued Amendment 3 to the Solicitation, which issued a new solicitation document that included changes made under Amendment 3. Amendment 3 contains the final version of the Solicitation and required bidders to submit their bids by 11:00 a.m. on September 18, 2014.

Four bidders responded to the IFB: MetLife, Minnesota Life, Standard Insurance Company (Standard), and Hartford Life and Accident Insurance Company (Hartford). On October 10, 2014, MetLife requested from the Materials Management Office (MMO) all bids submitted for the IFB and information pertinent to the IFB and the Intent to Award. Because the Minnesota Life bid documents received from MMO comprised a total of nine (9) pages, on Monday, October 13, 2014, counsel for MetLife contacted MMO to request the entire bid package for Minnesota Life. By telephone call, MMO confirmed that Minnesota Life's entire bid response is only those nine pages.

PPAB 2592666v1

Based on a review of the information received from MMO, MetLife hereby protests the intended award to Minnesota Life on the ground that Minnesota Life is non-responsive to the IFB. MetLife further asserts Standard and Hartford are also non-responsive to the IFB, thus, award to either of those bidders is inappropriate.

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## II. Grounds for Protest

### A. Minnesota Life is non-responsive to the IFB, thus any award to Minnesota Life is clearly erroneous, arbitrary and capricious, and contrary to law.

#### 1. Fails to Conform to Material Requirements.

Minnesota Life's bid response to the IFB comprised a total of nine (9) pages, which is a shockingly sparse response for such a sizeable contract. The Solicitation requires bidders to submit "all other information and documents requested in this part and in parts II.B Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitation." (IFB, p. 38.) Minnesota Life's nine page bid submission includes only the Bidding Schedule, the Cover Sheet and Page Two, the Mandatory Minimum Requirements, the Minority Participation form, an Executive Summary, and a certificate of authority from the Department of Insurance. Minnesota Life did not provide any information regarding the Special Instructions, Scope of Work, or Attachments, and thus fails to conform to the material requirements of the Solicitation. The Solicitation also specifically asks the bidder to designate at least one person to serve as the contact for PEBA. (IFB, p.37.) Minnesota Life failed to provide even this basic information in its response.

Most glaringly, nowhere in Minnesota Life's nine pages does it affirmatively agree to the contract terms established in the Solicitation. Without an acceptance of the terms of the contract, there can be no meeting of the minds and a contract cannot be formed. See *In Re: Protest of Hass Construction Co.*, Case No. 1997-16, 2000 WL 33956162 (S.C. Procurement Rev. Panel Sept. 8, 2000) ("It is inherent in Contract Law that there must be a meeting of the minds in regards to the obligations of the parties.") Further, because Minnesota Life has not acknowledged the services requested in the Scope of Work and has not agreed to perform those services, Minnesota Life is non-responsive to the Solicitation and is ineligible for award.

"A responsive bidder is a person who has submitted a bid or offer which conforms in all material aspects to the IFB." *In Re: Appeal by Greenville Office Supply*, Case No. 2014-5, 2014 WL 5038626, \*3 (S.C. Procurement Rev. Panel Sept. 10, 2014) (quoting § 11-35-1410(7)). "S.C. Code Ann. Regs. 19-445.2070 provides that 'any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.'" *In Re: Protest of Handi-House of Newberry*, Case No. 1996-1, 1996 WL 33404915, \*2 (S.C. Procurement Rev. Panel Feb. 14, 1996.) A procurement officer's determination of responsiveness will be overturned if it is clearly erroneous, arbitrary, capricious, or contrary to law. See *In Re: Appeal by Heritage Community Services*, Case No. 2013-1, 2013 WL 1464985, \*1 (S.C. Procurement Rev. Panel Mar. 27, 2013).

Because Minnesota Life's deficient bid response contains no substantive information other than price, it is impossible to determine that Minnesota Life has agreed to perform the services requested by PEBA in the manner requested by PEBA. Thus, Minnesota Life is non-responsive to the Solicitation and any award to Minnesota Life is clearly erroneous, arbitrary,

PPAB 2592666v1

capricious, and contrary to law. Accordingly, the Notice of Award to Minnesota Life should be cancelled.

2. Failure is Not Waivable as a Minor Informality.

Section 11-35-1520(13) of the South Carolina Code states:

A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders.

The failure to acknowledge and agree to the substance of a Solicitation in any meaningful way cannot be waived as a minor informality as it has a significant effect on the performance of the contract. Without an acknowledgement that Minnesota Life is agreeing to provide the services expressly detailed in the Scope of Work by PEBA, there is no way to determine that Minnesota Life intends to perform the contract as required and that its bid is responsive. *See In Re: Appeal by Greenville Office Supply*, Case No. 2014-5, 2014 WL 5038626, \*3 (S.C. Procurement Rev. Panel Sept. 10, 2014) (finding that responsiveness is determined at the time of the bid opening and is based on the four corners of the bidder's response.). Section 11-35-1520(6) of the South Carolina Code states that bids must be accepted unconditionally. *See also In Re: Protest of Handi-House of Newberry*, Case No. 1996-1, 1996 WL 33404915, \*2 (S.C. Procurement Rev. Panel Feb. 14, 1996.) In *Handi-House*, the Procurement Review Panel found that allowing contact with the bidder after bids were opened for the purpose of clarifying the bid would be prejudicial to other bidders. *Id.*

It is prejudicial to other bidders to allow one bidder to fail to agree to the terms of the contract in its bid submission but then allow that bidder to cure that failure upon award. This creates a situation where a bidder can submit a bid with impunity, with no intention of being bound to its bid, and being able to agree to the terms or refuse the terms after the Intent to Award has been issued. Because Minnesota Life's failure to acknowledge and agree to the terms of the contract has a significant effect on the delivery of the services and allowing Minnesota Life to cure that failure is prejudicial to other bidders, Minnesota Life's failure is not waivable as a minor informality. Therefore, Minnesota Life is non-responsive to the Solicitation and the procurement officer's decision to issue an Intent to Award in favor of Minnesota Life should be overturned as any award to Minnesota Life is clearly erroneous, arbitrary, capricious, and contrary to law.

B. Standard and Hartford are non-responsive to the IFB, thus any award to either of them would be clearly erroneous, arbitrary and capricious, and contrary to law.

Standard and Hartford are non-responsive to the IFB because they fail to conform with the required terms of the contract and they place conditions upon their acceptance of PEBA's offered terms. Therefore, Standard and Hartford are non-responsive and cannot be awarded the contract.

In its bid response, Standard includes thirteen (13) pages of Exceptions to the terms and conditions of the Solicitation. (Standard Response, Exceptions.) Within these thirteen pages, Standard, for example:

PPAB 2592666v1

- (1) categorically refuses to agree to the Setoff provisions and dictates to PEBA that "Failure to pay premiums within the grace period will result in automatic termination of the group policy";
- (2) refuses to agree to the Contract Interpretation section; and
- (3) states that it will charge the State for copies of its business records.

This is not an exhaustive list of the alterations Standard purports to make to the contract and is intended to be illustrative.

In its bid response, Hartford similarly places conditions upon the contract with PEBA. Within its response, Hartford, for example:

- (1) refuses to agree to the Setoff provision and attempts to bind PEBA to the Hartford's language;
- (2) significantly changes the language of the Indemnification provision; and
- (3) significantly changes the language of the Default provision.

This is not an exhaustive list of the alterations Hartford purports to make to the contract and is intended to be illustrative.

Because bids must be accepted unconditionally, it is essential that the bids conform to the requirements of the Solicitation and unreservedly agree to the terms and conditions. Standard and Hartford failed to do this. They each placed additional terms and conditions upon their acceptance of PEBA's offer and refused to accept the offered terms and conditions. Therefore, both Standard and Hartford are non-responsive to the Solicitation and are ineligible for an award of the contract. Any award to Standard or Hartford would thus be clearly erroneous, arbitrary, capricious, and contrary to law.

C. The Solicitation inherently is flawed, which is a detriment to the State employees and imposes a burden upon PEBA and State.

As explained in MetLife's July 30, 2014 letter, attached hereto as Exhibit 1, the Solicitation itself is flawed because it does not take into account the services currently provided to PEBA under the existing contract and the risks to PEBA and the State employees incurred by undertaking the solicitation of a contract of this magnitude based on price alone. Rather than detail the myriad issues addressed in the July 30 letter, MetLife incorporates it by reference and adopts all of the issues contained therein into this protest letter.

### III. Relief Requested

For the reasons set forth above, MetLife requests that Minnesota, Standard, and Hartford be declared non-responsive to the IFB, that the decision of the Procurement Officer to award the contract to Minnesota be overturned, and the contract be awarded to MetLife. Alternatively, MetLife requests the Solicitation be withdrawn and resolicited, preferably as a Request for Proposals to ensure PEBA, the State, and the State's employees receive the best, most comprehensive services for the best value.

PPAB 2592666v1

John White  
October 13, 2014  
Page 5

Thank you for your consideration of MetLife's protest. 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 this matter.

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With best regards, I am

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Summer, Jr.", is written over the word "Sincerely,".

David B. Summer, Jr.

DBS/abc

PPAB 2592666v1

501 US Highway 22, PO Box 6891  
Bridgewater, NJ 08807-0891

# MetLife

**Stephen R. Sottile**  
Senior Account Executive  
National Accounts  
AR Insurance Lic # 410396  
CA Insurance Lic # 011492  
Registered Representative

(908) 253-6206  
(973) 699-2840 cell  
(908) 253-2132 fax  
ssottile@metlife.com

July 30, 2014

Mr. Stephen R. Van Camp  
General Counsel  
South Carolina Public Employee Benefit Authority  
202 Arbor Lake Drive  
Columbia, SC 29223

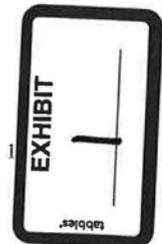
Re: Solicitation 5400008083 State Employee Life Insurance

Dear Steve,

Thanks for your time to review the PEBA Life Financial Reports yesterday. The purpose of this note is to follow on to our discussion about apparent deficiencies and opportunities to improve the recent Life RFP released by the B&CB's Materials Management Office through an amendment to the RFP.

1. **Provided Services- Life Record Keeping for Retirees.** PEBA currently does not administer the Optional Life Insurance program for Retirees. MetLife provides the following additional services as a part of current agreement for this Plan:
  - a. **Enrollment.** We coordinate with the 600+ employer groups that participate in the PEBA programs to process enrollment forms from eligible retirees. BA's at the employers use a secure fax to send enrollment forms to MetLife. Manual processes are in place for data entry and correspondence with the BA and retirees for missing information.
  - b. **Dedicated Support.** MetLife has a dedicated Life Record Keeping team for the PEBA program.
  - c. **Billing.** MetLife direct bills all participating retirees on either a monthly or quarterly basis.
  - d. **Call Center Support.** MetLife handles all service matters for Retiree Optional Life; these matters are not handled by PEBA. If coordination with PEBA is required the Account team handles with PEBA staff personnel.
2. **Provided Services- Statement of Health.**
  - a. **Status Reports.** We send weekly automated status reports to each of PEBA's participating employer's via secure email.
  - b. **PEBA Statement of Health Form.** We use a customized form template to accommodate the needs of the 600+ participating employers to aid in the assignment of subscriber status updates to the appropriate employer group. Special procedures are in place to obtain the group number in the event the BA did not include it on the form.
3. **Provided Services- Conversion Support.**
  - a. **Dedicated Conversion Agents.** MetLife has a dedicated team of locally based Transition Solution Specialists assigned to PEBA. This was created due to confusion caused when former employees engaged individual agents to figure out conversion or coverage

Metropolitan Life Insurance Company (MLIC), New York, NY 10166. Securities offered by MetLife Securities, Inc. (MSI) (FINRA/SIPC).  
MLIC and MSI are MetLife Inc. companies.



- continuation options given the ability to do so under the PEBA Optional Life program to use both features.
- b. Conversion Form. MetLife created a customized form to streamline the conversion notification process for the Benefit Administrators. This is an automated process that removes work from both the 600+ employers and PEBA in having to correct errors and request exception processing for errors discovered.
4. Provided Services- Eligibility.
    - a. Retirement Disability. Effective in 2014 PEBA amended the approval process for retirement disability. MetLife worked with PEBA to create a customized process to handle the instance in which a decision for Federal SSDI Disability benefits is not made by the time the 12-month LWOP allowance expires.
    - b. Specialized rules were created to allow for new eligibility into the PEBA program once an SSDI award is received.
  5. RFP Corrections- Continuation of Coverage, page 31, item 1. "A Retiree may continue Optional Life coverage at the same rates the retiree paid while the Retiree was an employee by applying for continued coverage within thirty-one (31) days of the date of his retirement. Coverage will reduce at age 70 and terminate at age 75.
    - a. Rate Correction. Effective for 2013 there is one rate structure for all Retirees participating in the Optional Life Plan. Prior to that there were 15 rate tables.
    - b. Coverage Reduction Correction. There are two age reduction groups. The first group cancels at age 70 and the second group reduces at age 70 and cancels at age 75.
  6. RFP Deficiencies- Value Add Programs. The RFP notes that the current program includes Grief Counseling, Will Preparation and Estate Resolution benefits but does not make these part of the evaluation criteria. Since the inclusion of these benefits into the program since 2009, they have become integral to it and in our view removing them is taking away value from employees. Note that in 2013 over 4,000 Plan Participants obtained wills through this program. We suggest that the inclusion of these benefits into the competitive bids be added as part of the evaluation criteria.
  7. RFP Deficiencies- Census. No census was provided with the contract. Especially given the different terms/conditions for the Optional Life for Retirees, census should be made available that provides a key to differentiate between groups as the reduction/termination provisions significantly impact how one projects retiree liabilities on a prospective basis.
  8. RFP Deficiencies- Evaluation Criteria. The life bid states at Section VIII. Bidding Schedule/Price-Business Proposal on page 63 that: "Award will be made to the lowest responsible and responsive bidder based on the lowest composite rate above. Award will be made to one bidder." Given the complexity of this contract, it is unusual that service delivery, implementation, account support, etc. is not taken into account, especially given that employees pay over 95% of the total cost of the plan. *We strongly suggest that the bid be revised to align with the provision used for the Vision RFP at Section VI. Award Criteria*, which notes:
    - a. Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State (06-6030-1)
    - b. Award will be made to one Offeror (06-6040-1)
    - c. Offerors will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance with the first factor being the most important. Once evaluation is complete, all responsive Offerors will be ranked from the most advantageous to the least advantageous. The criteria are then listed in order as Benefits Plan, Network (not applicable for Life Insurance), Proposed Approach, Rates and Background/Qualifications.
  9. RFP Deficiencies- Approach to Work. The RFP needs to be expanded for the Approach to Work requirements outlined above and they need to be considered, in our view, in evaluating the ability of an Offeror to service the PEBA plan.
  10. RFP Deficiencies- References. The Life RFP asks for no references. This is odd for a contract of this size. It is also odd that no implementation performance guarantees are requested, in the event of a carrier transfer, given the very significant business risk of disruption to PEBA.
  11. RFP Deficiencies- Preferences. MetLife was offered the ability in its original 2009 bid to claim a statutory preference based on Section 11-35-1524 based on its status as a large employer in South Carolina. David Quiat had agreed verbally to include this preference in the Life RFP before he left for his new job. We request that this provision be included in the RFP. The specific language in the original RFP reads as follows: "South Carolina Resident Vendor Preference: Section 11-35-1524 provides a preference for bidders that qualify as a resident vendor. A resident vendor is a bidder that is (a) authorized to transact business within South Carolina, (b) maintains an office in South Carolina, (c) either (1) maintains a minimum of \$10,000,000 representative inventory at the time of the

solicitation, or (2) is a manufacturer which is headquartered and has at least a ten million dollar payroll in South Carolina and the product is made or processed from raw materials into a finished end-product by such manufacturer or an affiliate (as defined in section 1563 of the Internal Revenue Code) of such manufacturer and (d) has paid all assessed taxes. If applicable, preference will be applied as required by law." There was also an item added to the Evaluation Criteria section that noted the application of this Preference.

12. Minority/Woman Owned Business Preference. The State has a provision related to Minority and Women owned businesses but does not offer any credit or evaluation criteria associated with meeting this provision. We suggest assigning 5-10 scoring points to fulfilling a meaningful subcontracting relationship (e.g. 5-10% of contract retention) in order to increase revenue opportunities for diverse suppliers and supporting the State's diversity initiative. This recommendation parallels what we most often see in other public sector bids.

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I appreciate the sensitivity of this matter as the RFP was already released. I offered to review the document with Materials Management before it was released to assure that it was correct given the staff changes at PEBA, but they were not able to accept the opportunity. We strongly believe that these deficiencies, once corrected, along with the additional evaluation components we are suggesting, will drive increased benefit and value to the State and its employees, retirees, beneficiaries, and tax payers.

MetLife greatly appreciates your help in making corrections to the RFP so that we can compete fairly for your business and hopefully continue the good work we have jointly done for the hard working employees of the State of South Carolina.

Sincerely,



Stephen R. Sottile



David B. Summer, Jr.  
*Partner*  
Telephone: 803.253.8910  
Direct Fax: 803.255.8017  
davidssummer@parkerpoe.com

Charleston, SC  
Charlotte, NC  
Columbia, SC  
Raleigh, NC  
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October 16, 2014

John White  
Chief Procurement Officer  
S.C. Budget & Control Board  
1201 Main Street, Suite 600  
Columbia, S.C. 29201

**Re: Amended Protest by MetLife of Intent to Award Solicitation No. 5400008083,  
State Employee Life Insurance**

Dear Mr. White,

This firm has been retained to represent Metropolitan Life Insurance Company (MetLife) 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 October 2, 2014 Intent to Award issued in favor of the Minnesota Life Insurance Company (Minnesota Life) in the above-referenced solicitation. As a bidder in this procurement, MetLife has standing under Section 11-35-4210 to pursue a protest.

#### I. Background

On July 23, 2014, the Public Employee Benefit Authority (PEBA) issued Solicitation No. 5400008083 for State Employee Life Insurance (Solicitation) as an Invitation for Bid (IFB). On August 27, 2014, PEBA issued Amendment 2 to the Solicitation, which included changes to the solicitation document. On September 2, 2014, PEBA issued Amendment 3 to the Solicitation. Amendment 3 contains the final version of the Solicitation and required bidders to submit their bids by 11:00 a.m. on September 18, 2014.

Four bidders responded to the IFB: MetLife, Minnesota Life, Standard Insurance Company (Standard), and Hartford Life and Accident Insurance Company (Hartford). On October 10, 2014, MetLife requested from the Materials Management Office (MMO) all bids submitted in response to the IFB and information pertinent to the IFB and the Intent to Award. Because the Minnesota Life bid documents that MetLife received from MMO consisted of only nine pages, on Monday, October 13, 2014, counsel for MetLife contacted MMO to request the entire bid package for Minnesota Life. By telephone call, MMO confirmed that Minnesota Life's entire bid response is only those nine pages.

Based on a review of the bids and information received from MMO, MetLife hereby protests the intended award to Minnesota Life on the ground that Minnesota Life's bid response

PPAB 2595586v1

is non-responsive to the IFB. MetLife further asserts Standard's and Hartford's bid responses are also non-responsive to the IFB, thus, award to either of those bidders would also be inappropriate.

## II. Grounds for Protest

### A. Minnesota Life's bid is non-responsive to the IFB, thus any award to Minnesota Life is clearly erroneous, arbitrary and capricious, and contrary to law.

#### 1. Bid Fails to Conform to Material Requirements.

Minnesota Life's bid response to the IFB comprised a total of nine pages, which is a shockingly sparse response for such a sizeable contract. By contrast, the Scope of Work in the IFB itself is 23 pages long. Substantively, Minnesota Life's bid is non-responsive because (i) it does not provide material information required by the IFB and (ii) it does not expressly accept the terms of the IFB. Because Minnesota Life's submission is deficient in length and lacking in substance, its bid is critically vague. PEBA, therefore, can have no assurance as to what services it is contracting for with Minnesota Life and whether Minnesota Life will provide all of the required services for the price it bid. Minnesota Life's response therefore is non-responsive, its bid should have been rejected, and the Intent to Award to Minnesota Life must be cancelled.

"A responsive bidder is a person who has submitted a bid or offer which conforms in all material aspects to the IFB." *In Re: Appeal by Greenville Office Supply*, Case No. 2014-5, 2014 WL 5038626, \*3 (S.C. Procurement Rev. Panel Sept. 10, 2014) (quoting § 11-35-1410(7)). The South Carolina Code of Regulations, section 19-445.2070, further provides that "any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected." *In Re: Protest of Handi-House of Newberry*, Case No. 1996-1, 1996 WL 33404915, \*2 (S.C. Procurement Rev. Panel Feb. 14, 1996). A procurement officer's determination of responsiveness will be overturned if it is clearly erroneous, arbitrary, capricious, or contrary to law. See *In Re: Appeal by Heritage Community Services*, Case No. 2013-1, 2013 WL 1464985, \*1 (S.C. Procurement Rev. Panel Mar. 27, 2013).

The Solicitation explicitly required bidders to submit "all other information and documents" requested in parts II.B. Special Instructions; III. Scope of Work; IV. Information for Offerors to Submit; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and IX. Attachments to Solicitation; as well as a Cover Page and Page Two; Bidding Schedule; and information requested in Section III, Mandatory Minimum Qualifications. (IFB, p. 38.) Minnesota Life's nine-page bid submission includes only the Bidding Schedule, the Cover Sheet and Page Two, the Mandatory Minimum Requirements, the Minority Participation form, an Executive Summary, and a certificate of authority from the Department of Insurance. Minnesota Life did not provide any information regarding the Special Instructions, Scope of Work, or Attachments, and thus fails to comply with the material requirements of the Solicitation. The Solicitation also specifically asks the bidder to designate at least one person to serve as the contact for PEBA. (IFB, p. 37.) Minnesota Life failed to provide even this basic information in its response.

Most glaringly, nowhere in Minnesota Life's nine pages does it affirmatively agree to the contract terms established in the Solicitation. Without an acceptance of the terms of the contract, there can be no meeting of the minds and a contract cannot be formed. See *In Re: Protest of Hass Construction Co.*, Case No. 1997-16, 2000 WL 33956162 (S.C. Procurement Rev. Panel Sept. 8, 2000) ("It is inherent in Contract Law that there must be a meeting of the

PPAB 2595586v1

John White  
October 16, 2014  
Page 3

minds in regards to the obligations of the parties.”). Further, because Minnesota Life has not expressly acknowledged the services requested in the Scope of Work and has not agreed to perform those services, Minnesota Life’s bid is non-responsive to the Solicitation and is ineligible for award.

Because Minnesota Life’s deficient bid response contains no substantive information other than price, it is impossible to determine that Minnesota Life has agreed to perform the services requested by PEBA in the manner requested by PEBA. The IFB’s Scope of Work detailed not only what services PEBA expected the contractor to provide, but also how PEBA expected those services to be provided. For example, PEBA provides specific requirements for how claims are to be processed and paid for basic life insurance, optional life insurance, and dependent life insurance. (IFB, pp.18, 26–27, 35–36.) The Scope of Work also contains specific instructions regarding customer service, communications and training, and reporting requirements. (IFB, pp. 37–38.) Additionally, PEBA expects the contractor to pay an administrative fee, proportional costs for printing and distributing the *Insurance Benefits Guide*, and for certain services that may be necessary to determine eligibility to receive benefits. (IFB, pp. 27, 37–38.) None of these clear, specific requirements are even acknowledged in Minnesota Life’s bid response.

Not only does Minnesota Life’s bid response not address material, specific requirements of the bid, but the information that is contained in its abbreviated bid response is contrary to the precise terms of the Solicitation. Most importantly, Minnesota Life does not agree to provide fixed pricing for the entire initial term and optional terms. The Solicitation requires the contractors’ offered prices be fixed for the initial term three-year term and for the optional renewal periods. (IFB, p. 42.) Minnesota Life, however, states plainly in its submission that its “Premium rates are guaranteed for three years.” (Minnesota Life Bid, Executive Summary, p. 1.) It does not guarantee its price for the optional renewal periods. Thus, the total possible cost of the contract cannot be reliably determined. (See IFB, p. 9 “If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined.”) Minnesota Life’s bid unquestionably is non-responsive to this material requirement of the Solicitation and must be rejected.

Additionally, the “Plan Enhancements” offered in Minnesota Life’s bid response ignore or contradict the requirements of the Solicitation. For instance, Minnesota Life offers to develop a marketing campaign (Minnesota Life Bid, Plan Enhancements, p. 1), but PEBA is clear on how it expects the contractor to handle marketing, communications, and training. (IFB, p. 37.) Minnesota Life also offers extended child life insurance eligibility from live birth to age 26 (Minnesota Life Bid, Plan Enhancements, p. 1), but this age range does not match the age ranges specifically requested by PEBA. (IFB, p. 30 (outlining PEBA’s eligibility criteria for dependent coverage as older than 14 days but younger than 19 years, or older than 19 years but younger than 25 years if attending school full-time and dependent upon the enrolled employee for support). Lastly, Minnesota Life offers “Portability,” which would allow an employee who is no longer eligible under the group policy to have coverage under a group plan. (Minnesota Life Bid, Plan Enhancements, p. 1.) This option, however, contradicts the requirements of the Solicitation, which requires the contractor to allow an employee who is no longer eligible under the group policy to convert to an individual policy. (IFB, pp. 19, 29, and 36.)

As further evidence of Minnesota Life’s careless approach to this Solicitation, Minnesota Life claims it will subcontract five percent (5%) of the total contract to a minority firm annually, which is an extremely high percentage to pay to a subcontractor. Based on industry practice,

PPAB 2595586v1

five percent of the total contract is equivalent to roughly fifty percent (50%) of retention, which must cover items like premium taxes, claims administration, corporate overhead, information technology charges, and the carrier's profit. It is highly unlikely that half of those core functions and associated costs, or half of this retained premium, could be subcontracted to a minority firm and still allow Minnesota Life to properly and fully administer this vital contract. The more likely explanation is that Minnesota Life intends to subcontract five percent of its retention to a minority subcontractor, rather than 5% of the total contract. However, this is not what Minnesota Life stated in its submission. If this is indeed an error, it is another example of how Minnesota Life was not careful and thorough in its bid response. Its lack of attention and completeness exposes PEBA to the risk of contracting with a non-responsive vendor that does not agree to the terms and conditions of the contract and is unable to perform the required services in the required fashion for the stated price. Such a situation is unacceptable.

All of these deviations and offers to provide services contrary to the expressly requested services call into question whether Minnesota Life carefully reviewed the Solicitation, is aware of the requirements, and intends to be bound by PEBA's terms. PEBA has no firm basis for concluding that Minnesota Life considered the clear terms of the Solicitation and offered a price to provide all of the required services in the required fashion. All evidence suggests the contrary. Minnesota Life has not fully assented to and accepted the terms of the Solicitation as required by law. Thus, Minnesota Life is non-responsive to the Solicitation and any award to Minnesota Life is clearly erroneous, arbitrary, capricious, and contrary to law. Accordingly, the Notice of Award to Minnesota Life should be cancelled.

2. Failure to Agree to the Substance of a Solicitation is Not Waivable as a Minor Informality.

Section 11-35-1520(13) of the South Carolina Code states:

A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders.

Minnesota Life's failure to acknowledge and agree to the substance of a Solicitation in any meaningful way cannot be waived as a minor informality as it may have a significant effect on the total bid price, quality, and performance of the contract. The Solicitation itself states, "Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. . . . **Offerors will not be given an opportunity to correct any material nonconformity.**" (IFB, p. 9) (emphasis added).

Without an express acknowledgement that Minnesota Life is agreeing to provide the services expressly detailed in the Scope of Work by PEBA, there is no way to determine that Minnesota Life intends to perform the contract as required and that its bid is responsive. See *In Re: Appeal by Greenville Office Supply*, Case No. 2014-5, 2014 WL 5038626, \*3 (S.C. Procurement Rev. Panel Sept. 10, 2014) (finding that responsiveness is determined at the time of the bid opening and is based on the four corners of the bidder's response). Thus, Minnesota Life's failure to conform its bid response to the Solicitation is a material nonconformity and cannot be remedied after notice of intent to award. See Section 11-35-1520(6) of the South Carolina Code (stating that bids must be accepted unconditionally); see also *In Re: Protest of*

PPAB 2595586v1

John White  
October 16, 2014  
Page 5

*Handi-House of Newberry*, Case No. 1996-1, 1996 WL 33404915, \*2 (S.C. Procurement Rev. Panel Feb. 14, 1996).

It would be prejudicial to other bidders, and contrary to South Carolina law, to allow one bidder to fail to agree to the terms of the contract in its bid submission but then allow that bidder to cure its material failure upon award. This creates a situation where a bidder can submit a bid with impunity, with no intention of being bound to its bid, and then either choose to agree to the terms or refuse the terms after the Intent to Award has been issued. Such a situation also encourages bidders to offer extremely low bids that do not encapsulate the actual cost of all the services and products required by the purchasing agency. This result is contrary to the Procurement Code and presents a risk to the purchasing agency in the form of change orders, deficient services, and substandard products. Here, it is an untenable risk to PEBA and the many state employees who rely upon this important benefit.

Because Minnesota Life's failure to acknowledge and agree to the terms of the contract may have a significant effect on the delivery of the services and allowing Minnesota Life to cure that material failure would be prejudicial to other bidders, Minnesota Life's failure is not waivable as a minor informality. Therefore, Minnesota Life is non-responsive to the Solicitation. The procurement officer's decision to issue an Intent to Award in favor of Minnesota Life should be overturned, as any award to Minnesota Life is clearly erroneous, arbitrary, capricious, and contrary to law.

B. Standard and Hartford are also non-responsive to the IFB, thus any award to either of them would be clearly erroneous, arbitrary and capricious, and contrary to law.

Standard and Hartford are also non-responsive to the IFB because they fail to conform with the required terms of the contract and they place significant conditions upon their acceptance of PEBA's offered terms. Therefore, Standard and Hartford are non-responsive and cannot be awarded the contract.

In its bid response, Standard includes thirteen (13) pages of Exceptions to the terms and conditions of the Solicitation. (Standard Response, Exceptions.) Within these thirteen pages, Standard, for example:

- (1) categorically refuses to agree to the Setoff provisions and dictates to PEBA that "Failure to pay premiums within the grace period will result in automatic termination of the group policy";
- (2) refuses to agree to the Contract Interpretation section; and
- (3) states that it will charge the State for copies of its business records.

This is not an exhaustive list of the alterations Standard purports to make to the contract and is intended to be illustrative.

In its bid response, Hartford similarly places conditions upon the contract with PEBA. Within its response, Hartford, for example:

- (1) refuses to agree to the Setoff provision and attempts to bind PEBA to the Hartford's language;

PPAB 2595586v1

- (2) significantly changes the language of the Indemnification provision; and
- (3) significantly changes the language of the Default provision.

This is not an exhaustive list of the alterations Hartford purports to make to the contract and is intended to be illustrative.

The Solicitation states, "Offers which impose conditions that modify material requirements of the Solicitation may be rejected. . . . Offerors will not be given an opportunity to correct any material nonconformity." (IFB, p. 9.) Because bids must be accepted unconditionally, it is essential that the bids conform to the requirements of the Solicitation and unreservedly agree to the terms and conditions. Standard and Hartford failed to do this. They each placed additional terms and conditions upon their acceptance of PEBA's offer and refused to accept the offered terms and conditions. Therefore, both Standard and Hartford are non-responsive to the Solicitation and are ineligible for an award of the contract. Any award to Standard or Hartford would thus be clearly erroneous, arbitrary, capricious, and contrary to law.

C. The Solicitation inherently is flawed, which is a detriment to the State employees and imposes an unnecessary burden upon PEBA and State.

As explained in MetLife's July 30, 2014 letter, attached hereto as Exhibit 1, the Solicitation itself is flawed because it does not take into account the services currently provided to PEBA under the existing contract and the risks to PEBA and the State employees incurred by undertaking the solicitation of a contract of this magnitude based on price alone. Rather than detail the myriad issues addressed in the July 30 letter, MetLife incorporates it by reference and adopts all of the issues contained therein into this protest letter.

Additionally, the IFB provides no meaningful description of the bidders' required obligations with regard to the administrative division of labor and workflows between the bidder, PEBA, and the benefit administrators within the various participating agencies. Consequently, one of two scenarios is likely. One, Minnesota Life will find it necessary to modify its standard process to match what PEBA ultimately requires, thus creating significant expenses for Minnesota Life that it may seek to recover from PEBA via a change order. Two, PEBA will find it necessary to do more and different work than it is accustomed and structured to handle, which carries significant costs to PEBA and participating agencies. Either scenario is inconsistent with the Procurement Code and must be avoided.

Focusing solely on the price for each type of insurance and conducting this Solicitation as an IFB—thus ignoring or minimizing considerable details inherent in a benefits contract, like the provision of customer service, the contractor's responsibility for certain fees, and the necessary set up and administration of the services—fails to properly account for all of the areas that could result in an increased cost to PEBA and the State. Because solicitations for employee benefits are more complex than a traditional commodities contract and involve many details other than price alone, the majority of recent State of South Carolina benefits procurements have been structured as Requests for Proposals, rather than IFBs. Utilizing RFPs is a best practice in the benefits procurement context, because the RFP structure allows for consideration of a broader set of criteria, which is better suited to assessing bids for complex products or services such as insurance. This Solicitation, in the form of an IFB, did not provide for consideration of all factors of cost to PEBA. Cancellation of the Solicitation, and reissuance

PPAB 2595586v1

John White  
October 16, 2014  
Page 7

of the Solicitation in the form of a Request for Proposal, is in the best interests of the State. S.C. Code Regs. 19-445.2085(C).<sup>1</sup>

### III. Relief Requested

For the reasons set forth above, MetLife requests that Minnesota, Standard, and Hartford be declared non-responsive to the IFB, that the decision of the Procurement Officer to award the contract to Minnesota be overturned, and the contract be awarded to MetLife. Alternatively, MetLife requests the Solicitation be withdrawn and resolicited, preferably as a Request for Proposals to ensure PEBA, the State, and the State's employees receive the best, most comprehensive services for the best value.

Thank you for your consideration of MetLife's protest. 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 this matter.

With best regards, I am

Sincerely,



David B. Summer, Jr.

*with permission  
by AmbuBlaute*

DBS/abc

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<sup>1</sup> Regulation 19-445.2085(C) provides, in pertinent part:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

(4) The invitation did not provide for consideration of all factors of cost to the State, . . .

. . .

(8) For other reasons, cancellation is clearly in the best interest of the State.

S.C. Code Regs. 19-445.2085(C).

PPAB 2595586v1

	<b>State of South Carolina</b>  <b>Invitation For Bid</b> Amendment #3	Solicitation Number: <b>540008083</b> Date Issued: <b>09/02/2014</b> Procurement Officer: <b>ANTHONY R CROMARTIE</b> Phone: <b>803-737-1129</b> E-Mail Address: <b>acromartie@mimo.sc.gov</b>
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DESCRIPTION: **State Employee Life Insurance**  
 USING GOVERNMENTAL UNIT: **Public Employee Benefit Authority**

*The Term "Offer" Means Your "Bid" or "Proposal". Unless submitted on-line, your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Offer" provision.*

SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL: <http://www.procurement.sc.gov>

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

MAILING ADDRESS: <b>Materials Management Office</b> <b>PO Box 101103</b> <b>Columbia SC 29211</b>	PHYSICAL ADDRESS: <b>Materials Management Office</b> <b>Capital Center</b> <b>1201 Main Street, Suite 600</b> <b>Columbia SC 29201</b>
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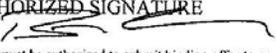
SUBMIT OFFER BY (Opening Date/Time): **09/18/2014 11:00 A.M.** (See "Deadline For Submission Of Offer" provision)  
 QUESTIONS MUST BE RECEIVED BY: **08/04/2014 4:00 P.M.** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **(1) One Original Copy, (1) One Redacted Copy (see SUBMITTING CONFIDENTIAL INFORMATION – Sec. II A and SUBMITTING REDACTED OFFERS – Sect. 4.) and one (1) electronic copy (See MAGNETIC MEDIA – REQUIRED FORMAT – Section II B)**

CONFERENCE TYPE: <b>Not Applicable</b> DATE & TIME: <small>(As appropriate, see "Conferences - Pre-Bid/Proposal" &amp; "Site Visit" provisions)</small>	LOCATION: <b>Not Applicable</b>
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AWARD & AMENDMENTS	Award will be posted on <b>10/01/2014</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="http://www.procurement.sc.gov">http://www.procurement.sc.gov</a>
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Unless submitted on-line, you must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" and "Electronic Signature" provisions.)

NAME OF OFFEROR <b>Minnesota Life Insurance Company</b>  <small>(full legal name of business submitting the offer)</small>	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  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>	TAXPAYER IDENTIFICATION NO. <b>41-0417830</b> <small>(See "Taxpayer Identification Number" provision)</small>	
TITLE <b>Second Vice President</b> <small>(business title of person signing above)</small>	STATE VENDOR NO. <b>7000135477</b> <small>(Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>	
PRINTED NAME <b>Brian C. Anderson</b> <small>(printed name of person signing above)</small>	DATE SIGNED <b>September 16, 2014</b>	STATE OF INCORPORATION <b>Minnesota</b> <small>(If you are a corporation, identify the state of incorporation.)</small>

OFFEROR'S TYPE OF ENTITY: (Check one) <small>(See "Signing Your Offer" provision.)</small> <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____ <input checked="" type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Corporation (tax-exempt) <input type="checkbox"/> Government entity (federal, state, or local)
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