

	State of South Carolina Request for Proposal Amendment 1	Solicitation Number: PEBA0112016
		Date Issued: 10/28/2016
		Procurement Officer: Georgia Gillens, CPPO, CPPB
		Phone: (803) 734-0010
		E-Mail Address: GGillens@peba.sc.gov

DESCRIPTION: **Provide Actuarial Review Services for the South Carolina Public Employee Benefit Authority**
 USING GOVERNMENTAL UNIT: **S.C. Public Employee Benefit Authority (PEBA)**

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 by the appropriate date and time below and following the instructions on Page 3.

SUBMIT OFFER BY (Opening Date/Time): **11/15/2016 2:00 PM E.S.T.** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **10/19/2016 10:00 AM** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: See Page 3. If no redacted copy is being provided, initial here _____

CONFERENCE TYPE: DATE & TIME:	LOCATION: _____
----------------------------------	-----------------

(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)

AWARD & AMENDMENTS	Award will be posted on 11/30/2016 . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: http://www.procurement.sc.gov
-------------------------------	--

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 <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. <small>(See "Taxpayer Identification Number" provision)</small>
TITLE <small>(business title of person signing above)</small>		STATE VENDOR NO. <small>(Register to Obtain S.C. Vendor No. at www.procurement.sc.gov)</small>
PRINTED NAME <small>(printed name of person signing above)</small>	DATE SIGNED	STATE OF INCORPORATION <small>(If you are a corporation, identify the state of incorporation.)</small>

OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.)

Sole Proprietorship
 Partnership
 Other _____

Corporate entity (not tax-exempt)
 Corporation (tax-exempt)
 Government entity (federal, state, or local)

COVER PAGE (NOV. 2007)

PAGE TWO

(Return Page Two with Your Offer)

HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business)	NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)
	_____ Area Code - Number - Extension Facsimile
	_____ E-- mail Address

PAYMENT ADDRESS (Address to which payments will be sent.) (See "Payment" clause)	ORDER ADDRESS (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)
_____ Payment Address same as Home Office Address _____ Payment Address same as Notice Address (check only one)	_____ Order Address same as Home Office Address _____ Order Address same as Notice Address (check only one)

ACKNOWLEDGMENT OF AMENDMENTS
 Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)

Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

DISCOUNT FOR PROMPT PAYMENT (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	_____ Calendar Days (%)
--	----------------------	----------------------	----------------------	-------------------------

PREFERENCES - A NOTICE TO VENDORS (SEP. 2009): On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at www.procurement.sc.gov/preferences. ***ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES.*** [11-35-1524(E)(4)&(6)] **PREFERENCES DO NOT APPLY.**

PREFERENCES - ADDRESS AND PHONE OF IN-STATE OFFICE: Please provide the address and phone number for your in-state office in the space provided below. An in-state office is necessary to claim either the Resident Vendor Preference (11-35-1524(C)(1)(i)&(ii)) or the Resident Contractor Preference (11-35-1524(C)(1)(iii)). Accordingly, you must provide this information to qualify for the preference. An in-state office is not required, but can be beneficial, if you are claiming the Resident Subcontractor Preference (11-35-1524(D)). **PREFERENCES DO NOT APPLY.**

_____ In-State Office Address same as Home Office Address
 _____ In-State Office Address same as Notice Address **(check only one)**

NUMBER OF COPIES

Offerors will need to follow these instructions carefully when responding to the solicitation.

1. The original solicitation response should be submitted to PEBA and is the official response. All bidders must attach all documents, including additional requested documents to their.

Please submit the following number of copies:

- a. One (1) original marked "original" and ten (10) identical paper copies of your Technical Proposal. Please number your copies Copy 1 of 2, 2 of 2, etc.**
- b. One (1) CD labeled "original" containing your original Technical Proposal.**
- c. Ten (10) labeled CDs containing a copy of the Offeror's Technical Proposal Response (in MS Word, MS Excel and/or PDF format where appropriate). Please number your copies Copy 1 of 2, 2 of 2, etc.**
- d. One (1) original marked "original" and two (2) paper copies of your Financial Proposal. Please number your copies Copy 1 of 2, 2 of 2, etc.**
- e. One (1) CD labeled "original" containing your original Financial Proposal**
- f. Two (2) labeled CDs containing a copy of the Offeror's Financial Proposal Response. Please number your copies Copy 1 of 2, 2 of 2, etc.**
- g. One (1) CD labeled "original redacted" containing a redacted version of your original Technical Proposal.**
- h. One (1) CD labeled "original redacted" containing a redacted version of your original Financial Proposal.**

DO NOT PASSWORD PROTECT YOUR CD'S.

All copies requested must be delivered no later than the date and time specified on the cover page of the solicitation to the following address:

S.C. Public Employee Benefit Authority

Attention: **Georgia Gillens, CPPO, CPPB**

Attention: PEBA0112016

S.C. Public Employee Benefit Authority 202 Arbor Lake Drive
Columbia, SC 29223

Solicitation PEBA0112016 has been amended as follows:

Submit Offer By: November 15, 2016 2:00 P.M. E.T.

See Page 3 with updated number of copies.

Page 43, replace clause titled Ownership of Materials with the following:

OWNERSHIP OF MATERIAL: Except to the extent that they incorporate Contractor's proprietary software, know-how, techniques, methodologies and report formats (collectively, "Contractor's Proprietary Information"), all data, material and documentation shared by the State with the Contractor, or generated by the Contractor or State pursuant to this contract, shall belong exclusively to the State, once paid for by the state. To the extent Contractor's Proprietary Information is incorporated into such data, material and documentation, the State shall have a perpetual, nonexclusive, worldwide, royalty-free license to use, copy, and modify Contractor's Proprietary Information as part of the data, material and documentation internally and for their intended purpose. Except as otherwise provided herein, all data and other records entered into any database of the State or supplied to (and maintained by) the Contractor for and/or by the State are, and shall remain, the sole property of the State. Contractor shall not, without the State's written consent, copy or use such records except to carry out contracted work, and will not transfer such records to any other party not involved in the performance of this Contract, and will return all records to the State upon completion of the work hereunder. Notwithstanding anything herein to the contrary, the State acknowledges and agrees that Contractor may retain an archival copy of the State's Confidential Information in accordance with Contractor's disaster recovery and document retention policies, subject to Contractor's continued compliance with its confidentiality obligations herein. In accordance with any exceptions regarding materials containing Contractor's Proprietary Information in the previous paragraph, reports, bulletins, pamphlets, summaries, similar materials, lists of employees, retirees, or any other program, product, list, or other usable and useful information shall become and remain the sole property of the State, including, but not limited to, all copyright protections and ownership and shall be released at no extra costs to the State at the termination of this contract.

Copyright or any other intellectual property right or ownership (copyright) of any preexisting items (items not specifically produced herein and which are in existence prior to the start of this contract) shall remain with the Contractor so long as the Contractor lists them not later than the start date of this contract. Failure of the Contractor to list any such materials in which the Contractor asserts a copyright will be interpreted to mean that the Contractor asserts no such ownership interests in any materials.

Any materials in which Contractor copyrighted contents are included, and subject to designation by the Contractor and agreement by the State, will bear the following notice: "Certain portions reprinted under license from _____, the copyright owner."

All other terms and conditions remain unchanged.

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

1. Please confirm whether, under Section 4 on page 22 of the RFP, PEBA prefers references from ongoing valuation clients or from actuarial audit clients.

A: PEBA prefers references from actuarial audit clients.

2. Are the audits of all five defined benefit plans to be included in a single report?

A: Yes. Please provide a single report.

3. When was the last actuarial audit of PEBA performed? Were there any issues identified that required changes to the actuarial assumptions, methods, or valuations?

A: PEBA has not had an actuarial audit previously, but we did have a parallel valuation done in 2011, with no major issues identified.

4. The "Receipt of Proposals" section on page 14 of the RFP indicates that sealed proposals will be received until 3 p.m. local time on the opening date, whereas the cover page states that offers must be submitted by 11 a.m. Please clarify the deadline time.

A: See Amendment 1 cover page for proposal submission date and time.

5. SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015) - Page 15 of RFP

(An overview is available at www.procurement.sc.gov) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4- 40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including reasonable attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-2]

A: No.

6. CONTRACTOR'S LIABILITY INSURANCE – GENERAL (FEB 2015) - Page 35 of RFP

- (a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.
- (b) Coverage shall be at least as broad as:
 - (1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.
 - (2) Professional Liability: Contractor shall maintain professional liability insurance with limits no less than \$5,000,000 per claim and \$5,000,000 in aggregate.
 - ~~(3) Fiduciary Responsibility: Contractor shall maintain fiduciary responsibility insurance with limits no less than \$5,000,000. [NOTE – Segal Vendor A will not have responsibility for the Benefit Authority's assets, and therefore will not serve in a fiduciary role.]~~
 - ~~(4)(3)~~ Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
 - ~~(5)(4)~~ Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- (c) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.
- (d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.
- (e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.
- (f) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this section

are or will be changed, cancelled, or replaced.

- (g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.
- (h) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- (i) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

A: No.

7. CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015) – Page 36 of RFP

- (a) Without limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, a policy or policies of insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible.
- (b) Coverage must include claims for:
 - information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;
 - (i) privacy risks, including (A) failure to properly handle, manage, store, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations;
 - (ii) contractual liability for the contractor's obligations described in the clauses titled "Indemnification - Third Party Claims – Disclosure Of Information" and "Information Use And Disclosure;" and
 - (iii) errors, omissions, or negligent acts in the performance, by the contractor or by any entity for which the contractor is legally responsible, of professional services included in the work.
- (c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged infringement of intellectual property rights, invasion of privacy, as well as advertising, media and content offenses.
- (d) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)
- (e) Coverage shall have limits no less than five million (\$5,000,000.00) dollars per occurrence and ten million (\$10,000,000.00) dollars aggregate.
- (f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence,"

as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.

- (g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims- made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.
- (h) Except for Professional Liability, ~~E~~every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.
- (i) For any claims related to this contract, the insurance coverage required by this clause shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.
- (j) Prior to commencement of the work, the Contractor shall furnish the State with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including policy declarations and any endorsements required by this section, at any time.
- (k) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State ~~immediately~~ within thirty (30) day ~~upon r~~from receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced.
- (l) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.
- (iv) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

A: No.

8. INDEMNIFICATION – THIRD PARTY CLAIMS (NOV 2011) – Page 38 of RFP

Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against ~~any and all~~ suits or claims ~~of any character~~ (and all related damages, settlement payments, reasonable attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property ~~arising out of or in connection with~~ resulting from the goods or services acquired hereunder or caused ~~in whole or in part~~ by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in

part by an Indemnitee, to the extent incurred as a result of Contractor's willful misconduct or negligence and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

A: No.

**9. INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015) – Page 38
of RFP**

(a) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter "action") of any character (and all related damages, settlement payments, reasonable attorneys' fees, costs, expenses, losses or liabilities) by a third party which ~~arise out of or in connection with~~ result from a disclosure of government information (as defined in the clause titled Information Security) caused ~~in whole or in part~~ by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only ~~if~~ to the extent the act or omission resulted from Contractor's negligence or willful misconduct. ~~constituted a failure to perform some obligation imposed by the contract or the law.~~

(b) Indemnitee must notify contractor in writing within a reasonable period of time after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractor's ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitees attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or

consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction.

(c) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

(d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions

A: No.

10. INFORMATION USE AND DISCLOSURE (FEB 2015) – Pages 40-41 of RFP

Except to the extent necessary for performance of the work, citizens should not be required to share information with those engaged by the government in order to access services provided by the government and such information should be used by those engaged by the government only to the extent necessary to perform the work acquired; accordingly, this clause addresses basic requirements for the Contractor's use and disclosure of government information, which expressly includes, but is not limited to, information provided by or obtained from the citizens. Anonymizing information does not resolve the foregoing concern. This clause should be broadly interpreted to effectuate this intent. Absent express reference to this clause, this clause supersedes any other clause to the extent of any inconsistency unless and to the extent the other clause provides greater protection for government information.

(a) *Definitions.* The following terms shall have the meanings set out in the clause titled Information Security: "**compromise,**" "**government information,**" "**information,**" "**public information,**" "**software,**" "**third party,**" "**unrestricted information,**" and "**web-based service.**"

(b) *Legal mandates.* Contractor shall be permitted to use, disclose, or retain government information to the limited extent necessary to comply with any requirement imposed on Contractor by law. If it is necessary for Contractor to use, disclose, or retain government information in order to comply with a law, Contractor shall provide using governmental unit with written notice, including a description of the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent prohibited by law.

(c) *Flow down.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement the limitations and restrictions of this clause on, any other person or entity that contractor authorizes to take action related to government information.

(d) *Collecting Information.* Contractor must gather and maintain government information only to the minimum extent necessary to accomplish the work.

(e) *Rights, Disclosure and Use.* Except as otherwise expressly provided in this solicitation, Contractor agrees NOT to either (1) use or disclose government information, or (2) retain government information after termination or expiration of this contract. Contractor acquires no rights in any government information except the limited rights to use, disclose and retain the government information in accordance with the terms of this solicitation. To the extent reasonably necessary to perform the work, Contractor may: (i) disclose government information to persons having a need-to-know (e.g., subcontractors); and (ii) use (including access, process, transmit, and store) and maintain the government information itself. Before disclosing government information to a subcontractor or third party, Contractor shall give the using governmental unit detailed written notice regarding the reason for disclosure and the identity and location of the recipient. The notice shall be provided no later than fifteen (15) business days in advance of the disclosure.

(f) *Return.* Notwithstanding the using governmental unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly destroy and return to the using governmental unit all government information in its possession upon written request of using governmental unit (provided that, if the contract has not expired or been terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information). Notwithstanding anything herein to the contrary, State acknowledges and agrees that Contractor may retain an archival copy of State's Confidential Information in accordance with Contractor's disaster recovery and document retention policies, subject to Contractor's continued compliance with its confidentiality obligations herein.

(g) *Privacy Policy & Applicable Laws.* Without limiting any other legal or contractual obligations imposed by this contract or the law, Contractor shall (a) comply with its own privacy policies and written privacy statements relevant to the work, and (b) comply with (1) all laws applicable to Contractor regarding government information, and (2) all laws and standards identified in the clause entitled Information Use and Disclosure –Standards.

(h) *Safeguarding Information.* Without limiting any other legal or contractual obligations, Contractor agrees to implement and maintain reasonable and appropriate administrative, physical, and technical safeguards (including without limitation written policies and procedures) for protection of the security, confidentiality, and integrity of the government information in its possession. Upon request by using governmental unit, Contractor shall confirm Contractor's compliance with this section in writing signed by Contractor's most senior executive responsible for information technology security.

(i) *Actions Following Disclosure.* ~~Immediately u~~ Upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, ~~but no later than twenty-four hours~~ after discovery, Contractor shall notify using governmental unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the using governmental unit all information necessary to enable the using governmental unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided to such parties by Contractor, and if not (e.g., if legally required of the using governmental unit), Contractor shall reimburse using governmental unit for the cost of providing such notifications; (2) ~~pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised;~~ (3) pay any related fines or

~~penalties~~ imposed on the using governmental unit by a government authority, ~~and (4) reimburse the Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use.~~

(j) *Survival & Remedy.* All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights, the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause.

A: No.

11. INTELLECTUAL PROPERTY INFRINGEMENT (JAN 2006) – Page 42 of RFP

(a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, reasonable attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes

no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim.

(b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability. (c) Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

A: No.

12. OWNERSHIP OF MATERIAL – Page 43 of RFP

Except to the extent that they incorporate Contractor's proprietary software, know-how, techniques, methodologies and report formats (collectively, "Contractor's Proprietary Information"), all ~~AI~~ data, material and documentation shared by the State with the Contractor, or generated by the Contractor or State pursuant to this contract, shall belong exclusively to the State, once paid for by the state. To the extent Contractor's Proprietary Information is incorporated into such data, material and documentation, the State shall have a perpetual, nonexclusive, worldwide, royalty-free license to use, copy, and modify Contractor's Proprietary Information as part of the data, material and documentation internally and for their intended purpose. Except as otherwise provided herein, all ~~AI~~ data and other records entered into any database of the State or supplied to (and maintained by) the Contractor for and/or by the State are, and shall remain, the sole property of the State. Contractor shall not, without the State's written consent, copy or use such records except to carry out contracted work, and will not transfer such records to any other party not involved in the performance of this Contract, and will return all records to the State upon completion of the work hereunder. Notwithstanding anything herein to the contrary, the State acknowledges and agrees that Contractor may retain an archival copy of the State's Confidential Information in accordance with Contractor's disaster recovery and document retention policies, subject to Contractor's continued compliance with its confidentiality obligations herein.

In accordance with any exceptions regarding materials containing Contractor's Proprietary Information in the previous paragraph, reports, bulletins, pamphlets, summaries, similar materials, lists of employees, retirees, or any other program, product, list, or other usable and useful information (~~including anything generally regarded as a "made for hire" product~~) shall become and remain the sole property of the State, including, but not limited to, all copyright protections and ownership and shall be released at no extra costs to the State at the termination of this contract.

Copyright or any other intellectual property right or ownership (copyright) of any preexisting items (items not specifically produced herein and which are in existence prior to the start of this contract) shall remain with the Contractor so long as the Contractor lists them not later than the start date of this contract. Failure of the Contractor to list any such materials in which the Contractor asserts a copyright will be interpreted to mean that the Contractor asserts no such ownership interests in any materials.

Any materials in which Contractor copyrighted contents are included, and subject to designation by the Contractor and agreement by the State, will bear the following notice: "Certain portions reprinted under license from _____, the copyright owner."

A: Yes.

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

VII. TERMS AND CONDITIONS

Q: In reviewing your template contract, we did not see a limitation on direct damages clause in the template included in the RFP. Our position is that such a clause is necessary before we sign any services contract. Will you allow the bidder to insert such a clause for discussion during contracting, or will you take the position that the bidder may not do so?

A: No.

Q: We are unclear whether we will be bound to the terms you have provided, or whether they are negotiable. Our position is that a proposal is not a binding contract. Please elaborate on your view of that position.

A: The terms and conditions of the RFP are binding. Please see the clause entitled "CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (FEB 2015)" on page 29 of the RFP.

Q: We noted that the clause in your template regarding contractor's indemnification lacks any requirement that the contractor have breached the terms before that clause is triggered. Please let us know whether we will have the opportunity to consider mutually agreeable language, including a limitation clause.

A: The time to propose changes is during the Question and Answer period.

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

I. Scope of Actuarial Audit Services

- a. For each retirement system (SCRS, PORS, GARS, JSRS, SCNG), please review and comment on the scope of services described below.
 - i. Review economic and demographic assumptions for reasonableness and internal consistency
 - ii. Review the reasonableness and appropriateness of funding methods
 - iii. Review the summary of plan provisions within the actuarial report in comparison to plan documents and statutory provisions
 - iv. Review actuarial results provided by the current actuary for reasonableness and consistency

- v. Request a sampling of participant data and detailed valuation results from the current actuary, prepare independent calculation of valuation results for comparison

b. Specific Questions

- i. **Will the latest demographic experience analysis for each of the funds be made available for review?**

A: Yes.

Is the latest experience analysis within the scope of this audit?

A: Yes

- ii. Will the latest investment experience analysis for the funds be made available for review?

A: Yes

- iii. **Is the sample of participant data available electronically?**

A: Yes.

In what format will the data be provided?

A: Fixed position text files

- iv. **Does the scope of the audit include evaluation of funding on the basis of the long-term funding policy and comparison to the stated employer contribution rates?**

A: Yes

- v. **Does the scope of the audit include evaluation of determinations under GASB Statements 67 and 68?**

A: Yes.

- vi. **Is evaluation of cost impact of the TERI and JSRS DROP programs within the scope of this actuarial audit?**

A: Yes.

- vii. **Does the scope of the audit include evaluation of the death benefit fund contribution rate by system?**

A: Yes.

- viii. **Does the scope of the audit include evaluation of the death benefit reserves maintained for the SCRS and PORS?**

A: Yes.

- ix. **Similar to the death benefit fund, does the scope of the audit include evaluation of the accidental death benefit contribution rate and reserve maintained for the PORS?**

A: Yes

- x. Does the scope of the audit include solvency testing under alternative assumptions?**
A: Yes
- xi. Does the scope of the audit include forecasting of funding and funded status trends over multiple years into the future?**
A: Yes
- xii. Does the scope of the audit include evaluation of the reasonableness of the current funding policies established and maintained by the State Fiscal Accountability Authority and PEBA Board?**
A: Yes
- xiii. Does the scope of the audit include evaluation of individual benefit calculations for proper allocation of benefits between the system and the QEBA in accordance with IRC 415(b)?**
A: Yes