

## Attachment 10 -- Questions and Answers

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

**1. Section 3.2.1. Will the daily file include only employees enrolled in a PEBA HDHP?**

A: Yes.

**2. Section 3.2.1. Will this daily file include retirees?**

A: No.

**3. Section 3.3.1. Since HSA account holder owns the account and can take distributions for any reason, there is no claim review, substantiation or reimbursement by the administrator. How does this section apply or may we consider this section not applicable?**

A: Other aspects of the section apply. PEBA will amend the requirement for distributions to be made within three business days of the request. The Contractor must also provide an online tool for distribution requests and provide the option for electronic funds transfer.

**4. Section 3.4.1. If there are multiple file formats in use now, is it the intent of PEBA to have one common file layout?**

A: There are a minimal number of file formats currently. PEBA will support one common file layout with the exception of the state's Comptroller General office's payroll system, which may have its own format.

**5. Section 3.2.1. What if an employer is unwilling to comply?**

A: Section 3.2.1 addresses the daily file from PEBA and doesn't require any employer action.

**6. Section 3.12.2. Can PEBA be more specific regarding "requirements from PEBA?"**

A: Security requirements may change as current best practices, threats, and state/federal guidelines are updated. PEBA needs to ensure that the Contractor remains current to ensure compliance and security practices are current.

**7. Section 3.12.3. May we assume PEBA will absorb costs related to onsite audits?**

A: PEBA does not anticipate an onsite audit to be conducted annually; however, PEBA will pay for its costs and third-party auditor costs related to conducting an onsite audit, if needed.

**8. Section 5.1.4.5.e. Can PEBA be more specific regarding “fiduciary responsibility?”**

A: No.

**9. Section 5.1.5.b. The verbiage refers to “plans” and the chart refers to “accounts.” Can PEBA be more specific and clarify the information requested? Is it for plans, employers, accounts, etc.?**

A: For the HSA plans that the Contractor administers, provide the number of plans within the range of participants listed in the table. For example, if the Contractor administers five plans, provide for those five plans how many have more than 50,000 participants, how many have between 30,000 and 49,999 participants, etc. See the clarified table below.

<b>Number of participants*</b>	<b>Number of HSA plans</b>	
	1/1/20	1/1/21
<b>More than 50,000</b>		
<b>30,000 to 49,999</b>		
<b>20,000 to 29,999</b>		
<b>10,000 to 19,999</b>		
<b>5,000 to 9,999</b>		
<b>Fewer than 5,000</b>		

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

**10. Item 3.12.3 states that the contractor must provide PEBA with the ability to audit the contractor on site. Is it correct to assume that this provision does not flow down to sub-contractors?**

**A:** That is correct.

**11. Section 2.2 discusses the number of payroll centers serving employees across the HSA program, indicating that 86 payroll centers are included in one file through the State Comptroller General's office, and 286 employers currently have enrolled HSA participants. Are the remaining 200 payroll centers using the same payroll system? If not, can the State please provide the number of differing payroll systems, and if possible the names of those systems?**

**A:** Employers do not necessarily use the same payroll system. PEBA does not track what payroll systems employers use. Employers outside of the Comptroller General's office maintain and operate their own payroll center.

**12. Section 3.12.2 requires the contractor to comply with "future updates of the security requirements from PEBA." With these being unknown, will PEBA consider altering this language? It is reasonable for a contractor to agree to comply with known requirements, but with future requirements being unknown we would expect that such requirements would be negotiated between PEBA and the contractor.**

**A:** Yes. PEBA may require additional requirements to ensure the safety of PEBA's information and to best protect our members. PEBA will work with the Contractor at the time of the requested changes.

**13. Amount of HSA assets in cash accounts for the State as of December 2020 (not deposits)?**

**A:** There was \$8,336,886 in cash accounts as of December 2020.

**14. Amount of HSA assets in investments for the State as of December 2020 (not deposits)?**

**A:** There was \$1,315,251 in investments as of December 2020.

**15. Average HSA account balance?**

**A:** The average HSA account balance is \$1,535.62.

**16. Are any employers within the State providing an employer contribution to the HSA? If so, please provide.**

**A:** PEBA does not track employer contributions to HSAs. We do not expect this to be a common practice.

**17. Does the current HSA custodian charge an HSA account closure/transfer fee for participants wishing to close their HSA and/or transfer their HSA to another custodian? If so, please provide the amount.**

**A:** There is a \$25 fee to transfer or close an account.

**18. Is the HSA member, Employer group or the State currently charged any additional fees for the following?**

- **Debit cards**
- **Transaction**
- **Banking**
- **Investment options and/or changing of those investment options**
- **Withdrawal**
- **Account statement**
- **Stop payment**

**A:** The current fees are available on Page 18 of the Request for Proposals.

**19. Can the State please share who their current 401k provider is?**

**A:** Empower Retirement is the current third-party record keeper for the South Carolina Deferred Compensation Program, which includes the 401(k) plan.

**20. Can you explain how the current HSA administration is going with ASI Flex?**

**A:** Background information is provided in the Request for Proposals.

**21. Are there any current pain points with the current administration on the employer and/or employee level?**

**A:** Background information is provided in the Request for Proposals.

**22. Can you please describe the current service experience for the State of South Carolina and its employer groups?**

- **Any specific enhancements the State of South Carolina is looking for regarding service?**

**A:** Background information is provided in the Request for Proposals.

**23. What key decision factors will play into the State's decision?**

**A:** The Award Criteria are detailed on Page 37 of the Request for Proposals.

**24. What percentage of the State's decision will be based on budget/price?**

**A:** The Award Criteria on Page 37 of the Request for Proposals are listed in the relative order of importance; the percentages will not be released.

**25. What percentage of the State's decision will be based on contractual items?**

**A:** The Award Criteria are detailed on Page 37 of the Request for Proposals. Offerors must agree to all of the terms and conditions in the Request for Proposals. See Clauses 1.16, Duty to Inspect and Inquire; 1.22, Questions from Offerors; 1.24, Responsiveness/Improper Offers; and 1.32, Pre-Proposal Conference/Submission of Questions.

**26. Does the State have any additional RFPs/projects going on in 2021 (i.e. Medical, Dental, Ben Admin)?**

**A:** All Request for Proposals issued by PEBA have previously been and will be continue to be published on the MMO website.

**27. Is the State willing to execute a Non-Disclosure Agreement in order to receive SOC reporting?**

**A:** Yes.

**28. Does the State have specific/preferred file specifications in which they require vendors to configure to or will the State configure to the vendor's preferred file specifications?**

**A:** The file format between PEBA and the Contractor will be in a mutually agreed upon format.

**29. Can the State please provide the number of differing benefit administration systems across the 286 employers that currently have enrolled HSA participants, and if possible the names of those systems?**

**A:** See response to Question 11.

**30. As it relates to section three of the proposal – Scope of Work it states “PEBA considers any proposal that provides any deviations from, or caveats to, Part 3, Scope of Work as unacceptable.” To confirm, does PEBA have any flexibility in the following requirements from section three specifically?**

**a. 3.5.2 Maintain ongoing daily interface with its Health Savings Account Trustee(s), and ensure that Participants’ Health Savings Account contributions are remitted and posted to the Participant’s Health Savings Account within one (1) business day of funds receipt from the payroll center. The Contractor may not hold Participant contributions in any type of suspense account for longer than five (5) business days. – are you able to clarify if PEBA will accept payroll contributions posting to participants accounts within 2 or more business days following submission from the employer as it is unclear in this section.**

**A:** PEBA requires posting of payroll contributions to participants’ HSA accounts within one (1) business day. PEBA will monitor the contractor’s performance of this duty. The monitoring will include, but not be limited to, reviewing accounts in “suspense.”

**b. 3.3.1 “..Make all distributions from HSAs within two business days of the request.’ – will PEBA deem any proposals unacceptable if the vendor cannot meet this requirement of distributions from an HSA within two business days of the request? Or does PEBA have flexibility in the two business day requirement?**

**A:** See response to Question 3.

**c. 3.10.1 Reporting: The following requested reporting metric within this section is not available to report on to PEBA as HSAs are individually owned accounts and this information is only provided to the account holder. Will this slight deviation deem our proposal response as unacceptable?**

**i. Types of investments used**

**A:** PEBA will require reporting regarding investments used within the HSA accounts.

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

**31. Why do you believe participation in your HSA program is so low? Do you have goals to increase this participation? If yes, can you share details about those goals and how you plan to accomplish them?**

**A:** As mentioned in Section 3.8.2, the Contractor will work collaboratively with PEBA's Communications Department staff to develop an annual marketing plan to increase participation in Health Savings Accounts.

**32. Investments – Can you explain your intention behind why you desire to “reserve the right” to change investment options? We are concerned about subjection to ERISA as there are strict rules about employers intervening in investment decisions.**

**A:** PEBA understands and recognizes that normally employers avoid becoming involved with the investment decisions on HSAs to avoid fiduciary responsibility and ERISA obligations. PEBA, however, is already a fiduciary for other investment products and is capable of handling that responsibility. As a governmental entity, PEBA will not be subject to ERISA and its compliance issues, regardless of PEBA's involvement in the investment decisions.

While perhaps it is an unusual approach in the market, PEBA intentionally crafted the requirements of this RFP so that PEBA would have fiduciary responsibility for and oversight of the investment decisions. It is PEBA's hope that the market will be able to accommodate this vision. PEBA will accept follow-up questions until February 9, 2021 as indicated by the deadline in Amendment 1.

**33. Fees – why does 3.4.4 say that the payroll centers would receive the HSA admin fees? Consumer-paid HSA fees would be deducted directly from the HSA account holder's balance.**

**A:** PEBA agrees for the administrative fee to be deducted directly from participants' accounts.

**34. 3.5.7 – Can you expand on what you mean by allowing “eligible” retired participants to access HSA. They wouldn't be able to contribute to the HSA if they were enrolled in Medicare. How would you know who was eligible or not?**

**A:** PEBA will not determine eligibility for retirees to contribute to an HSA, nor does PEBA expect the Contractor to do so. PEBA does expect the Contractor to continue to administer HSAs for retired participants to the same standards and levels of performance as required for actively employed participants under this Request for Proposals.

**35. 3.8.10 – What co-branding are you wanting to see on statements and reports? As these are individually owned accounts, this seems confusing and unnecessary. Can you please provide what details on why you want this, or waive this requirement entirely?**

**A:** PEBA will waive the requirement to cobrand participant bank account statements.

**36. For context, can you provide participation numbers for your other accounts / plans?**

**A:** Reports are available on the Facts and figures webpage at [peba.sc.gov/facts](http://peba.sc.gov/facts).

**37. 2.2 Background - You state that your intention is to separate HSAs from the contract for administration of the cafeteria plans. Can you explain why you are wanting to do this? Would you consider offers that include cafeteria plans at a bundled rate?**

**A:** No. PEBA is not interested in receiving offers that include cafeteria plans in response to this Solicitation. PEBA wants to separate HSAs from the contract for administration of the flexible spending accounts to better meet the agency's goals and serve the needs of participants.

**38. Will all the payroll centers be able / required to submit their data file in the same format as all other payroll centers?**

**A:** See response to Question 11.

**39. Do you intend to keep these accounts as employee paid accounts?**

**A:** Yes. See response to Question 16.

**40. Do any or all of the individual groups provide contributions or seed money to employee accounts? Are there plans to do so in the future if that is not the case today?**

**A:** See response to Question 16.

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

**41. Are electronic signatures acceptable?**

**A:** Yes.

**42. Can you provide more details on the requirement for a customized website (§3.8.9)?**

**A:** The customized website should be accessible without entering a password and include information specific to the benefits and features of Health Savings Accounts. The website, and any software programs residing on the website, shall be updated as needed to conform to applicable changes in federal tax laws and regulations. The website shall explain the benefits and value of enrolling, in accordance with applicable rules and information that allows a potential Participant to calculate his possible savings through participation (based on salary; federal, state, and FICA tax impact; and contributions paid pretax).

**43. Section 3.13.5 refers to section 7.50, “Security for Performance, Damages” however §7.50 is titled “Duties Upon Termination” and there is no section regarding Security for Performance.**

**A:** See the revised Request for Proposals for edits to Section 3.13.5.

**44. We submitted a request for an invitation to the pre-proposal conference on 12/9; please confirm that you have received this request.**

**A:** Acknowledged via email. An official invitation will be sent later.

**45. Will PEBA allow the vendor to produce online statements instead of paper?**

**A:** The Contractor can provide online statements to participants, but must allow participants to opt out of online statements and receive paper statements, too.

**46. Will PEBA allow electronic dissemination of welcome packets, confirmation notices, account statements, election and contribution changes in lieu of printed and mail home delivery?**

**A:** This is acceptable if the participant has provided an email address and opted to receive electronic communication.

**47. Pre COVID-19 best practices, how many HSA vendor representative(s) would typically be adequate at PEBA’s annual Benefits at Work Conference?**

**A:** PEBA requires a minimum of one representative each day of the conference; however, two representatives each day would be PEBA’s preference.

**48. Pre COVID-19 best practices, how many days August-September did PEBA’s annual Benefits at Work Conference occur over?**

**A:** The conference is held over a three-day period.

**49. Regarding the number of unique payrolls and multiple employers, is the current setup with each different participating entity implemented as its own separate client?**

**A:** Each employer receives their own reporting for their employees only. Each employer is responsible for resolving their own errors and/or payroll issues. The current contractor communicates directly with each employer.

**50. Does the obligation of Contractor under 7.31(b) only arise if Contractor’s indemnity obligation has arisen under 7.31(a) and, if so, would PEBA agree to the following insertion in 7.31(b) between “(b)” and “PEBA”, “In the event Contractor’s obligation to indemnify arises pursuant to 7.31(a) above,”?**

**A:** Yes. PEBA will agree to that modification, and will also add it to 7.32(b).

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

**51. Part 2 – Scope of Proposal**

**2.2 Background**

**Page 18 – What percentage of HSA participants have opted out of paper statements?**

**A:** Less than 1 percent.

**52. Part 3 – Scope of Work**

**3.2 Enrollment/Eligibility**

**Page 20, Section 3.2.2 – Is HSA enrollment and contribution data captured by the current vendor? If not, please describe the process.**

**A:** The enrollment currently goes through PEBA’s enrollment process; however, our intention is for enrollment to take place directly with the Contractor going forward.

**53. Page 20, Section 3.2.2 – Is PEBA open to exploring a solution in which PEBA’s current benefit enrollment platform is updated, potentially at Contractor’s expense, to be able to collect HSA enrollment and contribution data?**

**A:** See response to Question 52.

**54. 3.11 Financial Arrangements**

**Page 26, Section 3.11.1 – Is PEBA open to a solution in which the Contractor pulls funds from one or more PEBA-owned accounts based on contribution data provided by the payroll centers?**

**A:** PEBA’s intention is for funds not to flow through PEBA, but rather go directly to the Contractor.

**55. 3.15 Investments**

**Page 28, Section 3.15.1 – Can a copy of the existing Investment Policy Statement be provided?**

**A:** A current investment policy does not exist. PEBA intends to implement an investment policy statement with the execution of this Request for Proposals.

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

**56. RFP Page 7, Schedule for Key Dates indicates a Security Due date of 7/1/2021. Question/Clarification: What is the description and amount of Security Due?**

**A:** A security deposit will not be required. See the updated Request for Proposals.

**57. RFP Page 20, Section 3.3.1 Disbursement of Funds – Receive, authorize, and process all reimbursement claims for disbursement of funds from the Health Savings Account(s) for qualified benefits as allowed by the IRS. Ensure that all claims authorized for reimbursement are in compliance with all applicable IRS Codes and Regulations. Make all distributions within two business days of the request. Provide an online tool for distribution requests and provide the option for electronic funds transfer. Question/Clarification: Will PEBA allow 3 business days for review and processing?**

**A:** Yes.

**58. RFP Page 23, Section 3.8.4 Communications and Training – Ensure that all informational materials, letters, notices and collateral are cobranded with PEBA’s logo and the Contractor’s logo according to PEBA’s brand guidelines for vendors. The Contractor’s logo should be labeled as “Administered by:” to reflect the relationship between PEBA and the Contractor. The Contractor should follow other guidelines including size of logo, colors, typography and other styles as identified in the identity guidelines and will also adhere to Associated Press style guidelines. All materials must be reviewed and approved by PEBA’s Communications Department prior to use. See Attachment 8 for a sample list of required materials, letters, notices and collateral. Question/Clarification: Contractor will work with PEBA to customize all program marketing and general employee communication materials according to the PEBA’s instructions and will assure that all materials are reviewed and approved by PEBA. Automated system generated communications cannot be customized or altered due to Contractor compliance concerns. Is this acceptable to PEBA.**

**A:** It is acceptable to PEBA to not cobrand automated system-generated communications. However, custom letters, including, but not limited to a welcome letters and open enrollment confirmation notices must be cobranded.

**59. RFP Page 25, Section 3.10.3 Reporting – Provide a SOC1 report to PEBA by August 15 each year. A SOC1 report must be submitted; a SOC2 report should be submitted if available. The report should cover no less than 50% of the period in which the Contractor provided services to PEBA through June 30 of the same year. Question/Clarification: Contractor’s annual Security Assessment Review and SOC Review dates may not coincide with PEBA’s required dates. Will PEBA accept the Contractor’s most recent report(s) or a contractor equivalent report such as an independent bridge letter?**

**A:** Yes.

**60. RFP Page 26, Section 3.12.2 Information Security Requirements - Comply fully with all current and future updates of the security requirements from PEBA, as well as with all applicable state and federal requirements, in performance of this contract. Question/Clarification: Contractor can agree to abide by industry best practices, NIST standards and federal requirements – is this acceptable to the PEBA?**

**A:** No. PEBA may require additional requirements to ensure the safety of PEBA’s information and to best protect our members. PEBA will work with the Contractor at the time of the requested changes.

**61. RFP Page 28, Section 3.15.1 Investments – Question/Clarification: Will the State of South Carolina consider removing the right of PEBA to retain final authority to approve the IPS for the HSA? Typically, employers intentionally avoid making or influencing HSA investment decisions in order to avoid fiduciary obligations and ERISA implications (see DOL FAB 2006-02). We believe PEBA is exempt from ERISA, but by having final authority to approve the IPS, it may create a situation where PEBA and or the Contractor may face additional compliance burdens. Question/Clarification: If the State of South Carolina will not modify this section, will it agree to indemnify the Contractor for the additional compliance burdens?**

**A:** See response to Question 32. No, PEBA will not agree to indemnify the Contractor.

**62. RFP Page 28, Section 3.15.3 Investments – Question/Clarification: Will the State of South Carolina consider removing the right of PEBA to add to, replace, or remove any of the investment options offered through the HSA? Typically, employers intentionally avoid making or influencing HSA investment decisions in order to avoid fiduciary obligations and ERISA implications (see DOL FAB 2006-02). We believe PEBA is exempt from ERISA, but by having final authority to approve the IPS, it may unnecessarily create a situation whereby PEBA and or the Contractor may face additional compliance burdens. Question/Clarification: If the State of South Carolina will not modify this section, will it agree to indemnify the Contractor for the additional compliance burdens?**

**A:** See response to Question 32. No, PEBA will not agree to indemnify the Contractor.

**63. RFP Page 28, Section 3.15.5 Investments – Question/Clarification: Will the State of South Carolina consider removing the requirement to provide PEBA or its investment consultant all information necessary for the on-going oversight of the investment options? Typically, employers intentionally avoid making or influencing HSA investment decisions in order to avoid fiduciary obligations and ERISA implications (see DOL FAB 2006-02). We believe PEBA is exempt from ERISA, but by having final authority to approve the IPS, it may create a situation where PEBA and or the Contractor may face additional compliance burdens. If the State of South Carolina will not modify this section, will it agree to indemnify the Contractor for the additional compliance burdens?**

**A:** See response to Question 32. No, PEBA will not agree to indemnify the Contractor.

**64. RFP Page 28, Section 3.15 Investments – In general, several of the subsections provide PEBA with more control over the investment options than is typical. This creates potential concerns for the Contractor. Contractor should be providing custodial services, which allows the HSA owners to make self-directed investment options. The manner in which the State of South Carolina wants to maintain control over the investments, Contractor may be deemed to be a third-party service provider, creating additional liability for the Contractor. Question/Clarification: Will the State of South Carolina be open to a more standard architecture that does not alter the way leading HSA trustees and custodians operate?**

**A:** See response to Question 32. Any suggested changes from the structure described in the RFP must be presented to PEBA during the follow-up period established in response to Question 32.

**65. RFP Part 7, Terms and Conditions Section 7.46 SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE - REQUIRED (FEB 2015) The Contractor must demonstrate that programs, policies and procedures are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used by Contractor to process, store, transmit, and access all government information. In order for the State to accurately evaluate the strength and viability of the Contractor's security policies, procedures and practices related to confidentiality, integrity and availability, Offerors must submit with their offers a thorough and complete written response to the Service Provider Security Assessment Questionnaire ("Response to SPSAQ") attached to this Solicitation (Attachment 5), which must address all applicable organizations and applicable information systems. Question/Clarification: Will it be acceptable to the PEBA for contractor to complete Attachment 5 at the time of contract start date and thereafter provide Contractor's Annual DDP or a Contractor equivalent document? If this is not acceptable, may Contractor restrict frequency for completion of this questionnaire to no more than once annually?**

**A:** No.

**66. RFP Page 41, Section 7.22. Changes – Question/Clarification: Will the State of South Carolina agree to modify this section to reflect that any changes, even if deemed within the general scope of the contract, will require mutual agreement and a written amendment signed by all parties?**

**A:** No.

**67. RFP Page 42, Section 7.25, subsection (f) – Question/Clarification: Will the State of South Carolina agree that a waiver of any right to subrogation will only apply to General Liability Coverage?**

**A:** PEBA will agree to the request.

**68. RFP Page 42, Section 7.25, subsection (g) – Question/Clarification: Will the State of South Carolina agree to modify this section to remove the requirement that any deductibles or self-insured retentions must be approved by the State? Contractor recognizes the need to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. However, it not feasible to decrease a deductible for any single client because the insurance policies cover Contractor's entire book of business as a whole. The policies are not written specific for any one client.**

**A:** PEBA agrees to the proposed change. The Contractor must still disclose the amount of the deductibles or self-insured retentions.

**69. RFP Page 43, Section 7.26, subsection (e) – Question/Clarification: Will the State of South Carolina agree that the limits stated may be covered by an umbrella or excess coverage policy?**

**A:** Yes.

**70. RFP Page 43, Section 7.26, subsection (h) – Question/Clarification: Please confirm the additional insured requirement in this subsection applies only to the insurance required in this Section 7.26.**

**A:** PEBA will agree to remove subsection (h) from Section 7.26 from the RFP.

**71. RFP Page 43, Section 7.26, subsection (i) – Question/Clarification: Will the State of South Carolina agree to remove this subsection? It is not typical in the marketplace for there to be primary and non-contributory provisions in Cyber Risk/E&O policies.**

**A:** PEBA will agree to remove subsection (i) from Section 7.26 of the RFP.

**72. RFP Page 44, Section 7.26, subsection (l) – Question/Clarification: Please confirm the waiver of subrogation requirement in this subsection applies only to the insurance required in this Section 7.26.**

**A:** Yes.

**73. RFP Page 44, Section 7.26, subsection (m) – Question/Clarification: Will the State of South Carolina agree to modify this section to remove the requirement that any deductibles or self-insured retentions must be approved by the State? Contractor recognizes the need to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. However, it not feasible to decrease a deductible for any single client because the insurance policies cover Contractor’s entire book of business as a whole. The policies are not written specific for any one client.**

**A:** PEBA agrees to the proposed change. The Contractor must still disclose the amount of the deductibles or self-insured retentions.

**74. RFP Page 44, Section 7.28, subsection (2)(b) – Question/Clarification: Will the State of South Carolina agree to remove this subsection and accordingly modify all other subsections that relate to Contractor being liable to the State for any excess costs for services in the event of default?**

**A: No.**

**75. RFP Page 45, Section 7.31 Indemnification, subsection (a) – Question/Clarification: Will the State of South Carolina agree to modify this section to reflect that Contractor will only be required to indemnify PEBA solely to the extent any suit or claim is a result of Contractor’s negligence or fault? This provision currently provides that Contractor will fully indemnify PEBA even if PEBA is partly at fault.**

**A: No.**

**76. RFP Page 45, Section 7.31 Indemnification, subsection (a) – Question/Clarification: Will the State of South Carolina agree to modify this section to reflect that (i) Contractor may retain the right to choose counsel subject to the State’s approval, not to be unreasonably withheld and (ii) Contractor will control the defense of any claim for which it is responsible under this indemnity provision?**

**A: No.**

**77. RFP Page 45, Section 7.31 Indemnification, subsection (b) – Question/Clarification: Will the State of South Carolina agree to remove language in this subsection that gives PEBA the right to elect to defend on its own any matter falling within the indemnity provision? If Contractor is to bear the full responsibility for any and all costs, expenses, settlement payments, attorney’s fees, losses, liabilities, and damages resulting from the suit or claim, the Contractor should have the right to control the defense.**

**A: No.**

**78. RFP Page 46, Section 7.32 Indemnification, subsection (a) – Question/Clarification: Will the State of South Carolina agree to modify this section to reflect that Contractor will only be required to indemnify PEBA solely to the extent any suit or claim is a result of Contractor’s negligence or fault? This provision currently provides that Contractor will fully indemnify PEBA even if PEBA is partly at fault.**

**A: No.**

**79. RFP Page 46, Section 7.32 Indemnification, subsection (b) – Question/Clarification: Will the State of South Carolina agree to remove language in this subsection that gives PEBA the right to elect to defend on its own any matter falling within the indemnity provision? If Contractor is to bear the full responsibility for any and all costs, expenses, settlement payments, attorney’s fees, losses, liabilities, and damages resulting from the suit or claim, the Contractor should have the right to control the defense.**

**A:** No.

**80. RFP Page 47, Section 7.33 Indemnification, subsection (b) – Question/Clarification: Will the State of South Carolina agree to include an option (3) for Contractor to terminate the Agreement in the event Contractor cannot (i) procure for State the right to continue to use or (ii) replace or modify the acquired item so that it becomes non-infringing? In addition, will the State of South Carolina agree to modify the language to reflect that there will be no refund of any charges paid by the State to the extent the State received full benefit of the services required to be performed?**

**A:** No.

**81. RFP Pages 47 through 50, Sections 7.34 through 7.38 relating to Information and Information Security – Question/Clarification: Will the State of South Carolina consider modifications to these sections?**

**A:** PEBA must have the specific requested modifications to be able to respond.

**82. RFP Page 53, Section 7.50 Duties Upon Termination – Question/Clarification: May the Contractor include in its fee proposal the costs associated with the services being requested in this Section?**

**A:** See Page 37 of the Request for Proposals, Award Criteria. Offerors are to propose a single Total Fixed Administrative Fee in the Business Proposal.

**83. Part 7 Terms and Conditions – Question/Clarification: Will the State consider adding a force majeure provision?**

**A:** PEBA must have the specific requested modification to be able to respond.

**84. Part 7 Terms and Conditions – Question/Clarification: Will the State consider adding a limitation of liability provision?**

**A:** PEBA must have the specific requested modification to be able to respond.

**85. Part 7 Terms and Conditions – Question/Clarification: Will the State consider adding a provision excluding indirect, special, incidental or consequential damages?**

**A:** PEBA must have the specific requested modification to be able to respond.

**86. RFP Pages 33 – 34. 5.1.4.9 Performance Measurements, Standards and Liquidated Damages. a. Provide your PEBA specific monthly performance standards and related liquidated damages for deviation from those performance standards in, at a minimum, the following PEBA performance measurement areas as outlined in the table below. Question: Is it PEBA’s expectation that the Offeror will add or state it’s recommended or proposed standards in the blanks shown in the table or will these be negotiated during formal contract negotiations?**

**A:** PEBA expects the Offeror to fill in the blanks in its proposal submission.

**87. Part 7 Terms and Conditions – Question/Clarification: Will the State consider adding a force majeure provision as shown below:**

**Force Majeure. Neither Party shall be liable for any damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to acts of God, government restrictions (including the denial or cancellation of any necessary license), wars, strikes, insurrections, infectious disease outbreaks and/or any other cause beyond the reasonable control of the Party whose performance is affected**

**A:** See Clause 7.28 DEFAULT Item (c).

88. **Part 7 Terms and Conditions – Question/Clarification: Will the State consider adding a limitation of liability provision as shown below?**

**Limitation of Liability.** Except for damages incurred or arising out of or due to gross negligence, willful misconduct or fraud of the Contractor, the aggregate liability of Contractor from any and all actions relating to the subject matter of this Agreement shall not exceed fees actually paid by the State of South Carolina to Contractor under this Agreement in the twelve months preceding the date on which the cause of action arose.

A: No.

89. **Part 7 Terms and Conditions – Question/Clarification: Will the State consider adding a provision excluding indirect, special, incidental or consequential damages as shown below?**

**Limitation of Damages.** Neither party shall be liable for any indirect, special, incidental or consequential damages of any kind, even in the event that it is advised of the possibility that such damages may arise, occur, or result.

A: No.

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

90. **What do you mean by “Common Mode” from section 3.4.1? Is common mode SC PEBA’s term for what you want the vendor to build, or is it something that represents a central data hub for all employers’ payroll data?**

A: A common mode is a common format and method of transmission of required data.

91. **If SC PEBA can create one central file for enrollment to the vendor, has there been any consideration to centralizing payroll deduction requests as well and putting them in a contribution file to the HSA vendor?**

A: No. See response to Question 54.

92. **What are SC PEBA’s expectations for what each employer can see or not see regarding enrollment and contribution info?**

A: Employers should be able to see the information employers customarily see to appropriately administer the plan. Full details can be discussed during implementation.

**93. Would SC PEBA want the employers to be set up as their own individual employers?**

**A:** Yes.

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

**94. The performance measurements indicated the contributions must be remitted and posted to participant HSAs within 5 business days. What is PEBA's expectation for when funds should be available to participants after funds are received from the payroll centers?**

**A:** Section 3.4.2 states that payroll contributions and data provided electronically by a payroll center must be posted to a Participant's account within one (1) business day following submission from the employer. See response to Question 30.

**95. The minimum mandatory requirements indicate that the contractor must have previously administered a multi-employer, government plan with at least 50 different payroll centers. Can the subcontractor have this experience to meet this requirement?**

**A:** No.