

Attachment 15 -- Questions and Answers

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

Schedule of Key Dates

- 1. The Schedule of Key Dates listed on page 6 indicates a Pre-Proposal Conference would be held on 01/30/2020. The Instructions to Offerors – B. states “In order to have a meaningful discussion at the pre-proposal conference held at 202 Arbor Lake Drive, Columbia, South Carolina, all questions must be received by the Procurement Officer no later than January 30, 2020, at 2:30 p.m. local time.”**

Please confirm the time of the Pre-Proposal Conference is 2:30 pm on 01/30/2020.

A: Confirmed.

- 2. The Schedule of Key Dates listed on page 6 indicates a Live Test Demonstration would be held on 08/31/2020. However, Part 3, Scope of Work, Section K.6. states “The Contractor shall complete no later than November 30, 2020, a live test demonstration of the processing of test claim scenarios with 100 percent accuracy.”**

Please confirm the date of the Live Test Demonstration.

A: Live testing should begin as soon after award as is practicable, but August 31, 2020 serves as an official start date. Live testing with 100 percent accuracy of claim scenarios must occur by November 30, 2020.

Part 1 – Instructions to Offerors – a. General Instructions

- 3. Item 1.21 of the current Pharmacy Benefits Management (PBM) RFP states “Offerors are urged to advise the Procurement Officer as soon as possible regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. Offerors should advise PEBA of any problems they perceive as a result of reviewing this solicitation document, which may bear upon their ability to comply, or submit any other questions, which might ultimately bear upon PEBA’s ability to enter into the relationship described herein with a selected vendor.” While the RFP states in the Part 2, Scope of Proposal that the contract would be between PEBA and the PBM, using this arrangement solely could limit competition. To confirm our ability to submit an offer for this RFP, BlueCross BlueShield of South Carolina asks the following question:**

In reference to RFP item 1.21 (b) and with the desire to not unnecessarily or inappropriately limit full and open competition, would PEBA allow an offeror to submit a response to the RFP utilizing a PBM as a subcontractor to meet the mandatory minimum requirements and to perform certain requirements of the RFP?

A: No. Ample competition exists in the PBM market without subcontracting the primary PBM function. As stated in the original RFP and superseded by Amendment 2, page 17, Part 2, Scope of Proposal, paragraph 1, “The contract will be between PEBA and the Pharmacy Benefit Manager (PBM). Additionally, please see Section 4.2, Mandatory Minimum Qualifications.

Part 3 – Scope of Work – A. Pricing and Cost Containment Requirements

4. Item 5 reads “The contractor shall propose and implement pricing guarantees for both the Commercial and EGWP plans. Proposed pricing guarantees shall be for both the ingredient cost and dispensing fees for brand and generic prescription drugs filled at all retail, mail and the Contractor’s in-house specialty pharmacy.”

Please confirm if the request is for AWP discount guarantees or guaranteed ingredient cost. If the latter is requested, please provide more detail.

A: The request is for AWP discount guarantees. For detailed specifications of pricing guarantees, please see Tab A-10: Financial Proposal.

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

Technical Proposal

5. Tab A-2a – Section A ‘Pricing and Cost Containment’, Question 1: Please confirm the specific minimum program requirements and components for the Opioid management program under the Commercial Plan.

A: Requirement stands as written. The drug utilization review program shall include an opioid management program that promotes patient safety by ensuring appropriate prescribing of opioids and is compliant with federal and state guidelines.

6. Tab A-2a – Section A ‘Pricing and Cost Containment’, Question 10: Please provide more details surrounding the question. Is PEBA seeking information about how vendors promote mail order over retail, and vice versa, depending on the medication and/or therapy?

A: The Offeror should propose how it optimizes its cost containment strategies based on various distribution channels.

7. Tab A-2a – Section A ‘Pricing and Cost Containment’, Question 12: Please describe the specifics of what PEBA considers a managed injectable program.

A: As it relates to the Pharmacy benefit, PEBA views a managed injectable program as a program that manages the administration of injectables, to include, but is not limited to high cost and complex medications.

8. Tab A-2a – Section A ‘Pricing and Cost Containment’, Question 15: States that the Contractor shall provide a closed formulary in conjunction with a preferred drug list and that PEBA is currently using the incumbent’s National Preferred Formulary. Does PEBA intend to move to a fully closed formulary or continue with an incentive formulary that has exclusions in select categories of the formulary?

A: PEBA defines a closed formulary as one where selected drugs are excluded from coverage within certain categories. Alternatives to the excluded drugs are available in the generic, preferred brand, and non-preferred brand tiers. Bidders are reminded that PEBA is currently using the incumbent’s National Preferred Formulary.

9. Tab A-2b, Section B ‘Specialty Pharmacy’, Question 45: Please provide more details of what PEBA is looking for regarding our limited distribution drug process.

A: Offeror should describe its own process for dealing with exclusivity or limited distribution drugs.

See new questions in Tab A-2b, Section B. Pharmacy Network Management, Specialty Pharmacy, 45 (b) and 45 (c).

45 (b): Please provide (in Excel format) a complete list of NDC codes (11 digits, unformatted) for drugs you consider limited distribution (LDD) and please indicate which NDCs are considered exclusive to you, the Offeror. This list should be based on what would have been in place if you were administering PEBA’s prescription drug benefits on January 1, 2020.

45 (c): Please describe in detail the process that you would use to maintain and share with PEBA the LDD NDC list during contract performance.

10. Tab A2-c – Section C ‘Claims Processing and Payment’, Question 11a: Please clarify the intent of the question. Is PEBA referring to the way our system communicates with our retail network pharmacies?

A: Requirement stands as written. Offeror should describe the online data link between each participating pharmacy and the Offeror. See Part 3 Scope of Work, Section C Claims Processing and Payment Requirements, Item 4.

Part 2 Scope of Proposal

11. Page 16, states “As of December 2019, there are 421,421 participants in the Commercial Plan”. Part 2, Scope of Proposal, 2.1 Introduction, page 18 states “As of December 2019, there are 277,018 subscribers enrolled in the State Health Plan, with a total of 487,121 participants insured by the plan”. Please confirm if the correct number of participants as of December 2019 in the Commercial Plan.

A: As of December 2019, there are 420,423 participants in the Commercial Plan. See updated language in the Amendment.

Part 3 Scope of Work

12. Part 3, Question A.5, lists types of claims that should be excluded from the rebate guarantees. Please confirm if any of the following categories of claim may be excluded. Please confirm that no other exclusions besides those accepted below and outlined in the RFP will be accepted.

- **Member Submitted claims**
- **Subrogation Claims**
- **Biosimilar products**
- **Exclusive or Limited Distribution Products**
- **Vaccines**
- **OTC Products**
- **Claims dispensed from an on-site or Sponsor or Plan owned pharmacy**
- **Claims through 340B pharmacies**
- **Coordination of benefit claims**
- **No Bill/No Remit**
- **Long Term Care Pharmacy claims**
- **Home Infusion claims**
- **I/T/U claims**
- **Single source generic drugs**

A: Item A.5, of the RFP relates to “pricing guarantees”, not rebate guarantees as stated in your question. The exclusions to “pricing guarantees” stand as written.

13. Part 3, Question A.7, lists types of claims that should be excluded from the rebate guarantees. Please confirm if any of the following categories of claim may be excluded. Please confirm that no other exclusions besides those accepted below and outlined in the RFP will be accepted.

- **Member Submitted Claims**
- **Subrogation Claims**
- **Biosimilar products**
- **Exclusive or Limited Distribution Products**
- **Multi-source brands**
- **Vaccines**
- **OTC products**
- **Claims older than 180 days**
- **Claims through Sponsor-owned, in-house, or on-site pharmacies**
- **Claims through 340B pharmacies**
- **Coordination of benefit claims**
- **Claims with no cost to Sponsor**
- **I/T/U claims**
- **Claims pursuant to a 100% Member Copayment**

A: The exclusions stand as written.

14. Part 3, Question A.7, references ‘guarantee per branded prescription’.

Please clarify if this should be ‘per Brand’ and based on the classification of Brand Prescription Drug outlined in the definitions section, Part 1, Section 1.1.

A: Yes. (See updated definition section, Part 1, Section 1.1.)

15. Part 3, Question A.8, states that “All branded prescriptions with the exception of the exclusions listed in Part 3, A.7 are considered rebateable and are therefore subject to the rebate reconciliation”.

Please clarify if ‘branded prescriptions’ is based on the classification of Brand Prescription Drug outlined in the definitions section, Part 1, Section 1.1.

A: See answer to question 14.

16. Part 3, Question A.8, states that “Each element of the rebate guarantee shall be evaluated independently and surpluses in one element may not be applied to an element in deficit.”

Can PEBA provide clarification on what it defines as an element for the purpose of rebate guarantee reconciliation? For example, are Retail Rebates (Retail, Retail 90, and Retail Specialty) considered one element?

A: Each cell in Tab A-10: Financial Proposal, Tables II and III, where the Offeror is providing a rebate guarantee is considered an element. No, these are considered separate elements.

17. Part 3, Question I.3.b states, “the Contractor must provide a guaranteed minimum dollar amount per paid brand or generic prescription that PEBA will receive for rebates.” This conflicts with requirement in Part 3, Section A.7, which asks for ‘guarantee per branded prescription’ and Tab A-10: Financial Proposal worksheet, which asks for ‘per brand script’ guarantees.

Please clarify the basis which rebate guarantees are to be quoted on and confirm that Zero Balance Due (ZBD) claims are to be counted as claims in the rebate guarantee reconciliation.

A: Rebate guarantees are on a per brand/branded prescription basis. Yes, Zero Balance Due (ZBD) claims are to be counted. Please see updated language in Part 3 Scope of Work, Section I. Financial Requirements, Item 3.b; Part 5 Information for Offerors to Submit, 5.2 Business Proposal, Item 2 Offeror’s Financial Proposal Response (Excel Document) Tab A-10: Financial Proposal, Item 9; Tab A-2i; Service Description Questionnaire, Financial Requirements Q3-b.

Section 5.2 Business Proposal

18. Subsection Tab A-10 Financial Proposal, Question 9, states “...you must provide a guaranteed minimum dollar amount per paid brand or generic prescription that SCPEBA will receive for rebates.” This conflicts with requirement in Part 3, Section A.7, which asks for ‘guarantee per branded prescription’ and Tab A-10: Financial Proposal worksheet, which asks for ‘per brand script’ guarantees.

Please clarify the basis which rebate guarantees are to be quoted on and confirm that Zero Balance Due (ZBD) claims are to be counted as claims in the rebate guarantee reconciliation.

A: Rebate guarantees are on a per brand/branded prescription basis. Yes, Zero Balance Due (ZBD) claims are to be counted. Please see updated language in Part 3 Scope of Work, Section I. Financial Requirements, Item 3.b; Part 5 Information for Offerors to Submit, 5.2 Business Proposal, Item 2 Offeror’s Financial Proposal Response (Excel Document) Tab A-10: Financial Proposal, Item 9; Tab A-2i; Service Description Questionnaire, Financial Requirements Q3-b.

Miscellaneous

19. Please confirm rebates will not be based on minimum or minimum average days’ supply.

A: Confirmed. Rebates are to be based on a per brand/branded prescription basis. Please see Part 3 Scope of Work, Section A. Pricing and Cost Containment Requirements. Item 7.

20. Please confirm the start time and maximum number of attendees for the pre-proposal conference on January 30th.

A: The pre-proposal time is 2:30 p.m. The RFP does not state a maximum number of attendees.

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

21. Part 2 Scope of Proposal, Page 37, Section G. Indirect EGWP with Wrap Requirements: Is the drug coverage for actives, pre-65 retirees and the EGWP retirees the same?

A: Actives and pre-65 retirees are together in the Commercial plan. Member copayments and scope of coverage are the same for all groups. Formulary and utilization management programs may or may not be the same among groups. EGWP coverage must comply with all federal Medicare rules. PEBA determines member copayments and scope of coverage, while formulary and utilization management programs are the responsibility of the contractor, with PEBA approval.

22. Part 2 Scope of Proposal, Page 37, Section G. Indirect EGWP with Wrap Requirements: Do the EGWP retirees have a completely open formulary where the expectation is to cover all Med D and NON Med D drugs?

A: Yes, it is PEBA's expectation to cover all Med D and NON Med D drugs, subject to the Plan of Benefits document, and that the formulary be in compliance with all applicable CMS rules and regulations.

23. Part 2 Scope of Proposal, Page 16: Would you like to have a Hyper Inflation strategy in place for any of your populations?

A: The Offeror may propose programs it deems beneficial to PEBA but should be advised that they must be compliant with the RFP and any proposed services must be included as part of the fixed administrative fee. Please see Part 3, Scope of Work, Section A, Pricing and Cost Containment Requirements, Item 15.

24. Part 2 Scope of Proposal, Page 16: Is the expectation that we cover all pharmacies for EGWP members or can we offer a narrower pharmacy network?

A: Yes, it is the expectation that the Offeror include all willing pharmacies for EGWP members. Generally, a narrower pharmacy network is permissible for retail maintenance medications as is consistent with current practice.

25. Please provide the claims dataset with a field that breaks out the EGWP lives from the Commercial lives. Alternatively, please provide the data separated into two files, one for the Commercial lives and one for the EGWP lives.

A: EGWP claims are identified by joining the file “Claims.csv” to “Eligibility.csv” using the variables PATIENT_ID and DISP_DATE from claims and PATIENT_ID, ELIG_START, and ELIG_END from eligibility. Members with a subscriber type of “RETIREE”, “FORMER SP”, and “SURVIVOR” with a MEDICARE_FLAG value of “Y” are EGWP claims.

26. For the hard copy bid submission, please confirm that the State will accept a USB for attachments that have a large number of pages, rather than hard copy printed.

A: No. All hard copies should be complete documents that include all elements of the proposal. Electronic copies must mirror the hard copy. The mode of submission is the only difference.

27. Please provide census data for the PEBA population.

A: Pharmacy Benefit Managers who completed the Non-Disclosure Agreement have been provided this information. Please see file **PEBA PBM RFP 2020 - 16jan2020.zip**.

28. Offeror’s Technical Proposal Response, Tab A-2D Customer Service, Q1: Please provide the volume of written and telephone inquiries from participants, providers, and employers.

A: See below.

SC PEBA 2019

Month	Total Number of Contacts
January	13,430
February	10,229
March	10,505
April	9,664
May	8,549
June	8,139
July	9,079
August	8,641
September	8,376
October	9,358
November	8,078
December	8,363
Total	112,411

29. Offeror’s Technical Proposal Response, Tab A-2D Customer Service, Q1: PEBA requests “dedicated” customer service representatives. Please confirm that the representatives are not expected to sit idle if they are not serving PEBA members at the time.

A: Stands as written. PEBA requires dedicated customer service representatives.

30. Offeror’s Technical Proposal Response, Tab A-2J Eligibility of Participants and Computer Support Requirements, Q18: PEBA requests notice not to exceed two business days. Please confirm that PEBA would be willing to be notified at least five (5) business days following a compromise or breach. In addition, a written notice within five (5) business may be given to the Privacy Officer if emergency situations preclude.

A: PEBA does not accept the requested change. Notice should be provided as described in the RFP and the BAA.

31. Offeror’s Technical Proposals Response, Tab A-2k Implementation Plan Q-3: This Requirement identifies that “forms to be used beginning January 1, 2021” be included in our communications and training in the Implementation Plan. Please provide details or examples of the “forms to be used beginning January 1, 2021.”

A: Current forms include a *Prescription Drug Claim Form* and *Prescription Drug Mail Order Form*. Proposer should timely provide whatever communications and forms are needed to effectively manage the transition and implementation of the contract with minimal member disruption.

32. Offeror’s Technical Proposals Response, Tab A-2a, Pricing and Containment, Q24: Please clarify what “support” entails for items, “ll. Prior Authorization (PA) edits and support” and “mm. Step Therapy edits and support.”

A: “Support” may include, but is not limited to, providing any supporting documentation or explanation as to the purpose, origin or explanation of prior authorization edits and step therapy edits. Support may also include, but is not limited to communications as indicated in Part 3 Scope of Work, Section E. Communications and Training, Item 2.

33. Offeror’s Technical Proposals Response, Tab A-2a Pricing and Containment, Q-15: Please confirm that PEBA is requiring a closed formulary for this procurement. If yes, please provide your definition of a Closed Formulary.

A: See answer to question 8.

34. Offeror's Technical Proposals Response, Tab A-9 Performance Guarantees, Q-14: We ask that the following language be included in the guarantee:

This would only apply to mailings where complete and accurate requirements are received and approved based on a mutually agreed upon date between PBM and the State which will allow appropriate time to complete the mailing.

This is based on receipt of a clean and accurate electronic Eligibility file by a mutually agreed upon date between PBM and the State to support the mailing.

A: This is acceptable for Tab A-9 Performance Guarantees, PG-14.

35. Offeror's Technical Proposals Response, Tab A-9 Performance Guarantees, Q-4: As after-call surveys don't always provide a statistically valid sample, and member satisfaction should be evaluated more frequently than an annual basis we would recommend replacing PG #4 with the following:

**Participant Overall Satisfaction Rate - The Contractor will conduct participant satisfaction surveys on a quarterly basis. (See Part III, Section E.14 of the RFP). The overall satisfaction rate will meet or exceed the specified goal.
95% or greater**

A: Requirement stands as written.

36. Offeror's Technical Proposals Response, Tab A-2e Communications and Training, Q17: We would like to recommend the following change to RFP question:

The Contractor shall conduct ~~an annual~~ **quarterly Member Satisfaction Survey for Participants to gauge satisfaction with the Contractor. The Member Satisfaction Survey must be approved by PEBA prior to distribution. Results must be submitted to PEBA's Procurement Officer.**

A: Requirement stands as written.

37. Part I, Instructions to Offerors – A. General Instructions; 1.1-Definitions of Brand Prescription Drug and Generic Prescription Drug (page 7): Based on our review of the claims data sent with this procurement, it appears that the claims are not currently classified as described in the definitions. Please clarify that Bidder may selectively override the Medi-Span indicator to preserve industry standard classifications in alignment with Bidder’s book of business.

A: No, the bidder may not selectively override the Medi-Span indicator. The claims data represent the classification system currently being utilized by the incumbent.

38. Part I, Instructions to Offerors – A. General Instructions; 1.26-Submitting Confidential Information (page 13): This instruction states that “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.” Bidder understands the need for public transparency in contracting and for the total amount PEBA would pay under one proposal, compared to others, to be available to the public. However, the RFP calls for several specific financial guarantees to be provided. Any PBM could utilize the financial guarantees of another to reconstruct many details of a PBM’s highly confidential and proprietary underwriting model to the great detriment of that PBM in future procurements. Therefore, these individual financial guarantees, access to which is narrowly restricted by Bidder, constitute trade secret information under South Carolina law. Therefore, we request that PEBA permit bidders to identify individual financial guarantees that constitute trade secrets as such in their proposals. Given that the RFP mandates that bidders hold the State harmless for any damages it incurs for withholding any information identified as trade secret, the State should be protected in the event that a bidder cannot justify such markings if challenged.

A: Financial guarantees may be identified as a confidential trade secret.

39. Part 3, Scope of Work/Specifications; Paragraph C.13 (page 28): This section requires the PBM to provide PEBA with independent legal counsel in connection with any legal appeal of an adverse appeal decision. Because the PBM may have a potential conflict of interest in providing legal counsel to PEBA, it would be necessary for the PBM to hire its own independent legal counsel in such matters. In light of the unpredictable nature of such claims and the potential expense, please advise if the costs for such legal counsel may be passed through to PEBA (with no increases)? If PEBA will not agree to this, please advise how many member lawsuits challenging adverse appeal decisions have occurred in the last three years and, if known, the approximate costs that were incurred in defending such actions.

A: Part 3, Scope of Work, Paragraph C.13 summarizes the administrative appeal process available to health plan participants when they receive adverse decisions of requests for prescription drug benefits. As explained, the participant makes the initial request for benefits to the

Contractor, and, if denied, has the right to a first and second review by the Contractor. Thereafter, the participant may file an appeal with PEBA. PEBA's determination is the final and binding decision, subject only to administrative review by the Administrative Law Court and ultimately the state appellate courts. The counsel provided by the Contractor under this section would represent PEBA, at PEBA's request, and defend PEBA's decision to deny the requested benefits. The Contractor is not a party to a participant appeal and has no interest in the outcome of the appeal.

No, PEBA does not accept the legal counsel required under this section as a pass-through cost.

In the past five years, only one prescription drug denial has been appealed to the Administrative Law Court. The approximate costs are unknown because it was handled by outside counsel provided to PEBA by the PBM at the time.

40. Part 3, Scope of Work; Paragraph D.3 (pages 28-29): The RFP requires dedicated representatives to take calls from PEBA customer service representatives and managers. Does PEBA expect this team to be different from those that assist PEBA members, or may the group overlap?

A: The groups may overlap.

41. Part 3, Scope of Work; Paragraph I.2.d (page 42): This section requires that "Contractor shall not hold PEBA funds, such that interest accrues to the Contractor's benefit." Bidder will reimburse all retail pharmacies in accordance with applicable prompt pay law and if none is applicable, in accordance with its contractual commitments to the pharmacies. In addition, Bidder will reimburse these pharmacies on periodic remittances that include payments related to all Bidder's clients whose member have used the pharmacy or chain. Accordingly, the timing of remittances will not necessarily align precisely with the timing of PEBA's payments to the PBM. This means that the funds paid by PEBA will likely be in the PBM's account(s) for some amount of time before being disbursed to the pharmacies. Is PEBA mandating that the PBM not hold funds in an interest bearing account, as doing this may be very disruptive to a bidder's business operations?

A: PEBA is not mandating that the Contractor not hold funds in an interest bearing account. The sentence quoted in Offeror's question indicates PEBA's intent that the Contractor not hold PEBA funds in such a manner or duration as to benefit from the accrual of interest in a material sense. Because the Contractor will be paying claims promptly to pharmacies (and directly to participants, when applicable) and seeking reimbursement from PEBA for those claims payments, the amount of PEBA funds held for claims payments should be minimal, if any.

See new language: PEBA shall remit reimbursement to the Contractor within five business days following receipt of invoices. The Contractor shall not hold PEBA funds, such that interest accrues to the Contractor's benefit. All claims reimbursements shall be processed via Automated Clearing

House (ACH) transaction to the financial institution provided by the Contractor. The ACH transaction will be initiated by the S.C. State Treasurer. The Contractor shall make its best effort to pay pharmacies promptly within the parameters of its contractual arrangements with the pharmacies, and to hold PEBA funds for as little time as practical. It is PEBA's particular intent that South Carolina locally-owned pharmacies be paid as promptly as practical.

42. Section 5.1.3 TABLE OF CONTENTS (page 51): The Table of Contents requires page number references. Please confirm that the Response Documents requested on Page 54 of Section 5.1.4 OFFEROR'S TECHNICAL PROPOSAL RESPONSE (Excel Document) – if clearly labeled and tabbed in our printed and electronic responses. -are not required to be page numbered consecutively with such page numbers documented on the Table of Contents. By adding page numbers to Certificates of insurance, Financial Statements, etc we would be altering documents provided by independent third parties.

A: Confirmed.

43. Part 7, Terms and Conditions; Changes (page 63): Can PEBA please confirm that any unilateral changes would be made consistent with the terms of paragraph (2) (Adjustments of Price or Time for Performance) of the “Changes” subsection on page 63-64 of the RFP?

A: Section 7.24 controls in its entirety.

44. Part 7, Terms and Conditions; Contractor's Liability Insurance (pages 64-66): Bidder insures against certain information security risks through its E&O/ Professional Liability policies. Under those policies, no additional insured can be named, however, PEBA can be named as an additional insured on our Privacy/Network Security Liability policy. Bidder negotiates a number of customized provisions with its insurance carriers, and these policies require such provisions to remain confidential. Although Bidder cannot, pursuant to these provisions, provide a client with a full copy of its insurance policy to retain, Bidder can make such policies available for PEBA's review. Please confirm that this would be satisfactory. Certificates will be provided as stipulated in the RFP.

A: PEBA accepts the recommendation to be named as an additional insured on the vendor's Privacy/Network Security Liability policy. PEBA will also accept certificates in lieu of a copy of the policies with the right to review the full policy upon request.

45. Part 7, Terms and Conditions; Default (7.33) (page 67): Can PEBA confirm that, in the case of any default that can reasonably be cured, it will provide the PBM an opportunity to cure such default, consistent with subpart (a)(2) of this paragraph?

A: Yes, PEBA will ask for and allow cure.

46. Part 7, Terms and Conditions; Default (7.33) (page 67): In the unlikely event that PEBA were to feel it necessary to obtain substitute services pursuant to subpart (b) of this paragraph, can PEBA confirm that such substitute services would be procured through an appropriate open competitive process?

A: Section 7.33 says the substitute services will be procured ‘in the manner the Procurement Officer considers appropriate.’ PEBA follows the requirements of the South Carolina Consolidated Procurement Code in every solicitation.

47. Part 7, Terms and Conditions; Indemnification – Third Party Claims – General and Third Party Claims – Disclosure of Information (7.37 and 7.38) (pages 69-70): These provisions suggest that the PBM is fully liable for claims, even if the damage is caused in part by PEBA. Can PEBA confirm that the PBM’s liability will only extend to the degree that the damage is actually caused by the acts or omissions of the PBM or any party under its control?

A: Sections 7.37 and 7.38 stand as written.

48. Part 7, Terms and Conditions; Information Use and Disclosure (7.42) (pages 72-73): Can PEBA confirm that the BAA would control over this provision with respect to PHI? Subsection (e) states that prior notice must be given before any government information is given to a subcontractor. This is not practical to do on a case-by-case basis. Please confirm that the general communication of information to subcontractors may be discussed and agreed upon during the implementation process and individual notice will not be required for every transfer of information. Subsection (f) states that all government information must be returned or destroyed upon request. The PBM will have a number of legal responsibilities to maintain some information for limited purposes, such as to comply with CMS requirements for the EGWP. Please confirm PEBA understands that the PBM will have this separate obligation to retain some information (with all security obligations continuing). Subsection (h) requires notification of a compromise or improper use of government information within two business days of discovery. In order to ensure an appropriate review of any potential incident and the proper identification of which, if any client's data was involved, Bidder may require up to three (3) business days to provide notification. Please confirm this is acceptable.

A: The BAA does supersede the terms of the RFP where there is conflicting language with respect to PHI. Question regarding subsection (e): Notice does not have to be given to PEBA on a case by case basis, so long as the communication of information to subcontractors is specifically discussed and agreed upon during the implementation process. Question regarding subsection (f): PEBA agrees Contractor may retain information that must be maintained due to legal requirements; Contractor must tell PEBA in writing what information will be retained, pursuant to what legal requirement, and for how long. All other information must be destroyed as mandated in the terms and conditions. Retained information must be destroyed as required by the terms and conditions at the end of the legally required retention period. Question regarding subsection (h): PEBA requires notice within two business days.

49. Part 7, Terms and Conditions; Pricing Data – Audit – Inspection (7.50) (page 75): As defined, “Cost and Pricing Data” would seem to be all of the elements that go into our highly confidential and proprietary underwriting model. This creates obvious concerns for Bidder, as our underwriting model (and the underlying contracts that factor into it) is one of our most valuable and confidential assets. Can PEBA please provide details around when this data would be required and how it may be used?

A: The cost and pricing data audit is controlled by state law, Section 11-35-2220 of the South Carolina Code of Laws.

50. Attachment 5 (Business Associate Agreement) (pages 86-91): In order for Bidder to be able to remain in full compliance with the proposed BAA at all times, Bidder requests the following modifications be considered by PEBA:

- **As Bidder owns its own mail and specialty service pharmacies, it functions as a health care provider and covered entity with respect to dispensing drugs through these pharmacies. Accordingly, could we insert the clause, “in its capacity as a business associate (and not a pharmacy or other health care provider)” into the definition of Protected Health Information after the words, “created or received by Business Associate”?**

A: Yes.

- **May we add the clause, “in accordance with, and subject to the exceptions in, 45 CFR 164.502(b)” to the end of the last sentence in Section 2(a) of the BAA?**

A: Yes.

- **To ensure timely responses within the requirements of HIPAA, can we modify the relevant clauses of Section 2(e) and 2(f) to specify that requests submitted directly by Individuals should be submitted directly to Bidder’s Privacy Officer at a domestic address specified by Bidder?**

A: No.

- **May we insert the clarifying phrase, “and required by the Privacy Rule” to the end of the following sentence in Section 2(e): “Such information shall be made available in an electronic format where directed by Covered Entity”?**

A: No.

- **Understanding that Bidder’s Privacy Officer and staff investigate all HIPAA Security Incidents that present a material risk of a PHI Breach, and further understanding that many common events that do not pose a meaningful risk of a PHI Breach fall within the HIPAA definition of a “Security Incident” (e.g., firewall pings, port scans, unsuccessful log-ins, etc.), would PEBA be willing to restate Section 2(i) as follows (consistent with its previous bidder question responses):**

A: No.

“Business Associate agrees to notify Covered Entity within three (3) business days of becoming aware of any use or disclosure of PHI not provided for by the Agreement, or any security incident resulting in the successful unauthorized access, use, disclosure, modification or destruction of electronic PHI or interference with system operations in an information system resulting in the unauthorized access, use, disclosure, modification or destruction of electronic PHI, or resulting in any “Breach” of “Unsecured Protected Health Information,” as required by 45 CFR 164.410.

- **May Bidder modify Section 2(u) to read as follows:**

“(u) Business Associate agrees to retain the documentation required by the Privacy Rule with respect to the obligations undertaken in this agreement for six years from the date of its creation or the date when it last was in effect, whichever is later.”

A: No.

- **As 45 C.F.R. § 164.504(e)(4)(ii) expressly applies to disclosures of PHI for a business associate’s proper management and administration or to carry out its legal responsibilities, may we clarify Section 3(c) to state, “or to carry out its legal responsibilities” before the words, “if the disclosures are Required by Law...”?**

A: No

- **Similarly, may Sections 3(d) and 3(e) be modified to expressly refer to both use and disclosure of PHI?**

A: No.

- **May we modify Section 3 to add new subsection (f) to the end as follows, to incorporate additional perfunctory bases to use or disclose PHI as permitted by HIPAA:**

(f) Business Associate may also use and disclose PHI: (i) to respond to requests for PHI either accompanied by an authorization that meets the requirements of 45 CFR 164.508 or from a covered entity or health care provider in accordance with 45 CFR 164.506(c); (ii) to de-identify the information or create a limited data set in accordance with 45 CFR §164.514, which de-identified information or limited data set may be used and disclosed by Business Associate as permitted by law, including HIPAA; and (iii) as authorized in writing by Covered Entity.”

A: No.

- **May we modify Section 4 to add new subsection (b) to the end as follows, to incorporate a process for addressing changes in authorizations:**

“Notwithstanding the foregoing, Covered Entity agrees that, except as Required by Law, it shall not (a) make any changes to its Notice of Privacy Practices that would limit the uses and disclosures of PHI by Business Associate otherwise permitted herein, or (b) agree to any limitations upon the uses and disclosures of PHI by Business Associate otherwise permitted herein, without first notifying Business Associate and providing Business Associate a reasonable opportunity to identify to Covered Entity any such limitations that would cause a material impact on Business Associate’s ability or cost to comply in the provision of services under the [underlying contract]. In the event that Business Associate notifies Covered Entity of such a material impact, the parties shall work in good faith to reach a mutually acceptable solution, which may include an amendment to the [underlying contract], and Covered Entity shall not provide any PHI subject to such limitation(s) to Business Associate until the parties reach agreement on such a solution.”

A: No.

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

51. Can PEBA please specify how to separate EGWP claims from commercial or provide a crosswalk?

A: See answer to question 25.

52. Based on the initial analysis of the claims and eligibility files, we are seeing claims data in the claims file where the patient ID is not in the eligibility file. Can you please provide a new eligibility file that has all the patient IDs to break up the Commercial and EGWP data?

A: Slightly less than 1% of claims do not have a matched record in the eligibility file. These records are claim transactions that do not exactly match PEBA enrollment records (mismatch of SSN, patient name, patient date of birth, etc.)

53. The claims data has 16,573,765 claims. There are 165,883 claims where the patient_id is not found in the eligibility file. Please explain.

A: See the answer to question 52.

54. Within the eligibility data file, we are noticing instances where there is the same patient ID with the same eligibility date range, but has two different entries for the sex and DOB fields. Please explain.

A: These records are the result of normal eligibility record maintenance.

55. PG-3.a: Paper Claims

Would PEBA consider the following edit to PG - 3.a:

For the commercial plan, the Contractor will ~~respond (mail a check or reject notice)~~ to **process reimbursement paper claims within the guidelines specified.**

A: Yes.

56. PG-3.b: Paper Claims

To align with CMS requirements, please confirm PEBA will accept the following edit to PG - 3.b:

For the EGWP plan, the Contractor will ~~respond (mail a check or reject notice)~~ to **process reimbursement paper claims within ~~15~~ **14** business days.**

A: Yes.

57. PG-4.b: Participant Overall Satisfaction Rate

We are unable to locate “Part III, Section E.17 of the RFP”. In addition, how would this survey differ from PG-4.a or is it a duplicate and can be disregarded?

A: PG-4.b should reference Part III, Section E.14 of the RFP. The Contractor is required to conduct an annual Member Satisfaction Survey for Participants to gauge satisfaction with the Contractor as outlined in Part III, Section E.14 of the RFP. The Contract is also required to provide callers with a survey instrument at the end of each call or online inquiry to gauge customer satisfaction (wait time, courtesy of staff, knowledge of product, willingness to assist, problem resolved/question answered) with the Contractor’s call center as outlined in Part III, Section D.4. PG-4 is broken into two parts to account for the two requirements in the RFP.

58. PG-5: Automated Claim System Availability Rate

Will this target include or exclude scheduled downtime?

A: The target includes all time, including scheduled downtime.

59. PG-7: Financial Accuracy Rate

The guarantee asks for all claims. We measure financial accuracy rate based upon a statistically significant random sample of paid retail and mail order (and specialty claims when applicable). The results are extrapolated to all claims. Is that acceptable?

A: Yes.

60. PG-22: Marketing Plan

Please confirm that the intent of this PG is not to be effective until February 1, 2022. The target states on or before Feb 1 of each year but the penalty indicates "stated deadlines". Is the intent for the penalty to apply to any deadlines contained within the annual marketing plan or just the February 1 deadline?

A: See Part III, Sections E.3 and E.5. The annual marketing plan must be finalized and approved by PEBA by February 1 of each year, beginning February 1, 2021. PG-22 is intended to apply to the finalization and approval of the overall marketing plan, not the deadlines within the annual marketing plan.

61. PART 1 INSTRUCTIONS TO OFFERORS – A. GENERAL INSTRUCTIONS, 1.1 DEFINITIONS, CAPITALIZATION, AND HEADINGS, Contract Modification

We ask that all contract modifications be reasonably accepted by both parties. Is that agreeable?

A: Section 7.24, Changes, controls with no alterations.

62. Part 3. SCOPE OF WORK, A. Pricing and Cost Containment Requirements, 4.

PBMs have several different types of clients that include Health Plans and alternative funding arrangements. Will PEBA consider alternative language that states "PBM will supply the most aggressive MAC pricing among similar clients"?

A: See updated language for Part 3 Scope of Work, A. Pricing and Cost Containment Requirements, Item 4.

The Contractor shall provide a Maximum Allowable Cost (MAC) pricing, with ~~the most~~ favorable pricing to PEBA, for generic prescription drugs that uses a MAC price list. A generic prescription drug is defined as a prescription drug that has a Medispan multisource status of "Y" as of the dispense date. This MAC price list is subject to review and modification for inclusion of generic drugs representing the greatest cost savings to the Plan based on participant's drug utilization. However, PEBA will determine such pricing for 30-day supply generic prescription drugs filled at PEBA-defined locally-owned pharmacies in conjunction with the Contractor. PEBA will collaborate with the Contractor to determine locally-owned pharmacy pricing for 30-day supply generic prescription drugs in terms of dispensing fees and an effective discount off of Average Wholesale Price (AWP) and communicate to the Contractor no less than 30 days prior to the effective date of such pricing.

63. Part 3. SCOPE OF WORK, A. Pricing and Cost Containment Requirements, 7.

Due to federal laws, 340B claims are not eligible for rebates. Can PEBA please confirm that 340B claims are excluded from the rebate guarantees as well?

A: While PEBA understands there are restrictions around 340B claims in regards to rebates, the exclusions to rebate guarantees stand as written in Part 3 Scope of Work, Section A. Pricing and Cost Containment, Item 7. Offerors should include 340B claims in their rebate guarantee and underwrite the guarantee accordingly.

64. Part 3. SCOPE OF WORK, A. Pricing and Cost Containment Requirements, 8.

We request PEBA's consideration in accepting an aggregate rebate guarantee, which reflects the manner in which rebates are processed and paid by Pharma, and by reducing risk may improve the overall guaranteed amount for PEBA.

A: No, requirement stands as written.

65. Part 3. SCOPE OF WORK, A. Pricing and Cost Containment Requirements, 9.

Will PEBA be willing to add the following language to the audit section? "Provided that (i) a third party auditor approved by Contractor must be utilized; (ii) PEBA pays its own costs associated with the audit; (iii) all audits are subject to confidentiality obligations required of Contractor in its third party contracts; and (iv) rebate audits include no more than the top five pharmaceutical manufacturers or 50 percent of rebate spend."

A: PEBA agrees that it will pay its own costs associated with the audit. PEBA rejects the remaining changes as the right to and scope of the audit is controlled by state law, Section 11-35-2220 of the South Carolina Code of Laws. However, PEBA is willing to in good faith negotiate a reasonable confidentiality agreement prior to conducting an audit.

66. PART 3. SCOPE OF WORK, F. Reporting, 9.

Is PEBA willing to receive rebate guarantee reporting at the time of payment instead of 90 days prior to payment?

A: No.

67. Part 3 SCOPE OF WORK, B. Pharmacy Network Management Requirements, 10.

Would PEBA be agreeable to these audits taking place onsite and agree that such information is proprietary and confidential to the PBM and that no contract copies may be taken from the audit?

A: The right to and scope of the audit is controlled by state law, Section 11-35-2220 of the South Carolina Code of Laws. PEBA is willing to in good faith negotiate a reasonable confidentiality agreement prior to conducting an audit.

68. Part 3 SCOPE OF WORK, C. Claims Processing and Payment Requirements, 8.

Our position is that we would notify PEBA if participant or provider fraud is discovered and provide reasonable assistance to PEBA and authorities, such as providing service records, in any action by PEBA to recoup overpayments but the PBM will not pursue litigation. Why does PEBA feel that in cases of fraud, a PBM should pursue litigation, as these pharmacies are not agents of the PBM and frequently they have closed and would result in only empty judgments.

A: There is no question here related to the RFP; requirements stand as written.

69. Part 3 SCOPE OF WORK, C. Claims Processing and Payment Requirements, 13

Can PEBA please provide the number of suits filed over an appeals decision in the last five years? Does this requirement pertain to any claim, prior authorization or appeal that we deny on PEBA's behalf? If PEBA makes the final appeal determination as to whether a member is entitled to a given drug, can you please confirm that PEBA would then be responsible for paying for the defense?

A: See answer to question 39.

70. Part 3 SCOPE OF WORK, I. Financial Requirements, 6

Contractors annual SOC 1 Report is issued mid to late December or early January and typically covers 10 months, January 1 to October 31. OptumRx can provide a bridge letter covering November and December annually and quarterly bridge letters between report issuances. Please confirm that this is acceptable to PEBA.

A: Bridge letters are acceptable.

71. Part 3 SCOPE OF WORK, J. Eligibility of Participants and Computer Support Requirements, paragraphs 1 and 2

We do not believe that the requirement as stated would comply with CMS. We recommend modifying the revision as modified in red to ensure CMS compliance. Would this be acceptable to PEBA?:

Medicare primary participants have the option of opting out of EGWP by contacting the Contractor twenty-one (21) days prior to the participant's initial enrollment in EGWP.

If the member does not choose to opt out during the 21-day period, they can voluntarily elect to disenroll by contacting PEBA any time after their initial enrollment.

Or, the participant can contact PEBA to dis-enroll during the Medicare Open Enrollment period. Participants may opt back into EGWP at any time subject to approval by PEBA based on their eligibility rules. If they choose to opt out of EGWP, they have the option of enrolling in the Commercial Plan, enrolling in another Medicare Part D prescription drug plan outside of PEBA, or refusing prescription coverage. If the member chooses to opt out of the EGWP, they will be informed of the implications of their decision based on rules provided by PEBA (e.g. loss of medical coverage, inability to reenroll for a specific period of time, etc.)

~~Also, Medicare primary subscribers and Medicare primary dependents that previously opted out of the EGWP plan, can choose to opt back into the EGWP plan.~~

A: See updated language in Part 3 Scope of Work, J. Eligibility of Participants and Computer Support Requirements, paragraph 2.

72. Part 3 SCOPE OF WORK, J. Eligibility of Participants and Computer Support Requirements, 13.

Would PEBA consider modification to this section to provide for mutually agreed upon timeframes for restoration and recovery?

A: No.

73. PART 3 SCOPE OF WORK, M. Performance Standards and Guarantees (Liquidated Damages), 2., e.

We strongly believe that the 1M penalty far exceeds the damages and as such it is punitive. Furthermore, PEBA has required that we contractually agree to the same terms in the RFP and as such, if a PBM failed to do so, it would amount to a breach of contract and damages to PEBA. As such, this is a double jeopardy provision. We believe this PG should either be removed due to the duplication of requirements or otherwise significantly reduced to reflect a reasonable dollar amount.

A: Requirement stands as written. PG-20 should reference Part III, Section E.11 of the RFP.

74. Part 7. TERMS AND CONDITIONS – A. GENERAL, 7.4 CONTRACT DOCUMENTS & ORDER OF PRECEDENC[E]

In the order of precedence, would PEBA consider listing Contractor’s response as taking precedence over the solicitation, as negotiated? In most instances, is there a record of negotiations?

A: No, PEBA will not revise clause 7.4, Contract Documents and Order of Precedence. PEBA cannot answer definitively whether “in most instances” there is a Record of Negotiations; however, it is not uncommon for PEBA’s larger RFPs.

75. PART 7. TERMS AND CONDITIONS – B. SPECIAL, 7.30 CONTRACTOR’S LIABILITY INSURANCE-GENERAL (FEB 2015), (A)

To avoid confusion as this will be a self-funded non-insured contract, would PEBA be agreeable to the following edits to this language from section 7.30 (1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 04/13 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.~~

A: No.

76. PART 7, TERMS AND CONDITIONS – B. SPECIAL, 7.30 CONTRACTOR’S LIABILITY INSURANCE – GENERAL (FEB 20156), (c)

For clarification, would PEBA be agreeable to the following edit? 7.30 (c) For any claims related to this contract, the Contractor’s insurance coverage in which PEBA is included as an additional insured shall be primary insurance as respects the State, PEBA, and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the State, PEBA, or its officers, officials, employees, and volunteers shall be excess of the Contractor’s insurance and shall not contribute with it. Policy should be endorsed with Primary and Non- Contributory-Other Insurance Condition CG 20 01.

A: PEBA accepts this change.

77. Part 7. TERMS AND CONDITIONS – B. SPECIAL, 7.31 CONTRACTOR’S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015), (b)

As contractual liability is excluded on our cyber liability policy, would PEBA accept the following edit? 7.31 CONTRACTOR’S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015):

(b) Coverage must include claims for:

- (i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;
- (ii) privacy risks, including (A) failure to properly handle, manage, store, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss or disclosure of confidential information; and (C) any form of invasion, infringement or

interference with rights of privacy, including breach of security/privacy laws or regulations;

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

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

A: No.

78. Part 7. TERMS AND CONDITIONS – B. SPECIAL, 7.34 DUTIES UPON TERMINATION, paragraph 4

For clarification purposes, would PEBA accept the following edit?

7.34 DUTIES UPON TERMINATION:

For a year following the termination of the Contract, the Contractor shall provide any continuing support and/or information to PEBA and the successor contractor necessary to complete the transition and resolve outstanding claims, accounting, and customer service issues. Performance Guarantees related to any applicable runout post termination services will continue to apply during this period of transition

We ask that PEBA consider modifications to the indemnification requirements to reflect that Subcontractor would not indemnify PEBA for PEBA's actions and that PEBA be responsible for paying the cost to defend PEBA's actions.

A: No.

79. Part 7. TERMS AND CONDITIONS – B. SPECIAL, 7.37 INDEMNIFICATION – THIRD PARTY CLAIMS - GENERAL.

We ask that PEBA consider modifications to the indemnification requirements to reflect that Subcontractor would not indemnify PEBA for PEBA's actions and that PEBA be responsible for paying the cost to defend PEBA's actions.

A: The indemnification provisions stand as written.

80. Our PBM supports many different customers and as such, we are unable to commit to aligning with an individual customers policy. We abide by our own Information Security policies. We are happy to review your Information Security Guidelines and advise how we meet a given concern. Is that satisfactory?

A: PEBA will evaluate vendor security policies, practices, and procedures as part of the security related questions in the RFP, the security questionnaire, and the required terms and conditions. These items will all be considered in determining if a vendor meets the required security standards.

81. Part 7. TERMS AND CONDITIONS – B. SPECIAL, 7.38 INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION

We ask that PEBA modify the provision regarding receiving timely notice of improper use or disclosure to within three (3) business days to allow for appropriate initial review and investigation. Is that acceptable?

A: No.