

Attachment 8: Questions and Answers

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

1. Related to **Part 1: Instructions to Offerors-A. General Instructions, 1.5 Proposal as Offeror to Contract** (page 8) and **Instructions to Offerors-B. Special Instructions, 1.33 Contents of Offer** (page 16), is PEBA amenable to using Offeror's form of contract to supplement contractual requirements, including **Part 7: Terms and Conditions-A. General and B. Special** (pages 47 - 65), of the Solicitation? Offeror's services agreement is tailored specifically for the provision of services in the employee benefits recordkeeping industry, including applicable data security and privacy requirements, and certain terms of Offeror's services agreement are necessary in a final agreement between the parties.

A: No. See Clause 7.4, Contract Documents & Order of Precedence.

2. Related to **Part 5: Information for Offerors to Submit** (page 26), due to security concerns, Offeror cannot provide a hard copy of its SOC 1 and SOC 2. Are there any objections to these documents being provided exclusively on the USB?

A: SOC reports may be excluded from paper copies if they are included in the USB copies of the proposal.

3. Related to **Part 5: Information for Offerors to Submit** (page 26), for the USBs, is Offeror able to provide hyperlinks to exhibits, or must Offeror provide exhibits as separate pdfs?

A: Offerors must bid as specified. Exhibits must be included.

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

4. Please provide the total amount of contributions for each of the past three years for each plan (2024, 2023 and 2022).

Contributions by year				
Vendor		2024	2023	2022
Corebridge		\$ 69,532,376	\$ 66,846,909	\$ 64,333,804
Empower		65,047,748	57,520,576	49,374,468
TIAA		147,082,604	131,044,052	119,887,174
Voya		58,109,083	51,096,346	47,157,328
Totals	\$	339,771,811	\$ 306,507,883	\$ 280,752,774

A:

5. Please provide the total amount of distributions for each of the past three years for each plan (2024, 2023 and 2022).

Distributions by year				
Vendor		2024	2023	2022
Corebridge		\$ 67,715,130	\$ 51,063,490	\$ 45,981,839
Empower		40,361,492	30,683,879	31,207,759
TIAA		107,561,787	81,194,621	71,797,500
Voya		34,232,767	30,222,143	26,669,939
Totals	\$	249,871,176	\$ 193,164,133	\$ 175,657,037

A:

6. Does the plan currently utilize a self-directed brokerage option? If so, please provide the company being used as well as the # of participants in the program today.

A: State ORP does not offer a self-directed brokerage option.

7. Please provide the number of outstanding loans.

A: Loans are not available through the State ORP.

8. What is the number of participants who have multiple accounts between the various plans?

A: Unclear on what is being asked here, but it is not likely the information to respond to this question is readily available. It is also unclear on how the answer to this question would impact servicing under the contract anticipated in this RFP.

9. What payroll vendor/software is currently used by the State?

A: As noted in 4.2 of the RFP, offerors must be able to accept payroll files from a minimum of 150 different payroll centers across the state. The State is only one of those payroll centers.

10. Please provide 12/31/2024 data of assets and participants by vendor.

A:

Service provider				Total participants at 12.31.2024
Voya	Corebridge	Empower	TIAA	
14,159	14,859	13,101	26,166	68,285
Service provider				Total assets at 12.31.2024
Voya	Corebridge	Empower	TIAA	
\$ 630,223,744	\$ 1,089,555,809	\$ 709,468,098	\$ 2,471,018,940	\$ 4,900,266,591

11. To the extent the South Carolina Public Employee Benefit Authority (“PEBA”) requires its “Terms and Conditions – A. General” and its “Terms and Conditions – B. Special” (together, “Standard Terms”) to be used to formalize a contract between the parties, Vendor B Retirement would like to propose using certain provisions of Vendor B’s Administrative Services Agreement in administering the PEBA’s plan, including, for instance, a provision appointing Vendor B as the nondiscretionary retirement plan administrator. See the sample Administrative Services Agreement in the [Appendix](#) for additional language specific to the delivery of retirement plan administrative services that could be incorporated into the final agreement with PEBA. Please note, however, the following clarifications regarding the Standard Terms.

TERMS AND CONDITIONS – A. GENERAL

GENERALLY: To the extent the obligations of the Standard Terms extend to subcontractors, Vendor B understands “subcontractor” (or an equivalent term) to mean a third-party vendor Vendor B retains to provide custom services unique to PEBA.

SECTION 7.4. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE (MAY 2024): Vendor B proposes that PEBA’s acceptance statement, the documentation of discussions of an offer, and Vendor B’s offer as accepted should take precedence over the solicitation to account for agreed-upon adjustments to terms of the solicitation.

A: PEBA does not accept this change.

12. SECTION 7.13. ORGANIZATIONAL CONFLICT OF INTEREST (JUL 2023): To the best of our knowledge, Vendor B has neither a legal or familial connection nor a business arrangement with any currently elected or appointed official or employee of PEBA, other than to the extent such an individual may have an account administered by Vendor B. Other potential conflicts, however, include our arrangements with, and the compensation we pay to or receive from, our affiliates, vendors or other entities with which we have business relationships ("third parties"). These third parties may also provide services to plan sponsors who retain Vendor B. None of these potential conflicts would impermissibly interfere with our provision of services to PEBA.

A: Offeror has not asked a question or proposed alternate terms.

13. SECTION 7.14. PAYMENT AND INTEREST: Based on the final compensation terms, an invoice may or may not be appropriate as Vendor B generally proposes asset-based pricing. Vendor B proposes that, if required, the conditions for invoices shall be as set forth in the final agreement between the parties.

A: PEBA does not accept this change.

14. SECTION 7.19. TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006):

All termination provisions impact our pricing formula and may trigger withdrawal restrictions or other consequences in certain investment options, such as the Vendor B PLUS Fund. Vendor B proposes at least a 60-day notice of termination to allow for a reasonable transfer to a successor provider.

A: PEBA does not accept this change.

15. TERMS AND CONDITIONS – B. SPECIAL

SECTION 7.31. CONTRACTOR’S LIABILITY INSURANCE – GENERAL (FEB 2015) AND SECTION 7.32. CONTRACTOR’S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015): Vendor B can provide 30 days’ notice of cancellation except for cancellation for non-payment, which would be provided upon 10 days’ notice. Vendor B understands the obligations for subconsultants to maintain insurance pursuant to PEBA’s requirements shall only apply to those subcontractors (and other third parties) Vendor B retains to provide custom services unique to PEBA.

A: PEBA does not accept this change.

16. SECTION 7.34. DEFAULT (JAN 2006) AND SECTION 7.57. TERMINATION FOR CONVENIENCE: All termination provisions impact our pricing formula and may trigger withdrawal restrictions or other consequences in certain investment options, such as the Vendor B PLUS Fund. Vendor B proposes at least a 60-day notice of termination to allow for a reasonable transfer to a successor provider. Vendor B also proposes a 30-day cure period, given the nature of the services being provided.

A: PEBA does not accept this change.

17. SECTION 7.36. INDEMNIFICATION – THIRD PARTY CLAIMS – GENERAL AND SECTION 7.37. INDEMNIFICATION – THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION: While Vendor B can agree to indemnify and hold our clients harmless, we generally agree to do so only if the indemnification is mutual and limited to claims reasonably related directly to Vendor B’s provision of services, with each party undertaking its own defense. Further, Vendor B’s ability to indemnify our clients’ officers, agents, and employees (“Personnel”) is limited to (a) those claims that do not involve such Personnel acting in the capacity of a holder of an account administered or record kept by Vendor B or (b) those claims that do not involve agents of PEBA advising PEBA on the administration or investment of the plan.

A: PEBA does not accept this change.

18. SECTION 7.39. INFORMATION SECURITY – SAFEGUARDING REQUIREMENTS (FEB 2015): To the extent the stated obligations extend to subcontractors, Vendor B understands “subcontractor” (or an equivalent term) to mean a third-party vendor Vendor B retains to provide custom services unique to PEBA.

A: See the definition of “Subcontractor” added to Section 1.1, Definitions, Capitalization, and Headings: “Subcontractor means any person or entity having a contract to perform Work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation and is not limited to only those entities retained by the Contractor exclusively to perform Work arising from this solicitation.”

19. SECTION 7.41. INFORMATION USE AND DISCLOSURE (FEB 2015):

- (e) Consistent with regulatory obligations to maintain and produce records, Vendor B may be required by a court, regulatory body or agency to maintain or release information regarding our services without prior notification to our clients. Vendor B also proposes that it should be able to disclose PEBA’s information to third parties to the extent necessary to provide the services for which Vendor B is retained, including, for instance, processing rollovers to and from other providers.
- (h) Vendor B has a defined Cyber Security Incident Response Plan (CSIRP) and a designated Cyber Security Incident Response Team that handles all operations related to incidents and the implementation of the CSIRP, including notifications to business partners of verified security or data privacy breaches. Vendor B commits to notifying business partners of a breach within 48 hours of verification/approval from internal and external legal entities (e.g., law enforcement), as applicable.

A: Offeror has not asked a question. However, the clause stands as written.

20. SECTION 7.50. PRICING DATA – AUDIT – INSPECTION (JAN 2006): Vendor B proposes that the books, documents, and records that Vendor B would make available would be those records customarily maintained that pertain directly to services delivered to PEBA, and such records may be maintained solely in electronic media.

A: PEBA does not accept this change.

- 21. SECTION 7.51. RELATIONSHIP OF THE PARTIES (JAN 2006):** In order to fulfill its duties in providing retirement plan services, Vendor B proposes to include language in the final contract between the parties indicating that Vendor B does not act as an agent for PEBA, except as authorized and contemplated under the Agreement or as PEBA may authorize in a letter of direction.

A: PEBA does not accept this change.

22. Exceptions to the Scope of Work

SECTION B.5. Regarding the acceptance of paper format submissions. Our current systems and processes are optimized exclusively for electronic data handling, and we do not accept paper format submissions. This approach ensures enhanced efficiency, accuracy, and security in our operations.

A: Paper format submissions must be an option although PEBA would be amenable to working with the offeror in educating employers on the benefits of electronic submission as the preferred method.

- 23. SECTION B.10.** Our organization recognizes the importance of managing State ORP assets in compliance with the specified requirements. While the assets cannot be escheated to the state, we ensure that all funds remain securely within the participant's account. Our robust tracking system allows us to maintain accurate records of unclaimed property accounts, ensuring seamless collaboration with PEBA to reissue payments as they are claimed by participants. This approach guarantees that the assets are managed effectively and remain accessible to the rightful owners.

A: Offeror has not asked a question, but to be clear, unclaimed checks are not escheated to the state per 3.B.10.

24. SECTION E.4. We acknowledge the requirement to accept and retain imaged documents from the prior contractor. However, we would need to discuss the specific handling procedures and requirements for these documents. To ensure a seamless transition and proper management, we seek clarification on the following points:

- **Are the documents currently imaged, or are they physical documents that need to be digitized?**

A: PEBA anticipates digital documents only.

- **Is there metadata associated with these documents that we can leverage for integration into our imaging system?**

A: This would be specific to the vendor from whom the documents are being obtained and could be determined after the contract award effective date.

- **There may be charges associated with storing these documents. We would need to understand the cost implications.**

A: Documents should support participant account setup and activity, and charges for storage would need to be built into offeror's proposed pricing.

- **What is the retention policy for these documents? How long are we required to retain them?**

A: Documents should be retained until the account is fully dispersed and a period beyond based on offeror's retention policy

- **If the client moves to another provider, do we need to provide physical documents to the new provider? If the documents are digital, would we need to transfer the images to the new provider?**

A: All physical documents submitted to offeror would be expected to be imaged as part of offeror's administrative process thereby making them digital. Should accounts transfer to a new provider, images associated with all accounts that transfer to the new provider would be expected to be transferred.

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

25. To the extent the subject matter is not covered in the existing agreements with the ORP, we would like to discuss the addition of mutually agreed upon terms and conditions drawn from out standard sample service provider and custodial agreements currently in use by XXXXX and XXX, a copy of which will be included for your consideration in our formal bid response.

7.7 EQUAL OPPORTUNITY Page 49

Bidder does not discriminate against employees or applicants for employment because of race, color, creed, national origin, sex, age, disability, or any other characteristic protected by applicable federal, state, or local law. However, the cited federal regulations are inapplicable to the retirement plan services proposed to be provided by Bidder pursuant to the RFP because Bidder is not a federal contractor or subcontractor, and the RFP does not involve a construction contractor or federal funds.

A: Offeror has not asked a question or proposed alternate terms. The clause stands as written.

26. 7.23 ATTORNEY'S FEES Page 51

In the event that ~~PEBA~~ either party brings suit or action to compel performance of or recover for any breach of any stipulation, covenant, term, or condition of this Contract, the prevailing party is entitled to seek an award of its ~~PEBA may seek~~ reasonable attorneys' fees. ~~from the Contractor and the Contractor will pay to PEBA such attorneys' fees as the court may award. Contractor will, in all instances, bear its own attorneys' fees and expenses.~~

A: PEBA does not accept this change.

27. 7.31 CONTRACTOR'S LIABILITY INSURANCE-GENERAL (FEB 2015): (a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the Contractor, his agents, representatives, employees ~~or subcontractors~~. (b) Coverage shall be at least as broad as: (1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 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. (2) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. (b) PEBA, its officers, officials, employees, and volunteers must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided through the addition of both CG 20 10 and CG 20 37 if a later edition is used. (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. (d) Prior to commencement of the work, the Contractor shall furnish PEBA with original industry standard Acord certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by PEBA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. ~~PEBA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.~~ (e) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify PEBA immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced. 54 (f) Contractor hereby grants to the State and PEBA a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or PEBA by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary

to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or PEBA has received a waiver of subrogation endorsement from the insurer. (g) Any deductibles or self-insured retentions must be declared to ~~and approved by~~ PEBA. PEBA may require the Contractor ~~to purchase coverage with a lower deductible or retention or~~ provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. (h) PEBA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances

A: The following clause is hereby modified as identified below:

7.31 CONTRACTOR'S LIABILITY INSURANCE-GENERAL (FEB 2015):

(a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

(b) Coverage shall be at least as broad as: (1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 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. (2) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(c) PEBA, its officers, officials, employees, and volunteers must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

(d) For any claims related to this contract, the Contractor's insurance coverage 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.

(e) Prior to commencement of the work, the Contractor shall furnish PEBA with original industry standard Acord certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by PEBA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. **PEBA reserves the right to require complete, certified copies of all required insurance policies, including endorsements proof of applicable coverage and endorsements required by this section, at any time.**

(f) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify PEBA immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.

54

(g) Contractor hereby grants to the State and PEBA a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or PEBA by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or PEBA has received a waiver of subrogation endorsement from the insurer.

(h) Any deductibles or self-insured retentions must be declared to **and approved by** PEBA. PEBA may require the Contractor to **purchase coverage with a lower deductible or retention or** provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(i) PEBA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

28. 7.31 [7.32] CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015):

(a) Without limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A-: VII, and maintain for the duration of the contract, a policy or policies of insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible.

(b) Coverage must include claims for:

(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.

(d) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for ~~actual or alleged infringement of intellectual property rights~~, invasion of privacy, as well as advertising, media and content offenses.

(e) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)

(f) Coverage shall have limits no less than five million (\$5,000,000.00) dollars per ~~occurrence~~ per claim and ten million (\$10,000,000.00) dollars aggregate.

(g) ICyber policy is written on a per claim basis.

(h) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.

(i) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims- made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.

(j) PEBA and its officers, officials, employees, and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.

(k) For any claims related to this Contract, the insurance coverage required by this clause shall be primary insurance as respects PEBA and its officers, officials, employees, and volunteers of any of them. Any insurance or self-insurance

maintained by PEBA and its officers, officials, employees, and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(l) Prior to commencement of the work, the Contractor shall furnish PEBA with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. ~~PEBA reserves the right to require complete, certified copies of all required insurance policies, including policy declarations and any endorsements required by this section, at any time.~~

(k) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify PEBA immediately upon receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced.

(l) Contractor hereby grants to PEBA a waiver of any right to subrogation which any insurer of said Contractor may acquire against PEBA by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not PEBA has received a waiver of subrogation endorsement from the insurer.

(m) Policies are considered proprietary and are not disclosed to clients.

Any deductibles or self-insured retentions must be declared to and approved by PEBA. PEBA may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(n) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify PEBA immediately upon receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced.

(o) Contractor hereby grants to PEBA a waiver of any right to subrogation which any insurer of said Contractor may acquire against PEBA by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not PEBA has received a waiver of subrogation endorsement from the insurer.

(p) Any deductibles or self-insured retentions must be declared to ~~and approved~~ by PEBA. PEBA may require the Contractor to ~~purchase coverage with a lower deductible or retention or~~ provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(m) Contractor's self-insured retentions are appropriate for the Contractor's company, and some are market driven. They cannot be changed at client's request.

A: The following clause is hereby modified as identified below:

7.32 CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015):

(a) Without limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A-: VII, and maintain for the duration of the contract, a policy or policies of insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible. (b) Coverage must include claims for:

(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.

(c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged infringement of intellectual property rights, invasion of privacy, as well as advertising, media and content offenses.

(d) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)

(e) Coverage shall have limits no less than five million (\$5,000,000.00) dollars **per occurrence/claim** and ten million (\$10,000,000.00) dollars aggregate.

(f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.

(g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims-made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.

(h) PEBA and its officers, officials, employees, and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.

(i) For any claims related to this Contract, the insurance coverage required by this clause shall be primary insurance as respects PEBA and its officers, officials, employees, and volunteers of any of them. Any insurance or self-insurance maintained by PEBA and its officers, officials, employees, and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(j) Prior to commencement of the work, the Contractor shall furnish PEBA with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. **PEBA reserves the right to require complete, certified copies of all required insurance policies, including endorsements proof of applicable coverage and endorsements required by this section, at any time.**

(k) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify PEBA immediately upon receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced.

(l) Contractor hereby grants to PEBA a waiver of any right to subrogation which any insurer of said Contractor may acquire against PEBA by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not PEBA has received a waiver of subrogation endorsement from the insurer.

(m) Any deductibles or self-insured retentions must be declared to **and approved by** PEBA. PEBA may require the Contractor to **purchase coverage with a lower deductible or retention or** provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.