

	<b>State of South Carolina</b>  <b>Request for Proposal</b>	Solicitation Number: <b>PEBA0102016</b>
		Date Issued: 07/07/16 Procurement Officer: Georgia Gillens, CPPO, CPPB Phone: (803) 734-0010 E-Mail Address: GGillens@peba.sc.gov

DESCRIPTION: **Tobacco Cessation Services for the S.C. Public Employee Benefit Authority**

USING GOVERNMENTAL UNIT: **S.C. Public Employee Benefit Authority (PEBA)**

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

**SUBMIT YOUR OFFER by the appropriate date and time below and following the instructions on Page 3.**

SUBMIT OFFER BY (Opening Date/Time): **08/16/2016 11:00 AM E.T.** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **07/18/2016 10:00 AM** (See "Questions From Offerors" provision)

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

CONFERENCE TYPE: <b>Pre-Proposal Meeting</b> DATE & TIME: <b>07/20/2016 10:30 AM</b>  <small>(As appropriate, see "Conferences - Pre-Bid/Proposal" &amp; "Site Visit" provisions)</small>	LOCATION: <b>SC Public Benefit Authority</b> <b>200 Arbor Lake Drive, Room 210A</b> <b>Columbia SC 29223</b>
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<b>AWARD &amp; AMENDMENTS</b>	Award will be posted on <b>08/30/2016</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="http://www.procurement.sc.gov">http://www.procurement.sc.gov</a>
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You must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of one hundred and twenty (120) calendar days after the Opening Date.  
(See "Signing Your Offer" and "Electronic Signature" provisions.)

NAME OF OFFEROR  <small>(full legal name of business submitting the offer)</small>		Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the Offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
AUTHORIZED SIGNATURE  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>		
TITLE  <small>(business title of person signing above)</small>		STATE VENDOR NO.  <small>(Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>
PRINTED NAME  <small>(printed name of person signing above)</small>	DATE SIGNED	STATE OF INCORPORATION  <small>(If you are a corporation, identify the state of incorporation.)</small>

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

## PAGE TWO

(Return Page Two with Your Offer)

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

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

### ACKNOWLEDGMENT OF AMENDMENTS

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

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

DISCOUNT FOR PROMPT PAYMENT (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	_____ Calendar Days (%)
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PREFERENCES - A NOTICE TO VENDORS (SEP. 2009): On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at [www.procurement.sc.gov/preferences](http://www.procurement.sc.gov/preferences). **ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES.** [11-35-1524(E)(4)&(6)] **PREFERENCES DO NOT APPLY.**

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

\_\_\_\_\_ In-State Office Address same as Home Office Address  
\_\_\_\_\_ In-State Office Address same as Notice Address (check only one)

### NUMBER OF COPIES

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

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

**Please submit the following number of copies:**

- a. One (1) original marked "original" and five (5) identical paper copies of your Technical Proposal. Please number your copies Copy 1 of 2, 2 of 2, etc.
- b. One (1) CD labeled "original" containing your original Technical Proposal.
- c. Five (5) labeled CDs containing a copy of the Offeror's Technical Proposal Response (in MS Word, MS Excel and/or PDF format where appropriate). Please number your copies Copy 1 of 2, 2 of 2, etc.
- d. One (1) original marked "original" and two (2) paper copies of your Cost Proposal. Please number your copies Copy 1 of 2, 2 of 2, etc.
- e. One (1) CD labeled "original" containing your original Cost Proposal
- f. Two (2) labeled CDs containing a copy of the Offeror's Cost Proposal Response. Please number your copies Copy 1 of 2, 2 of 2, etc.
- g. One (1) CD labeled "original redacted" containing a redacted version of your original Technical Proposal.
- h. One (1) CD labeled "original redacted" containing a redacted version of your original Cost Proposal.

**DO NOT PASSWORD PROTECT YOUR CD'S.**

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

**S.C. Public Employee Benefit Authority**  
Attention: **Georgia Gillens, CPPO, CPPB**  
Attention: PEBA0102016  
S.C. Public Employee Benefit Authority  
202 Arbor Lake Drive  
Columbia, SC 29223

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## **I. SCOPE OF SOLICITATION**

### **ACQUIRE SERVICES (JAN 2006)**

The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions. [01-1010-1]

PEBA is interested in partnering with a contractor who will be able to provide evidence based counseling, support materials and all the requirements for tobacco cessation listed herein for the State Health Plan and the MUSC Health Plan (hereinafter "Plan"). Because tobacco use is a contributor to diseases such as cancer, heart and lung disease and in general overall poor health, PEBA is seeking a partner who can provide great health outcomes to those subscribers seeking help with tobacco cessation.

### **MAXIMUM CONTRACT PERIOD - ESTIMATED (JAN 2006)**

Start date: 01/01/2016 End date: 12/31/2021. Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract - Effective Date/Initial Contract Period". [01-1040-1]

The maximum contract shall be for five years and shall take effect at 8:00 a.m. January 1, 2016. The contract shall end on December 31, 2021 at 12:00 midnight.

### **INITIAL CONTRACT PERIOD**

Contract Period: January 1, 2016 through December 31, 2019.

The initial contract shall be for three years and shall take effect at 8:00 a.m. January 1, 2016. The initial term shall end on December 31, 2019 at 12:00 midnight. There will also be two one (1) year renewals.

## **INTRODUCTION**

PEBA was created July 1, 2012 by the South Carolina General Assembly as part of the retirement reform legislation, Act No. 278. PEBA is a state agency responsible for the administration and management of the State's employee insurance programs and retirement systems.

PEBA is responsible for managing the state of South Carolina's employee insurance programs. Participating entities (all state agencies, school districts, and those eligible local governments who have chosen to participate) must offer to all their eligible employees the entire package of available state insurance benefits, and allow individual employees to refuse all or any part of the state insurance benefits package. The group health, dental, basic life and basic long term disability plans are the core benefits that participating entities must provide for each employee by paying a minimum contribution for each plan. Some of the voluntary plans include Dental Plus, Optional and Dependent Life Insurance, Supplemental Long Term Disability, MoneyPlus (the state's flexible benefits program), and the State Vision Plan. Health, Dental, Dental Plus, and the State Vision Plan benefits are available to retirees and survivors.

PEBA offers the State Health Plan, a self-funded group health plan for active and retired employees of state agencies, school districts, and participating local governments (hereinafter "State Health Plan") and the MUSC



Group Health Benefits Plan for employees of the Medical University of South Carolina and Medical University Hospital Authority (hereinafter “MUSC Health Plan”). The State Health Plan and MUSC Health Plan are collectively referred to herein at times as the “Plan.”

The State has sponsored the self-funded group health plan since 1972. The State Health Plan, which was established on January 1, 1990, is a continuation of, and replaces the previous Health Benefits Plan initially established on July 1, 1972. Statutory authorization for the program is included in Section 1-11-710 of the South Carolina Code of Laws.

The State Health Plan offers the Standard PPO Plan, the Savings Plan, which is a qualified High Deductible Health Plan, and, for retirees enrolled in Medicare, the Medicare Supplement Plan. PEBA believes the State Health Plan is a “grandfathered health plan” under the Patient Protection and Affordable Care Act (“Affordable Care Act”). As of June 2016, there are approximately 680 participating employers, with 260,360 subscribers, or policyholders, enrolled in the State Health Plan, and 444,911 persons insured by the State Health Plan.

The MUSC Health Plan was introduced in January 2014. The MUSC Health Plan is a non-grandfathered plan, with inclusion of covered preventive pharmacy services as mandated by the Affordable Care Act, and includes the federally-defined MOOP (Maximum Out-of-Pocket) for members. The MUSC Health Plan covers active employees of the Medical University of South Carolina and the Medical University Hospital Authority (both state agencies) and their eligible dependents. The MUSC Health Plan does not cover retirees of the Medical University of South Carolina or Medical University Hospital Authority. As of March 2016, there are 9,612 subscribers, or policyholders, enrolled in the MUSC Health Plan, and 17,682 persons insured by the MUSC Health Plan.

The Contractor shall prepare as if the other State-sponsored plans may be non-grandfathered effective at any time during the term of this contract.

Companion Benefit Alternatives (CBA) currently serves as the Tobacco Cessation Services Manager for the State under a contract that commenced January 1, 2012 and will expire on December 31, 2016. At present, the monthly administrative fee paid to CBA for Behavioral Health Services is \$1.48 per subscriber per month. However, tobacco cessation is not part of that fee. Tobacco cessation services are reimbursed on a claims basis. Other major contractors serving the State Health Plan at present are medical claims processor and utilization manager BlueCross BlueShield of South Carolina (BCBSSC), under a contract that also expires December 31, 2016, and pharmacy benefits manager Express Scripts, Inc. (ESI) under a contract that expires December 31, 2020.

Effective January 1, 2006, the State Health Plan added a tobacco cessation program through the Behavioral Health Manager to its Plan of Benefits. Companion Benefit Alternatives (CBA) has contracted with Free and Clear (now Quit for Life offered by Alere Wellbeing) to be the exclusive provider of tobacco cessation services to State Health Plan participants.

PEBA is looking for a qualified contractor who can focus exclusively on tobacco cessation services. The contractor should be able to develop a marketing program specifically geared towards tobacco cessation for members of the Plan. These communication efforts should be based on proven success methodologies.

The Contractor shall provide a comprehensive evidence based tobacco cessation program as proposed to Plan subscribers and dependents. The Contractor’s tobacco cessation program shall help participants stop using cigarettes, cigars, pipes and smokeless tobacco and encourages participants that quitting tobacco is a lifestyle decision and not just a health decision. Payment will be made as a claim on a fee-for-service basis to be invoiced in the same manner as other claims.

## SCHEDULE OF KEY DATES IN THE PROPOSAL PROCESS

All dates subject to change

1. Distribution of the RFP	07/07/2016
2. Questions on the Request for Proposal	07/17/2016
3. Pre-Proposal Conference; and, Final Deadline for Submission of All Questions	07/20/2016
4. State's Written Responses to Questions Submitted/Amendment Issued (tentative)	07/28/2016
5. Submission and Opening of Proposals (11:00 a.m.)	08/16/2016
6. Intent to Award Posting Date (tentative)	08/30/2016
7. Intent to Award Becomes Official (tentative)	09/12/2016
8. Contract Performance	01/01/2016

## II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS

### DEFINITIONS

EXCEPT AS OTHERWISE PROVIDED HEREIN, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION.

AMENDMENT means a document issued to supplement the original solicitation document.

CHANGE ORDER means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

CONTRACT See clause entitled Contract Documents & Order of Precedence.

CONTRACT MODIFICATION means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

CONTRACTOR means the Offeror receiving an award as a result of this solicitation.

COVER PAGE means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.

COVERED PERSON means any individual who participates in the plan, including a Subscriber and any covered dependents of the Subscriber.

OFFER means the bid or proposal submitted in response this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.

OFFEROR means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.

PAGE TWO means the second page of the original solicitation, which is labeled Page Two.

PARTICIPANT means an individual who participates in the plan, including all (a) Active employees; (b) Employees on leave of absence; (c) Retirees; (d) Survivors of deceased employees; (e) Survivors of deceased retirees; (f) COBRA participants enrolled in the Plan, and (g) any enrolled dependents of the individuals identified in (a) through (f) herein. The term Member is used interchangeably with the term Participant.

PLAN means State Health Plan and MUSC Health Plan.

PROCUREMENT OFFICER means the person, or his successor, identified as such on the Cover Page.

YOU and YOUR means Offeror.

SOLICITATION means this document, including all its parts, attachments, and any Amendments.

STATE means the Using Governmental Unit(s) identified on the Cover Page.

SUBCONTRACTOR means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

SUBSCRIBER means an Active or Retired Employee, Surviving Child/Surviving Spouse or COBRA enrollee of an Employer.

USING GOVERNMENTAL UNIT means the unit(s) of government identified as such on the Cover Page. If the Cover Page names a Statewide Term Contract as the Using Governmental Unit, the Solicitation seeks to establish a Term Contract [11-35-310(35)] open for use by all South Carolina Public Procurement Units [11-35-5010(5)].

WORK means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

#### **AMENDMENTS TO SOLICITATION (JAN 2004)**

(a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: [www.procurement.sc.gov](http://www.procurement.sc.gov) (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment.

(c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged. [02-2A005-1]

#### **AUTHORIZED AGENT (FEB 2015)**

All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement or the resulting contract.

#### **AWARD NOTIFICATION (FEB 2015)**

Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. Should the contract resulting from this Solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given. [02-2A010-2]

#### **BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004)**

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

#### **BID ACCEPTANCE PERIOD (JAN 2004)**

In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. [02-2A020-1]

#### **BID IN ENGLISH and DOLLARS (JAN 2004)**

Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]

## **CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)**

**GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.**

(a) By submitting an offer, the Offeror certifies that-

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Offeror or competitor relating to-

- (i) Those prices;
- (ii) The intention to submit an offer; or
- (iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the Offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory-

(1) Is the person in the Offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or

(2)(i) Has been authorized, in writing, to act as agent for the Offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the Offeror's organization responsible for determining the prices offered in this bid or proposal];

(ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

(c) If the Offeror deletes or modifies paragraph (a)(2) of this certification, the Offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032-1]

## **CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)**

(a) (1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offeror must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

[02-2A035-1]

### **CODE OF LAWS AVAILABLE (JAN 2006)**

The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:  
<http://www.scstatehouse.gov/code/statmast.php>

The South Carolina Regulations are available at:  
<http://www.scstatehouse.gov/coderegs/statmast.php>

[02-2A040-2]

### **COMPLETION OF FORMS/CORRECTION OF ERRORS**

All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.)

### **DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015)**

You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an Offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either. [02-2A047-2]

### **DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)**

Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)] [02-2A050-1]

## **DRUG FREE WORK PLACE CERTIFICATION (JAN 2004)**

By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended. [02-2A065-1]

## **DUTY TO INQUIRE**

Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation and will be implemented on time and performed satisfactorily over the entire term of the contract for not more than the prices proposed. Offerors are expected to examine the Solicitation thoroughly, conduct appropriate pre-submission reviews of the circumstances, conditions and requirements and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. See clause entitled "Questions from Offerors." By submission of a proposal, Offeror also certifies that its proposal has been reviewed by the appropriate individuals within the Offeror's organization and that the goods and services herein, if an award is made to that Offeror, can and will be provided on time and for the compensation proposed, subject to any negotiations that may affect the amount of compensation.

## **ETHICS CERTIFICATE (MAY 2008)**

By submitting an offer, the Offeror certifies that the Offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-744 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02-2A075-2]

## **IRAN DIVESTMENT ACT- CERTIFICATION (JAN 2015)**

(a) The Iran Divestment Act List is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-irandivestment.phtm> (.) Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By signing your Offer, you certify that, as of the date you sign, you are not on the then-current version of the Iran Divestment Act List. (c) You must notify the Procurement Officer immediately if, at any time before posting of a final statement of award, you are added to the Iran Divestment Act List. [02-2A077-1]

## **OMIT TAXES FROM PRICE (JAN 2004)**

Do not include any sales or use taxes in your price that the State may be required to pay. [02-2A080-1]

## **OPEN TRADE REPRESENTATION (JUN 2015)**

By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [02-2A083-1]

## PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)

Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law.

(a) During the period between publication of the solicitation and final award, ***you must not communicate, directly or indirectly, with the Using Governmental Unit or its employees, agents or officials regarding any aspect of this procurement activity, unless otherwise approved in writing by the Procurement Officer.*** All communications must be solely with the Procurement Officer. [R. 19-445.2010]

(b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. ***You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date.*** [R. 19-445.2165] [02-2A087-1]

## PROTESTS (JUNE 2006)

Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". [Section 11-35-4210] [02-2A085-1]

## PUBLIC OPENING (JAN 2004)

Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. [02-2A090-1]

## PREPARATION OF PROPOSAL

Preparation of Proposal: (a) All Offers should be complete and carefully worded and should convey all of the information requested. (b) Offers should be prepared simply and economically, providing a straightforward, concise description of Offeror's capabilities to satisfy the requirements of the Request for Proposal. Emphasis should be on completeness and clarity of content. (c) If your Offer includes any comment over and above the specific information requested in our Request for Proposal, you are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the Request for Proposal's contractual requirements or an Offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

## QUESTIONS FROM OFFERORS (FEB 2015)

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled "Duty to Inquire." **We will not identify you in our answer to your question.** (b) The State seeks to permit maximum practicable competition. 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. [See R. 19-445.2140] [02-2A095-2]

## REJECTION/CANCELLATION (JAN 2004)

The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1610 & R.19-445.2065] [02-2A100-1]

## **RECEIPT OF PROPOSALS**

PEBA will receive sealed proposals until 11:00 a.m. local time on the opening date shown. The submitting Offeror should have printed on the envelope or wrapping containing his proposal the Proposal Title specified on the Cover Page of this Request for Proposal (page 1) and the proposal opening date/time. PEBA assumes no responsibility for unmarked or improperly marked envelopes. All envelopes received showing the Request for Proposal title and opening date/time will be placed directly under locked security until the date and time of opening. Proposals transmitted electronically or submitted via PEBA's facsimile machine will not be accepted.

## **RELEASE OF CLAIMS**

With the submission of a proposal, each Offeror agrees that it will not bring any claim or have any cause of action against PEBA based on any misunderstanding, failure by PEBA to properly convey the information, or failure by PEBA to provide the Offeror with pertinent information as intended by the Request for Proposal. Additionally, the Offeror, its officers, agents, or representatives waive and release PEBA and each and any entity, person, or other source providing any information concerning the Offeror, of any and all claims of any sort or variety whether in tort, contract or otherwise, whether known or unknown, regarding the Offeror's or subcontractor's past performance, products, services, personnel, reputation or its Subcontractors or any other information sought or obtained by PEBA, whether or not the information is relied on by PEBA. The Offeror agrees that it will assert no claims for proposal preparation costs arising from a protest, action or claim arising from the solicitation or award.

## **RESPONSIVENESS/IMPROPER OFFERS**

- (a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.
- (b) Responsiveness. Any proposal deemed unacceptable pursuant to S.C. Regulation 19-445.2095 (I)(1)(c) and (J) will be rejected, such determinations to be discretionary and not disturbed unless arbitrary and capricious. The South Carolina Public Employee Benefit Authority may elect to conduct discussions, including the possibility of proposal revisions, but only for those proposals determined to be either acceptable or potentially acceptable pursuant to S.C. Regulation 19-445.2095 (I)(1)(a) and (b). Any such discussions shall be conducted in accordance with S.C. Regulation 19-445.2095 (I)(2), (3), and (4).
- (c) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price.
- (d) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid.

## **SIGNING YOUR OFFER (JAN 2004)**

Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]

## **STATE OFFICE CLOSINGS (JAN 2004)**

If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <http://scemd.org/index.php/departments/response/severe-winter-weather> [02-2A120-2]



## **SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015)**

(An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1710. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including reasonable attorney's fees, resulting from withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-2]

## **SUBMITTING YOUR OFFER OR MODIFICATION**

All copies of the offer or modification, and any other documents required to be submitted with the offer should be enclosed in a sealed, opaque envelope or package – (1) Addressed to the office specified on the Cover Page; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the Offeror. (b) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified on the Cover Page. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered.

## **TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)**

Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. [02-2A135-1]

## **UNSUCCESSFUL OFFERORS**

Offerors not awarded a contract under this solicitation may request return of their proposals within thirty (30) calendar days after notification of award is posted. All cost of returns will be paid by the Offeror. Thirty (30) calendar days after notification of award is posted all materials submitted by firms not awarded a contract may be destroyed.

## **VENDOR REGISTRATION MANDATORY (JAN 2006)**

You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit [www.procurement.sc.gov](http://www.procurement.sc.gov) and select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered, you can update your information by selecting Change Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://www.scbos.com/default.htm>) [02-2A145-1]

## **WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)**

Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085. [02-2A150-1]

## **II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS**

### **CONFERENCE - PRE-BID/PROPOSAL (JAN 2006)**

Pre-Proposal Conference Date and Time: Conference: **07/20/2016 10:30 AM ET**

Location of Pre-Bid/Proposal Conference: **S.C. Public Employee Benefit Authority, Conference Room 210A, 200 Arbor Lake Drive, Columbia, SC.**

Due to the importance of all Offerors having a clear understanding of the specifications and requirements of this solicitation, a conference of potential Offerors will be held on the date specified on the cover page. Bring a copy of the solicitation with you. Any changes resulting from this conference will be noted in a written amendment to the solicitation. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State. The State assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does the State assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract. [02-2B025-1]

**NOTE:** Due to the importance of all Offerors having a clear understanding of the specifications and requirements of this Request for Proposal, attendance at the pre-proposal conference is strongly encouraged. The South Carolina Public Employee Benefit Authority strongly recommends that, at a minimum, the proposed account manager and the individual responsible for preparing and submitting the Offeror's proposal be in attendance. Prospective Offerors will be limited to two (2) representatives. There will be no call in number for this meeting.

**Any questions, comments, requests for information or clarifications regarding the Request for Proposal must be submitted in writing prior to the adjournment of the Pre-Proposal Conference. Do NOT wait to assert deviations, exceptions, etc. to anything in this Request for Proposal until (or in) the submission of your proposal. Potential Offerors are strongly encouraged to mail, e-mail or fax their questions on the Request for Proposal prior to the conference. Any written questions, requests for information or request for clarifications received prior to the conference, or prior to the adjournment of the conference, will be responded to in the form of a written amendment to the Request for Proposal and e-mailed to all prospective Offerors. The amendment will also be posted at the following web address: <http://www.mmo.sc.gov/MMO/spo/MMO-eip-solicitations.phtm>. Once the Conference is adjourned, no further questions regarding the Request for Proposal will be accepted.**

## **SUBMISSION OF QUESTIONS**

All questions, comments, requests for information or clarifications regarding this Request for Proposal must be submitted as indicated below. All questions, comments, requests for information or clarifications should, to the highest degree possible, cite the specific Request for Proposal section and paragraph number(s) to which the question refers. All questions, comments, requests for information or clarifications regarding this Request for Proposal should include the identity of the sender, firm name, mailing address, telephone number, and e-mail address. Email is the preferred method for submitting questions with “Questions: Tobacco Cessation Services for the South Carolina Public Employee Benefit Authority” as the subject of the email. Submit questions in an easily copied format such as MS Word.

### **Mark envelopes on questions mailed: QUESTIONS**

**Title:** Tobacco Cessation Services for the SC Public Employee Benefit Authority

**Attn.:** Georgia Gillens, CPPO, CPPB

### **SEND QUESTIONS TO:**

#### **MAIL TO:**

S.C. Public Employee Benefit Authority  
Insurance Benefits  
PO Box 11960  
Columbia, SC 29211-1960  
Attention: Georgia Gillens, CPPO, CPPB

#### **HAND DELIVER/EXPRESS**

S.C. Public Employee Benefit Authority  
Insurance Benefits  
202 Arbor Lake Drive  
Columbia, SC 29223  
Attention: Georgia Gillens, CPPO, CPPB

#### **E-MAIL ADDRESS:**

[ggillens@peba.sc.gov](mailto:ggillens@peba.sc.gov)

## **CLARIFICATION (NOV 2007)**

Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B044-1]

## **ELECTRONIC COPIES – REQUIRED MEDIA AND FORMAT (MAR 2015)**

In addition to your original offer, you must submit an electronic copy or copies on compact disk (CD), DVD, or USB drive. Submit the number of copies indicated on the cover page. Each copy should be on separate media. Your business and technical proposals must be on separate media. Every disk or USB drive must be labeled with the solicitation number and the Offeror’s name, and specify whether its contents address technical proposal or business proposal. If multiple-disk sets are provided, each disk in the set must be appropriately identified as to its relationship to the set, e.g., 1 of 2. The electronic copy must be identical to the original offer. File format shall be compatible with Microsoft Office (version 2003 or later), or Adobe Acrobat or equivalent Portable Document Format (.pdf) viewer. The Procurement Officer must be able to view, search, copy and print electronic documents without a password. [02-2B070-2]

## **OPENING PROPOSALS -- INFORMATION NOT DIVULGED (FEB 2015)**

In competitive sealed proposals, neither the number or identity of Offerors nor prices will be divulged at opening. [Section 11-35-1530 & R. 19-445.2095(C)(1)] [02-2B110-2]

## **PROTEST - CPO - MMO ADDRESS (JUNE 2006)**

Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

(a) by email to [protest-mmo@mmo.state.sc.us](mailto:protest-mmo@mmo.state.sc.us) ,

(b) by facsimile at 803-737-0639 , or

(c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. [02-2B122-1]

### III. SCOPE OF WORK/SPECIFICATIONS

#### DELIVERY DATE -- 30 DAYS ARO (JAN 2006)

Unless otherwise specified herein, all items shall be delivered no later than thirty days after contractor's receipt of the purchase order. If the using governmental unit requests delivery sooner than the time specified, contractor may invoice the ordering entity any additional shipping charges approved by the ordering entity on the purchase order. [03-3025-1]

#### DELIVERY/PERFORMANCE LOCATION -- SPECIFIED (JAN 2006)

After award, all deliveries shall be made and all services provided to the following address, unless otherwise specified: **S.C. Public Employee Benefit Authority, 202 Arbor Lake Drive, Columbia SC.**  
[03-3030-1]

### SCOPE OF WORK

1. The Contractor shall provide all personnel, goods and services necessary to administer and manage Tobacco Cessation Services in conformance with the Plan's documents, all applicable laws and regulations, and in accordance with all of the requirements outlined in this Request for Proposal and the Offeror's response thereto. The Contractor agrees that in the event of any disagreement about PEBA's requirements that might occur at any time during the term of the contract, Contractor will defer to and be governed by, without additional cost, PEBA's interpretation of its requirements so long as that interpretation is reasonable. This provision applies to all matters, including those arising from disputes concerning scope of work issues and whether particular items or efforts were included in the scope of work agreed to by the parties in this Request for Proposal.
2. The Contractor shall provide an evidence-based, comprehensive, and customized tobacco cessation quit program to eligible Plan subscribers, their covered spouses and dependent children age 13 and older. The program will also be utilized as a reasonable alternative for Affordable Care Act (ACA) purposes. The comprehensive quit program should be personalized to encourage the most successful outcomes for participants and at no cost to the participant. The comprehensive program shall provide help with quitting all forms of tobacco use to include smokeless products, cigars, pipes and electronic nicotine delivery systems (e-cigarettes, vape pens, etc.). The program should at a minimum assist the participant with developing a customized a quit plan, motivation to quit, help identifying triggers to using tobacco and developing coping mechanisms to be successful in quit attempt.
3. The Contractor shall provide a tobacco cessation program that is available and customized to participants as an online/digital self-help platform and a 24 hours a day, 7 days a week toll-free quit line. Members should be able to enroll in the quit program either through the online platform or toll-free quit line and be provided all necessary program materials regarding the program benefits the participants are eligible.
4. The Contractor shall provide a tobacco cessation program that can be aligned and compatible with PEBA's digital health and wellness platform, Rally Health (Rally). Rally will be offered beginning January 1, 2016 through PEBA's Third Party Administrator, currently BlueCross and BlueShield of SC (BCBSSC).
5. The Contractor shall collaborate with PEBA's Third Party Administrator, BCBSSC, on encouraging member enrollment in PEBA's tobacco cessation program through BCBSSC's health coaching program, Rally, or other forms of member engagement and contact such as MyHealth Toolkit and the PEBA specific website [stateresc.southcarolinablues.com](http://stateresc.southcarolinablues.com) maintained by BCBSSC.
6. The Contractor shall collaborate with PEBA on establishing program goals, to include but not limited to, successful quit rates and member engagement.

## 7. Tobacco Cessation Program Requirement

The contractor shall provide the following tobacco cessations services:

- a. Appropriate program kit and quitting aids (digital and physical kits options) that address self-help cessation techniques for tobacco products to include smokeless products, cigars, pipes and electronic nicotine delivery systems (e-cigarettes, vape pens, etc.);
- b. Telephonic or online counseling with a minimum of 4 out-bound interactions and unlimited in-bound calls or web-based inquiries;
- c. The Contractor shall provide live-call response and web-based response by trained cessation specialists to individuals seeking cessation support. A sufficient number of specialists must be trained and available to allow calls and web inquiries to be handled in a timely manner;
- d. Emailing and texting, available as optional communication channels for proactive follow-up participant counseling and messaging;
- e. Directly supply nicotine replacement therapy (NRT) to program participants at no member cost within three business days of participant's request to include but not limited to patches, gum, lozenges and other acceptable NRT products;
- f. Resource for implications of the Affordable Care Act in regards to tobacco cessation programming; and
- g. Provide education materials on PEBA's tobacco cessation program to encourage provider and Third Party Administrator referrals.
- h. The contractor shall provide types and cost of NRT products in its technical proposal.

### **A. Account Management and Personnel**

1. Establish and maintain a physical business office in either Columbia, Charleston, or Greenville, South Carolina, or Charlotte, North Carolina metro areas, or within one hundred (100) miles of PEBA's offices in Columbia, South Carolina with business hours of 8:00 AM to 5:00 PM local time, Monday through Friday.
2. The Contractor shall maintain a service location staffed, at a minimum, by an account representative dedicated to the State's business, who shall provide ready access to PEBA staff. The account representative shall be knowledgeable about all aspects of the tobacco cessation program and be readily available by phone or email during regular working hours to address issues posed by PEBA
3. The Contractor shall act as consultant to PEBA in the operation of the tobacco cessation programming by assisting PEBA in the ongoing review of the program, and advising of new trends, techniques, and programs.
4. The Contractor shall coordinate with the Medical Claims Processor (currently BCBSSC) and the Pharmacy Benefits Manager (currently ESI) for the Plans to promote tobacco cessation programming and to encourage participation in programming.
5. The Contractor shall meet with PEBA as necessary, but not less than quarterly, to review financial performance and service issues and to take corrective action as directed and approved by PEBA. One of the scheduled meetings should consist of an annual review at PEBA's office in Columbia, South Carolina, to review and summarize program participation and product utilization, program goals around participation and tobacco quit-rates, financial and clinical issues regarding the claims experience and financial performance of the tobacco cessation program during the previous plan year. The Contractor shall also, during these meetings, assist PEBA in its ongoing review of the tobacco cessation program, and advise PEBA as to the following:
  - a. Follow-up to, and status of, any agreed upon corrective action resulting from any preceding meetings;

- b. Developments in the tobacco cessation industry as a whole;
- c. Legal developments including, but not limited to, regulatory, administrative, statutory, and judicial developments relating to tobacco cessation management. However, between such meetings, the Contractor must promptly, and not later than ten (10) business days following the date of the applicable development, notify PEBA of any changes in the law or regulations affecting tobacco cessation.

#### **B. Eligibility of Subscribers and Computer Support**

1. PEBA shall determine and maintain eligibility and enrollment information. PEBA shall provide the Contractor, on a daily basis, an electronic file of eligibility updates including adds, terminations and changes since the last file transmission. The Contractor shall accept, process, maintain and update eligibility information from the files provided by PEBA on a daily basis. The Contractor shall verify eligibility from eligibility data provided by PEBA. The Contractor shall refer to PEBA, for consideration and PEBA's final decision, any questions with respect to subscriber or dependent eligibility for benefits.
2. PEBA's eligibility database shall be considered the system of record and eligibility data stored on the Contractor's systems must mirror the eligibility data maintained by the state. Any modifications to the Contractor's system needed to accommodate PEBA eligibility data shall be done at the Contractor's expense.
3. PEBA shall provide the Contractor, on a schedule determined by PEBA, a full positive enrollment file. It is anticipated that this type of file shall be provided by PEBA to the Contractor on an annual basis.
4. The Contractor shall comply with HIPAA provisions related to Electronic Transaction Standards.
5. PEBA conforms to the standard X12 834 data transmission. PEBA shall provide the Contractor with file transfers of eligibility through electronic data interchange. Data transfer shall be performed by FTP using VPN tunnel. The contractor shall accept and deliver eligibility data through this method.
6. The Contractor shall provide PEBA with a daily acknowledgement of files received and entered in Contractor's system.
7. The Contractor shall provide PEBA with a daily processing report, in a format acceptable to PEBA, of any transactions that did not update when eligibility data sent from PEBA to the Contractor was entered into the Contractor's system.
8. The Contractor shall provide PEBA with a monthly membership file, containing only members and their dependents in an active status, for comparison to PEBA's database. PEBA will accept the file by FTP using VPN tunnel.
9. The Contractor shall provide a secured encrypted VPN tunnel for purposes of permitting selected PEBA authorized staff to make online inquiries and/or have eligibility update and entry capabilities of the Contractor's system.
10. PEBA assigns a Benefits Identification Number or BIN that is used in lieu of the subscriber's Social Security Number. The Benefits Identification Number is eight (8) numeric digits, randomly generated by PEBA. The Contractor will be required to accommodate the use of BIN numbers.

11. PEBA shall provide to the Contractor the ability to inquire into PEBA enrollment eligibility. The Contractor shall utilize Employee Benefit Services (EBS) to respond to any enrollment questions from subscribers and/or providers. The Contractor shall notify PEBA's Operations Manager when one of their employees, who have previously been granted access to EBS leaves employment so that the employee's user rights to EBS can be deleted.
12. The Contractor shall be responsible for transmitting and maintaining data security and confidentiality as required by state and federal law, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
13. The Contractor shall maintain database backups in a manner that will eliminate disruption of service or loss of data due to system or program failures.

### **C. Customer Service**

1. The Contractor shall provide a toll-free customer service telephone line and customer service personnel and equipment necessary to support the toll-free telephone service. The system must have the capacity to handle multiple, simultaneous in-bound and out-bound calls.
2. The customer service call center shall provide live response to assist subscribers, providers and PEBA administrative staff via dedicated toll-free customer service telephone line(s), fully staffed with knowledgeable customer services representatives (not a recording), and open for at a minimum of 12 p.m. to 8 p.m. eastern time and open on the same business days as PEBA. The Contractor will be required to demonstrate that it has established and staffed telephone lines by November 15, 2016.
3. The customer service call center must have the capacity to channel callers to the most appropriate trained staff to meet the needs of the caller.
4. The Contractor shall have the capability to provide after-hours service.
5. Provide callers with a survey instrument to gauge customer satisfaction with the Contractor. Measures should include, but are not limited to, wait time, courtesy of staff, knowledge of product, willingness to assist, and problem resolved/question answered. Satisfaction survey results shall be submitted to PEBA quarterly with a minimum 95% overall satisfaction rate with key components identified. An assessment of \$5000 per quarter shall be levied against the Contractor for each quarter the Contractor fails to obtain a 95% overall satisfaction rate as liquidated damages for the Contractor's failure to meet this performance standard. The survey instrument shall be subject to review and approval by PEBA.
6. Annually conduct and submit the results to PEBA of a Satisfaction Survey for participants to gauge satisfaction with the tobacco cessation program. Coordinate with PEBA on the development of the satisfaction survey. The results of the Satisfaction Survey shall be submitted to Georgia Gillens, PEBA.

### **D. Communications and Training**

1. The Contractor agrees to furnish communication information on covered tobacco cessation benefits, and how to access them, to subscribers and employer groups. The Contractor shall provide communication information between the Contractor and covered persons under the Plans and PEBA that describes the features, operation, and any changes of the tobacco cessation benefit and increases awareness of the Plan benefits and changes.
2. The Contractor agrees to work collaboratively with PEBA's Analytics and Health Initiatives, Communications Department and Employer Services staff to develop a variety of targeted and focused marketing content and deliverables, and provide timelines for their development and updates. Marketing plans, and all collateral are

subject to approval by PEBA prior to actual use. Materials to covered persons and benefit administrators, include, but are not limited to:

- a. Targeted campaigns to promote benefits and services that include turnkey toolkits for benefits administrators (posters, fliers, postcards, email templates, social media posts, article templates etc.);
  - b. Content for multiple media (e-blasts, text messaging, social media, video and traditional publications describing the initiatives or resources available through the Plan);
  - c. Produce fliers, posters, table tents, and content for electronic delivery mechanisms;
  - d. Produce brochures, posters and similar materials to promote Plan initiatives, programs and services.
3. All informational materials, letters and marketing collateral must be cobranded with PEBA's logo and the Contractor's logo according to PEBA's identity guidelines for vendors. The Contractor's logo should be labeled as "Administered by:" to reflect the relationship between PEBA and the Contractor. The Contractor should follow other guidelines including size of logo, colors, typography and other styles as identified in the identity guidelines and will also adhere to Associated Press style guidelines. All materials must be reviewed and approved by PEBA's Communications Department prior to use.
  4. The Contractor shall develop, print, distribute and mail (including processing of returned mail), at its own expense, all approved communications materials and items. Distribution to active employees is through the employee's benefits administrator, and by mail to addresses of eligible retirees, COBRA participants, and survivors.
  5. The Contractor shall not conduct any mass mailings to enrolled eligible participants or contact benefit administrators or other State group benefits personnel without the prior express permission of PEBA.
  6. The Contractor shall develop and provide digital self-administered, turn-key tobacco cessation education programs and promotional material for participating employer groups to implement in their workplace.
  7. The Contractor shall provide personnel and promotional materials at PEBA's annual Benefits at Work Conference (four days) held each year in late August, beginning in August 2016. Approximately 400 benefits administrators and other essential benefits personnel attend each day. The conference is typically held in Columbia, South Carolina.

#### **E. Reporting**

1. Collaborate with and advise PEBA on best practices and industry standards for establishing program outcome measures and evaluating the effectiveness of the tobacco cessation program
2. Provide standardized reports, or an online reporting system capable of generating such reports, in a format and time schedule acceptable to PEBA which shall include, at a minimum:
  - a. Dashboard reporting with key performance indicators including but not limited to program metrics with actual results and program goals (i.e. participant counts, success rates and quit attempts);
  - b. Participant demographics to include age, gender, subscriber type, member type (subscriber or dependent) and by type of tobacco use;
  - c. Method of entry in cessation program (i.e. telephonic, online);
  - d. Knowledge of the program (i.e. how they heard about the program)
  - e. Utilization statistics of services provided (i.e. web coaching, in/out-bound calls pharmacotherapy recommendation and NRT product usage)
  - f. Overall program participation by point of contact (i.e. telephonic, digital interaction)
  - g. Projected Plan cost savings based on quit rate
3. Detailed compliance reports on a monthly or quarterly basis on performance standards
4. The Contractor shall have the ability to provide, on a daily basis, a program participation file to PEBA and/or its Third Party Claims Administrator (currently BCBSSC) with, but not limited to, the following information:



- a. Subscriber identifier (BIN)
- b. Participant identifier (PEBA relationship code)
- c. Participant first name
- d. Participant last name
- e. Participant date of birth
- f. Type of coaching (telephonic, web-based)
- g. Date of coaching session(s)
- h. Indicator for completed coaching sessions
- i. Goals assigned
- j. Goals accomplished
- k. Date goals accomplished
- l. Pharmacotherapy recommended

#### **F. Performance Standards and Guarantees (Liquidated Damages)**

1. Performance shall be provided in a first class manner. The Contractor shall be responsible to PEBA and liable for any delay, breach or non-performance of any portion of the contract. The Contractor shall strictly adhere to their proposed performance standards and performance guarantees and related liquidated damages for deviation from those performance standards as agreed to between PEBA and the Contractor. All Offerors are required to submit both proposed standards (guarantees) for performance and penalties for deviation from those standards. Proposed penalties may vary depending on such factors as severity (e.g. number of person impacted), frequency of failure to meet the performance standards both as to the same or different failures(s), and financial impact to the State.
2. The Contractor shall report to PEBA on the achievement of performance standards for the previous quarter and identify all performance standards that were not met and the related liquidated damages. Achievement of Performance Guarantees is subject to independent verification by PEBA.
3. PEBA plans to use a Contractor performance monitoring instrument to document Contractor performance in order to facilitate communication and foster improvements during the term of the contract. The Contractor will have the opportunity to respond in writing to the instrument prior to its finalization.

#### **G. Financial Arrangements**

1. PEBA will remit a monthly PMPM fee for all contracts based on PEBA's enrollment calculated as of PEBA's monthly billing cycle cutoff (generally last week of each month). First administration fee paid by January 15, 2016 based on December billing cutoff.
2. PEBA will also remit a PMPM user fee (claim) for subscribers and dependents 13 years of age and older who complete participation in the tobacco cessation program, as reported to PEBA by the contractor the first of each month for the previous month's participation. First user fee paid by February 15 based on January 1-31 participation.
3. Remittances will be made via two ACA transactions initiated by the State Treasurer by the 15th of each month, to one financial institution held in the Contractor's name.
4. Contractor shall provide an SSAE 16 report by August 15 each year.

## **H. Payment for Services**

1. Payment for all personnel, goods and services necessary to administer and manage the Tobacco Cessation Services as described in this Request for Proposal and the Offeror's response thereto, will be based on a flat per member per month administrative fee.
2. The Contractor shall receive a per member per month fee based on enrolled participants who complete the tobacco cessation program.
3. The Contractor shall receive reimbursement as a claim on a fee-for-service basis for nicotine replacement therapies (gum, lozenges, and patches) filed through the Plan's Third Party Administrator, currently BlueCross and BlueShield of South Carolina (BCBSSC).

## **I. Implementation Plan**

1. The Contractor shall be responsible for the preparation and execution of a Final Implementation Plan. The Final Implementation Plan shall be submitted to PEBA not later than thirty (30) calendar days following final award. The Contractor agrees to implement promptly any instructions from PEBA designed to accomplish full and successful implementation in a timely manner and ongoing performance as may be made from time to time without additional cost.
2. The Contractor's Final Implementation Plan shall be based upon the proposed implementation plan submitted in response to this Requirement and coordinated through and developed in conjunction with PEBA to ensure that readiness to commence tobacco cessation services shall be accomplished and completed by November 1, 2016. The Contractor's Final Implementation Plan shall outline, in detail, all the steps necessary to begin full performance of the contract on January 1, 2016 and shall specify expected dates of completion of all such steps and identify the person(s) responsible for each step.
3. The Contractor's Final Implementation Plan shall be accomplished in a manner to minimize interference with normal operations and services for both PEBA and the current contractor.
4. In the event of any failure by the Contractor to strictly adhere to the Final Implementation Plan, as agreed upon between the Contractor and PEBA (and without the express written waiver of the State before the date of the agreed upon time for completion), the Contractor shall pay to the State the amount of \$1000 per day, up to a maximum of five per cent (5%) of the annual administrative fee under the contract (Contractor's quoted per subscriber per month administrative fee times 229,880 subscribers) which shall be paid directly to the State. If, after fifteen (15) days notice, Contractor has failed to pay any amount due hereunder, the amount shall be withdrawn from the security.

## **IV. INFORMATION FOR OFFERORS TO SUBMIT**

### **INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (MAR 2015)**

You shall submit a signed Cover Page and Page Two. **If you submit your offer electronically, you must upload an image of a signed Cover Page and Page Two.** Your offer should include all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in Part IX. Attachments to Solicitations. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis. [04-4010-2]

### **SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE -- REQUIRED (FEB 2015)**

**ASK QUESTIONS NOW:** If you have a properly qualified third-party report or certification you believe we should accept in lieu of those identified in item (b), submit a question identifying same pursuant to the clause titled Questions from Offerors.]

The Contractor must demonstrate that programs, policies and procedures are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used by contractor to process, store, transmit, and access all government information. In order for the State to accurately evaluate the strength and viability of the Contractor's security policies, procedures and practices related to confidentiality, integrity and availability, Offerors must submit with their offers a thorough and complete written response to the Service Provider Security Assessment Questionnaire ("Response to SPSAQ") attached to this Solicitation, which must address all applicable organizations and applicable information systems. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. [04-4027-1]

## **INFORMATION FOR OFFERORS TO SUBMIT**

Proposals will be accepted only from the entity that will be providing the services hereunder. Offerors shall submit:

- a. One (1) original marked "original" and five (5) identical paper copies of your Technical Proposal. Please number your copies Copy 1 of 2, 2 of 2, etc.
- b. One (1) CD labeled "original" containing your original Technical Proposal. Prefer CD with enough capacity to include appendices. However, it is acceptable to include appendices on separate CD.
- c. Five (5) labeled CDs containing a copy of the Offeror's Technical Proposal Response (in MS Word, MS Excel and/or PDF format where appropriate). Please number your copies Copy 1 of 2, 2 of 2, etc.
- d. One (1) original marked "original" and two (2) paper copies of your Cost Proposal. Please number your copies Copy 1 of 2, 2 of 2, etc.
- e. One (1) CD labeled "original" containing your original Cost Proposal
- f. Two (2) labeled CDs containing a copy of the Offeror's Cost Proposal Response. Please number your copies Copy 1 of 2, 2 of 2, etc.
- g. One (1) CD labeled "original redacted" containing a redacted version of your original Technical Proposal.
- h. One (1) CD labeled "original redacted" containing a redacted version of your original Cost Proposal.

Offerors are required to mark the original copy of their offer to identify any information that is exempt from public disclosure. Offerors must do so in accordance with the clause entitled "Submitting Confidential Information." In addition, Offerors should also submit one CD of their offer from which they have removed any information that they marked as exempt, i.e., a redacted copy. The information redacted should mirror in every detail the information marked as exempt from public disclosure. The redacted copy should (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted in the following format: compact disk (CD) in one of the following formats: CD-R; DVD ROM; DVD-R; or DVD+R. File format shall be Microsoft Word 97 or later. Except for the redacted information, the CD must be identical to the original hard copy and accessible for reproduction by PEBA.

Offerors should submit the following information for purposes of evaluation. PEBA desires a detailed written submission so that it can make an accurate comparison of all proposals received. Please be specific in your answers. The Proposal shall include the following sections and shall be presented in the listed order:

Both the Cost Proposal and the Technical Proposal should be submitted separately and each marked respectively with: Section I: Cost Proposal and Section II: Technical Services Proposal. .

### **Technical Proposal**

1. **Statement of Acceptance:** Offerors should reply to Section I, Scope of Proposal; Section II, Instructions to Offerors A. General and B. Special; Section III Scope of Work; Section IV, Information for Offerors to Submit; Section V, Qualifications; Section VI, Award Criteria; Section VII, Terms and Conditions A. General and B. Special; Section VIII, Bidding Schedule / Price Proposal; and Section IX, Attachments to Solicitation, by declaring that the Offeror understands, agrees to, and will comply with all of the provisions/requirements/terms in each of these Parts. **Offerors should include this statement of acceptance in the introduction (e.g. executive summary) to their response. Additionally, Offerors must specifically state in its statement of acceptance that it meets the Mandatory Minimum Qualifications for this RFP.**

Statement of Acceptance must be free from any and all exclusions to the terms and conditions of the RFP.

Offerors must submit a signed copy of the cover page (page one and two) with their offer. By submitting a proposal, Offeror agrees to be bound by all of the terms of the RFP. Offerors agree to hold their offer open for a minimum of one hundred twenty (120) calendar days after the Opening Date.

2. **Executive Summary:** An Executive Summary should be provided with the Offeror's Proposal. The Executive Summary should bear the name and address of the Offeror, the solicitation number of this RFP, and acknowledgement of the receipt of any amendments. The Executive Summary should include a brief description of the Offeror's understanding of the scope of services and their ability to provide the required services. The Executive Summary should be signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP.
3. **Mandatory Minimum Qualification:** Offerors should provide detailed information to establish that the Offeror meets the mandatory minimum qualifications outlined in Section V, Mandatory Minimum Qualifications. Offerors should include this detailed information in their Executive Summary. Any Offeror not meeting the mandatory minimum qualifications will not be considered for award, and therefore will not be evaluated.
4. **Subcontracting:** Offerors should identify any subcontractor(s) by name, define the relationship, the services to be performed by the subcontractor, and the years of experience. The Offeror's contract with the subcontractor(s) should require the subcontractor(s) to comply with all of the requirements contained in this RFP.
5. **References**  
Offerors should provide not less than three (3) reference accounts from the list of 5 Under Background and Qualifications, Item F (excluding the State of South Carolina). Include the name of person to contact, title, telephone number and e-mail addresses.

Provide the following information for a minimum of three companies/entities of similar size and scope that are familiar with your work.

- a. Company/Entity name
- b. Date that your company worked for the above named business/entity
- c. The type of services provided to the business/entity
- d. Name and position of the person familiar with your work
- e. Mailing address, phone number, and email address for the above named person

## **I. TECHNICAL SERVICES PROPOSAL**

### **1. APPROACH**

Offerors should describe, in detail, their approach to providing Tobacco Cessation services under this contract. Offerors, in describing their detailed approach, should, at a minimum, restate each of the items below and provide their response (approach) to that item immediately thereafter. Offerors should respond in detail and specificity to all items under Section III. Scope of Work / Specifications.

#### **A. Account Management and Personnel**

1. Offerors should describe, in detail, their approach to managing the State's account. In describing its approach offerors should describe how they would assign personnel to perform all of the obligations and requirements of the contract.
2. Offerors should provide the name, background, qualifications, and location of the account representative who will be assigned to PEBA.
3. Offerors should submit a list of the key qualified personnel that will be involved in the work. The key staff must have specific experience in Tobacco Cessation Projects or other coaching programs in projects of similar size and nature. Submit resumes for key personnel detailing their responsibility in the project.
4. Provide a staff plan identifying the key categories of staff that will be used to support the requirements of the RFP (e.g. intake specialists, telephonic coaches, in-person counselors, etc.), required qualifications, training protocols, evaluation and monitoring protocols, and staffing ratios.
5. Offerors should describe the location(s) from which services will be delivered under this contract.

#### **B. Eligibility of Subscribers and Computer Support**

1. Offerors should describe and provide information that their company currently has an operational data processing system capable of efficiently and accurately:
  - providing an on-line claims adjudication system, including providing PEBA personnel access to the claims adjudication system, and exchanging data with the Third Party Administrator and the Flexible Benefits Contractor;

- maintaining records and tracking each patient file; providing pre-admission approval, medical necessity determination, comparing proposed treatment plans with generally recognized medical standards, assigning a DRG, if utilized for reimbursement, upon admission and comparing such DRG with that reported upon discharge, generating letters to patients, providers and insurers regarding case management decisions, and generating reports for PEBA.
2. Offerors should describe the software proposed to be used by their company in response to this Request for Proposal, the hardware on which it runs, when each system was developed and when each system was last updated and the telecommunications configurations.
  3. Offerors should describe their proposed method and frequency of reconciliation and how they would provide PEBA with verification of the reconciliations.
  6. Offerors should describe how they would notify PEBA of enrollment discrepancies.
  7. Offerors should describe how they would coordinate resolution with PEBA.
  8. Offerors should describe their process for making modifications to their system and how long it would typically take for system modification.
  9. Offerors should describe their ability to handle multiple addresses for dependents. Currently, if a dependent formally requests (in writing) that we use alternative means or an alternative address when communicating any protected health information to avoid personal endangerment, we will grant the request. This would be communicated both verbally and in writing to the Contractor. PEBA reserves the right to grant the request for other reasons in the future.
  10. Offerors should describe their ability to handle multiple transactions for a subscriber on the same file.
  11. Offerors should describe their backup schedule and how often would PEBA eligibility and claims data be backed up.
  12. Offerors should describe their procedure for providing access to PEBA eligibility and claims data in the event of a disaster.

### C. Customer Service

1. Offerors should describe, in detail, their approach to customer service. Offerors should describe the number of customer service representatives, with training on the specific features of the tobacco cessation of the Plans, they will make available to the State of South Carolina.
2. Offerors should describe the assistance available to subscribers, providers, and PEBA administrative staff via a dedicated toll-free telephone line(s), including the average time that a caller must wait to speak to a customer service representative, or other measure of the efficiency of the customer services rendered over the dedicated telephone lines.
3. Offerors should describe their procedures to insure a prompt response to all written or telephone inquiries from subscribers, providers, agencies and PEBA administrative staff, including the average time, from receipt of a written inquiry from claimants or staff, to a written or telephone response.

4. Offerors should describe their dedicated toll-free telephone “crisis” line to provide referrals and assistance for emergencies to covered subscribers, if necessary.

#### D. Communications and Training

1. Offerors should describe how they will communicate awareness of the features, operations, and tobacco cessation benefits to enrolled participants, benefit administrators, participating employers’ essential benefits staff and the provider community.
2. Offerors should provide a list and detailed description of all proposed communications and informational materials they will provide, at no cost to the State (including printing, coordination, production, distribution/mailing and storage), to covered persons under the Plan, the tobacco user community, and PEBA. (Note that all materials are subject to prior approval by PEBA.)
3. Offerors should provide a detailed description of the website that will be utilized.
4. Offerors should provide a sample of the Member Satisfaction Survey they would utilize.

#### E. Reporting

1. Offerors should describe, in detail, online reporting. Offerors should describe the standard customized, and ad hoc reports that will be provided, the frequency of those reports, and a detailed description of all the information that will be provided in each of these reports. Offerors also need to describe how often the online reporting will be updated (i.e. daily, weekly, monthly).
2. Offerors should describe the information that will be contained on the detailed program participation file provided to PEBA and the Third Party Administrator, currently BCBSSC.
3. Offerors should describe the typical turn-around time for custom report requests. Offerors should describe, in detail, the type and frequency of any reports it proposes to provide in addition to those required in Part III, Scope of Work, Reporting.

F. Performance Standards and Guarantees (Liquidated Damages)

Offerors should propose standards (guarantees) for performance and penalties for deviation from those standards in, at a minimum, the following areas and describe how they will be reported to PEBA.

**Eligibility processing**

Timeliness of file updates

Accuracy

**Communications with Participants and the State**

***Telephone service standards***

Average speed to answer

Call Abandonment

1<sup>st</sup> Call Resolution

***Written inquiries***

**Reporting**

Timeliness of reporting

Accuracy of reports

G. Financial Arrangements

Offerors shall acknowledge compliance with and agreement to PEBA's financial arrangements as described herein.

H. Payment for Services

Offerors shall acknowledge compliance with PEBA's payment for services and describe in detail how contractor will provide detailed evidence of program completion for the purposes of reconciling invoicing to PEBA.

I. Implementation Plan (NOT an evaluated item)

Offerors should submit a preliminary implementation plan. The plan should consist of a sequential listing of all steps necessary to provide the requested services from the date of contract award to full performance of the contract on January 1, 2016. At a minimum, the plan should consist of detailed descriptions of key events, a proposed date of completion (in number of days after contract award), how the task will be accomplished, and identification of the person responsible for the item or requirement. In particular the Offeror should address the following: Staff recruitment, hiring, and training; the loading and testing of all computer and data processing systems, which must be ready to begin processing and conduct a demonstration test no later than October 1, 2016; when and how eligibility databases will be installed and ready for use on Contractor's system; establishing and staffing of customer services unit and toll-free telephone lines; procedures for developing all publications, websites, and communications materials; support and coordination required from PEBA and the State. A demonstration of the Contractor's operational system capability shall be required on or before October 1, 2016. The preliminary implementation plan will be converted to a Final Implementation Plan.



## **2. BACKGROUND AND QUALIFICATIONS**

Offerors should describe, in detail, their background and qualifications in providing Tobacco Cessation Services. Offerors, in describing their background and qualifications, should restate each of the items below and provide their response to that item immediately thereafter.

- a. Offerors should provide a detailed description of its present organization, including a description of its size and assets and the length of time it has been in the business of providing tobacco cessation services. Offerors should provide their experience providing tobacco Cessation services in an environment similar to that applicable to the State of South Carolina.
- b. Offerors should provide its last two (2) audited financial statements and annual reports.
- c. Offerors should provide information that demonstrates that it possesses the qualifications outlined in Part IV of the RFP, Qualifications. Offerors should restate each of the bulleted items in this section and provide information that demonstrates that it possesses the specific qualification immediately thereafter. Offerors who do not meet the minimum qualifications outlined in Part IV, Qualifications, will not be considered for award.
- d. Offerors should complete the following table, identifying the three (3) largest group medical plans (in decreasing order of size of for which the Offeror currently provides tobacco cessation services that includes secure data transfer capability with a third-party medical plan administrator. Include both insured and self-insured plans. Also, identify each contract for which the Offeror is using a subcontractor.

<b>Group Name</b>	<b>Medical Plan Administrator</b>	<b>Group Size (Subscribers)</b>	<b>2014 Number of NRT products provided</b>	<b>2015 Number of NRT products provided</b>

- e. Offerors should provide not less than three (3) reference accounts from the list above (excluding the State of South Carolina) including the name of person to contact, title, telephone number and e-mail addresses.
- f. Offerors should list the amount of the Offeror's liability insurance and insurance carrier.

## **II. COST PROPOSAL**

### **Fixed Administrative Fee And Program Completion Fee**

The Fixed Administrative Fee and Program Completion Fee shall be submitted in a separate, sealed envelope.

The Fixed Administrative Fee per member per month and Program Completion Fee shall be submitted in the format specified on **Attachment Number Eight (8)**.

Offerors quoted fixed Administrative Fee and Program Completion Fee shall be fixed for the three (3) year initial term of the contract (January 1, 2016 through December 31, 2019).

## **MINORITY PARTICIPATION (JAN 2006)**

Is the bidder a South Carolina Certified Minority Business? ☐ Yes ☐ No

Is the bidder a Minority Business certified by another governmental entity? ☐ Yes ☐ No

If so, please list the certifying governmental entity: \_\_\_\_\_

Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor? ☐ Yes ☐ No

If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor?  
\_\_\_\_\_

Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor? ☐ Yes ☐ No

If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor? \_\_\_\_\_

If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:

- ☐ Traditional minority
- ☐ Traditional minority, but female
- ☐ Women (Caucasian females)
- ☐ Hispanic minorities
- ☐ DOT referral (Traditional minority)
- ☐ DOT referral (Caucasian female)
- ☐ Temporary certification
- ☐ SBA 8 (a) certification referral
- ☐ Other minorities (Native American, Asian, etc.)

(If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.)

For a list of certified minority firms, please consult the Minority Business Directory, which is available at the following URL:<http://www.govoepp.state.sc.us/osmba/>  
[04-4015-1]

## **SUBMITTING REDACTED OFFERS (MAR 2015)**

If your offer includes any information that you marked as “Confidential,” “Trade Secret,” or “Protected” in accordance with the clause entitled “Submitting Confidential Information,” you must also submit one complete copy of your offer from which you have removed or concealed such information ( the redacted copy). The redacted copy should (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted on magnetic media. (See clause entitled “Electronic Copies - Required Media and Format.”) Except for the information removed or concealed, the redacted copy must be identical to your original offer, and the Procurement Officer must be able to view, search, copy and print the redacted copy without a password. [04-4030-2]

## V. QUALIFICATIONS

### QUALIFICATION OF OFFEROR (MAR 2015)

(1) To be eligible for award, you must have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify. (2) You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested information is grounds for rejection. (3) **Corporate subsidiaries are cautioned that the financial capability of an affiliated or parent company will not be considered in determining financial capability**; however, we may elect to consider any security, e.g., letter of credit, performance bond, parent-company corporate guaranty, that you offer to provide Instructions and forms to help assure acceptability are posted on [procurement.sc.gov](http://procurement.sc.gov), link to "Standard Clauses & Provisions." [05-5005-2]

### QUALIFICATIONS -- MANDATORY MINIMUM

(a) In order to be qualified to receive award, you must meet the following mandatory minimum qualifications:

**Offeror must have a minimum of three (3) years' experience working on projects of similar size and scope.**

(b) The Procurement Officer may, in his discretion, consider (1) the experience of a predecessor firm or of a firm's key personnel which was obtained prior to the date Offeror was established, and/or (2) any subcontractor proposed by Offeror.

**(c) Provide a detailed, narrative statement providing adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation.**

### MANDATORY MINIMUM QUALIFICATIONS

PEBA believes that a Contractor does not have the capability of successfully and fully performing the contract unless it meets the mandatory minimum qualifications outlined below. For purposes of meeting these minimum requirements, the Offeror may take into consideration the contribution of a subcontractor(s) so long as the Offeror and subcontractor(s) being relied upon have all worked together before to provide similar services jointly to the same customer. In those instances where applicable in response to the items below, the Offeror shall list the accounts/customers where the Offeror and all subcontractors have worked together, describe the services provided by each subcontractor, and the dates and length of time of such joint efforts. Thus, in order to be qualified to receive an award, offerors must meet the following mandatory minimum qualifications:

1. Offerors must currently be able to provide tobacco cessation programming for at least 75,000 covered lives. Offerors should submit detailed information to establish how and what tobacco cessation programming they provide for at least 75,000 covered lives.
2. Offerors must currently provide NRT products for at least 25,000 covered lives. Offerors should submit detailed information to establish how they currently provide NRT products.

3. Offerors must have successfully administered and managed a tobacco cessation program with the essential features described in this Request for Proposal for at least three (3) groups of 25,000 covered lives.
4. Offerors must have been in the business of providing tobacco cessation services for at least five (5) years. Offerors should provide detailed information to establish that they have been in the business of providing tobacco cessation services to large employers, including public sector employers that maintain self-insured health plans, for at least five (5) years.

While PEBA believes that an Offeror (or, if applicable, a Subcontractor) who does not meet these minimum requirements cannot successfully and fully perform the contract, Offerors are cautioned that the existence of these factors does not constitute a finding that an Offeror is responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1710.

Any Offeror not meeting these requirements will not be considered for award, and therefore will not be evaluated.

#### **QUALIFICATIONS -- REQUIRED INFORMATION (MAR 2015)**

Submit the following information or documentation for you and for any subcontractor (at any tier level) that you identify pursuant to the clause titled Subcontractor – Identification. Err on the side of inclusion. You represent that the information provided is complete. (a) The general history and experience of the business in providing work of similar size and scope. (b) Information reflecting the current financial position. Include the most current financial statement and financial statements for the last two fiscal years. If the financial statements have been audited in accordance with the following requirements, provide the audited version of those statements. [Reference Statement of Financial Accounting Concepts No. 5 (FASB, December, 1984), as amended.] (c) A detailed, narrative statement listing the three most recent, comparable contracts (including contact information) which have been performed. For each contract, describe how the supplies or services provided are similar to those requested by this solicitation, and how they differ. (d) A list of every business for which supplies or services substantially similar to those sought with this solicitation have been provided, at any time during the past three years. (e) A list of every South Carolina public body for which supplies or services have been provided at any time during the past three years, if any. (f) List of failed projects, suspensions, debarments, and significant litigation. [05-5015-2]

#### **SUBCONTRACTOR -- IDENTIFICATION**

If you intend to subcontract, at any tier level, with another business for 1) any portion of the work, (2) subcontracting involves access to any "government information," as defined in the clause entitled "Information Security - Definitions," if included, or (3) otherwise involves services critical to your performance of the work (err on the side of inclusion) your offer must identify that business and the portion of work which they are to perform. Identify potential subcontractors by providing the business name, address, phone, taxpayer identification number, and point of contact. In determining your responsibility, the state may evaluate your proposed subcontractors. [05-5030-2]

## **VI. AWARD CRITERIA**

### **AWARD CRITERIA -- PROPOSALS (JAN 2006)**

Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State. [06-6030-1]

### **AWARD TO ONE OFFEROR (JAN 2006)**

Award will be made to one Offeror. [06-6040-1]

### **COMPETITION FROM PUBLIC ENTITIES (JAN 2006)**

If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 116-304.1 (Supp. 2004). [06-6057-1]

### **DISCUSSIONS AND NEGOTIATIONS - OPTIONAL (FEB 2015)**

Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The State may also elect to conduct negotiations, beginning with the highest ranked Offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. [06-6058-1]

### **EVALUATION FACTORS -- PROPOSALS (JAN 2006)**

Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation is complete, all responsive Offerors will be ranked from most advantageous to least advantageous.

## **AWARD CRITERIA**

Proposals will be evaluated by a review panel on the basis of the following criteria. Evaluation criteria are stated in relative order of importance with the first criteria being the most important. Once evaluation is complete, all responsive Offerors shall be ranked from most advantageous to least advantageous in each of the Option(s) under consideration.

Award will be made to the highest ranked responsive, responsible Offeror whose offer is determined to be the most advantageous to the State.

Proposals will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous.

- 1) **Approach**: Offeror's detailed approach and understanding of the services being solicited (the evaluation panel will use the information submitted in response to Part IV, Information For Offerors To Submit, Item Number 1., **APPROACH**, and the information submitted in response to Part IV, Section II, Cost Proposal to evaluate this criteria. Each evaluation panel member will assign points to this criterion subjectively).

- 2) **Background And Qualifications**: Offeror's background and qualifications (the evaluation panel will use the information submitted in response to Part IV, Information For Offerors To Submit, Item Number 2., **BACKGROUND AND QUALIFICATIONS**, to evaluate this criteria. Each evaluation panel member will assign points to this criterion subjectively).
- 3) **Cost**: Offeror will be evaluated on the basis of:
- a. Fixed Administrative Fee
  - b. Program Completion Fee

## **VII. TERMS AND CONDITIONS -- A. GENERAL**

### **ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015)**

(a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2170, which does not restrict transfers by operation of law. [07-7A004-2]

### **BANKRUPTCY (FEB 2015)**

(a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-2]

### **CHOICE-OF-LAW (JAN 2006)**

The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]

### **CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (FEB 2015)**

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) documentation of clarifications [11-35-1520(8)] or discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the state's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

(b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect.

(c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-2]

#### **DISCOUNT FOR PROMPT PAYMENT (JAN 2006)**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the Offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, Offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day  
[07-7A020-1]

#### **DISPUTES (JAN 2006)**

(1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 16 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]

#### **EQUAL OPPORTUNITY (JAN 2006)**

Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference. [07-7A030-1]

#### **FALSE CLAIMS (JAN 2006)**

According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime. [07-7A035-1]

#### **FIXED PRICING REQUIRED (JAN 2006)**

Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award. [07-7A040-1]

#### **IRAN DIVESTMENT ACT - ONGOING OBLIGATIONS- (JAN 2015)**

(a) You must notify the procurement officer immediately if, at any time during the contract term, you are added to the Iran Divestment Act List. (b) Consistent with Section 11- 57-330(B), you shall not contract with any person to perform a part of the Work, if, at the time you enter into the subcontract, that person is on the then-current version of the Iran Divestment Act List. [07-7A072-1]



## **NO INDEMNITY OR DEFENSE (FEB 2015)**

Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason. [07-7A045-2]

## **NOTICE (JAN 2006)**

(A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]

## **OPEN TRADE (JUN 2015)**

During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

## **PAYMENT and INTEREST (FEB 2015)**

(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on "Page Two." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off. [07-7A044-3]

## **PUBLICITY (JAN 2006)**

Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer. [07-7A060-1]

## **PURCHASE ORDERS (JAN 2006)**

Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

## **SURVIVAL OF OBLIGATIONS (JAN 2006)**

The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit. [07-7A075-1]

## **TAXES (JAN 2006)**

Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor. [07-7A080-1]

## **TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)**

Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term. [07-7A085-1]

## **THIRD PARTY BENEFICIARY (JAN 2006)**

This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise. [07-7A090-1]

## **WAIVER (JAN 2006)**

The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing. [07-7A095-1]

# **VII. TERMS AND CONDITIONS -- B. SPECIAL**

## **ADVERTISING USE AND REPRESENTATION: CONTACT WITH STATE ENTITIES**

The Contractor agrees not to refer to the award of this contract in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the State or is considered by the State to be superior to other products or services. The State reserves the right to review and approve any commercial advertising to which the State's use of Contractor's services and/or supplies under this contract is referred. Such review shall be timely and approval shall not be unreasonably withheld.

The Contractor shall not perform any mass mailings to participants without the permission of PEBA.

At no time during the term of the contract or otherwise, shall any employee of the Contractor use any data, name, address or other information received by the Contractor or Subcontractor pursuant to this contract for any purpose other than performance of the contract.

## **ATTORNEYS' FEES**

In the event that the State is required and shall bring suit or action to compel performance of or recover for any breach of any stipulation, covenant, term or condition of this contract, the State may seek attorneys' fees from the Contractor and the Contractor will pay to the State such attorneys' fees as the court may award. Contractor will, in all instances, bear its own attorneys' fees and expenses.

## **BANKRUPTCY – GOVERNMENT INFORMATION (FEB 2015)**

(a) All government information (as defined in the clause herein entitled “Information Security - Definitions”) shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate.

(b) Contractor agrees to notify the State within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor’s possession in a format that can be readily utilized by the State.

(c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information. [07-7B007-1]

## **CHANGES (JAN 2006)**

(1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

(a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;

(b) method of shipment or packing;

(c) place of delivery;

(d) description of services to be performed;

(e) time of performance (i.e., hours of the day, days of the week, etc.); or,

(f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification.

(4) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

[07-7B025-1]

## **CHANGE ORDERS**

The procedure for change orders shall be as follows: Offerors have a duty to inform PEBA of any possible item that may affect cost in the Request for Proposal issued by PEBA. The failure to do so will result in the Contractor being responsible for any additional costs during the term of the contract due to the failure to inspect and advise. Additionally, under the applicable contract interpretation provisions, the Contractor agrees to defer to the reasonable interpretation of PEBA regarding PEBA’s requirements. Also, if a requirement is presently known but not effective until some time during the contract, it should be reflected in the proposal price. If there is a new and necessary requirement, not reasonably within the scope of the specifications, and not known prior to the date the notice of the intent to award is issued, then a change order request may be submitted to PEBA. The change order should be submitted with a proposed price, and supported by sufficient detail for PEBA to evaluate the fairness of the price which shall include a comparison to the Contractor’s original price proposal and a proposed implementation schedule. The Contractor bears the burden of establishing that the duty to inspect and advise does not apply or was complied with as well as the requirements of this provision for a change order are each established by clear and convincing evidence. Following submission of a change order proposal by the Contractor and a determination by PEBA that the change order is proper, the parties shall negotiate in good faith to agree on the price and schedule for the proposed change. If the negotiations are unsuccessful, PEBA will determine in good faith a reasonable price for the change order, and the Contractor may submit any difference in price for resolution pursuant to S.C. Code Section 11-35-4230. In no event will the Contractor withhold or delay services as the result of any dispute between the parties regarding a change order or any other matter.

The above requirements shall apply to any change orders, contract modifications, or other deviations to this agreement. Failure to receive the prior written and express approval of PEBA prior to implementing any changes to the requirements provided for hereunder, for which requests for extra or additional compensation are thereafter submitted by the Contractor to PEBA, shall impose no liability for payment upon PEBA and may be rejected by PEBA without recourse.

#### **CISG (JAN 2006)**

The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement. [07-7B030-1]

#### **COMPLIANCE WITH LAWS (JAN 2006)**

During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs. [07-7B035-1]

#### **CONFERENCE – PRE-PERFORMANCE (JAN 2006)**

Unless waived by the Procurement Officer, a pre-performance conference between the contractor, state and Procurement Officer shall be held at a location selected by the state within five (5) days after final award, and prior to commencement of work under the contract. The responsibilities of all parties involved will be discussed to assure a meeting of the minds of all concerned. The successful contractor or his duly authorized representative shall be required to attend at contractor's expense.

[07-7B0401]

#### **CONTRACT INTERPRETATION**

In the event there are any disagreements between the parties with regards to the application of this contract or the requirements of PEBA arising from any interpretation of the Request for Proposal, this contract, or otherwise, Contractor agrees to defer to the reasonable interpretations of PEBA as from time to time may be made by PEBA. This provision applies to all matters including those arising from disputes concerning whether Contractor is required to provide some service or item including scope of work issues and whether particular items or services were included in the scope of work agreed to by the parties in this contract or otherwise. In summary, if both parties have a reasonable interpretation regarding application of the contract, Contractor agrees to defer to PEBA's interpretation.

The above requirements shall apply to any change orders, contract modifications, or other deviations to this agreement. Failure to receive the prior written and express approval of PEBA prior to implementing any changes to the requirements provided for hereunder, for which requests for extra or additional compensation are thereafter submitted by the Contractor to PEBA, shall impose no liability for payment upon PEBA and may be rejected by PEBA without recourse.

#### **CONTRACT LIMITATIONS (JAN 2006)**

No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment. [07-7B045-1]

#### **CONTRACT MODIFICATION**

PEBA may at any time, by written order, and unilaterally, make changes within the general scope of this contract in any one or more of the following:

- (a) Description of services to be performed;
- (b) Time of performance (i.e. hours of the day, days of the week, etc.);
- (c) Place of performance of the services; and
- (d) Term of Contract.

## **CONTRACTOR PERSONNEL (JAN 2006)**

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. [07-7B060-1]

## **CONTRACTOR SOLELY RESPONSIBLE FOR PERFORMANCE/SUBCONTRACTORS**

The Contractor will be solely responsible for performance under this contract. The State will rely upon the Contractor for full, complete, and satisfactory performance under the terms and conditions of this contract and for any relief, or judgment which may be requested by the State against the Contractor or which may be entered against the Contractor in any litigation which may arise under this contract or the relationship between the parties.

If the Contractor's services provided for hereunder include services, equipment or materials supplied by a subcontractor, the Contractor must act as the prime Contractor and assume full responsibility for any subcontractor's performance. The Contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

## **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 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.

(2) Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(c) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

(d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

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

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

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

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

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

[07-7B056-2]

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

[ASK QUESTIONS NOW: For products providing the coverages required by this clause, the insurance market is evolving. Our research indicates that the requirements stated herein reflect commercially-available insurance products. Any offeror having concerns with any specific requirements of this clause should communicate those concerns to the procurement officer well in advance of opening.]

(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 three million (\$3,000,000.00) dollars per occurrence and five million (\$3,000,000.00) 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) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.

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

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

(k) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately 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 the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.

(m) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. [07-7B058-1]

## **CONTRACTOR'S OBLIGATION -- GENERAL (JAN 2006)**

The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements. [07-7B065-1]

## **DEFAULT (JAN 2006)**

(a) (1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.

(b) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

(f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.

(h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

[07-7B075-1]

#### **ESTIMATED QUANTITY -- PURCHASES FROM OTHER SOURCES (JAN 2006)**

The state may bid separately any unusual requirements or large quantities of supplies covered by this contract. [07-7B090-1]

#### **ESTIMATED QUANTITY -- UNKNOWN (JAN 2006)**

The total quantity of purchases of any individual item on the contract is not known. The State does not guarantee that the State will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information. [07-7B095-1]

#### **HIPAA COMPLIANCE/CONFIDENTIALITY**

The Contractor shall keep confidential all information and material which has or will come into its possession or knowledge in connection with the performance of services under this contract; and will not release, use or disclose any such information without prior written consent of PEBA. In addition, the Contractor shall comply with all State and federal laws and regulations concerning the confidentiality of medical records, including, but not limited to, the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and any federal regulations concerning the confidentiality of alcohol and drug abuse patient records. Furthermore, the Contractor shall adhere to the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and sign PEBA's Standard Business Associate Agreement, prior to award of the contract, which has been constructed in accordance with the requirements of the HIPAA Privacy and Security Rules and the requirements of the HITECH Act.

#### **ILLEGAL IMMIGRATION (NOV 2008)**

(An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

#### **INDEMNIFICATION – THIRD PARTY CLAIMS (NOV 2011)**

Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, reasonable attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property resulting from the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B100-2]



## INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015)

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

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

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

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

(d) “Indemnatee” means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B102-1]

## INFORMATION SECURITY – DEFINITIONS AND SAFEGUARDING REQUIREMENTS

(a) *Definitions.* As used in this clause—

**Clearing** means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (i.e., through the keyboard); however, the data may be reconstructed using laboratory methods.

**Compromise** means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term “compromise” includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract.

**Data** means a subset of information in an electronic format that allows it to be retrieved or transmitted

**Government information** means information (i) provided to Contractor by, or generated by Contractor for, the using governmental unit, or (ii) acquired or accessed by Contractor as a result of performing the work. Without limiting the foregoing, government information includes any information that Contractor acquires or accesses by software or web-based services, which includes, without limitation, any metadata or location data. Government information excludes unrestricted information.

**Information** means any communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

**Information system** means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

**Intrusion** means an unauthorized act of bypassing the security mechanisms of a system.

**Media** means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, large scale integration memory chips, and printouts (but not including display media, e.g., a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system.

**Public information** means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request.

**Safeguarding** means measures or controls that are prescribed to protect information.

**Software** means any computer program acquired, accessed, or used by the Using Governmental Unit or a third party pursuant to or as a result of this contract.

**Third party** means any person or entity other than the Using Governmental Unit, the Contractor, or any subcontractors at any tier.

**Unrestricted information** means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor's performance of the work.

**Voice** means all oral information regardless of transmission protocol.

**Web-based service** means a service accessed over the Internet and acquired, accessed, or used by the using governmental unit or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services.

(b) *Safeguarding requirements and procedures.* The Contractor shall apply the following basic safeguarding requirements to protect government information from unauthorized access and disclosure:

(1) Protecting information on public computers or Web sites: Do not process government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Government information shall not be posted on Web sites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (versus the Web site itself or the application it hosts).

(2) Transmitting electronic information. Transmit email, text messages, blogs, and similar communications that contain government information using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment.

(3) Transmitting voice and fax information. Transmit government information via voice and fax only when the sender has a reasonable assurance that access is limited to authorized recipients.

(4) Physical and electronic barriers. Protect government information by at least one physical and one electronic barrier (e.g., locked container or room, login and password) when not under direct individual control.

(5) Sanitization. At a minimum, clear information on media that have been used to process government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 800-88, Guidelines for Media Sanitization, at [http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88\\_with-errata.pdf](http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf).

(6) Intrusion protection. Provide at a minimum the following protections against intrusions and compromise:

(i) Current and regularly updated malware protection services, e.g., anti-virus, antispyware.

(ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.

(7) Transfer limitations. Transfer government information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause.

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

(d) *Other contractual requirements regarding the safeguarding of information.* This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems. [07-7B104-1]

## **INFORMATION SECURITY – LOCATION OF DATA (FEB 2015)**

Contractor is prohibited from accessing, processing, transmitting, or storing government information, as defined in the clause titled Information Security, outside the continental United States. This obligation is a material requirement of this contract. [07-7B106-1]

## **INFORMATION USE AND DISCLOSURE (FEB 2015)**

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

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

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

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

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

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

(f) *Return.* Notwithstanding the using governmental unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly destroy and return to the using governmental unit all government information in its possession upon written request of using governmental unit (provided that, if the contract has not expired or been terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information).

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

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

(i) *Actions Following Disclosure.* Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify using governmental unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the using governmental unit all information necessary to enable the using governmental unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided to such parties by Contractor, and if not (e.g., if legally required of the using governmental unit), Contractor shall reimburse using governmental unit for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) pay any related fines or penalties imposed on the using governmental unit by a government authority, and (4) reimburse the Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use.

(j) *Survival & Remedy.* All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause. [07-7B108-1]

## **INFORMATION USE AND DISCLOSURE – STANDARDS (FEB 2015)**

To the extent applicable:

(a) Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division, S.C. Code Ann. § 1-11-490.

(b) South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended. Solely for purposes of Section 39-1-90 of the South Carolina Code of Laws, as amended, Contractor is deemed to be the owner of government information, as defined herein, and Contractor agrees that the Using Governmental Unit is not a licensee.

(c) The South Carolina Family Privacy Protection Act of 2002, S.C. Code Ann. §§ 30-2-10, *et seq.*

(d) Personal Identifying Information Privacy Protection, S.C. Code Ann. §§ 30-2-310 *et seq.*

(e) Data Breach Notification, 2014 Act No. 286, § 116.116, as revised in any future annual appropriations act. [07-7B110-1]

## **INTELLECTUAL PROPERTY INFRINGEMENT**

(a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim.

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

## **INTERVENTION OF THIRD PARTY AND ASSISTANCE**

In the event that the Contractor does not meet any single deliverable or any other requirement after three (3) attempts, including those specified in the warranty provisions herein, Contractor shall provide at its own expense, subject to prior approval by PEBA as to the identity of the entity performing the services, sufficient additional oversight and assistance as deemed appropriate by PEBA.

Furthermore, PEBA has the option to retain a third party with the financial responsibility for the third party to be paid by the Contractor. This includes, but is not limited to, quality assurance, quality control, and/or independent verification and validation services. Once deployed, these services shall remain in place for such time as PEBA, in its sole discretion, deems appropriate. These services will be at no additional expense to PEBA.

## **LAWSUIT NOTIFICATION AND COOPERATION**

The Contractor shall notify PEBA of any class action lawsuits asserted or brought against the Contractor, which are pending or known to the Contractor as of the date of submission of the proposal as well as any asserted or brought against the Contractor after the date of submission of the proposal and prior to the termination of the contract. The Contractor also agrees to cooperate with PEBA and provide data, information, and documentation necessary to pursue litigation filed by or on behalf of PEBA against any party other than the Contractor.

## **LICENSES AND PERMITS (JAN 2006)**

During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract. [07-7B115-1]

## **OFFSHORE CONTRACTING PROHIBITED (FEB 2015)**

No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications that, in whole or in part, take place offshore of the United States. [07-7B122-1]

## **OWNERSHIP OF MATERIAL**

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

All reports, bulletins, pamphlets, summaries, similar materials, lists of employees, retirees, or any other program, product, list, or other usable and useful information shall become and remain the sole property of the State, including, but not limited to, all copyright protections and ownership and shall be released at no extra costs to the State at the termination of this contract.

Copyright or any other intellectual property right or ownership (copyright) of any preexisting items (items not specifically produced herein and which are in existence prior to the start of this contract) shall remain with the Contractor so long as the Contractor lists them not later than the start date of this contract. Failure of the Contractor to list any such materials in which the Contractor asserts a copyright will be interpreted to mean that the Contractor asserts no such ownership interests in any materials. Any materials in which Contractor copyrighted contents are included, and subject to designation by the Contractor and agreement by the State, will bear the following notice: "Certain portions reprinted under license from, the copyright owner.

## **PRICE ADJUSTMENTS (JAN 2006)**

(1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the Contract or subsequently agreed upon;
- (c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;
- (d) in such other manner as the parties may mutually agree; or,
- (e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 16 of the S.C. Code of Laws.

(2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1730.

[07-7B160-1]

## **PRICE ADJUSTMENT - LIMITED -- AFTER INITIAL TERM ONLY**

Prices shall not be increased during the first three (3) years of the term of the contract (2016, 2017 and 2019). Upon approval of the Procurement Officer, prices adjustments may be considered for year four (1/1/2021-12/31/2021) and year five (1/1/2021-12/31/2021). Any request for a price increase must be received by the Procurement Officer by January 15, 2019 for year four and by January 15, 2021 for year five and must be accompanied by sufficient documentation to justify the increase. A price increase must be executed as a change order Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase.

## **PRICE ADJUSTMENTS -- LIMITED BY CPI "OTHER GOODS AND SERVICES"**

Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), "Other Goods & Services" for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at [www.bls.gov](http://www.bls.gov)

## **PRICING DATA -- AUDIT -- INSPECTION (JAN 2006)**

[Clause Included Pursuant to Section 11-35-1730, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state.

[07-7B175-1]

## **PRIVACY -- WEB SERVICES**

You agree that any information acquired by you about individuals or businesses that is available to you as a result of your performance of this contract shall not be retained beyond the end of the term of the contract without the express written consent of the government. Such information shall never be sold, traded, or released to another entity, including affiliates, and shall not be used for any purpose other than performing this contract. Upon request, contractor shall provide written confirmation of compliance with this clause.

## **RECORDS RETENTION & RIGHT TO AUDIT**

PEBA shall have the right to audit, or have audited, the books and records of the Contractor as they pertain to this contract both independent of and pursuant to S.C. Code §11-35-2220 and other applicable provisions. Such books and records shall be maintained for a period of three (3) years from the date of final payment under the contract, or longer if requested by the Procurement Officer. PEBA, or its authorized representatives, shall have full access to observe and evaluate the performance hereunder with respect to the coverages, claims, reimbursements, profits, reserves, and all other matters pertaining to the performance and experience of this Plan as provided by the Contractor. PEBA may conduct, or have conducted, audits of specific requirements, of this contract as determined necessary by PEBA.

Pertaining to all audits, Contractor shall make available access to its computer files containing history of contract performance and all other documents related to the audit. Additionally, any software used by the Contractor shall be made available for auditing purposes at no cost to PEBA. All such audits, inspections and evaluations shall be performed in such a manner that will not unreasonably delay work.

In the event of any dispute between the parties, the Contractor will preserve all documents and records pertaining to this contract or the Contractor's performance under it, and shall not destroy any such documents, records or materials.

#### **RELATIONSHIP OF THE PARTIES (JAN 2006)**

Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party. [07-7B205-1]

#### **RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015)**

(a) Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the government pursuant to this contract (hereinafter "applicable services") or, in the case of public employees, to perform their job duties; accordingly, in performing the work, contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use (hereinafter "terms of use") not previously approved in writing by the procurement officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect.

(b) Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not – for itself or on behalf of any third party – offer citizens or public employees (other than the procurement officer) any additional products or services not required by the contract.

(c) Any reference to contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that contractor authorizes to take any action related to the work.

(d) Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the state liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction.

[07-7B212-1]

#### **SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015)**

The following obligations are subordinate to any other contract clause to the extent the other clause specifically provides for enhanced safeguarding of government information, applicable information systems, or applicable organizations. Offeror (i) warrants that the work will be performed, and any applicable information system (as defined in the clause titled "Information Security - Definitions") will be established and maintained in substantial conformity with the information provided in Offeror's Response to SPSAQ; (ii) agrees to provide PEBA with prompt notice of any material variation in operations from that reflected in the Response to SPSAQ; and (iii) agrees to comply with all other obligations involving either information security or information use and disclosure imposed by the contract, notwithstanding any inconsistent statement in Offeror's Response to SPSAQ. To the extent Offeror's Response to SPSAQ does not conform to any other contractual requirements, PEBA's lack of objection does not constitute a waiver.

#### **TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006)**

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is 3 years, 0 months, 0 days from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

#### **TERM OF CONTRACT -- OPTION TO RENEW (JAN 2015)**

(a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of 1 year(s), month(s), and day(s), unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. (b) Contractor acknowledges that, unless excused by Section 11-57-320, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio. [07-78245-2]

## **TERMINATION FOR CAUSE**

PEBA may cancel the Contract in whole or in part for cause in case of the Contractor's breach, default, negligence or other basis for termination for cause. In such instances, PEBA will provide the Contractor with notice of the basis for the termination in advance, if advance notice does not materially affect the interests of the State, and provide the Contractor an opportunity to cure the basis for termination. In instances where notice is provided, the length of the notice shall be determined on a case by case basis. PEBA may also provide suggestions for remedying the cause but this is at the sole discretion of PEBA. Therefore, in the event of a termination for cause there is no specific duty to provide ninety (90) days advance notice. Further, in the event of termination for cause PEBA reserves the right to purchase any or all items/services in default in the open market, charging the Contractor with any costs over and above the costs that would have applied had Contractor not been terminated. **SHOULD SUCH CHARGE BE ASSESSED, NO SUBSEQUENT PROPOSALS OF THE DEFAULTING CONTRACTOR WILL BE CONSIDERED UNTIL THE ASSESSED CHARGE HAS BEEN SATISFIED.**

Except for cause for termination of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

## **DUTIES UPON TERMINATION**

Upon expiration or termination of the contract for any reason, the Contractor shall provide full cooperation to PEBA in transferring any and all documents created for PEBA during the course of this contract.

Within ten (10) working days following termination of the contract, the Contractor shall deliver to PEBA documents and any intellectual property created for PEBA as a result of any contract resulting from this RFP.

## **TERMINATION FOR CONVENIENCE -- INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS (JAN 2006)**

Unless the termination so provides, a termination for convenience shall not operate to terminate any purchase orders issued prior to the effective date of termination. [07-7B244-1]

## **TERMINATION FOR CONVENIENCE (JAN 2006)**

(1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in a accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.

(4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1730 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.



(b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

- (i) contract prices for supplies or services accepted under the contract;
- (ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;
- (iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;
- (iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.

(5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or (ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause.

[07-7B265-1]

## **WARRANTY**

The Contractor warrants that any services, administration, implementation, and/or related services and all other work performed in connection with this contract shall comply with all specifications and other terms and conditions herein set forth and further warrants and guarantees that all services provided hereunder, and all supplies provided hereunder, shall be in accordance with the defined standards of availability, reliability, and suitability for the use herein intended and as set forth in the Request for Proposal. Any remedies for breach of this warranty shall include, but not be limited to, those specified under the Default clause and all remedies shall be considered cumulative and non-exclusive.

The Contractor shall be responsible for the full performance hereunder of any subcontractors, equipment, supplies, goods and/or services, and the State shall rely solely upon said Contractor for full, complete, and satisfactory contract performance.

This warranty shall be continuous and survives the termination of the contract.

## **VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL**

### **BIDDING SCHEDULE (NOV 2007)**

**PRICE /COST PROPOSAL TO BE SUBMITTED UNDER SEPARATE SEALED COVER IN ACCORDANCE WITH THE RFP INSTRUCTIONS.**

### **PRICE PROPOSAL**

Notwithstanding any other instructions herein, you shall submit the price information as a separate document (See page 44).

## **IX. ATTACHMENTS TO PROPOSAL**

### **ATTACHMENTS TO SOLICITATION**

1. Attachment 1: Important Tax Notice - Nonresidents Only
2. Attachment 2: Nonresident Taxpayer Affidavit
3. Attachment 3: Income Tax Credit
4. Attachment 4: Offeror's Checklist
5. Attachment 5: Service Provider Security Assessment Questionnaire
6. Attachment 6: Provider Reimbursement Methodologies
7. Attachment 7: Business Associate Agreement Template
8. Attachment 8: Fixed Fee

## **ATTACHMENT NUMBER ONE (1)**

### **IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**

Withholding Requirements for Payments to Nonresidents: Section 12-8-440 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

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Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

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For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at [www.sctax.org](http://www.sctax.org).

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This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898-5383.

## ATTACHMENT NUMBER TWO (2)



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
**NONRESIDENT TAXPAYER  
REGISTRATION AFFIDAVIT  
INCOME TAX WITHHOLDING**

**I-312**  
(Rev. 6/26/01)  
3323

The undersigned nonresident taxpayer on oath, being first duly sworn, hereby certifies as follows:

1. Name of Nonresident Taxpayer: \_\_\_\_\_

2. Trade Name, if applicable (Doing Business As):  
\_\_\_\_\_

3. Mailing Address: \_\_\_\_\_

4. Federal Identification Number: \_\_\_\_\_

5. \_\_\_\_\_ Hiring or Contracting with:  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ Receiving Rentals or Royalties From:  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ Beneficiary of Trusts and Estates:  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

6. I hereby certify that the above named nonresident taxpayer is currently registered with (check the appropriate box):

- ☐ The South Carolina Secretary of State or  
☐ The South Carolina Department of Revenue

Date of Registration: \_\_\_\_\_

7. I understand that by this registration, the above named nonresident taxpayer has agreed to be subject to the jurisdiction of the South Carolina Department of Revenue and the courts of South Carolina to determine its South Carolina tax liability, including estimated taxes, together with any related interest and penalties.

8. I understand the South Carolina Department of Revenue may revoke the withholding exemption granted under Code Sections 12-8-540 (rentals), 12-8-550 (temporarily doing business or professional services in South Carolina), and 12-8-570 (distributions to nonresident beneficiary by trusts or estates) at any time it determines that the above named nonresident taxpayer is not cooperating with the Department in the determination of its correct South Carolina tax liability.

The undersigned understands that any false statement contained herein could be punished by fine, imprisonment or both.

Recognizing that I am subject to the criminal penalties under Code Section 12-54-44 (B) (6) (a) (i), I declare that I have examined this affidavit and to the best of my knowledge and belief, it is true, correct and complete.

\_\_\_\_\_  
Signature of Nonresident Taxpayer (Owner, Partner or Corporate Officer, when relevant) (Seal) \_\_\_\_\_ Date

If Corporate officer state title: \_\_\_\_\_

\_\_\_\_\_  
(Name - Please Print)

## **ATTACHMENT NUMBER THREE (3)**

### **INCOME TAX CREDIT**

References: SC §12-6-3350 – Income Tax Credit for State Contractors Having  
Subcontracts with MINORITY Firms

Taxpayers, who utilize certified minority subcontractors, may take a tax credit equal to 4% of the payments they make to said subcontractors. The payments claimed must be based on work performed directly for a South Carolina state contract. The credit is capped at \$25,000 per year or the total tax liability; whichever is lesser. The taxpayer is eligible to claim the credit for 6 consecutive taxable years beginning with the taxable year in which the credit is first claimed. There is no carry forward of unused credits.

The credit may be claimed on Form TC-2, “Minority Business Credit.” A copy of the subcontractor’s certificate from the Governor’s Office of Small and Minority Business (OSMBA) is to be attached to the contractor’s income tax return. Taxpayers must maintain evidence of work performed for a State contract by the minority subcontractor.

Questions regarding the tax credit and how to file are to be referred to:

SC Department of Revenue  
Research and Review  
Phone: (803) 898-5786  
FAX: (803) 898-5888

Reference: SC §11-35-5010-Definition for Minority Subcontractor  
SC §11-35-5230 (B)–Regulations for Negotiating with State Minority Firms

The subcontractor must be certified as to the criteria of a “Minority Firm” by the Governor’s Office of Small and Minority Business Assistance (OSMBA). Certificates are issued to subcontractors upon successful completion of the certification process. Questions regarding subcontractor certification are to be referred to:

Governor’s Office of Small and  
Minority Business Assistance  
Phone: (803) 734-0507  
FAX: (803) 734-2498

# OFFEROR'S CHECKLIST

## *AVOID COMMON PROPOSAL MISTAKES*

Review this checklist prior to submitting your proposal.  
If you fail to follow this checklist, you risk having your proposal rejected.

- DO NOT INCLUDE ANY OF YOUR STANDARD CONTRACT FORMS!
- UNLESS EXPRESSLY REQUIRED, DO NOT INCLUDE ANY ADDITIONAL BOILERPLATE CONTRACT CLAUSES.
- REREAD YOUR ENTIRE PROPOSAL TO MAKE SURE YOUR PROPOSAL DOES NOT TAKE EXCEPTION TO ANY OF THE STATE'S MATERIAL AND ESSENTIAL REQUIREMENTS OR MAY BE OTHERWISE SUBJECT TO REJECTION.
- MAKE SURE YOU HAVE PROPERLY MARKED ALL PROTECTED, CONFIDENTIAL, OR TRADE SECRET INFORMATION IN ACCORDANCE WITH THE INSTRUCTIONS ENTITLED: SUBMITTING CONFIDENTIAL INFORMATION. ***DO NOT MARK YOUR ENTIRE PROPOSAL AS CONFIDENTIAL, TRADE SECRET, OR PROTECTED! DO NOT INCLUDE A LEGEND ON THE COVER STATING THAT YOUR ENTIRE RESPONSE IS NOT TO BE RELEASED!***
- HAVE YOU PROPERLY ACKNOWLEDGED ALL AMENDMENTS? INSTRUCTIONS REGARDING HOW TO ACKNOWLEDGE AN AMENDMENT SHOULD APPEAR IN ALL AMENDMENTS ISSUED.
- MAKE SURE YOUR PROPOSAL INCLUDES A COPY OF THE SOLICITATION COVER PAGE. MAKE SURE THE COVER PAGE IS SIGNED BY A PERSON WHO IS AUTHORIZED TO CONTRACTUALLY BIND YOUR BUSINESS.
- MAKE SURE YOUR PROPOSAL INCLUDES THE NUMBER OF COPIES REQUESTED.
- CHECK TO ENSURE YOUR PROPOSAL INCLUDES EVERYTHING REQUESTED!
- IF YOU HAVE CONCERNS ABOUT THE SOLICITATION, DO NOT RAISE THOSE CONCERNS IN YOUR RESPONSE! **AFTER OPENING, IT IS TOO LATE! IF THIS SOLICITATION INCLUDES A PRE-PROPOSAL CONFERENCE OR A QUESTION & ANSWER PERIOD, RAISE YOUR QUESTIONS AS A PART OF THAT PROCESS!** PLEASE SEE INSTRUCTIONS UNDER THE HEADING "SUBMISSION OF QUESTIONS" AND ANY PROVISIONS REGARDING PRE-PROPOSAL CONFERENCES.

This checklist is included only as a reminder to help Offerors avoid common mistakes.  
Responsiveness will be evaluated against the solicitation, not against this checklist.  
You do not need to return this checklist with your response.

**ATTACHMENT NUMBER FIVE (5)**

**Service Provider Security Assessment Questionnaire  
SERVICE PROVIDER SECURITY ASSESMENT QUESTIONNAIRE**

**Instructions: I. Attach additional pages or documents as appropriate.**

**II. As used in this Questionnaire, government information shall have the meaning defined in the clause titled "Information Security."**

1. Describe your policies and procedures that ensure access to government information is limited to only those employees/Contractors who require access to perform your proposed services.
2. Describe your disaster recovery and business continuity plans to include agency notification of incident and pre-prepared communications plan for notifying individuals affected by the incident and the timeframes within all of these items are addressed.
3. What safeguards and practices do you have in place to vet employees and Contractors who have access to government information?
4. Describe and explain your security policies and procedures related to use of Contractors/sub -contractors.
5. List any certifications that you have that demonstrate that adequate security controls are in place to properly store, manage and process government information (for example, ISO or SSAE certifications). Will these certifications be in place for the duration of the contract? Will you provide the state with most recent and future audit reports related to these certifications?
6. Describe the policies, procedures and practices you have in place to provide for the physical security of your data centers and other sites where government information will be hosted, accessed or maintained.
7. Will government information be encrypted at rest? Will government information be encrypted when transmitted? Will government information be encrypted during data backups?
8. Describe safeguards that are in place to prevent unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of government information.
9. What controls are in place to detect security breaches? Do you log transactions and network activity? How long do you maintain these audit logs?
10. How will government information be managed after contract termination? Will government information provided to the Contractor be deleted or destroyed? When will this occur?
11. Describe your incident response policies and practices to include agency notification of incident and pre-prepared communications plan for notifying individuals affected by the incident and the timeframes within all of these items are addressed.
12. Identify any third party which will host or have access to government information.

**Offeror's response to this questionnaire includes any other information submitted with its offer regarding information or data security.**

**SIGNATURE OF PERSON AUTHORIZED TO REPRESENT THE ACCURACY OF THIS INFORMATION ON BEHALF OF CONTRACTOR:**

By: \_\_\_\_\_  
(Authorized Signature)

Its: \_\_\_\_\_  
(Title of person signing above)

Name: \_\_\_\_\_  
(Printed name of person signing above)

Date: \_\_\_\_\_

**ATTACHMENT NUMBER SIX (6)**  
**PROVIDER REIMBURSEMENT METHODOLOGIES**

- Reimburse institutional providers for inpatient services using prospective payment methodologies including, but not limited to, case rates, per diems, and global case rates.
- Reimburse institutional providers for outpatient services using prospective payment methodologies including, but not limited to, outpatient DRG, APC, case rates, and global case rates.
- Reimburse professional providers using methodologies including, but not limited to, fee schedules, case rates, and global case rates.
- Reimburse under a percent of charge arrangement for services otherwise not enumerated under general contractual terms with institutional and professional providers.



## ATTACHMENT 7

### Business Associate Agreement

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between **NAME OF BUSINESS ASSOCIATE, ADDRESS OF BUSINESS ASSOCIATE** (hereinafter referred to as “Business Associate”) and the **South Carolina Public Employee Benefit Authority**, 202 Arbor Lake Drive, Columbia, South Carolina 29223 (hereinafter referred to as the “Covered Entity”).

In consideration of the mutual promises and agreements set forth herein, Covered Entity and Business Associate do hereby contract and agree as follows:

#### 1. DEFINITIONS

- (a) “Breach” shall have the same meaning as the term “Breach” in 45 CFR § 164.402.
- (b) “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 CFR § 160.103, and in reference to the party to this agreement, shall mean **NAME OF BUSINESS ASSOCIATE**.
- (c) “Compliance Date” shall have the same meaning as the term “Compliance Date” in 45 CFR § 160.103.
- (d) “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 CFR § 160.103, and in reference to the party to this agreement shall mean the South Carolina Public Employee Benefit Authority (PEBA).
- (e) “Data Aggregation” shall have the same meaning as the term “Data Aggregation” in 45 CFR § 164.501.
- (f) “Designated Record Set” shall have the same meaning as the term “Designated Record Set” in 45 CFR § 164.501.
- (g) “Electronic Protected Health Information” shall have the same meaning as “Electronic Protected Health Information” in 45 CFR § 160.103.
- (h) “HITECH Act” shall have the same meaning as the Health Information Technology for Economic and Clinical Health Act, as incorporated into the American Recovery and Reinvestment Act of 2009.
- (i) “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (j) “Individual” shall have the same meaning as the term “Individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

(k) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, subparts A and E.

(l) “Protected Health Information” or “PHI” shall have the same meaning as the term “Protected Health Information” in 45 CFR § 160.103, limited to the information created or received by Business Associate from, or on behalf of, Covered Entity.

(m) “Required By Law” shall have the same meaning as the term “Required By Law” in 45 CFR § 164.103.

(n) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

(o) “Security Incident” shall have the same meaning as “Security Incident” in 45 CFR § 164.304.

(p) “Security Rule” shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and 164, Subpart C.

(q) “Service Agreement” shall mean the agreement between **NAME OF BUSINESS ASSOCIATE** and PEBA, whereby **NAME OF BUSINESS ASSOCIATE** performs plan administrative tasks on behalf of the benefit program described herein as Covered Entity.

(r) “Unsecured PHI” shall have the same meaning as the term “Unsecured Protected Health Information” in 45 CFR § 164.402.

## **2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

(a) Business Associate agrees to use or disclose PHI only as permitted or required by this Agreement or as Required By Law. Business Associate is permitted to use and disclose PHI or Electronic PHI that it creates for, or receives from, Covered Entity or business associate of Covered Entity and to request PHI on behalf of Covered Entity as described in the Agreement, consistent with the HIPAA Rules. When requesting, using, or disclosing PHI, Business Associate shall restrict the request, use, or disclosure of said PHI to the minimum necessary to accomplish the intended purpose of the request, use, or disclosure.

(b) Business Associate agrees to provide access to Covered Entity, at the request of Covered Entity, to PHI in a Designated Record Set in order to meet the requirements under 45 CFR § 164.524.

(c) Business Associate agrees to make available PHI for amendment and incorporate any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity, within thirty (30) days of a written request by Covered Entity.

(d) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity available to the Covered Entity or the Secretary, within thirty (30) days of a written request by the Covered Entity or the Secretary, for the purpose of permitting the Secretary to determine Covered Entity's compliance with the HIPAA Rules.

(e) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528 and to make available to Covered Entity, within thirty (30) days of a written request by Covered Entity, the information required to provide such an accounting to an individual. Business Associate will comply with mandates regarding individuals' rights under the HITECH Act, including rights to access and accounting of disclosures. Such information shall be made available in an electronic format where directed by Covered Entity. In addition, Business Associate shall include, within its accounting, disclosures for payment and health care operations purposes where such recording or accounting is required by the HITECH Act and as of the effective date for this provision of the HITECH Act. Covered Entity shall provide any additional information to the extent required by the HITECH Act and any accompanying regulations.

(f) Business Associate shall make information available directly to an individual within thirty (30) days, when that individual so requests, if such information is required to be disclosed.

(g) Business Associate agrees to develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the privacy, confidentiality, integrity, and availability of Covered Entity's electronic and paper PHI that Business Associate creates, receives, maintains, or transmits on Covered Entity's behalf, as required by the HIPAA Rules and as required by the HITECH Act. Business Associate shall also develop and implement policies and procedures and meet the HIPAA Rules' documentation requirements as required by the HITECH Act.

(h) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any agent, including a subcontractor, to whom Business Associate provides PHI, agrees in writing, to abide by the same restrictions, conditions, and requirements that apply to Business Associate with respect to PHI and to implement appropriate safeguards to protect it.

(i) Business Associate agrees to notify Covered Entity within 48 hours of becoming aware of any use or disclosure of PHI not provided for by the Agreement or of any security incident resulting in the successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system, or resulting in any "Breach" of "Unsecured Protected Health Information," as required by 45 CFR 164.410.

(j) Business Associate will provide written notice of the HIPAA Breach of Unsecured PHI, on behalf of Covered Entity, without unreasonable delay but no later than sixty (60) calendar days following the date the HIPAA Breach of Unsecured PHI is discovered or such later date as is authorized under 45 CFR § 164.412 to each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, used, or disclosed as a result of the HIPAA Breach. For purposes of this paragraph, a HIPAA Breach shall be treated as discovered as of the first day on which the HIPAA Breach is known or should reasonably have been known to Business Associate (including any person, other than the one committing the HIPAA Breach, which is an employee, officer, or other agent of Business Associate).

The content, form, and delivery of such written notice shall comply in all respects with 45 CFR § 164.404(c)-(d).

If the HIPAA Breach of Unsecured PHI involves less than five hundred (500) individuals, Business Associate will maintain a log or other documentation of the HIPAA Breach of Unsecured PHI which contains such information as would be required to be included if the log were maintained by Covered Entity pursuant to 45 CFR § 164.408, and provide such log to Covered Entity within five (5) business days of Covered Entity's written request.

Additionally, upon request by the Covered Entity, Business Associate shall notify the Secretary of its breach of unsecured protected health information pursuant 45 CFR § 164.408.

(k) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

(l) Business Associate agrees to maintain appropriate clearance procedures and provide supervision to ensure that its workforce follows Business Associate's security procedures.

(m) Business Associate agrees to provide appropriate training for its staff to ensure that its staff complies with the HIPAA Rules and the requirements of the HITECH Act.

(n) Business Associate agrees to implement appropriate security incident procedures and provide training to its applicable staff sufficient to detect and analyze security incidents.

(o) Business Associate agrees to maintain a current contingency plan in case of an emergency, as required by 45 CFR § 164.308.

(p) Business Associate agrees, as appropriate, to maintain an emergency access plan to ensure that the PHI it holds on behalf of Covered Entity is available when needed, as required by 45 CFR § 164.312.

(q) Business Associate agrees to implement appropriate storage, disposal and reuse procedures to protect any PHI that Business Associate holds for Covered Entity.

(r) Business Associate agrees to provide appropriate backup of the PHI that Business Associate holds for Covered Entity, as required by 45 CFR § 164.308.

(s) Business Associate agrees to have in place appropriate authentication and access controls to safeguard the PHI that Business Associate holds for Covered Entity.

(t) Business Associate agrees to make use of encryption, as appropriate, when transmitting PHI over the Internet.

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

(v) Business Associate agrees not to engage in any sale (as defined in the HIPAA Rules) of PHI.

(w) With respect to PHI, Business Associate shall abide by any marketing restrictions established by Section 13406 of the HITECH Act.

(x) With respect to PHI, Business Associate shall abide by any fundraising restrictions established by Section 13406 of the HITECH Act.

### **3. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION BY BUSINESS ASSOCIATE**

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity, as specified in the Service Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity.

(b) Except as otherwise limited in this agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate if the disclosures are Required By Law; or if Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the PHI will remain confidential and will be used or further disclosed only as Required By Law or only for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Except as otherwise limited in this agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

(e) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

### **4. OBLIGATIONS OF COVERED ENTITY**

Covered Entity shall notify Business Associate of any limitations in its notice(s) of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI.

### **5. PERMISSIBLE REQUESTS BY COVERED ENTITY**

Covered Entity shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except Business Associate may use or disclose PHI for data aggregation or management and administrative activities of Business Associate.

### **6. TERM AND TERMINATION**

(a) Term.

The Term of this Agreement and the obligations herein shall be deemed effective as of the Compliance Date or the date of execution of this Agreement, whichever date is later, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for Cause.

Upon either Party's (the Non-Breaching Party's) knowledge of a material breach by the other party (the Breaching Party), the Non-Breaching Party may:

- (1) Provide an opportunity for the Breaching Party to cure the material breach or end the violation and terminate this Agreement if the Breaching Party does not cure the material breach or end the violation within the reasonable time specified by the Non-Breaching Party; or
- (2) If neither termination nor cure is feasible, the Non-Breaching Party may report the violation to the Secretary. Failure by the Non-Breaching Party to exercise its rights to terminate under this provision shall not be construed as a waiver of its rights to terminate, rescind or revoke the services herein in case of any subsequent breach.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

(2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible, including the need to retain PHI for audit, justification of work product or compliance with other applicable law. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **7. MISCELLANEOUS**

(a) Definitions. All terms that are used but not otherwise defined in this Agreement shall have the meaning specified under HIPAA, including its statute, regulations, and other official government guidance.

(b) Independent Contractor. The relationship between the parties will solely be that of independent contractors engaged in the operation of their own respective businesses.

(c) Third Party Beneficiaries. The parties agree that there are no intended third party beneficiaries under this Agreement.

(d) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules and/or HITECH Act means the section as in effect, or as amended, and for which compliance is required.

(e) Amendment. The parties agree to take such action as is necessary to amend this Agreement as is necessary to comply with the requirements of the HIPAA Rules and other applicable law or regulation.

(f) Survival. The respective rights and obligations of Business Associate under Section 6 (c) of

this Agreement shall survive the termination of this Agreement.

(g) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the applicable requirements under HIPAA and other applicable law or regulation.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date indicated below.

**NAME OF BUSINESS ASSOCIATE**

**SOUTH CAROLINA PUBLIC EMPLOYEE  
BENEFIT AUTHORITY**

By: \_\_\_\_\_

(Signature)

By: \_\_\_\_\_

(Signature)

NAME: \_\_\_\_\_

(Type or Print Name)

NAME: \_\_\_\_\_

(Type or Print Name)

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

<b>ADMINISTRATIVE FEE</b>
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**Part I: TOBACCO CESSATION PROGRAM FOR SC PEBA**

PER MEMBER  
PER MONTH

**FIXED ADMINISTRATIVE FEE:** \_\_\_\_\_

**ADMINISTRATIVE FEE IS TO BE GUARANTEED FOR THE INITIAL THREE YEAR TERM OF THE  
CONTRACT, JANUARY 1, 2016 – DECEMBER 31, 2019.**

<b>PROGRAM COMPLETION FEE</b>
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**Part II: TOBACCO CESSATION PROGRAM FOR SC PEBA**

**PROGRAM COMPLETION FEE:** \_\_\_\_\_

**PROGRAM COMPLETION FEE TO BE PAID PER MEMBER PER MONTH BASED ON ELIGIBLE ENROLLED  
PARTICIPANTS WHO COMPLETE THE TOBACCO CESSATION PROGRAM.  
CONTRACTOR MUST PROVIDE ACCURATE BACKUP.**