

	<b>State of South Carolina</b>  <b>South Carolina Public Employee Benefit Authority</b>  <b>Request For Proposal Amendment 1</b>	Solicitation Number: PEBA0332021 Date Issued: 01/14/2022 Procurement Officer: Georgia Gillens, CPPO, CPPB Phone: 803.734.0010 Email Address: <a href="mailto:GGillens@peba.sc.gov">GGillens@peba.sc.gov</a>

**DESCRIPTION: Provide Investment Consulting Services for the South Carolina Optional Retirement Program, the South Carolina Deferred Compensation Program, and Health Savings Accounts offered through the South Carolina Public Employee Benefit Authority.**

**SUBMIT OFFER BY (Opening Date/Time): 02/11/2022 11:00 AM.**

*The Term "Offer" Means Your "Proposal". Your offer must be submitted in a sealed package. The Solicitation Number & Opening Date should appear on the package exterior. See the clause entitled "Submitting Your Offer or Modification."*

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**SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:**

<b>MAILING ADDRESS:</b> South Carolina Public Employee Benefit Authority P.O. Box 11960 Columbia, S.C. 29211-1960 Attention: Georgia Gillens, CPPO, CPPB	<b>PHYSICAL ADDRESS:</b> South Carolina Public Employee Benefit Authority 202 Arbor Lake Drive Columbia, S.C. 29223 Attention: Georgia Gillens, CPPO, CPPB
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<b>AWARD &amp; AMENDMENTS</b>	Award will be posted on <b>03/04/2022</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="https://procurement.sc.gov/vendor/contract-ops/other-solicitations/peba">https://procurement.sc.gov/vendor/contract-ops/other-solicitations/peba</a>
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You must submit a signed copy of this form with Your Offer. By submitting a 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 twenty (120) calendar days after the Opening Date. (See the clause entitled "Signing Your Offer.")

<b>NAME OF OFFEROR</b>  <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.
<b>AUTHORIZED SIGNATURE</b>  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>		
<b>TITLE</b>  <small>(Business title of person signing above)</small>		<b>STATE VENDOR NO.</b>  <small>(Register to obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>
<b>PRINTED NAME</b>  <small>(Printed name of person signing above)</small>	<b>DATE SIGNED</b>	<b>STATE OF INCORPORATION</b>  <small>(If you are a corporation, identify the state of incorporation.)</small>

<b>OFFEROR'S TYPE OF ENTITY: (Check one)</b> <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)**

<b>HOME OFFICE ADDRESS</b> (Address for offeror's home office / principal place of business)	<b>NOTICE ADDRESS</b> (Address to which all procurement and contract related notices should be sent.)  <hr/> Area Code - Number - Extension                      Facsimile <hr/> Email Address
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<b>PAYMENT ADDRESS</b> (Address to which payments will be sent.)  <hr/> ___ Payment Address same as Home Office Address ___ Payment Address same as Notice Address <b>(check only one)</b>	<b>ORDER ADDRESS</b> (Address to which purchase orders will be sent)  <hr/> ___ Order Address same as Home Office Address ___ Order Address same as Notice Address <b>(check only one)</b>
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**ACKNOWLEDGMENT OF AMENDMENTS**  
 Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See the clause entitled "Amendments to Solicitation")

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

<b>DISCOUNT FOR PROMPT PAYMENT</b> (See the clause entitled "Discount for Prompt Payment")	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	___ Calendar Days (%)
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**REQUEST FOR PROPOSAL – PEBA0332021**  
**Locator Services for S.C. PEBA**

**PLEASE NOTE:** The original Request for Proposal document is superseded and is being replaced in its entirety by Amendment 1. It is recommended that Offerors, discard all superseded documents as described above and refer and respond only to the solicitation as described in Amendment 1. Attachment 6 includes responses to questions submitted in writing by the deadline. Any changes agreed to as a result of Attachment 6, Q&A have been incorporated into Amendment 1. Changes are highlighted in yellow. However, Offerors are responsible for reading the entire document in the event the State inadvertently failed to highlight a change. The questions and answers submitted in writing by the deadline are included as an attachment for information only. Only the changes incorporated in Amendment 1 are relevant

**AMENDMENTS TO SOLICITATION (JAN 2004)**

(a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offeror's should monitor the following web site for the issuance of Amendments: [www.procurement.sc.gov](http://www.procurement.sc.gov) (b) Offeror's 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 is amended, then all terms and conditions which are not modified remain unchanged. [02-2A005-1

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REQUEST FOR PROPOSAL (RFP)  
SOLICITATION NUMBER PEBA0332021

**PROVIDE INVESTMENT CONSULTING SERVICES FOR S.C. PEBA**  
**SCHEDULE OF KEY DATES IN THE PROPOSAL PROCESS**

All dates subject to change

1.	Distribution of the Request for Proposal	12/22/2021
2.	Questions on the Request for Proposal (10:30 a.m.)	01/06/2022
3.	Pre-Proposal Conference (11:30 a.m.)	01/11/2022
4.	State's Written Responses to Questions	01/14/2022
6.	Submission and Opening of Proposals (11 a.m.)	02/11/2022
7.	Intent to Award Posting Date	03/04/2022
8.	Intent to Award Becomes Official (tentative)	03/04/2022

**PART 1**

**INSTRUCTIONS TO OFFERORS-A. GENERAL INSTRUCTIONS**

**1.1 DEFINITIONS, CAPITALIZATION, AND HEADINGS:** Clause headings used in this solicitation are for convenience only and shall not be used to construe meaning or intent. Even if not capitalized, the following definitions are applicable to all parts of the solicitation, unless expressly provided otherwise.

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

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

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 the 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 clause of the contract titled "Changes," 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.

Offer means the proposal submitted in response to this solicitation. The term Proposal is used interchangeably with the term Offer.

Offeror means the single legal entity submitting the offer. See the clause entitled "Signing Your Offer."

Participant means an individual who participates in the South Carolina Deferred Compensation Program, the State Optional Retirement Program, or a Health Savings Account offered through the State Insurance Benefits

Program. The term Member is used interchangeably with the term Participant.

Procurement Officer means the person, or his successor, identified as such on either the Cover Page, an amendment, or an award notice.

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

State means the State of South Carolina and the South Carolina Public Employee Benefit Authority (PEBA).

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.

Work means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

You and Your means Offeror.

**1.2 AMENDMENTS TO SOLICITATION:** (a) The solicitation may be amended at any time prior to opening. All amendments to this solicitation shall be in writing from the South Carolina Public Employee Benefit Authority ("PEBA"). PEBA shall not be legally bound by any amendment which is not in writing. All actual and prospective Offerors should monitor the following web site for the issuance of amendments: <https://procurement.sc.gov/vendor/contract-opps/other-solicitations/peba> (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 acknowledging receipt in the Offeror's Executive Summary, (4) by letter, or (5) by submitting a proposal that indicates in some way that the Offeror received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified by the amendment(s) remain unchanged.

**1.3 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.

**1.4 AWARD NOTIFICATION:** 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. Notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the calendar day immediately following the seventh business day after such notice is given.

**1.5 PROPOSAL AS OFFER TO CONTRACT:** By submitting Your proposal, You are offering to enter into a contract with PEBA. 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.

**1.6 PROPOSAL ACCEPTANCE PERIOD:** In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. Otherwise, Your Offer remains valid until final award including through any periods consumed by protests.

**1.7 BID IN ENGLISH & DOLLARS:** Offers submitted in response to this solicitation shall be in the English language and in US dollars.

**1.8 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 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 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.

## **1.9 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, or his designee, 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, or his designee, may render the Offeror nonresponsive.

(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, or his designee, may terminate the contract resulting from this solicitation for default without cost to the South Carolina Public Employee Benefit Authority or the State and the Contractor will be charged for the cost of replacement goods and services.

**1.10 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>

**1.11 DEADLINE FOR SUBMISSION OF OFFER:** PEBA will receive sealed proposals until 11:00 a.m. local time on the opening date shown. To be timely filed, proposals and amendments thereto should be received by the time advertised for opening. It is the vendor's sole responsibility to ensure PEBA receives these documents. Offerors mailing proposals should allow a sufficient mail delivery period to ensure timely receipt of their proposal by PEBA. Any offer received after the Procurement Officer 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 PEBA's mail room prior to the opening. [R. 19-445.2070(G)]

**1.12 DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE:** 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, PEBA 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 that has already been performed by You, a proposed subcontractor, or an affiliated business of either.

**1.13 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.

**1.14 DUTY TO INSPECT AND 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. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation in accordance with the terms of this 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, or assumption it makes concerning the Solicitation, which Offeror does not bring to the State's attention pursuant to the terms of this Solicitation. By submission of a proposal, Offeror also certifies that its Offer 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.

**1.15 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 8-13-755 and 8-13-760, regarding restrictions on employment of a 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.

**1.16 OMIT TAXES FROM PRICE:** Do not include any sales or use taxes in Your price that PEBA may be required to pay

**1.17 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.

**1.18 PROHIBITED COMMUNICATIONS AND DONATIONS:** 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 PEBA 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 PEBA during the period beginning eighteen months prior to the Opening Date.* [R. 19-445.2165]

**1.19 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.

**1.20 QUESTIONS FROM OFFERORS:** (a) Any prospective Offeror desiring an explanation or interpretation of the solicitation, specifications, etc. (see clause 1.14 above, "Duty to Inspect and Inquire"), must request it in writing. Oral explanations or instructions will not be binding. 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. We will not identify you in our response to your question. (b) PEBA 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. Offerors should advise PEBA of any problems they perceive as a result of reviewing this solicitation document, which may bear upon their ability to comply, or submit any other questions, which might ultimately bear upon PEBA's ability to enter into the relationship described herein with a selected vendor.

**1.21 REJECTION/CANCELLATION:** PEBA may cancel this Solicitation in whole or in part and may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065]

**1.22 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. PEBA 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. PEBA 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.

(e) Do not submit bid samples or descriptive literature unless expressly requested. Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077(D).

**1.23 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) If an Offer is signed by an agent, other than as stated in

subparagraphs (a) through (c) 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.

**1.24 STATE OFFICE CLOSINGS:** If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the PEBA office 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 the proposal opening. If state offices are closed at the time a pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <http://www.scemd.org/planandprepare/disasters/severe-winter-weather>

**1.25 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 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response 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 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 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 attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". (All references to S.C. Code of Laws.)

**1.26 SUBMITTING YOUR OFFER OR MODIFICATION:** (a) 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. (c) Facsimile or email offers, modifications, or withdrawals, will not be considered.

**1.27 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>.)

**1.28 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. A proposal may be withdrawn in person by an Offeror 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 proposal. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085.

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

### **SUBMISSION OF QUESTIONS**

Any questions, comments, requests for information or clarifications regarding the RFP must be submitted in writing. Do NOT wait to assert deviations, exceptions, etc. to anything in this RFP until (or in) the submission of your proposal.

A pre-proposal conference will be held via Cisco WebEx on January 11, 2022 at 11:30 a.m. Please email Georgia Gillens at [ggillens@peba.sc.gov](mailto:ggillens@peba.sc.gov) to receive an invitation to the conference. Interested parties are limited to two attendees per company. To have a meaningful discussion at the pre-proposal conference, all questions must be received by the Procurement Officer no later than **January 6, 2022, at 10:30 a.m.** local time. No further questions regarding the RFP will be accepted after this deadline.

Any written questions, requests for information, or request for clarifications will be responded to in the form of a written amendment to the RFP and emailed to all prospective Offerors. The amendment will also be posted at: <http://procurement.sc.gov/doing-biz/bid-ops/peba>

All questions, comments, and requests for information or clarifications regarding this RFP must be submitted as indicated below. All questions, comments, and requests for information or clarifications should, to the highest degree possible, cite the specific RFP section and paragraph number(s) to which the question refers. All questions, comments, and requests for information or clarifications regarding this RFP should include the identity of the sender, firm name, mailing address, telephone number, and email address. Email is the preferred method for submitting questions, with “Questions: Investment Consulting Services RFP” as the subject of the email. Submit questions in an easily copied format such as Microsoft Word.

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

**Title: Investment Consultant Services**

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

### **SEND QUESTIONS TO:**

#### **MAIL TO:**

South Carolina Public Employee Benefit Authority  
P.O. Box 11960  
Columbia, SC 29211-1960  
Attention Georgia Gillens, CPPO, CPPB

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

South Carolina Public Employee Benefit Authority  
202 Arbor Lake Drive  
Columbia, SC 29223  
Attention Georgia Gillens, CPPO, CPPB

**EMAIL ADDRESS:**  
[GGillens@peba.sc.gov](mailto:GGillens@peba.sc.gov)

**1.29 CONTENTS OF OFFER (FEB 2015):** (a) 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 RFP. Emphasis should be on completeness and clarity of content. (c) The contents of Your Offer should be divided into two parts, the technical proposal and the business proposal/offeror's proposed fees. Each part should be bound in a single volume. (d) If Your Offer includes any comment over and above the specific information requested in the solicitation, you should include this information as a separate appendix to Your Offer. Offers that include either modifications to any of the solicitation's contractual requirements or an Offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

**1.30 OPENING PROPOSALS – INFORMATION NOT DIVULGED (FEB 2015):** Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. In competitive sealed proposals, neither the number, identity of Offerors nor prices will be divulged at opening. [Section 11-35-1530 & R. 19-445.2095(C)(1)]

**1.31 UNSUCCESSFUL OFFERORS:** Offerors not awarded a contract under this solicitation may request return of their proposals within thirty (30) calendar days after the notice of intent to award becomes the final statement of award. All cost of returns will be paid by the Offeror. Thirty (30) calendar days after the notice of intent to award becomes the final statement of award all materials submitted by firms not awarded a contract may be destroyed.

**1.32 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 RFP. 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.

**1.33 DISCUSSIONS AND NEGOTIATIONS (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, PEBA may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. If improper revisions are submitted during discussions, PEBA may elect to consider only your unrevised initial proposal, provided your initial offer is responsive.

PEBA may also elect to conduct negotiations as provided in Section 11-35-1530.

## **PART 2**

### **SCOPE OF PROPOSAL**

It is the intent of the South Carolina Public Employee Benefit Authority (PEBA), in accordance with all requirements stated herein or attached hereto, to solicit proposals for a Contractor to provide Investment Consulting Services to PEBA.

### **EXEMPT PROCUREMENT**

This selection for investment counselors is exempt from the Procurement Code pursuant to exemption 1982.07.13, adopted by the Budget and Control Board; and it shall not be governed by the Procurement Code.

The specific procedures which govern this solicitation are set forth in the solicitation documents and may be amended as necessary. Notwithstanding any other provision of this Solicitation, PEBA reserves the right to modify or excuse compliance with any aspect of the procurement process outlined herein.

Neither the Procurement Code procedures nor remedies apply to the competitive process, solicitation documents, or selection of an investment counselor.

Notice of the competitive process will be posted on the website, [www.procurement.sc.gov](http://www.procurement.sc.gov), advertised in South Carolina Business Opportunity (SCBO), and emailed to the businesses which have expressed interest in receiving notice of the solicitation. Any interested party may participate in the solicitation.

The selection will be final and not subject to protest, appeal, or suit. PEBA must have an investment counselor in place no later than July 1, 2022.

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

Start date: 07/01/2022 End date: 06/30/2027. 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]

### **INITIAL CONTRACT PERIOD**

The initial contract term will commence on July 1, 2022, and expire 12:00 midnight June 30, 2025, unless extended for an additional period. The contract may be extended at the end of the initial contract period unless PEBA elects not to extend the contract. Extensions may be less than, but will not exceed, two (2) additional one (1) year periods.

It is the intent of PEBA, in accordance with all requirements stated herein or attached hereto, to solicit proposals from qualified firms to provide investment consulting services to PEBA.

PEBA will make one (1) award to one (1) Offeror. The award will be made to the highest ranked, responsive and responsible Offeror whose offer is determined to be the most advantageous to PEBA. Selection will be at the sole discretion of PEBA.



## 2.1 INTRODUCTION

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

### **Background – State ORP**

Effective July 1, 2000, the state of South Carolina enacted legislation establishing the State Optional Retirement Program (State ORP), a defined contribution plan. Statutory provisions for State ORP may be found in Title 9, Chapter 20 of the South Carolina Code of Laws. State ORP is a governmental 401(a) defined contribution retirement plan and meets the requirements for tax-favored treatment under the Internal Revenue Code.

Participation in State ORP is available to employees of the state of South Carolina, as well as to those of public and charter school districts and public higher education institutions within the state of South Carolina. State ORP is also available to individuals first elected to the South Carolina General Assembly at or after the general election in November 2012. Unless an eligible employee elects to join State ORP within 30 days of being hired, he will become a member of the South Carolina Retirement System (SCRS), a defined benefit plan, by default.

A participant of State ORP must also elect a service provider upon enrollment. Mandatory State ORP employee and employer contributions are set by statute and are to equal those for SCRS members. The employee contribution, which is set at 9 percent of earnable compensation, and a portion of the employer contribution equal to 5 percent of the employee's earnable compensation, are remitted directly to the service provider by the participant's employer for deposit into the participant's State ORP account. By statute, the remaining portion of the employer contribution is remitted directly to PEBA.

By statute, State ORP is required to have no fewer than four service providers for third-party administration. State ORP is currently administered by AIG Retirement Services, Empower Retirement, TIAA and Voya Financial, all of which are under a contract that will expire December 31, 2025.

A participant may change his service provider during the open enrollment period each year (January 1 – March 1). If a participant changes from one service provider to another during the open enrollment period, he is not required to transfer his assets. Therefore, it is possible for a participant to have State ORP assets with more than one service provider. However, a participant may only contribute to a single service provider at any given time. A participant may elect to irrevocably join SCRS during the open enrollment period if, at any point during that open enrollment period, it has been at least one year, but no more than five years, since the participant's initial enrollment in the State ORP. If a participant elects to change service providers or join SCRS during an open enrollment period, the change is effective April 1 of the same year.

There are approximately 237 employers whose employees are eligible to participate in the State ORP. Generally, participating employers operate independently from one another and receive their own employer-level reports from the service providers.

As of September 30, 2021, there were 62,653 accounts in the State ORP across all active service providers, of which approximately 36,749 are actively contributing participants. Total assets in State ORP were approximately \$3.9 billion as of the same date. Refer to Exhibit 1 for further investment details.

PEBA has a State ORP webpage, which is available at [www.peba.sc.gov/state-orp](http://www.peba.sc.gov/state-orp).

### **Investment Structure – State ORP**

All investment options shall comply with the provisions of State ORP's Investment Policy Statement (IPS). Currently, the IPS allows service providers to offer no more than 16 core investment options. Refer to Exhibit 2 for further details, including a listing of approved asset classes.

Service providers currently propose their own menu of investment options, which provides them with an opportunity for differentiation. The investment consultant reviews any proposed changes to the investment menu, and PEBA reserves the right, at its sole discretion, to add to, replace, or remove any of the investment options. A majority of the investments are mutual funds, and target date funds serve as the default investment option per the IPS. Investment advice, including a managed account service, is required by contract to be made available to all participants.

All investment options available to receive contributions must be fully liquid (i.e., available within five business days) at the participant level. This requirement pertains to transfers between these options, as well as distributions or rollovers out of State ORP. However, if market conditions dictate, PEBA and the service providers may implement mutually agreeable transfer restrictions as deemed necessary.

### **Background – Deferred Comp**

Statutory provisions for Deferred Comp may be found in Title 8, Chapter 23 of the South Carolina Code of Laws. Deferred Comp consists of the State of South Carolina Salary Deferral [401(k)] and Savings Profit Sharing Plan and Trust (401(k) Plan) and the State of South Carolina 457 Deferred Compensation Plan and Trust (457 Plan). The 401(k) Plan was established in 1985, and the 457 Plan was established in 1980. Both Plans are governmental defined contribution retirement plans and meet the requirements for tax-favored treatment under the Internal Revenue Code.

Participation in Deferred Comp is available to all employees of the state of South Carolina, as well as to those of public and charter school districts and public higher education institutions within the state of South Carolina. Participation is also available to employees of any optional employer (i.e., a city, county, or other local unit) in the state of South Carolina that adopts the terms of Deferred Comp. Participation is voluntary for employees. Participants may contribute to both Plans simultaneously and may choose from pretax and/or Roth deferral methods.

Deferred Comp is currently administered by Empower Retirement under a contract that will expire December 31, 2024.

There are 747 employers that participate in Deferred Comp as of September 30, 2021. Generally, participating employers operate independently from one another and receive their own employer-level reports from the service provider.

As of September 30, 2021, there were 76,039 accounts in the 401(k) Plan, of which 30,497 represent actively contributing participants, and 23,808 accounts in the 457 Plan, of which 9,471 represent actively contributing participants. Total assets in the 401(k) Plan were approximately \$4.3 billion, and total assets in the 457 Plan were approximately \$1.2 billion as of the same date. Refer to Exhibit 5 for further investment details.

Deferred Comp's website, which is maintained by the service provider, may be found at [www.southcarolinadcp.com](http://www.southcarolinadcp.com).

## **Investment Structure – Deferred Comp**

All investment options shall comply with the provisions of Deferred Comp’s IPS. Currently, the investment menu consists of a series of lifecycle funds, 12 mutual funds, a collective trust fund, a stable value fund, and a self-directed brokerage option.

The investment consultant currently proposes any recommended changes to the investment menu, and PEBA reserves the right, at its sole discretion, to add to, replace, or remove any of the investment options. The investments are uniform across both Plans, and the majority of them are mutual funds or collective investment trusts. Target date funds serve as the default investment option, and investment advice, including a managed account service, is required by contract to be made available to all participants.

All investment options available to receive contributions must be fully liquid (i.e., available within five business days) at the participant level. This requirement pertains to transfers between these options, as well as distributions or rollovers out of Deferred Comp. However, if market conditions dictate, PEBA and the service provider may implement mutually agreeable transfer restrictions as deemed necessary.

### **Stable Value Fund**

The Stable Value Fund (SVF) is managed by Great-West Capital Management, LLC, under a separate account structure. Refer to Exhibit 8 for the SVF investment guidelines. As of September 30, 2021, the SVF market-to-book value ratio was 102.4%. On a quarterly basis, the investment manager prepares a SVF report that contains characteristics of the fund, including a list of specific holdings.

### **84-Month Certificates**

84-Month Certificates (Certificates) were previously offered as an investment option but were discontinued effective January 1, 2015, and are no longer available to receive new or reinvested assets. Unless otherwise directed by the participant, assets from maturing Certificates will be invested in the most conservative target date fund. The service provider is responsible for administration services related to the Certificates.

## **Background – HSA**

The state of South Carolina has sponsored a cafeteria plan since 1987. The plan is available to active employees of the state, public school districts, public higher education institutions and optional employers that participate in the State Insurance Benefits Program. The cafeteria plan is the vehicle through which HSA participants can make contributions pretax through payroll deductions. HSAs are offered under Internal Revenue Service (IRS)-approved, tax-favored accounts pursuant to Sections 125 and 223 of the Internal Revenue Code (IRC). Eligibility for enrollment in an HSA is governed by the Flexible Benefits Plan document. The 2021 Flexible Benefits Plan document can be found at [peba.sc.gov/publications](http://peba.sc.gov/publications) under Health Savings Account. The HSA program that PEBA administers is a multi-employer plan. Employees who are enrolled in the Savings Plan are eligible to enroll in an HSA and can use the HSA to pay for qualified healthcare expenses. Currently, eligible employees may make pretax contributions to their PEBA-administered HSA through payroll deduction. Investment options for HSA balances exceeding \$1,000 are available as well.

Employee participation in HSAs is voluntary, and the employee elects the contribution amount within the limits set by the IRS. Below is a three-year history of enrollment in the Savings Plan (eligible population for an HSA) and three-year history of enrollment in Health Savings Accounts.

	2018	2019	2020
Savings Plan subscribers eligible for HSA	12,806	13,097	12,901
Health Savings Account participants	3,424	3,976	4,526

As of September 30, 2021, there was a total of \$9,651,674 on deposit in all HSAs associated with PEBA. As of that same date, 4,126 accountholders had a balance less than \$1,000, and 1,475 accountholders had a balance of \$1,000 or more. A total of 198 participants are investing funds, totaling \$1,929,996 as of September 30, 2021.

The current investment menu with Central Bank, the current HSA custodial bank, is available online at <https://hsainvestments.com/fundperformance/?p=MY1&newwindow=true>. PEBA is seeking the option to contract for investment consulting services to assist it in determining the appropriate scope of oversight for the investment options offered in the HSA. It is PEBA’s intent to gain insight into the HSA investment oversight market through the investment consultant and then implement oversight policy and practices accordingly.

## 2.2 OBJECTIVE

PEBA’s objective is to partner with a Contractor to provide comprehensive investment consulting services for the State ORP and Deferred Comp.

PEBA intends to forge a strong partnership of trust and commonality with its investment consultant. Its primary goal is to promote and drive positive retirement outcomes for participants as a result of thoughtful plan design and effective education. PEBA is committed to holistically measuring and working to improve retirement awareness.

A high value is placed on the following:

1. Timely, detailed and consistent service:
  - Provides quarterly reports and other meeting materials well in advance of meetings.
  - Prepares reports with a high level of attention to detail and ensures they meet PEBA’s needs.
  - Presents information to PEBA Board of Directors in a dynamic and engaging manner.
2. Proactive approach:
  - Develops and implements a plan with clear, concise objectives and timetables.
  - Fosters strong, constructive working relationships with plan sponsor and service providers.
  - Capitalizes on opportunities to learn, teach and add value.
3. Commitment to technology:
  - Values information technology security and the protection of participant information.
  - Demonstrates improvement in client service through technological enhancements.

PEBA seeks to obtain Investment Consulting Services for up to five (5) years. The initial term will be three (3) years with two (2) additional one (1) year renewal terms.

## **PART 3**

### **SCOPE OF WORK**

The Contractor shall provide investment consulting services to PEBA, in accordance with all requirements outlined in this Request for Proposal, including all attachments, and the Offeror's response thereto.

PEBA is seeking proposals that comply with each of the requirements described in Part 3, Scope of Work, listed below. PEBA considers any proposal unacceptable that provides any deviations from, or caveats to, Part 3, Scope of Work, below. As a result, any item an Offeror would like to modify, seek clarifications on or request other deviation from, however modest, must be presented during the question-and-answer phase for PEBA to consider and determine before the submission date for all proposals, so that all Offerors will have a common and uniform basis upon which to submit their proposals.

Contractor shall provide, at a minimum, the following material and essential requirements for the Contract term, without deviation or modification, subject to any modifications that may be issued in an Amendment to the Request for Proposal by PEBA resulting from the question-and-answer phase:

1. Contractor shall provide general investment consulting services to PEBA related to the State ORP and Deferred Comp.
2. Contractor shall serve as a fiduciary for any advice and/or recommendations it provides in conjunction with the services outlined in this Request for Proposal.
3. Contractor shall review the State ORP and Deferred Comp Investment Policy Statements at least annually. A written report shall be provided by the Contractor to PEBA outlining recommended changes or affirming there are no recommended changes. Any recommended changes will be presented by the Contractor to the PEBA Board of Directors according to the Board's meeting schedule.
4. Contractor shall regularly monitor all State ORP and Deferred Comp investment options for compliance with their respective Investment Policy Statement (IPS) and shall provide a detailed quarterly investment performance report for each Plan to PEBA staff. The quarterly investment performance reports must include a "report card" to document the Contractor's review process. For examples of current "report cards," see Exhibit 1 (pp.9, 64, 127, 188) and Exhibit 4 (pp. 5). Contractor shall notify PEBA timely if an investment option is found to be out of compliance with its Plan's respective IPS.

The quarterly investment performance reports shall contain key plan-level details in addition to the investment performance information (e.g., asset totals, median and average account balance, contribution statistics, asset allocation statistics (by service provider for State ORP and by plan for Deferred Comp) to assist PEBA in gaining a holistic perspective of the programs. Contractor shall also provide a consolidated executive summary of the quarterly performance reports for presentation to the PEBA Board of Directors according to its meeting schedule. See Exhibit 9 for an example of the current executive summary report.

The template for each of these reports must be approved by PEBA. Contractor shall provide these reports to PEBA staff each quarter at least one month in advance of a scheduled meeting and hold conference calls with PEBA staff in advance of such presentations to review the final investment performance reports.

5. Contractor shall perform an annual analysis on each State ORP and Deferred Comp investment option to ensure assets are invested in the most appropriate, available share class for plan participants. As part of the analysis, contractor shall also evaluate the investment menus for inefficiencies (i.e., gaps and/or overlap that might materially hinder a participant's ability to create a well-diversified investment portfolio). Contractor

shall certify this analysis was performed and provide any recommended changes in a written report to PEBA in June of each calendar year.

6. Contractor shall provide a report to inform State ORP participants of specific information related to the investment options offered by the four service providers (e.g., fees, overall return, risk-adjusted return, return vs. benchmark). The report template must be approved by PEBA, and Contractor shall update this document on a quarterly basis using information included in the quarterly investment performance and executive summary reports. For an example of the current participant report, see Exhibit 10.
7. Contractor shall perform investment option searches and/or reviews as needed to replace investment options for which the Contractor is recommending a change or as requested by PEBA.
8. If requested, Contractor shall attend up to five (5) meetings per year at PEBA's office in Columbia, S.C., or virtually if necessary. If requested, one (1) of these meetings shall consist of up to a full day of training to be performed by the Contractor.
9. Contractor shall assist PEBA with the oversight of service providers as requested. Contractor shall attend most, if not all, scheduled bi-weekly calls with the Deferred Comp service provider and monthly calls with the State ORP service providers.
10. Contractor shall continuously monitor for legislative and other regulatory changes and notify PEBA of any such changes it believes might materially impact State ORP and/or Deferred Comp.
11. Contractor shall certify to PEBA annually their compliance with Securities and Exchange Commission Rule 206(4)-5 (SEC 'pay to play' regulations) and state requirements related thereto.
12. Contractor shall assist PEBA, as requested, in performing service provider searches (i.e., recordkeeper searches) and/or special projects.
13. Contractor shall bill and receive payment for services on a quarterly basis in arrears. Separate invoices are required for each Plan (State ORP, Deferred Comp) to allow for payment from separate sources.

## PART 4

### QUALIFICATIONS

- 4.1 QUALIFICATIONS OF OFFEROR:** (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 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. (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 at <https://procurement.sc.gov/legal/proc-docs> link to “Standard Clauses & Provisions.”

Provide the following information or documentation for the Offeror. This information, and other information in PEBA’s discretion, will be used to determine your responsibility:

- (a) Your most current financial statement, financial statements for your last two fiscal years, and information reflecting your current financial position. If you have audited financial statements meeting these requirements, you must provide those statements.
- (b) A list of failed projects, suspensions, debarments, and significant litigation.

#### **4.2 MANDATORY MINIMUM- QUALIFICATIONS**

**In order for an Offeror to be considered for an award it must demonstrate that it possesses, as of the date of proposal submission, all of the following minimum qualification:**

- 1. Offerors must have at least ten (10) years of experience providing the services outlined in this Request for Proposal to public sector defined contribution clients.
- 2. Offerors must provide such services as outlined in this Request for Proposal to at least one (1) public sector client that serves as plan sponsor over defined contribution assets of at least one (1) billion dollars.
- 3. Offerors must have a minimum of twenty (20) billion dollars in defined contribution assets under advisement.

**Any Offeror not meeting these requirements will not be considered for award, and therefore will not be evaluated. In its proposal, each Offeror shall respond to this section and declare whether it meets the requirement and, if so, provide detailed specifics that satisfy that requirement.**

#### **PART 5**

##### **INFORMATION FOR OFFERORS TO SUBMIT**

Proposals will be accepted only from the entity that will be providing the services hereunder. **Offerors shall submit a signed transmittal sheet indicating that it has submitted the following:**

- a. Include Offeror’s name, the solicitation number, and the appropriate title on the label for hard copies and for USBs submitted in response to this RFP (i.e., Acme Corp., PEBA0332021, Technical Proposal Original; Acme Corporation, PEBA0332021, Technical Proposal Original -- Redacted; Acme Corporation, PEBA0332021, Copy 1 of 5, etc.). Each USB should be labeled as above with the Offeror’s name clearly listed on each label.
- b. One (1) original and five (5) identical spiral bound copies of the Offeror’s Technical Proposal. Proposals should be prepared on 8½”×11” paper, spiral bound (no comb binding) length-wise, with tabs to separate. Please label copies 1 of 5, 2 of 5, etc.
- c. One (1) original marked and five (5) labeled USB flash drives containing a copy of the Offeror’s Technical Proposal Response (in Microsoft Word, Microsoft Excel and/or PDF format where appropriate). Please label copies 1 of 5, 2 of 5, etc. Do not password protect USBs.

- d. One (1) USB flash drive containing a redacted version of the Offeror's original Technical Proposal. Do not password protect USBs.

**Both the Technical Proposal and the Business Proposal should be submitted in one document with each section marked respectively with: "Section 5.1: Technical Proposal" and "Section 5.2: Business Proposal/Offeror's Proposed Fees."**

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 USB flash drive 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 on a USB flash drive. File format shall be Microsoft Word 2007 or later. Except for the redacted information, the USB flash drive 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:

## **5.1 TECHNICAL PROPOSAL**

The Technical Proposal shall include the following sections and shall be presented in the listed order.

### **5.1.1 COVER PAGE**

Offerors must submit a signed copy of the cover page (pages 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.

### **5.1.2 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 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 work 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.

**Statement of Acceptance:** Offerors shall reply to Part 1 Instructions to Offerors-A. General Instruction, Part 1 Instructions to Offerors-B. Special Instructions, Part 2 Scope of Proposal, Part 3 Scope of Work, Part 4 Mandatory Minimum Qualifications, Part 7 Terms and Conditions-A. General, and Part 7 Terms and Conditions-B. Special and Part 8 Attachments to Solicitation by declaring that the Offeror fully understands, agrees to, and will comply with all of the provisions/requirements/terms in each of these Parts. Offerors shall include this Statement of Acceptance in their Executive Summary. Please note that PEBA considers unacceptable any proposal containing deviations, exceptions or caveats to the RFP that have not been submitted for consideration during the question and answer phase and adopted by PEBA.



**Mandatory Minimum Qualification:** Offerors shall certify in writing that they meet all the Mandatory Minimum Qualifications outlined in Part 4, Qualifications. Any Offeror not meeting the Mandatory Minimum Qualifications will not be considered for award, and therefore will not be evaluated.

**Subcontractors and Affiliates**

PEBA prohibits the use of an affiliate or subcontractor to perform the services/requirements outlined in this Request for Proposal.

**Presentation**

A presentation of Offeror’s proposal to include an overview of investment services may be required. The presentation should clearly demonstrate the Offeror has a familiarity with the scope of the proposal.

Offerors may be asked to give a presentation to PEBA. This presentation will include a period for questions and answers. Offeror’s key personnel who would be the primary consultants for the relationship with PEBA and would be expected to present matters to the PEBA Board of Directors should be the primary presenters.

Should PEBA opt to use presentations, Offerors selected to present to PEBA will be notified in writing.

5.1.3 **TABLE OF CONTENTS**

The Proposal should include a Table of Contents that lists page number references. The Table of Contents should be in sufficient detail to facilitate easy reference to the sections of the Proposal and separate attachments (which shall be included in the main Table of Contents). If supplemental materials are included with the Proposal, each copy of the Proposal should include such supplemental materials. Supplemental information (i.e., information not required) and attachments included by the Offeror should be clearly identified in the Table of Contents and provided as a separate section.

5.1.4 **OFFEROR’S TECHNICAL PROPOSAL RESPONSE**

Offerors should provide a detailed response to each of the questions/sub-questions below. Please be specific in your response. Please list the question as stated below with your response immediately following the question.

**I. Company Background**

1. Provide an overview of your company, including the following:
  - a. Date established.
  - b. Type of ownership.
  - c. Relationships with other entities (e.g., affiliates, subsidiaries) that might be involved in providing the services outlined in this Request for Proposal.
  - d. Years in the defined contribution market.
  - e. Years in the public sector defined contribution market.
  
2. Provide the following information about your company:
  - a. Total retirement plan assets under advisement.
  - b. Total defined contribution retirement plan assets under advisement.
  - c. Total public sector defined contribution retirement plan assets under advisement.
  - d. Total assets under advisement in multiple-employer defined contribution retirement plans.
  
3. Provide the following additional information about your company:

- a. Total assets under advisement in health savings accounts.
  - b. Number of clients for which you provide investment consulting services related to health savings accounts.
4. Provide the address of your corporate office, along with a description of your geographic distribution (e.g., number of offices and their locations, number of consultants in each office). Provide an organizational chart showing function, position, and title of any key personnel involved in providing consulting services.
  5. How many consultants do you employ?
  6. How many clients do you serve, and how many of those clients maintain a bundled (i.e., full-service retainer) relationship? Complete the below chart to describe the range of assets under advisement for those clients that maintain a bundled relationship.

<b>Client Assets</b>	<b>Number of Clients</b>
< \$200 million	
\$200 million to \$1 billion	
\$1 billion to \$10 billion	
> \$10 billion	

7. List your top ten clients by assets under advisement.
8. Provide a representative list of your defined contribution clients (complete below chart).

<b>Client Name</b>	<b>Public Sector (Y/N)</b>	<b>Total Assets</b>	<b>Length of Relationship</b>

9. Describe your client retention statistics for each of the last three (3) years. What percentage of these clients left for service issues pertaining to your company? What is the length of your average client relationship?
10. What is the last date when your company had a change in its business structure, whether through an acquisition or divestiture or through an alliance arrangement? If applicable, how did this change in business affect the investment consulting division?
11. Describe any pending or anticipated plans to reorganize your company within itself or as part of the larger organization of which your company is a part.

## **II. References**

1. Provide references for your three (3) current clients whose plan demographics are most similar to those of the defined contribution plans for which PEBA is plan sponsor (e.g., plan size, plan design). If available, at least one (1) of these clients should have converted within the last year. At least one of these clients should be a client for which the proposed lead consultant for the relationship with PEBA also serves a lead consultant. For each reference, provide client name, contact name, address, phone number, email address, services provided, and the year they became your client.

2. Provide references for your three (3) former clients whose plan demographics are most similar to those of the defined contribution plans for which PEBA is plan sponsor (e.g., plan size, plan design). If available, at least one (1) of these clients should have left within the last year. If available, at least one of these clients should be a client for which the proposed lead consultant for the relationship with PEBA also served as a lead consultant. For each reference, provide former client name, contact name, address, phone number, email address, services provided, the year they left, and the reason(s) for leaving.

### **III. Quality Assurance**

1. Describe your professional liability insurance, including the type and level of coverage. Confirm you will notify PEBA at least thirty (30) days in advance of any material changes to this coverage.
2. Confirm you will maintain the required level of liability insurance coverage, as described in Part 7, Contractor's Liability Insurance.
3. Has your company, or any affiliates, been a party to any litigation during the last three (3) years related to your company's performance of any duties similar to those outlined in this Request for Proposal? If so, describe: 1) the nature of the claim or action; 2) the current status of the litigation; and 3) any fines or settlements paid.
4. Has your company, or any individuals expected to be materially involved in providing the services outlined in this Request for Proposal, ever been censured by any regulatory body? If so, describe the circumstances surrounding the censure.
5. Confirm that your company and any individuals (if applicable) expected to be materially involved in providing the services outlined in this Request for Proposal are, to the best of your knowledge, in good standing with the Securities and Exchange Commission. Confirm you will notify the State within thirty (30) days of any changes to that status.
6. Provide a copy of your most recent Form ADV filing with the Securities and Exchange Commission, including Part 1, describing your company, and Part 2, describing any individuals (if applicable) expected to be materially involved in providing the services outlined in this Request for Proposal.
7. Confirm there would be no actual or potential conflicts of interest created if your company is selected to provide the services outlined in this Request for Proposal. How do you ensure no conflicts of interest exist or arise in your consulting relationships?
8. Generally, PEBA expects the Contractor to have very little, if any, interaction with Personally Identifiable Information (PII). However, PEBA is very sensitive to data security and the protection of confidential information. Describe your controls in place related to the protection of PII and other sensitive information.
9. Please list the geographical locations of your data centers that could contain PEBA data.
10. Describe the policies, procedures and practices you have in place to provide for physical security of your data centers and other sites where government information will be hosted, accessed, or maintained.
11. Please provide a list of cloud services where PEBA data may be stored if cloud services are used.

12. Describe your policies and procedures that ensure that access to PEBA data is limited to only those employees and contractors who require access.
13. Please describe how you protect hard copies of PEBA data.
14. Describe any security breaches your company experienced within the past three (3) years that resulted in improper access to confidential or sensitive data.
15. Describe any material system enhancements that are scheduled to occur in the next three (3) years.

#### IV. Client Service

1. Describe your consulting philosophy. Do you specialize solely in investment consulting, or are there other areas (e.g., gauging retirement awareness, reviewing communication materials, analyzing the programs holistically to determine how best to impact participant outcomes) where your company could add value?
2. Describe the services (e.g., general consulting, investment policy statement review, investment monitoring) that would be included in your comprehensive annual fee in Attachment Five (5), Offeror's Proposed Fees. Specifically, describe any services you believe might differentiate you from other consulting firms.
3. Describe the services that would **not** be included in your comprehensive annual fee, which would fall under the categories of additional services or special projects in Attachment Five (5).
4. So PEBA has a clear understanding of the resources you intend to dedicate to this relationship, complete the below schedule **estimating** the number of expected work hours included in your comprehensive annual fee in Attachment Five (5).

Staff Level	Hours
Senior Vice President	
Vice President	
Senior Consultant	
Consultant	
Associate	
Analyst	
Other (be specific)	

5. List the average tenure of the following positions in your company:
  - a. Senior Vice President
  - b. Vice President
  - c. Senior Consultant
  - d. Consultant
  - e. Associate
  - f. Analyst
6. Describe the team that would deal directly with PEBA on an ongoing basis. Indicate staff size, experience, and turnover rates. Provide a resume for each of these individuals, including their level of education and

work experience. Identify a lead consultant and a secondary consultant for the relationship with PEBA. For the lead and secondary consultant, provide: (a) the number of years the consultant has provided investment consulting in (i) the defined contribution retirement plan market and (ii) the public sector defined contribution plan market; (b) the number of years the consultant has been employed by your company; (c) the number of defined contribution plans for which the consultant currently provides investment consulting and the total amount of assets in those plans; and (d) the number of public sector defined contribution plans for which the consultant currently provides investment consulting and the total amount of assets in those plans. PEBA reserves the right to approve the lead and secondary consultant assigned to the relationship with PEBA.

7. What is the average number of account relationships for each member of your proposed service team? What is the current number of account relationships for each member of this team?
8. Describe any general plan sponsor education opportunities that are available to clients (e.g., regular webinars, conference calls, or publications). If applicable, provide samples of any relevant publications.
9. Indicate your level of involvement in any public sector/governmental professional organizations.

#### **V. Investment Policy Statement Development**

1. Describe your philosophy and process for developing an investment policy statement, including how you determine the recommended asset classes for a particular plan. Provide a copy of your sample/template investment policy statement for a public-sector defined contribution plan client.
2. Describe your process for setting the benchmark and peer universe for each investment option.
3. Describe your company's philosophy on risk as it pertains to a defined contribution plan.

#### **VI. Investment Review and Reporting**

1. Describe your philosophy and methodology for evaluating defined contribution plan investment options.
2. Which investment monitoring database(s) do you use? If the database is proprietary, describe your risk management procedures.
3. How often do you update your investment monitoring database(s)? How do you verify the data collected from internal and/or external sources? How often do you meet with fund managers, and how often do you visit their facilities, in person or virtually?
4. Describe your process for evaluating qualitative conditions of fund managers (e.g., staff turnover, mergers, and financial soundness).
5. What is your philosophy regarding the appropriateness of active versus passive investment options in a defined contribution plan investment lineup?
6. Describe your methodology and source(s) of data for analyzing and evaluating **potential** investment options. How do you determine the **potential** investment options for which you hold high conviction?
7. Describe the frequency with which you conduct reviews of **current** investment options.

8. Describe your process for analyzing **current** investment options, emphasizing any area you consider to be a competitive advantage.
9. How often do you recommend a review of investment option fees to ensure your clients are in the share class that offers the lowest fee?
10. Describe the circumstances in which you might recommend the removal of a specific investment option.
11. How many days following quarter-end would you generally be able to provide the quarterly investment performance reports? Provide a sample of your quarterly performance report for a public sector defined contribution plan client.
12. Describe the database you use to compile the quarterly performance reports as well as your internal quality assurance review process
13. How would you monitor each investment option for compliance with its respective investment policy statement?

## **VII. Health Savings Account Oversight**

1. Describe your company's philosophy and process for developing an investment policy statement for assets invested as part of a health savings account.
2. Describe your company's typical involvement with assets invested as part of a health savings account. Describe the current typical involvement and any anticipated changes in the future.
3. Describe challenges associated with monitoring assets invested as part of a health savings account.
4. Describe best practices associated with monitoring assets investment as part of a health savings account.
5. Describe your suggested scope of services, if any, for advising clients on assets invested as part of a health savings account.

### **5.1.5 ATTACHMENTS**

Complete all pertinent attachments.

### **5.2 BUSINESS PROPOSAL/OFFEROR'S PROPOSED FEES**

Offerors shall complete Attachment Five (5), Offeror's Proposed Fees. All proposed fees must be included in Attachment Five (5) so PEBA may compare Offerors on an equitable basis. Contractor's fees shall be guaranteed for a period of five (5) years. Please price the work for the Deferred Compensation Program and the State ORP program as fixed costs for the term of the contract. PEBA may engage in additional negotiations with the selected vendor for investment consulting services related to HSAs.

## **PART 6**

### **AWARD CRITERIA**

Award will be made to the highest ranked responsive and responsible Offeror whose offer is determined to be the most advantageous to PEBA. Award will be made to one Offeror.

Proposals will be evaluated by a review panel using only the criteria stated below. 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.

#### **Phase I**

- A. Organization and History:** Information submitted in response to Part 5, Information for Offerors to Submit, Section 5.1.4, Roman Numerals I and II will be used to evaluate this criterion.
- B. Client Service:** Information submitted in response to Part 5, Information for Offerors to Submit, Section 5.1.4, Roman Numeral IV will be used to evaluate this criterion.
- C. Investment Policy and Review:** Information submitted in response to Part 5, Information for Offerors to Submit, Section 5.1.4, Roman Numerals V and VI will be used to evaluate this criterion.
- D. Quality Assurance:** Information submitted in response to Part 5, Information for Offerors to Submit, Section 5.1.4, Roman Numeral III will be used to evaluate this criterion.
- E. Offeror's Proposed Fees:** Information submitted in response to Part 5, Information for Offerors to Submit, Section 5.2, Offeror's Proposed Fees.

#### **Phase II**

##### **Offeror's Presentation**

A presentation of Offeror's proposal, to include an overview of investment services, may be required. The presentation should clearly demonstrate the Offeror has a familiarity with the scope of the proposal.

Offerors may be asked to give a sample quarterly investment review presentation to PEBA. This presentation will include a period for questions and answers. Offeror's key personnel who would be the primary consultants for the relationship with PEBA and would be expected to present matters to the PEBA Board of Directors, should be the primary presenters. Should PEBA opt to use presentations, Offerors selected to present to PEBA will be notified in writing.

Upon completion of all Presentations, the presenting Offerors will be evaluated, and this score will be added to the previous score from Phase I.

## **PART 7**

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

**7.1 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 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 (30) days after Contractor (not the assignee) has provided the 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 19-445.2180, which does not restrict transfers by operation of law.

**7.2 BANKRUPTCY – GENERAL (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 PEBA. This notification shall be furnished within two (2) business 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 PEBA contracts against which final payment has not been made. This notification obligation remains in effect through the twelve (12) month post-termination transition period under this Contract. (b) Termination. This Contract is voidable and subject to immediate termination by PEBA upon the Contractor's insolvency, including the filing of proceedings in bankruptcy.

**7.3 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 this solicitation.

**7.4 CONTRACT DOCUMENTS & ORDER OF PRECEDENCE:** (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 or discussions of an offer, if applicable, (4) your offer, (5) any statement reflecting the state's final acceptance (the "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 PEBA, (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 PEBA. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.



**7.5 DISCOUNT FOR PROMPT PAYMENT:** (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 PEBA 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.

**7.6 DISPUTES:** (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 17 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 PEBA regarding the Agreement is not a waiver of either PEBA's or the State of South Carolina's sovereign immunity or 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 this solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary 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 permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

**7.7 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.

**7.8 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.

**7.9 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.

**7.10 NO INDEMNITY OR DEFENSE:** Any term or condition is void to the extent it requires PEBA to indemnify, defend, or pay attorney's fees to anyone for any reason.

**7.11 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 PEBA 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.

**7.12 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 S.C. Code Section 11-35-5300.

**7.13 PAYMENT & INTEREST:** (a) PEBA 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 PEBA. (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, PEBA 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 PEBA 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) PEBA shall have all of its common law, equitable, and statutory rights of set-off.

**7.14 PUBLICITY:** Contractor shall not publish any comments or quotes by PEBA or State of South Carolina employees or include PEBA or the State of South Carolina in either news releases or a published list of customers without the prior written approval of the Procurement Officer.

**7.15 PURCHASE ORDERS (JAN 2006):** Contractor shall not perform any work prior to the receipt of a purchase order from PEBA. Purchase orders may be used to elect options available under this contract, e.g., quantity, 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.

**7.16 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, Indemnification - Intellectual Property, Contract Documents and Order of Precedence, any provisions regarding warranty or audit.

**7.17 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 PEBA, and such sums shall be due and payable to the Contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by PEBA. It shall be solely PEBA'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 PEBA to the Contractor, Contractor shall be liable to PEBA for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on the Contractor's net income or assets shall be the sole responsibility of the Contractor.

**7.18 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 therefore. 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.

**7.19 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.

**7.20 WAIVER (JAN 2006):** PEBA 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 PEBA's rights under this Contract. Any waiver must be in writing.

## **PART 7**

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

**7.21 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 PEBA or the State of South Carolina or is considered by PEBA or the State of South Carolina to be superior to other products or services. PEBA reserves the right to review and approve any commercial advertising to which PEBA'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. 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 PEBA liquidated damages per Section M.2(c) of this Contract.

**7.22 ATTORNEY'S FEES:** In the event that PEBA brings suit or action to compel performance of or recover for any breach of any stipulation, covenant, term, or condition of this Contract, PEBA may seek attorneys' fees from the Contractor and the Contractor will pay to PEBA such attorneys' fees as the court may award. Contractor will, in all instances, bear its own attorneys' fees and expenses.

**7.23 BANKRUPTCY – GOVERNMENT INFORMATION (FEB 2015):** (a) All government information (as defined in the clause herein entitled "Information Security - Definitions") shall belong exclusively to PEBA, 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 PEBA within two (2) business days of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to PEBA, before such filing, all government information that is in Contractor's possession in a format that can be readily utilized by PEBA. (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.

**7.24 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 to the term of the Contract or 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 PEBA 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. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract as changed, provided that PEBA promptly and duly makes 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 PEBA 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.

**7.25 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.

**7.26 CONFERENCE – PRE-PERFORMANCE (JAN 2006):** Unless waived by the Procurement Officer, a pre-performance conference between the Contractor, PEBA, and Procurement Officer shall be held at a location selected by PEBA 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 Contractor or his duly authorized representative shall be required to attend at Contractor's expense.

**7.27 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 Proposals, 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.

**7.28 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]

**7.29 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]

**7.30 CONTRACTOR'S LIABILITY INSURANCE-GENERAL (FEB 2015):** (a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. (b) Coverage shall be at least as broad as: (1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 04/13 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.

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

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

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

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

(e) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify PEBA immediately

upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.

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

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

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

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

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

(b) Coverage must include claims for:

(i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;

(ii) privacy risks, including (A) failure to properly handle, manage, store, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations;

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

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

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

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

**(e) Coverage shall have limits no less than one million (\$1,000,000.00) dollars per occurrence and three 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) PEBA and its officers, officials, employees, and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.

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

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

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

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

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

**7.32 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.

**7.33 DEFAULT (JAN 2006):** (a) (1) PEBA 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) PEBA’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 ten (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 PEBA 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 PEBA 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, PEBA may require the Contractor to transfer title and deliver to PEBA, 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 PEBA has an interest.

(f) PEBA 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. PEBA may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect PEBA 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 PEBA in this clause are in addition to any other rights and remedies provided by law or under this contract.

**7.34 DUTIES UPON TERMINATION:** Upon expiration or termination of the Contract for any reason, the Contractor shall provide full cooperation to PEBA and any successor Contractor so that the transition to PEBA or a subsequent Contractor will be efficiently accomplished without any disruption in claims processing, claims payments, or services to participants and providers.

Within ten (10) working days following notice of termination of the Contract, the Contractor shall deliver to PEBA a detailed transition plan, including all information regarding current operations requested by PEBA, that PEBA, in its sole discretion, feels is necessary to effectuate a smooth transition to a successor contractor. No later than sixty (60) days before the end of the term of the Contract, the Contractor shall provide any and all materials, data, records, databases, software, and all other things in the Contractor’s possession to PEBA or the successor Contractor at no additional cost to PEBA, including:

- (1) all participants information received during the term of the contract,
- (2) sufficient information and technical assistance on current operations to assure that the transition can be achieved without disruption of ongoing operations.

For six months following the termination of the Contract, the Contractor shall provide any continuing support and/or information to PEBA and the successor contractor necessary to complete the transition and resolve outstanding issues. Reports required under the terms of this RFP must be provided for the quarters ending with the termination of this contract.



In the event that PEBA has not secured alternate sources for the supplies and/or services under this Contract at the expiration of, or following termination of the Contract for any reason, the Contractor agrees to continue to perform hereunder at the then-applicable prices and terms until such alternate source is obtained and any transition period required to maintain continuity has been successfully completed.

**7.35 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.

**7.36 LAWSUIT NOTIFICATION AND COOPERATION.** The Contractor shall notify PEBA of any lawsuit or legal claim asserted, brought, filed, or served against the Contractor arising out of or in connection with the goods or services acquired hereunder. Notification shall be made within two (2) business days after the date Contractor first learns, by any means, of the legal claim or lawsuit. The Contractor will keep PEBA apprised of all documents filed in the lawsuit, and, to the extent possible, allow PEBA the opportunity to review and provide input on the Contractor’s draft documents before they are filed. PEBA will, at all times, retain the right to choose its own counsel and control its own defense. 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.

**7.37 INDEMNIFICATION – THIRD PARTY CLAIMS - GENERAL.**

- (a) Notwithstanding any limitation in this Contract, and to the fullest extent permitted by law, Contractor will indemnify PEBA for any and all costs, expenses, settlement payments, attorney’s fees, losses, liabilities, and damages from all suits or claims of any character brought by a third party, when the third party’s claims arise out of or are in connection with the goods or services acquired under this Contract, whether 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, and regardless of whether or not caused in part by PEBA. The Contractor shall be required to indemnify under this section regardless of its own fault, but if PEBA’s negligence is determined by the appropriate court to be the sole proximate cause of the suit or claim, the Contractor will not be required to indemnify PEBA under this paragraph. PEBA will, at all times, retain the right to choose its own counsel and control its own defense.
- (b) PEBA may, at its sole discretion, request Contractor to provide defense of the third party claim or suit. If PEBA elects defense, Contractor will bear full responsibility for any and all costs, expenses, settlement payments, attorney’s fees, losses, liabilities, and damages resulting from the suit or claim. PEBA will give Contractor timely notice of the suit or claim. PEBA’s failure to provide or delay in providing such notice will relieve Contractor of its obligations under this subparagraph only if and to the extent that such delay or failure materially prejudices Contractor’s ability to defend such action. Contractor must provide counsel acceptable to PEBA. Contractor will keep PEBA apprised of all documents filed or sent to the third party in the claim or suit and allow PEBA the opportunity to review and provide input on the Contractor’s draft

documents before they are filed or sent. PEBA reserves the right to revoke its request for defense at any point and to undertake responsibility for its own defense, in which case Contractor will be required to indemnify PEBA under subparagraph (a) of this paragraph. Contractor may not, without PEBA's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action, suit, or claim.

- (c) 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 will not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist at law or in equity. The obligations of this paragraph will survive termination, cancelation, or expiration of this Contract. This provision will be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

**7.38 INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION:**

- (a) Notwithstanding any limitation in this Contract, and to the fullest extent permitted by law, Contractor will indemnify PEBA for any and all costs, expenses, settlement payments, attorney's fees, losses, liabilities, and damages from all suits or claims by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) 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 PEBA. The Contractor shall be required to indemnify under this section regardless of its own fault, but if PEBA's negligence is determined by the appropriate court to be the sole proximate cause of the suit or claim, the Contractor will not be required to indemnify PEBA under this section. PEBA will, at all times, retain the right to choose its own counsel and control its own defense.
- (b) PEBA may, at its sole discretion, request Contractor to provide defense of the third party claim or suit. If PEBA elects defense, Contractor will bear full responsibility for any and all costs, expenses, settlement payments, attorney's fees, losses, liabilities, and damages resulting from the suit or claim. PEBA will give Contractor timely notice of the suit or claim. PEBA's failure to provide or delay in providing such notice will relieve Contractor of its obligations under this subparagraph only if and to the extent that such delay or failure materially prejudices Contractor's ability to defend such action. Contractor must provide counsel acceptable to PEBA. The Contractor will keep PEBA apprised of all documents filed or sent to the third party in the claim or suit and, to the extent practicable, allow PEBA the opportunity to review and provide input on the Contractor's draft documents before they are filed or sent. Contractor may not, without PEBA'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 PEBA 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 PEBA or otherwise adversely affect PEBA. PEBA's consent is necessary for any settlement that requires PEBA to part with any right or make any payment or subjects PEBA to any injunction. PEBA reserves the right to revoke its request for defense at any point and to undertake responsibility for its own defense, in which case Contractor will be required to indemnify PEBA under subparagraph (a) of this paragraph.
- (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.

**7.39 INFORMATION SECURITY - DEFINITIONS (FEB 2015):** The following definitions are used in those clauses that cross reference this clause.

**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, PEBA, 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.

**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.

**Software** means any computer program accessed or used by PEBA or a third party pursuant to or as a result of this contract.

**Third party** means any person or entity other than PEBA, 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.

**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.

#### **7.40 INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015)**

(a) *Definitions.* The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. In addition, 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.

**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.

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

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

(b) *Safeguarding Information.* Without limiting any other legal or contractual obligations, Contractor shall 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. In addition, Contractor shall apply security controls when the

Contractor reasonably determines that safeguarding requirements, in addition to those identified in paragraph (c) of this clause, may be required to provide adequate security, confidentiality and integrity in a dynamic environment based on an assessed risk or vulnerability. Contractor shall comply fully with all current and future updates of the information security requirements of PEBA, as outlined in this Contract and as provided during the term of the Contract.

(c) *Safeguarding requirements and procedures.* 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.

(d) *Subcontracts.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information.

(e) *Due Diligence.* Contractor shall complete a due diligence process annually or as otherwise requested by PEBA or a PEBA designated third party. This process may include a written questionnaire and in some cases could require an onsite visit from PEBA or a PEBA designated third party.

(f) *Background Checks.* Contractor shall ensure its staff shall have a criminal background check completed prior to accessing systems and/or applications that contain PEBA data. The background check shall be nationwide and, at a minimum, include federal, state, and county records where the Contractor's staff member has resided for the past seven years. PEBA maintains the right to request a third party vendor or an individual who is involved with PEBA data and/or systems be removed from the further interaction with PEBA's data and/or systems.

(g) *Training.* Contractor shall provide security and privacy training, at least annually, for all staff members who have access to systems and/or applications that contain PEBA data.

(h) *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.

**7.41 INFORMATION SECURITY – DATA LOCATION (FEB 2015):** Contractor is prohibited from accessing, processing, transmitting, or storing government information, as defined in the clause titled Information Security, outside the United States. This obligation is a material requirement of this contract.

**7.42 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. Every obligation in this clause is material. 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 terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions.

(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 expressly 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 requirements 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) use (including access, process, transmit, and store) and maintain the government information itself; and (ii) disclose government information to persons having a need-to-know (e.g., subcontractors). Before disclosing government information to a subcontractor or third party, Contractor shall give PEBA detailed written notice of both 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 PEBA’s failure to perform or the pendency of a dispute, Contractor agrees to promptly deliver to PEBA (or destroy, at PEBA’s option) all government information in its possession as and upon written request of PEBA (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, if included, entitled Information Use and Disclosure – Standards.

(h) *Actions Following Unintended 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 two business

days after discovery, Contractor shall notify PEBA 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 PEBA all information necessary to enable PEBA 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 such notice by Contractor, and if not (e.g., if legally required of PEBA), Contractor shall reimburse PEBA 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) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on PEBA, and (5) reimburse PEBA all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use. Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation.

(i) *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 PEBA may have, and notwithstanding any other term of this contract, Contractor agrees that PEBA may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore PEBA shall be entitled to pursue equitable remedies in the event of a breach of this clause.

**7.43 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 PEBA 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, Proviso 117.110 of the 2015-2016 Appropriations Act. H.R. 3701 § 117.110. 121st Cong. (S.C. 2015) (Act 91), as revised in any future annual appropriations act.

**7.44 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.

**7.45 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]

**7.46 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 17 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 11-35-1830.

**7.47 PRICE ADJUSTMENT - LIMITED:** Premiums and fees shall not be increased during the initial term of the Contract (5/01/2021 through 04/01/2024). Upon approval of the Procurement Officer, premiums and fees may be adjusted for renewal term one (1/1/2024 through 12/31/2024) and renewal term two (1/1/2025 through 12/31/2025) of the term of the contract. Any request for a price increase must be received by the Procurement Officer by January 15, 2023, for renewal term one and by January 15, 2024, for renewal term two and must be accompanied by sufficient documentation to justify the increase. A price increase must be executed as a change order.

**7.48 PRICE ADJUSTMENTS--LIMITED BY CPI "OTHER GOODS & SERVICES" (JAN 2006):** 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)

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

(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.

**7.50 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.

**7.51 RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES:**

(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 PEBA liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction.

**7.52 SECURITY FOR PERFORMANCE, DAMAGES:** The Contractor shall supply security no later than March 1, 2021. The Contractor shall supply security in the form of an unconditional irrevocable standby letter of credit, on deposit in or issued by, respectively, a federal or state chartered bank with offices physically located in the State of South Carolina in the amount of five hundred thousand dollars US (\$500,000.00) whereby funds are (1) pledged to the benefit of the State; (2) are not under the control of the Contractor; and (3) are payable to PEBA upon written demand to the holder.

This security is for the faithful performance of this contract between the State and Contractor and will further protect, indemnify and save harmless the State from all costs and damages by reason of the Contractor's default, breach or failure to satisfactorily perform the obligations outlined in this RFP, the Contractor's response thereto, and any amendments, modifications or change orders. The security required under this section must extend through the initial Contract term, any renewal terms, and the period of transition described in section 7.34, Duties Upon Termination.

Not sooner than twelve (12) months following the commencement of performance, the Contractor may seek a reduction in the amount of the security and consideration for such a request will depend on Contractor's performance up to the time of the request and the time remaining under the contract. Further, any revenue or other yield generated by the security shall be owned by the Contractor and may be withdrawn periodically so long as then applicable minimum security amount is maintained.

In the event of any condition of breach or other circumstance attributable to the Contractor, PEBA shall have the right to draw against the security such sums as are necessary to make the State whole, including, but not limited



to, the costs incurred to secure and compensate for substituted services of another entity made necessary by the breach. Nothing herein shall be construed to mean that the security provided for herein is exclusive or constitutes any limitation or restriction on any remedies to which the State may be entitled.

**7.53 SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE – REQUIRED:**

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 PEBA to accurately evaluate the strength and viability of the Contractor’s security policies, procedures and practices related to confidentiality, integrity and availability, Offerors must submit with their offers a thorough and complete written response to the Service Provider Security Assessment Questionnaire (“Response to SPSAQ”) attached to this Solicitation (Attachment 3), 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.

**7.54 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.

**7.55 TERM OF CONTRACT - EFFECTIVE DATE:**

Maximum Contract Term: July 1, 2022, through June 30, 2027.

Initial Contract Term: July 1, 2022, through June 30, 2025.

These dates are estimates only. The effective date of this Contract is the first day of the Contract Term as specified on the final statement of award. Regardless, this Contract expires no later than the last date stated on the final statement of award.

**7.56 TERMINATION FOR CONVENIENCE:** (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 PEBA. 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 PEBA 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 PEBA 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 accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that PEBA 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 11-35-1830 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 PEBA, 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 PEBA’s right to require the termination of a subcontract, or (ii) increase the obligation of PEBA beyond what it would have been if the subcontract had contained an appropriate clause.

## **PART 8**

### **ATTACHMENTS TO SOLICITATION**

- Attachment 1 — Important Tax Notice – Nonresidents Only
- Attachment 2 — Offeror’s Checklist
- Attachment 3 — Service Provider Security Assessment Questionnaire
- Attachment 4 — Minority Participation
- Attachment 5 — Offeror’s Proposed Fees

### **Exhibits**

The following exhibits are posted directly to the web and are for reference only:

- Exhibit 1 — State ORP – Investment Review
- Exhibit 2 — State ORP – Investment Policy Statement
- Exhibit 3 — State ORP – Plan Document
- Exhibit 4 — Deferred Comp – Investment Review
- Exhibit 5 — Deferred Comp – Investment Policy Statement
- Exhibit 6 — Deferred Comp – 401 (k) Plan Document
- Exhibit 7 — Deferred Comp – 457 Plan Document
- Exhibit 8 — Deferred Comp – Group Annuity Contracts
- Exhibit 9 — Executive Summary – Quarterly Investment Performance Report
- Exhibit 10 — State ORP – Quarterly Participant Report

**Attachment 1**  
**IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 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.



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 2**  
**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 MANDATORY REQUIREMENTS.
- 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 THAT 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! AS THIS SOLICITATION INCLUDES A QUESTION & ANSWER PERIOD, RAISE YOUR QUESTIONS AS A PART OF THAT PROCESS!

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 3**

## **Service Provider Security Assessment Questionnaire**

Instructions: (1) Attach additional pages or documents as appropriate and make sure answers cross reference to the questions below. (2) As used in this Questionnaire, the phrase “government information” shall have the meaning defined in the clause titled “Information Security.” (3) This Questionnaire must be read in conjunction with both of the following two clauses (a) Service Provider Security Assessment Questionnaire – Required, and (b) Service Provider Security Representation.

#### **Access Control**

1. Describe your policies and procedures that ensure access to government information is limited to only those employees and contractors who require access to perform your proposed services.
2. What safeguards and practices do you have in place to vet your employees and contractors who will have access to government information?
3. Describe safeguards that are in place to prevent unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of government information.

#### **Data Protection and Disposal**

4. Do you have documented policies and procedures for managing information assets? If yes, please provide those policies and procedures.
5. Will government information be encrypted at rest? Will government information be encrypted when transmitted? Will government information be encrypted during data backups, and on backup media? Please elaborate.
6. How will government information be managed after contract termination? Will government information provided to the Contractor be deleted or destroyed? When will this occur?

#### **Third Party Management**

7. Identify any third party which will host or have access to government information.
8. Describe and explain your security policies and procedures as they relate to your use of your contractors and next-tier sub-contractors.

#### **Human Resources**

9. Do you conduct employee awareness training? If so, please explain.

#### **Audit and Compliance**

10. List any reports or certifications that you have from properly accredited third-parties that demonstrate that adequate security controls and assurance requirements are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used to process, store, transmit, and access all government information. (For example, an ISO/IEC 27001 compliance certificate, an AICPA SOC 2 (Type 2) report, or perhaps an AICPA SOC 3 report (i.e., a SysTrust or WebTrust

seal)). For each certification, describe the scope of the assessment performed. Will these reports / certifications remain in place for the duration of the contract? Will you provide the state with most recent and future versions of the applicable compliance certificate / audit report?

### **Physical Security**

11. Please list the geographical locations of your data centers that could contain PEBA data. Do your secondary/failover sites have commensurate security with your primary site?
12. 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.

### **Detection and Prevention**

13. What controls are in place to detect security breaches? What system and network activity do you log? How long do you maintain these audit logs?
14. Is penetration testing and/or vulnerability assessments performed annually? Is this done with an outside vendor or is it performed using internal staff? Please list the last 3 assessment dates.

### **Incident Response**

15. Describe your incident response policies and practices.

### **Security Requirements and General Information**

16. Are there any planned system upgrades, conversions, other system changes that may affect PEBA in the next year? If yes, please describe.
17. Are there any other material items that you believe we should be aware of?

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: \_\_\_\_\_  
(printed name of person signing above)

\_\_\_\_\_  
(title of person signing above)

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

**Attachment 4**  
**Minority Participation**

Is the Offeror a South Carolina Certified Minority Business?  Yes  No

Is the Offeror 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://osmba.sc.gov/index.html>

**Attachment 5**  
**Offeror's Proposed Fees**

PEBA is seeking a bundled (i.e., full-service retainer) relationship. All fees must be quoted in hard dollars and must include any projected travel or other expenses.

1. With the exception of service provider searches (i.e., recordkeeper searches) and special projects, what is your comprehensive annual fee to provide all services outlined in this Request for Proposal? Please break the annual fee down by plan (State ORP, Deferred Comp). Complete the chart below to describe your fees for any common services not included in this comprehensive annual fee.

**Additional Services**

<b>Service</b>	<b>Fee</b>	<b>Comments</b>
Service provider Search		
Site Visit to Service provider		
Additional Meeting (in Columbia, SC)		
Additional Meeting (Virtual)		
Other (be specific)		

2. PEBA intends to administer all service provider searches. However, the Contractor would likely assist with these searches in an advisory capacity. Would you be willing to discount/prorate your service provider search fee to reflect your level of involvement in the search process?
3. Describe your fee for special projects that are considered to be outside the scope of services outlined in this Request for Proposal. This fee should be presented as a single, hourly rate that represents a weighted average of the staff levels involved in such projects.