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Correspondence Memorandum

Date: April 3, 2023

To: Group Insurance Board

From: Diana Felsmann, General Counsel, Office of Legal Services
Tim Steiner, Director, Bureau of Budget, Contract Administration, and Procurement

Subject: Appeal by Sharecare of the Group Insurance Board's Notice of Intent to Award contracts resulting from RFPs ETB0047, ETB0048, ETB0049 for Well-Being Services, Mental Health Services, and Chronic Condition Management Services

The Department of Employee Trust Funds (ETF) recommends the Group Insurance Board (Board) deny the appeal filed by Sharecare for the reasons set forth below.

Background
In August 2021 the Board authorized ETF to proceed with the preparation and distribution of Request for Proposals (RFPs) for third party administration of the Well Wisconsin Program pursuant to the Board's authority under Chapter 40 of the Wisconsin Statutes. In May 2022, ETF released RFPs ETB0047, ETB0048, and ETB0049 for Well-Being Services, Mental Health Services, and Chronic Condition Management Services under the umbrella of the Well Wisconsin Program (RFPs ETB0047-49). On February 22, 2023, the Board reviewed the evaluation committee's recommendation to award contracts to WebMD and agreed with the recommendation. On the same date, on behalf of the Board and pursuant to the Board's authority under Chapter 40, ETF issued a Letter of Intent to Award contracts resulting from RFPs ETB0047-49 to WebMD. All other vendors who submitted proposals were copied on the letter. Sharecare was one of the finalists for the contracts.

On February 28, 2023, ETF received a notice of intent to file an appeal from the attorney representing Sharecare. On March 7, 2023, ETF Secretary John Voelker informed the Board that ETF received the intent to appeal letter and provided a copy of the letter to the Board. On March 8, 2023, ETF received the attached letter of protest (the appeal letter) to the Letter of Intent to Award from the attorney representing Sharecare. On March 13, 2023, ETF Secretary, John Voelker, informed the Board that

ETF received the appeal letter from Sharecare's attorney and provided a copy of the appeal letter.

This memorandum summarizes Sharecare's appeal, provides the results of ETF's investigation and includes the legal and factual support for the above recommendation.

Board Procurement Appeals

Appeals of procurement decisions by the Board are governed by Chapter 40 of the Wisconsin Statutes and the Board's Vendor Procurement Appeals Policy (the Board's Policy). A protesting vendor must file a written notice of intent to appeal within five business days of the issuance of the Letter of Intent to Award. The appeal itself must be submitted within 10 business days of the issuance of the Letter of Intent to Award.

Generally, an appeal must state the contract number, detailed factual grounds for the objection to the contract award, and any violations of Chapter 40. Upon the receipt of such an appeal, the ETF Secretary is to notify the Board and direct ETF's General Counsel and Procurement Director to investigate the alleged violation(s) of Chapter 40. Generally, the subjective judgment of an evaluation committee member is not appealable. The Secretary is to forward the results of the investigation to the Board and include a recommendation to the Board as well as the legal and factual support for the recommendation. The Board will review the appeal and the recommendation and render a decision.

For most appeals, the options available to the Board are as follows: rescind the original Intent to Award and direct staff to issue the award to a different bidder; rescind the original Intent to Award and direct staff to terminate the procurement; deny the appeal and proceed with implementing the original decision.

Following Board action, a written decision will be sent to the vendor. The vendor is allowed one appeal per procurement contract or process. For appeals of procurement awards made under Chapter 40, the Board's decision is final.

Sharecare's Appeal and ETF's Investigation

Sharecare's appeal letter was timely filed. The appeal letter identifies the contract number and Sharecare's reasons in support of the appeal. The appeal requests that the award of contracts to WebMD be withdrawn and the award be made to Sharecare, or, in the alternative, Sharecare requests that the Board terminate the award to WebMD and "direct the Department to re-evaluate and award the contract in accordance with the RFP." (Appeal page 14)

RFPs ETB0047-49 were released under Chapter 40 of Wisconsin Statutes. The RFPs included the following language regarding Board and ETF authority:

1.2 Board and Department Authority

> This solicitation is authorized under Chapter 40 of the Wisconsin State Statutes. Procurement statutes and rules that govern other State agencies may not be applicable. All decisions and actions under this RFP are solely under the authority of the Group Insurance Board (Board). On August 18, 2021, the Board delegated to the Department the authority to solicit proposals for one or more third-party administrators for the State of Wisconsin Well Wisconsin Program. The Department is acting as an agent of the Board in carrying out any directives or decisions relating to this RFP, the Contract(s), and subsequent awards.

The ETF procurement lead led the evaluation committee through a detailed evaluation process according to ETF's well-established procurement procedures. The evaluation committee, consisting of four qualified individuals, evaluated the proposals submitted by thirteen vendors in response to RFPs ETB0047-49 using the predetermined evaluation criteria set forth in the RFP. The committee read and scored each proposal against a set of pre-established benchmarks, participated in vendor reference calls and presentations, and made the recommendation on the award of contracts, which ETF staff presented to the Board.

According to Sharecare, its two principal arguments for objecting to the award of contracts to WebMD are that the evaluation process was unfair and contracts were awarded to the higher- cost vendor. ETF's high-level investigation results appear below. More in-depth discussions appear in Appendix A and Appendix B. In our response, ETF consolidated duplicative or similar arguments posed by Sharecare, therefore not every argument that Sharecare included in its appeal is included in this document.

<u>Investigation Results</u>

Sharecare Principal Argument 1: The evaluation process was unfair

Based on the investigation, ETF's procurement process was appropriately followed, and vendor proposals were evaluated within the authority of the evaluation committee. After review of Sharecare's arguments, ETF believes one argument (1.d), may warrant an adjustment to the score. However, after making this score adjustment, WebMD remains the top scorer for the general and technical questionnaires for all three RFPs. ETF's investigation regarding other Sharecare arguments found that they are either not appealable or justified to warrant an adjustment.

Regardless, if ETF accepted Sharecare's overall assertion that Sharecare deserved an additional 9 points for the well-being technical questionnaire and WebMD deserves a decrease of 16.35 points for the general questionnaire, WebMD would still have the highest number of points for general and technical scores for all three RFPs.

No violation of Chapter 40 was discovered. Appendix A describes each sub-argument (1.a. – 1.f.) and ETF's investigation results.

Sharecare Principal Argument 2: ETF awarded contracts to the higher-cost vendor

Based on the Best And Final Offer (BAFO) cost scores, Sharecare appeared to be the lower-cost vendor. However, as explained to the Board at its February 22, 2023, meeting, Sharecare’s BAFO omitted certain required costs. Based on ETF’s cost analysis, Sharecare’s costs were higher than presented. Regardless, the Board, under the authority of Wisconsin Statutes 40, was under no obligation to award contracts to the lowest-cost vendor. The Board fulfilled its fiduciary duty by considering all relevant information in making the award decision, with cost being one of the many factors considered. Appendix B describes each of Sharecare’s sub-arguments (2.a. – 2.d.) and ETF’s investigation results. Appendix C includes ETF’s in-depth cost analysis of well-being costs.

ETF Recommendation

The evaluation committee based its recommendation to the Board to award the contracts to WebMD on all of the information gleaned through ETF’s standard and rigorous evaluation process. The evaluation was based on the general, technical, and cost evaluations as well as vendor presentations, reference checks, vendor clarifications, and evaluation committee discussions.

The proposals submitted by WebMD and Sharecare were both very competitive. However, the evaluation committee unanimously concluded that WebMD’s proposal was stronger, based on all evaluation criteria and that WebMD would best meet the goals of the State’s benefit programs.

RFPs ETB0047-49 were procurements under Chapter 40 of the Wisconsin Statutes. ETF, the evaluation committee, and the Board acted in accordance with the Chapter 40 Board Procurement Policy. In addition, there has been no violation of Wisconsin Administrative Code. Regarding underlying concerns based on Sharecare’s questions posed, specifically whether the evaluation criteria identified in the RFP were adhered to and whether vendors were treated equally, the information presented above demonstrates the criteria were followed.

ETF recommends that the Sharecare appeal should be denied. The evaluation committee engaged in a rigorous RFP process, resulting in a well-reasoned recommendation to the Board. The Board performed its fiduciary duty and due diligence in thoroughly considering all evaluation criteria associated with the Sharecare and WebMD proposals.

Attachment A: Sharecare, Inc. Appeal of the Award of Contracts to WebMD Health Services Group, Inc. under Request for Proposal Nos. ETB0047 for Well-Being Services, ETB0048 for Mental Health Services, and ETB0049 for Chronic Condition Management Services

Appendix A

Sharecare’s Principal Argument 1: The evaluation process was unfair

Sub-Arguments:

a. WebMD’s scores were changed by ETF without justification.
b. [T]he Department cannot make an award based on an arbitrary evaluation, or that is unreasonable in light of the evaluation record.
c. The Department repeatedly failed to adhere to the evaluation criteria by ignoring content in Sharecare’s Proposal and by failing to ask clarifying questions. (In violation of Wis. Admin. Code § ADM 10.08(3),(4)(a)).
d. [T]the Department overscored WebMD’s proposal by assigning scores that are objectively unjustifiable.
e. [T]he Department’s interpretation of certain Sharecare capabilities articulated in the proposal and clarifications was unreasonable and represents a lack of understanding.
f. [T]he Department’s technical evaluation for WebMD’s proposal was flawed, creating the illusion that WebMD’s technical proposal was superior and undermining the Department’s best value determination.

Sharecare’s Argument 1.a.

> ***WebMD’s scores were changed by the Department without justification.*** *(Appeal page 13)*
>
> > ***It appears that the Source Selection Authority (SSA), or the individual responsible for making the award decision, unilaterally modified the evaluators’ scores before including them in the score rollup. This defeats the purpose of using evaluators and is contrary to procurement principles.*** *(Appeal page 7)*
> >
> > ***[T]he SSA appears to have unilaterally changed the scores of Sharecare and WebMD. If the evaluators changed their scores, presumably they would have updated their scoresheets.*** *(Appeal page 7)*

ETF’s Investigation

The entity responsible for making an award decision (the SSA) is the Group Insurance Board. Evaluators’ scores were not “unilaterally modified” by the GIB or any person or entity connected to the procurement.

- Evaluation committee members scored proposals on their own and provided their scoresheets to the procurement lead prior to the committee meeting at which the proposal was discussed.

- The procurement lead copied and pasted those scores into the master scoresheet.
- At committee meetings, the procurement lead led discussions regarding variations in scoring between evaluation committee members.
- Committee members were allowed to change their scores following discussions.
- If an evaluator changed a score, the evaluator verbally (or through email) provided a revised score to the procurement lead and the procurement lead made the change to the master scoresheet. The rollup in the master scoresheet included the final scores of each committee member.
- Individual scoresheets submitted to the procurement lead prior to committee meetings were not updated or resubmitted if an evaluator changed their score in a committee meeting.

Evaluation committee members are permitted to change their scores up until the time cost proposals are opened and shared with committee members. The RFP includes the following criteria for scoring:

- RFP Section 3.3-Evaluation Criteria: The evaluation committee may review written Proposals, additional clarifications, oral presentations or demonstrations of the Proposer's proposed products(s) and/or service(s) (top scoring Proposers only), site visits, and other information to score Proposals.

- RFP Section 3.5-Proposer Presentations, Demonstrations, Site Visits includes: "Proposer presentations and/or demonstrations may be used by evaluation committee members to validate or supplement Proposal information; committee members may change their scores to the Proposer's responses to items in Sections 6 and 7 based on Proposer presentations/demonstrations."

- RFP Table 6 includes the following: "Proposer Presentations/Portal Demonstrations - Not scored but used by the evaluation committee to clarify proposals."

Presentations were used by the evaluation committee to supplement the information provided in the vendors' proposals, to give the evaluation committee the opportunity to glean information from a vendor that may not have been included in the proposal, and to follow up on proposal information that may not have been fully explained to the satisfaction of the evaluation committee.

- At committee meetings held after the vendor presentations, committee members discussed the presentations and were allowed to change their general and technical questionnaire scores based on what they heard in the presentations.
- If an evaluator changed a score, the evaluator verbally (or through email) provided a revised score to the procurement lead and the procurement lead

made the change to the master scoresheet. The rollup in the master scoresheet included the final scores of each committee member.

Expectations around how scores would be recorded and processed were clearly communicated to all evaluation committee members. At the evaluation committee kick-off meeting held on August 10, 2022, the ETF procurement lead presented PowerPoint slides that included the following bullet points regarding scoring:

- After receiving each of your scoresheets by email, I will copy and paste those scores into a master scoresheet
- At the next committee meetings, I will share a side-by-side comparison of all evaluators' scores for each proposal and facilitate a discussion for variations in scores with a differential of 3 or more points (scoring is from 0-5)
- At the sole discretion of each evaluator, based upon information/clarification shared during the discussions, any evaluator may elect to change their scores; the procurement lead will change the score in the master scoresheet

The practice of discussing scoring variances between evaluation committee members is consistent with ETF's procurement procedures, statewide procurement procedures, and procedures of agencies of other states. The ETF procurement lead facilitated discussions with evaluation committee members regarding the scoring of each proposal, specifically scores given by evaluators that deviated by three or more points. If a committee member wanted to change the committee member's scores based on what was learned in those discussions, the committee member instructed the procurement lead to make the change in the master scoresheet.

As noted in the Department of Administration's Form DOA-3271 (Request for Proposal Evaluation Committee Checklist), discussion of and change in scores is allowed: "The procurement lead for the evaluation committee may call a meeting for the purpose of clarifying and discussing an evaluator's score. At this meeting, the evaluation committee may discuss any variations in scoring of the technical criteria points. This does not mean scores will be discarded or changed, only reviewed. Based upon information/clarification shared during the discussion an evaluator(s) may elect to change his/her scores, however that is at the sole discretion of each evaluator."

Though adjusting scores based on noted variances is standard procurement practice, it is worth highlighting that Sharecare was not disadvantaged by scoring changes. In its appeal, Sharecare chose to emphasize scores that increased for WebMD and decreased for Sharecare. However, the net change was 4 additional points for WebMD and 4 additional points for Sharecare.

Conclusion

ETF did not arbitrarily change vendor scores. If the ETF procurement lead was instructed to change a vendor's score by an evaluation committee member based on what they learned in committee discussions, vendor follow-up, and vendor presentations, then the procurement lead changed the score in the master scoresheet. Score changes are allowed under ETF's standard RFP procurement practices and DOA standard practices, and according to information provided in the RFP.

Sharecare's Argument 1.b.

> ***[T]he Department cannot make an award based on an arbitrary evaluation, or that is unreasonable in light of the evaluation record.*** *(Appeal, page 7)*

ETF's Investigation

ETF made the award recommendation to the Board based on the recommendation made by the evaluation committee.

The committee and procurement lead met to discuss each proposal. The committee discussed score differentials of 3 or more points, provided any changes in scoring to the procurement lead, and the procurement lead made changes to the scores on the master scoresheet.

The committee completed reference calls for the top four finalists and listened to a two-hour presentation given by each of the four finalists.

As allowed in the RFP evaluation criteria and ETF's standard RFP process, committee members changed some of their scores based on what they learned in vendor presentations, reference calls, and in follow-up communications with vendors, and then provided those revised scores to the ETF procurement lead, who changed the scores on the master scoresheet.

The evaluation of vendor proposals was consistent with the RFP, and ETF's standard practices and procedures. Committee members are allowed to change their scores up until the point when cost proposals are revealed. The subjective judgment of a committee member is not appealable. There was no Chapter 40 violation.

The RFP contains many sections that speak to the evaluation process; the language in these sections was followed by ETF and the evaluation committee.

- RFP Section 3.8-Contract Award: The evaluation committee may conduct Proposer discussions, clarify Proposals, contact the references of Proposers, and request a Best and Final Offer (BAFO) from Proposers. Information regarding the Proposals will be presented to the Board. One or more Proposals may be presented to the Board for award based on the results of the general, technical, cost evaluations, and references. If the evaluation committee

> conducted oral presentations or demonstrations, the award will be based on the results of the presentations or demonstrations, as well. The Proposal(s) determined to best meet the goals of the State's benefits program may be selected by the Board for further action, including oral presentations or demonstrations to the Board, and the Board's discussion held in closed session regarding the award among other considerations in determining the award decision. The Board has the fiduciary responsibility and authority to make the final contract award decision. Under Wis. Stat. § 40.03 (6) there is no requirement for the Board to award a contract to the Proposer who scored the most points. The Board reserves the right not to award a Contract."

A recommendation was presented to the Board for award based on the evaluation criteria listed in RFP Section 3.8-Contract Award included above, and also based on other criteria specified in the RFP, such as the following:

- Section 2.1-General Instructions: The evaluation and selection of a Contractor(s) will be based on the information received in the submitted Proposal plus the following optional review methods, at the Department's discretion: reference checks, presentations, demonstrations, interviews, responses to requests for additional information or clarification, any on-site visits, and/or best and final offers (BAFOs), where requested. Such methods may be used to clarify and substantiate information in the Proposals.

- Section 3.2-Clarification Process: The Department may request Proposers to clarify ambiguities or answer questions related to information presented in their Proposal. Clarifications may occur throughout the Proposal evaluation process. Clarification requests will include appropriate references to this RFP and the Proposal. Responses must be submitted to the Department in writing in the manner and timeframe specified by the Department. Failure to provide responses as instructed may result in rejection of a Proposal.

- Section 3.3-Evaluation Criteria: Proposals that pass the preliminary evaluation may be reviewed by an evaluation committee. The evaluation committee may review written Proposals, additional clarifications, oral presentations or demonstrations of the Proposer's proposed products(s) and/or service(s) (top scoring Proposers only), site visits, and other information to score Proposals.

  The RFP evaluation committee may contact the references of selected Proposers to determine the quality of services provided and work performed by the Proposer, customer satisfaction, etc.

  Reference checks may be used by evaluation committee members to clarify and substantiate information in the Proposals, learn about the Proposer's past performance and ability to perform the Services, and may be considered when scoring Proposer responses to the general and technical questionnaires in this RFP.

- Section 3.4-Proposal Scoring: Proposals submitted for each of the RFPs (ETB0047, ETB0047, and ETB0049) will be scored based upon the proven ability of the Proposer to satisfy the requirements specified herein in an efficient, cost-effective manner, considering quality of Services proposed. Proposals will be scored individually, using the following point system:

Table 6. Evaluation Criteria / Points

RFP SECTION	DESCRIPTION	TOTAL POINTS	%
6	General Questionnaire: Applies to all RFPs. The maximum total score for section 6 is 350; if a Proposer submits a Proposal for more than one RFP the score of section 6 will be used for each Proposal submitted.	350	35%
7	Technical Questionnaire: Sections 7.1 – 7.5 apply to all RFPs; section 7.6 applies to Well-Being Services; Section 7.7 applies to Mental Health Services; Section 7.8 applies to Chronic Condition Management. The maximum total score for section 7 is 450 for each Proposal submitted.	450	45%
Form I	Cost Proposal	200	20%
	Proposal Total	**1,000**	**100%**
TOP PROPOSERS ONLY	**DESCRIPTION**	**TOTAL POINTS**	**%**
-	Proposer Presentations/Portal Demonstrations	Not scored but used by the evaluation committee to clarify proposals	

The points listed above are the maximum amount of points awarded for each RFP section listed. Proposers whose Proposals are accepted for final consideration will be required to participate in Proposer presentations and/or web-portal demonstrations.

- Section 3.5-Proposer Presentations, Demonstrations, Site Visits: Any presentations, demonstrations or site visits will inform evaluation committee members' scoring of the General and/or Technical Questionnaires.

> At the direction of the evaluation committee and the discretion of the Department, Proposers reasonably apt to receive an award (top scoring Proposers) based on the evaluation of their Proposal and the scores to their General and Technical Questionnaires (RFP Sections 6 and 7) may be required to participate in oral presentations or demonstrations, interviews and/or site visits to supplement the Proposals, if requested by the Department. This may include presentations to supplement or clarify information in the Proposal or demonstrations of Proposer's key tools, web portal, and reporting capabilities, and interviews with key Department staff, evaluation committee members, and Board members. Proposer presentations and/or demonstrations may be used by evaluation committee members to validate or supplement Proposal information; committee members may change their scores to the Proposer's responses to items in Sections 6 and 7 based on Proposer presentations/demonstrations.

The evaluation committee, consisting of four qualified individuals, evaluated the proposals submitted by thirteen vendors in response to RFPs ETB0047-49 using the predetermined evaluation criteria set forth in the RFP (listed above) scoring the proposals against a set of pre-established benchmarks.

<u>Conclusion</u>

The award of contracts to WebMD was not based on an arbitrary evaluation, but a well-planned, well-executed, and lengthy evaluation process that followed ETF's standard process and procedures, and the process outlined in the RFP.

<u>Sharecare's Argument 1.c.</u>

> ***[T]he Department repeatedly failed to adhere to the evaluation criteria by ignoring content in Sharecare's Proposal and by failing to ask clarifying questions.*** **(In violation of Wis. Admin. Code § ADM 10.08(3),(4)(a)).** *(Appeal page 9)*
>
> ***[I]f the Department asked WebMD any clarifying questions, but failed to ask Sharecare, such decision would have resulted in unequal treatment of offerors and created a clear violation of the procurement rules. (In violation of Wis. Admin. Code § ADM 10.08(5).*** *(Appeal page 10)*

<u>ETF's Investigation</u>

Sharecare's referenced sections of Wis. Admin. Code state the following:

> ***10.08(3)*** *PROPOSAL EVALUATION. Proposals shall be evaluated using a predetermined method to determine which proposer best meets the needs of the*

> *procuring agency. A description of the process of evaluation should be included with the RFP. The RFP should state, whenever possible, whether oral presentations by proposers will be part of the evaluation process.*
>
> ***10.08(4)(a)*** *[An evaluation committee shall:] Review all proposals submitted in response to an RFP, using as a basis the evaluation criteria included in the RFP.*
>
> ***10.08(5)*** *DISCUSSIONS WITH PROPOSERS. Fair and equal discussions may be conducted with all proposers for the purpose of clarification, and with proposers whose proposals are reasonably apt to be awarded the contract for the purpose of negotiating the best offer.*

While this was a procurement under Chapter 40 of the Wisconsin Statutes, Chapter 40 procurements look to Chapter 16 of the Wisconsin Statutes and Chapter 10 of the Department of Administration's administrative code for information on best practices. As a result, while ETF is not strictly bound by DOA Chapter 10 administrative rule requirements in a Chapter 40 procurement, Sharecare's concerns about compliance with Chapter 10 are addressed below.

Language in the RFP regarding clarifying questions includes:

> RFP Section 3.2, Clarification Process: The Department may request Proposers to clarify ambiguities or answer questions related to information presented in their Proposal. Clarifications may occur throughout the Proposal evaluation process. Clarification requests will include appropriate references to this RFP and the Proposal. Responses must be submitted to the Department in writing in the manner and timeframe specified by the Department. Failure to provide responses as instructed may result in rejection of a Proposal.
>
> RFP Section 8.1, Submission of Form I – Cost Proposal Workbook: The Department reserves the right to clarify any pricing discrepancies related to assumptions on the part of the Proposers. Such clarifications will be solely to provide consistent assumptions from which an accurate cost comparison can be achieved for scoring. Cost scores will be calculated using the "3-year Total" figure for the Estimated Total Annual Cost of Administrative Fees listed in the Contractor's final or BAFO Form I – Cost Proposal Workbook.

As discussed in ETF's investigation to Sharecare's Argument 1.b. above, vendor proposals were evaluated using a predetermined method to determine the best vendor. ETF satisfied the language in Wis. Admin. Code § ADM 10.08(3) by including the description of the process of evaluation in the RFP, and following that process, and by stating that oral presentations were part of the evaluation process. The evaluation committee reviewed all proposals using the evaluation criteria included in the RFP as described in Wis. Admin. Code § ADM 10.08(4)(a). The ETF procurement lead led the committee through the evaluation process according to ETF procurement procedures and the criteria specified in the RFP. ETF and the committee asked WebMD and Sharecare clarifying questions, treating both vendors equally per Wis. Admin. Code § ADM 10.08(5).

Committee members reviewed and scored vendor proposals on their own. At committee meetings, committee members could, and did, instruct the ETF procurement lead to ask clarifying questions of any vendor throughout the evaluation process. When instructed to do so, the procurement lead reached out to vendors. There is no requirement for the procurement lead to ask a vendor clarifying questions unless requested to do so by an evaluation committee member.

ETF reviewed the emails it sent to Sharecare and WebMD. The ETF procurement lead sent approximately 25 clarification questions in seven emails to Sharecare. ETF sent two emails to WebMD asking two clarifying questions. Nothing in statute or DOA or ETF procurement procedures requires a committee to ask the same clarifying questions of every vendor or the same number of questions to each vendor. Questions are tailored to the context of each proposal. Within the context of RFPs ETB0047-49, ETF treated all vendors equally.

Additionally, Sharecare and WebMD each gave a two-hour presentation to evaluation committee members. During the presentations, committee members had the opportunity to ask clarifying questions, and did ask questions (although no discussions regarding pricing were allowed during vendor presentations).

Sharecare states:

> ***[I]n Section 7.6.7, Evaluator 3 left a note in their scoresheet stating, "I'm not clear on whether they're including all of our custom reporting as part of their proposal or if they're limiting it and/or charging more fees for the custom reports." They scored Sharecare as "2" while the other evaluators scored Sharecare as 3, 4, and 4. This section was weighted 4, meaning that Sharecare lost 4-12 points (1-3 points times 4) because the evaluator unreasonably failed to ask Sharecare to clarify whether it was offering all custom reporting. Other evaluators' scores reflect that they were likely confused about this aspect of Sharecare's offer. Had the evaluators asked a few questions, they could have resolved any uncertainty and saved Wisconsin taxpayers' money by acquiring a superior solution from Sharecare.*** *(Appeal pages 9 and 10)*

Regarding question 7.6.7, the ETF procurement lead followed up with Sharecare as requested by the committee member. The procurement lead sent Sharecare several questions about custom reporting and file transfers in a January 10, 2023, email, and Sharecare's answers were shared with committee members.

As a point of clarification on how scores are calculated, evaluation committee member scores are averaged. Each question is weighted according to ETF's subject matter experts' pre-determined level of importance. The average weighted score is then multiplied by the number of points in the section (350 points for the general questionnaire and 450 points for the technical questionnaire) then divided by the total possible weighted score (190 for the general questionnaire and a different number for each of the technical questionnaires based on the number of questions). The weighted criteria approach provides a generalized process to emphasize the more critical areas of a project over less important aspects. It allows ETF to obtain the quality and experience that is needed for desired outcomes.

Sharecare's final score for question 7.6.7 was 39.0. Had evaluator 4 scored a "4" for question 7.6.7, Sharecare's score would have been 45.0 instead of 39.0.

Sharecare states:

> ***[U]nder 7.6.8 on the master scoresheet, there is a note stating "[w]e can't provide email addresses, how would ShareCare work around this?" Three of the evaluators gave Sharecare less than the full 5 points because of the unnecessary confusion that could have been easily resolved with a simple question. The Department had multiple opportunities to ask these types of clarifying questions during the presentation, but unreasonably failed to do so.*** *(Appeal page 10)*

The question was discussed with the evaluation committee, and it was determined that the issue did not impact scoring. The issue would be discussed and negotiated if Sharecare was awarded the contracts. Accordingly, the procurement lead was not directed by the evaluation committee to ask Sharecare questions about email addresses.

Evaluator scores for Sharecare for question 7.6.8. were: 4, 3, 3, and 5. Sharecare had an average raw score of 3.75 for question 7.6.8 and a final score of 45. Had all evaluators scored this question a 4, Sharecare's final score would have been 3 points higher at 48.

Conclusion

The committee and ETF procurement lead followed the pre-established criteria outlined in the RFP and ETF's process for clarification questions. The procurement lead followed up on committee questions as instructed. ETF asked Sharecare and WebMD clarifying questions. Sharecare and WebMD were treated equally. The actions of the evaluation committee, ETF, and the Board were consistent with Wisconsin Administrative Code. (See table in ETF's conclusion to Argument 1.d. below.)

<u>Sharecare's Argument 1.d.</u>

> ***[T]he Department overscored WebMD's proposal by assigning scores that are objectively unjustifiable.*** *(Appeal page 14)*

<u>ETF's Investigation</u>

Sharecare asserts in its appeal that two questions should have been scored lower for WebMD:

Sharecare states:

> ***WebMD's proposal makes clear that it does not and will not have a Wisconsin-based office, meaning that the highest it could score in this section was "3." Despite this, two evaluators rated the proposal as "4" and one as "3.5." This is objectively and directly contrary to the specific scoring guidance, and a violation of procurement rules. (Appeal page 11)***

RFP question 6.2.4 states:

> Would your organization or Subcontractor(s) establish a Wisconsin-based office? If not, where would Program administration, including claims processing, billing, and customer service be carried out? If you have or will establish a Wisconsin office which tasks will be performed there? Where is or where do you anticipate the office in Wisconsin?

The benchmark for question 6.2.4 states:

> Looking for a thoughtful, well-written, and organized response.
> 0 points = No response provided, or it can't be understood
> 1 point = Response given, but it fails to meet requirements
> 2 points = Poor response with no office based in Wisconsin and some reference to being able to carry out contract requirements.
> 3 points = Average response indicating that they will not have an office based in Wisconsin, but do not have concerns with performing needed in-person based services, like screenings or flu vaccines, if applicable, or attending in-person meetings or benefit fairs.
> 4 points = Very good response indicating that the Proposer (or one of their Subcontractors) will have an office based in Wisconsin where some of their services or business operations will be performed
> 5 points = Excellent response indicating the Proposer (or one of their subcontractors) will have a Wisconsin-based office where most of their business operations will be performed

WebMD's response to RFP question 6.2.4 states:

> “As part of the current contract with the State of WI, WebMD has one remote Senior Dedicated Well-being Program Manager and one Dedicated Well-being Program Manager based in Madison. We are proposing five additional onsite staff to be added to the team across all three proposals.”

Based on this information and more provided during WebMD’s presentation to the evaluation committee, it was determined that at least 6 of the 7 WebMD staff would be located in Wisconsin. Individual evaluator scores for question 6.2.4 were as follows: 4, 4, 3.5, and 3. The evaluation committee determined that the number of staff that would be located in Wisconsin warranted the scores given. WebMD’s final score for question 6.2.4 was 6.68. Had all evaluation committee members scored question 6.2.4 as a “3,” as Sharecare suggests, WebMD’s final score would be 5.53, an immaterial change.

Sharecare states:

> ***Section 6.3.3 required offerors to provide the “organization’s employee turnover rate within the account management department” over the past three years. WebMD instead gave the total turnover rate within the entire company. This is a non-responsive answer, and should have garnered “0” points. Otherwise, the Department is scoring WebMD’s proposal based on unequal numbers. The RFP required, and other offerors took the time to, calculate the turnover rate of their account management department and provide those specific numbers. The Department’s failure to follow its own scoring guidelines resulted in a total score bump of 15.20 points for WebMD. This leniency clearly demonstrates the unequal treatment between WebMD and Sharecare and for this reason the award decision to WebMD was unreasonable.*** *(Appeal page 11)*

RFP question 6.3.3. states:

> Over the past three years what has been your organization’s employee turnover rate within the account management department?

The benchmark for question 6.3.3. states:

> 5 points = minimal, voluntary turnover in the last three years; 10% or less
> 4 points = turnover between 10 – 15%
> 3 points = turnover between 15 – 20%
> 2 points = turnover between 20 – 25%
> 1 point = turnover of 25%+
> 0 points = no response given, or response can’t be understood
> Evaluators: keep in mind that Covid could have been the cause of employee turnover. With fewer in-person services/activities, there could have been a lesser need for account management staff.

WebMD's response to RFP question 6.3.3. states:

> WebMD does not track historical turnover by department and therefore cannot provide turnover rates for the account management department. However, we can provide the following companywide turnover information:
> • 2019: 14.8%
> • 2020: 12.2%
> • 2021: 6.0%
> • 2022 (Year-to-Date): 9.3%
> Our professionals have enjoyed historically low turnover due to our commitment to staff development, equitable compensation and benefits, philosophy of valuing life balance, empowerment of the work environment to promote longevity, focus on diversity and inclusion and intangibles like our positive corporate mission and passionate dedication to excellent customer service. Because of our recognized leadership in health management, WebMD enjoys a long tradition of attracting many of the most qualified and experienced senior staff in our industry.

Individual evaluator scores for question 6.3.3 were: 4, 4, 3.5, and 5.

The evaluation committee had the opportunity to discuss question 6.3.3 in a committee meeting, and each committee member chose to score as they did. The evaluation committee members then used their individual judgment to decide how many points to assign. Had all evaluators scored WebMD a "0" for this question, WebMD's score would have been reduced by 15.20 points, not enough to push Sharecare ahead in technical scores.

Conclusion

The small decreases in scores that Sharecare believes WebMD deserves (1.15 points less for question 6.2.4, and 15.20 points less for question 6.3.3) and the small increases that Sharecare believes Sharecare deserves (6 more points for question 7.6.7 and 3 more points for question 7.6.8), amounting to a net gain of 7.35 points for Sharecare. These changes are not enough to move Sharecare ahead of WebMD for the general and technical scores for well-being. The table below includes original scores, unmodified for the scores Sharecare believes Sharecare and WebMD deserve.

	Sharecare	WebMD
General + Technical Score for Well-Being:	562.78	631.98
General + Technical Score for Mental Health:	550.53	580.23
General + Technical Score for Chronic Cond Mgmt.:	548.24	612.30

Sharecare's Argument 1.e.

> ***[T]he Department's interpretation of certain Sharecare capabilities articulated in the proposal and clarifications was unreasonable and represents a lack of understanding.*** *(Appeal pages 13 and 14)*

ETF's Investigation

The evaluation committee, consisting of four qualified individuals, evaluated (or interpreted) vendor proposals using the predetermined evaluation criteria set forth in the RFP and scored the proposals against a set of pre-established benchmarks. Further, if there was confusion about an answer provided in a vendor's proposal, the issue was detected by reviewing variances between evaluator scores at evaluation committee meetings. If a committee member wanted the procurement lead to follow up with a vendor on an issue that was misunderstood, the procurement lead did so and provided the response to the committee.

Conclusion

The evaluation committee reviewed Sharecare's written responses and assigned scores. The subjective judgment of evaluation committee members is not appealable.

Sharecare's Argument 1.f.

> ***[T]he Department's technical evaluation for WebMD's proposal was flawed, creating the illusion that WebMD's technical proposal was superior and undermining the Department's best value determination.*** *(Appeal page 8)*

ETF's Investigation

WebMD scored higher than Sharecare for the general and technical questionnaire for all three RFPs. As demonstrated by the earlier responses that address Sharecare's issues with the technical evaluation, technical scores were appropriately assigned to Sharecare and WebMD based on the individual judgment of evaluation committee members. WebMD scored higher than Sharecare for all three RFPs before cost scores were added.

As discussed below in ETF's response to Sharecare's argument 2.c., the evaluation committee and the Board considered best value when recommending that WebMD be awarded the contracts. Multiple factors, e.g., cost, quality, experience, and expertise, were considered in the evaluation process to determine the best possible vendor.

Conclusion

The technical evaluation of proposals by the evaluation committee was not flawed. Because the procurement authority for this RFP is Wis. Stat. Chapter 40, the Group Insurance Board (Board) has the fiduciary responsibility and authority to make the final contract award decision. The Board exercises appropriate fiduciary responsibility in considering the entirety of the RFP process, including the recommendation of the evaluation committee, program area, vendor scores, and proposal analyses. The committee and Board look at the best value when making an award decision, taking into consideration many factors and balance cost and the capabilities of vendors.

Appendix B

Sharecare's Principal Argument 2: The Department awarded contracts to the higher cost vendor

Sub-Arguments:

a. Although there is no requirement for the Group to award the contract to the lowest-priced offeror, it is unreasonable for the Department to pay a higher price for an inferior technical solution.
b. [The Department] adjusted Sharecare's price upward for best value purposes to account for "an estimate of Sharecare's costs for incentive rewards and postage for mail campaigns."
c. Sharecare offered an overall superior solution that would cost Wisconsin taxpayers and health plan participants far less money and provide a greater return on investment than paying for a solution that the Department knows will not achieve the State's goals, based on a long history of WebMD's failure to meet expectations.
d. The Department has not provided WebMD's pricing information. As a result, Sharecare cannot determine what the difference in pricing currently is but understands from the evaluation that its price is substantially lower than WebMD's.

<u>Sharecare's Argument 2.a.</u>

> ***Although there is no requirement for the Group to award the contract to the lowest-priced offeror, it is unreasonable for the Department to pay a higher price for an inferior technical solution.*** *(Appeal page 11)*
>
>> ***Sharecare alleges that the Department's evaluation violates Wisconsin statutes, including Section 40.01(2), which requires that "[t]he public employee trust fund is a public trust and shall be managed, administered, invested and otherwise dealt with solely for the purpose of ensuring the fulfillment <u>at the lowest possible cost</u> of the benefit commitments to participants, as set forth in this chapter, and shall not be used for any other purpose." Wisc. Stat. § 40.01(2).*** *(Appeal page 6)*

<u>ETF's Investigation</u>

Sharecare claims it offered a superior solution at the lowest cost. However, WebMD scored more points than Sharecare in the general and technical questionnaires for all three RFPs. Additionally, ETF analyzed costs listed in Sharecare's and WebMD's cost proposals for each of the three RFPs to determine if vendor proposed costs included all costs that were required per the RFPs and found that Sharecare failed to include all required costs.

The recommendation memorandum that was presented to the Board at its February 22, 2023, meeting (Recommendation Memorandum), confirms that scores and cost of the contract award were considered and that the Board fulfilled its fiduciary duties in making the award. The manner in which the cost was addressed is consistent with Wis. Stat. § 40.01(2). The internal tension in the responsibilities noted in that statute was acknowledged in *Wisconsin Professional Police Association v. Lightbourn*, 2001 WI 59, 243 Wis.2d 512, 627 N.W.2d 807 (see paragraph 115). Subsection (2) provides that the trust fund shall be managed to ensure the fulfillment of benefit commitments to participants, but at the lowest possible cost. The court indicated that Subsection (2) requires balancing competing interests. That balancing effort requires the Board to exercise the fiduciary duties of diligence, prudence, and absolute fidelity to managing trust assets (see paragraph 120).

Board members are fiduciaries to the trust funds for the benefit programs they oversee. As such, Board members must weigh all relevant information in making decisions, with cost as one of the many factors considered. This position is consistent with the long-standing position of the 7th Circuit Court of Appeals, as reiterated in its recent decision in *Albert v. Oshkosh Corp.*, 47 F.4th 570 (7th Cir. 2022), that fiduciaries are not required to choose the least expensive option.

ETF's cost analysis looked at all three RFPs:

<u>Well-Being</u>
ETF analyzed the per employee per month (PEPM) administration fee, the estimated costs for per participant usage fees, and other costs included in the additional services section of the Cost Proposal Workbook and in follow-up communications with WebMD and Sharecare. ETF's analysis showed that Sharecare was missing at least $0.30 from their stated PEPM administration fee for well-being and that Sharecare's well-being Per Participant Usage Fees (lines 20 – 25 in the cost proposals) was almost $3 million higher for Sharecare than for WebMD per year. ETF's detailed cost analysis is included in the attached Appendix C.

<u>Mental Health</u>
Sharecare's annual administrative fee PEPM for mental health is approximately $800,000 more than WebMD's. Also, Sharecare's per participant fees for Mental Health are higher than WebMD's.

<u>Chronic Condition Management</u>
Although Sharecare's administrative fee PEPM for condition management was lower than WebMD's, Sharecare's cost per session fee (line 20 of the Cost Proposal) was higher than WebMD's. Also noted, Sharecare was not offering the condition management contract unless the Board awarded the well-being contract to Sharecare.

<u>Conclusion</u>

All vendors were provided sufficient information in the RFPs to determine an accurate cost of the services described in the RFPs. The number of incentives in 2021, the number of participants, employees and retirees, the number and location of biometric health screening events and flu vaccine clinic events held in 2020, the requirement for physical cards and postage, the requirement for mailing campaigns and postage, and printing, was all described in the RFPs. Vendors had the opportunity to ask questions. If Sharecare believed it did not have enough information to provide an accurate cost proposal, it could have asked follow-up questions during the question-and-answer period.

ETF's cost analysis demonstrated that Sharecare's total cost across all three contracts would be higher than WebMD's cost for all three contracts. After ETF completed its analysis, cost scores were recalculated for Sharecare and WebMD. Cost scores were presented to the Board using original costs, BAFO costs, costs with and without vendor-provided discounts, and cost scores taking into consideration the $0.30 PEPM missing from Sharecare's PEPM for Well-Being for incentive fulfillment and postage, and print campaign postage. The Board considered all the necessary factors pertaining to the top two vendors before awarding the contracts to WebMD, as described in the Recommendation Memorandum.

Sharecare's Argument 2.b.

> ***[The Department] adjusted Sharecare's price upward for best value purposes to account for "an estimate of Sharecare's costs for incentive rewards and postage for mail campaigns."*** *(Appeal page 12)*

ETF's Investigation

ETF completed an analysis of Sharecare's and WebMD's cost because Sharecare failed to include required costs in its BAFO. ETF estimated Sharecare's missing costs in order to provide the Group Insurance Board with a fair comparison of costs for WebMD and Sharecare. Costs and cost scores were presented to the Board in the Recommendation Memorandum in a variety of scenarios to demonstrate original costs submitted, BAFO costs submitted, and costs including ETF's estimate of required items and services.

In its position paper, "Best Value in Government Procurement," 2013, NIGP, Inc., *The Institute for Public Procurement (*NIGP) describes best value as:

> The *value* of procured goods or services may be simply described as a comparison of costs and benefits. Compare all the benefits from what you get and how you use it, against your costs to purchase, use, and perhaps dispose of it. Additional costs include the resources necessary to conduct the procurement,

> purchase price, fiscal tracking and processing costs, storage/maintenance and other operational costs, costs for needed training, disposal costs, etc. Other terms to characterize best value comparisons are strengths and weaknesses, pros and cons, risks and rewards. While recognizing these variables may seem mostly common sense, that recognition reflects an evolution in the role and responsibility of procurement in the public setting and how these variables are applied in detail.

ETF uses a "best value" approach similar to NIGP's in most RFP procurements. ETF's RFP solicitations to procure services consider price as only one factor along with quality, experience, and expertise to determine the selection of a vendor(s). The general and technical portions of the RFPs were worth 80% of total score and cost was 20% of total score.

Conclusion:
ETF completed an analysis of costs for both Sharecare and WebMD in order to provide a fair comparison of costs to the Board. With a more accurate analysis of costs, the Board was able to view all factors considered for a best value procurement. The Board was presented with final vendor score totals that were calculated before and after pricing considerations were included.

As stated earlier, RFPs ETB0047-49 were drafted using a best value model of procurement. Similarly, the evaluation of proposals for RFPs ETB0047-49 was completed using a best value model. Best value procurement includes more factors than just cost.

Sharecare's Argument 2.c.

> ***Sharecare offered an overall superior solution that would cost Wisconsin taxpayers and health plan participants far less money and provide a greater return on investment than paying for a solution that the Department knows will not achieve the State's goals, based on a long history of WebMD's failure to meet expectations.*** *(Appeal page 1)*

ETF's Investigation

WebMD scored higher than Sharecare for the general and technical questionnaires for all three RFPs. As discussed in Argument 2.a., Sharecare's costs are not far less than WebMD's costs. Sharecare based its statement on the original total scores, which were calculated by using solely the vendor-provided administrative fee PEPMs. When accounting for costs missing from Sharecare's PEPMs, and higher per participant fees, Sharecare's costs are not less than WebMD's cost.

Sharecare understands that the Board uses a Triple Aim approach, which includes health, quality, and finances. All of these have been measured and the results were shared with the Board; the most recent being in November 2022 (Ref GIB | 11.16.22 | 12). Some highlights from the memo include lower rates of increases to relative risk scores, better healthcare utilization rates, and less than expected healthcare spending for Well Wisconsin participants compared to those who do not participate.

In a recent report, WebMD also shared that the average number of risks improved by 7.4% for participants who completed the health assessment in 2021 and again in 2022. Average number of risks improved 10.4% for those who also participated in coaching.

Additionally, since WebMD has taken over the contract (from StayWell), they have met all measured performance standards. Under WebMD's administration, member satisfaction has continually surpassed 90% across program areas such as customer service, screenings, health assessment/portal, coaching and condition management.

Conclusion

Sharecare's subjective claim about offering a greater return on investment (ROI) is unverifiable. As a common industry challenge, it is difficult to make such a claim. Based on the general and technical scores, the evaluation committee determined the services proposed by WebMD were superior to Sharecare's.

ETF and the Board understand it takes time to realize a higher ROI, with most organizations needing well over three years to produce strong results. As is well documented, the COVID-19 pandemic had a drastic impact on healthcare utilization and costs. ETF does not know what the results will be for future ROI analyses and will continue to monitor and recommend adjustments to programming efforts as necessary.

Sharecare's Argument 2.d.

> ***The Department has not provided WebMD's pricing information. As a result, Sharecare cannot determine what the difference in pricing currently is, but understands from the evaluation that its price is substantially lower than WebMD's.*** *(Appeal page 8, footnote 1)*

ETF's Investigation

ETF has not provided Sharecare with WebMD's pricing. ETF's decision to withhold pricing, as communicated in ETF's February 24, 2023, email to Sharecare, is as follows:

> ETF's decision [to withhold pricing] relies on authority in state law, and on previous Wisconsin Supreme Court opinions. To provide a brief background, as you are aware, on February 22, 2023, the Group

> Insurance Board considered proposals in closed session for RFPs ETB0047-49, based on the authority in Wis. Stat. §19.85(1)(e):
>
> > (e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.
>
> In addition, Wis. Stat. §19.35(1)(a) provides in pertinent part:
>
> > […] The exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access to a record only if the authority or legal custodian under s. 19.33 makes a specific demonstration that there is a need to restrict public access at the time that the request to inspect or copy the record is made.
>
> At this time, there exists the need to restrict public access to the records you requested because ETF has not completed its negotiations of contracts resulting from RFPs ETB0047-49. *State v. Beaver Dam Area Development Corporation*, 2008 WI 90, ¶87, 312 Wis. 2d 84, 752 N.W.2d 295 (2008) (interference with ongoing negotiations is a public policy reason that may support the nondisclosure of records). See *Wisconsin Public Records Law Compliance Guide*, page 34 (reasons for closing a meeting may still exist and therefore justify denying access to the requested records).

Sharecare is basing its argument on the original cost scores. As stated in ETF's response to Sharecare's Argument 2.c., original cost scores were calculated using only the three years of administrative fee PEPMs entered by vendors in the cost proposal workbook. ETF's cost analysis indicated that Sharecare's PEPM was missing costs. When an estimate of the missing costs was added to Sharecare's well-being PEPM, Sharecare's cost score decreased and WebMD's cost score increased.

<u>Conclusion</u>

ETF withheld WebMD's pricing from Sharecare because negotiations have not yet begun for contracts awarded under RFPs ETB0047-49. ETF is allowed to withhold pricing per established law. Original cost scores were calculated using only the vendor provided PEPMs. Sharecare's PEPMs were lower, thus their cost score was higher. However, Sharecare failed to include all required costs in their well-being PEPM. Cost scores were recalculated using an estimate of the costs missing from Sharecare's PEPM for well-being. Original and revised cost scores were shared with the Board in the Recommendation Memorandum.

Appendix C

ETF's Cost Analysis for Well-Being (RFP ETB0047)

a. Per Participant Usage Fees: For every item in Sharecare's cost proposal in Tab B under Per Participant Usage Fees, lines 20 – 25 of the cost proposal workbook, Sharecare's costs were higher than WebMD's costs for the same items. As an example, for one line item, Sharecare's cost is three times higher than the cost proposed by WebMD. ETF estimated Sharecare's Well-Being Per Participant Usage Fees (lines 20 – 25) at almost $3M higher for Sharecare than for WebMD per year.

b. Incentive Fulfillment: The RFP indicated that physical, custom branded gift cards were a requirement. RFP Appendix 1 – Specifications – Well-Being Services states:

   1.1.D. Cash incentives issued for the Program must be a universally accepted, **physical gift card**.

   1.1.D.7. **Gift cards and gift card packaging (envelopes) must be branded** with the Well Wisconsin logo and **include customized disclaimer language**.

   In its BAFO, Tab 2, line 34, Sharecare listed a cost for custom-branded physical cards, and also stated postage for physical cards would be an additional charge:

Additional charge for Visa reward cards	Rewards Marketplace digital Visa Reward Cards are $2.00 per redemption. Custom-branded physical Visa cards or mutually agreed retailer cards are $4.75 (plus pass-through postage) per redemption.

   The ETF procurement lead pointed out the above to the evaluation committee. The evaluation committee could make no inference other than incentives cards, physical or digital, custom-branded or not, were not included in Sharecare's BAFO for the administrative fee PEPM for well-being.

   In its appeal, Sharecare stated that it had included hard cards in its original cost proposal:

   Redemptions of up to 50,000 custom-branded physical Visa cards or mutually agreed retailer cards per year are included. Convenience credits (addressed above) cover the costs of postage and mailing the physical cards. *(Appeal page 13)*

   Sharecare further states in footnote 3 of its appeal, regarding the first sentence directly above:

> ***Although this same note does not appear in the BAFO, it remained true and the price decreases were not facilitated by the elimination of the 50,000 cards. Due to limited space, Sharecare did not list all of the RFP requirements its pricing was meeting in the BAFO, but still maintained that 50,000 cards were included.*** *(Appeal page 13)*

BAFOs are used by ETF to calculate final cost scores and are relied upon as a true representation of vendors' costs for the items and services required in the RFP. Sharecare intentionally removed from its BAFO, in cell 13E, language that it had included in its original cost proposal that stated 50,000 cards were included in its PEPM for well-being (lines 13 from Sharecare's original cost proposal and BAFO). Further, Sharecare added the line listed in the table above to its BAFO (Tab 2, line 34) specifically calling out the additional cost of digital and physical cards. ETF accepted Sharecare's BAFO as its best and final offer.

In the RFP cost proposal workbook, vendors were instructed to include the cost for all items and services described in the sections of the RFP applicable to the RFP being responded to; such costs were to be included in the vendors' proposed PEPMs.

Cost Proposal Workbook, Tab B. Well-being Cost Proposal states:

> Administrative Fee: Enter the Proposed Cost Per Employee Per Month for each of the 3 years listed below. This cost must include all items and services included in the sections of the RFP and its attachments that are applicable to the Well-Being Program, that is, everything except those items and services specifically called out for the Mental Health and Chronic Condition Management programs. Do not include costs that are listed in the Per Participant Usage Fees and Additional Services sections below. In the Comments cells, explain how fees would be administered.

Sharecare had space in its BAFO cost proposal workbook to keep the language from its original cost proposal about the 50,000 cards if they intended that cost to be included in their PEPM for their BAFO. Some boxes/lines did not expand but additional text could have been added to the boxes/lines. Other vendors added text beyond what was visible, but the ETF procurement lead expanded the boxes allowing the procurement lead and the evaluation committee to see all text that was entered. A test of Sharecare's cell 13E, mentioned above, indicates that Sharecare was able to add more text. Additionally, if Sharecare wanted to include more text, it had the opportunity to do so in Tab E – Cost Assumptions of its cost proposal. If Sharecare had an issue with adding more text it could have raised the issue during the question-and-answer period. If Sharecare considered the cost proposal workbook to have an error or flaw, it could have reported such error or flaw to ETF as instructed in RFP Section 1.7 and in the cost proposal workbook instructions tab, item B.

Sharecare contends that its $15,000 convenience credit could be used to cover the cost of mailing hard cards. However, Sharecare's BAFO, cell 13E includes the following language:

> *We have also included up to $15,000 per year in "Convenience CREDITS" to offset/mitigate custom support options **other than reward value or redemption fees**.*

ETF and the evaluation committee took Sharecare's statement ***"other than reward value or redemption fees"*** to mean the convenience fee could *not* be applied to the $150 maximum incentive value or Sharecare's listed redemption fees.

Because Sharecare failed to include the cost of incentive fulfillment in its BAFO, as required in the RFP, ETF estimated the costs in order to provide the Group Insurance Board with a fair comparison of costs for WebMD and Sharecare. ETF's analysis took the following into consideration:

RFP Table 1 included the number of incentives earned in 2021 at 47,554:

	Eligible Participants	Incentives Earned	% of Eligible
State Employees	55,545	18,665	34.2%
UW Employees	48,835	17,703	36.3%
Local Employees	17,465	5,315	30.4%
State Retirees	41,577	5,369	12.9%
Local Retirees	2,960	502	17%

Accounting for a reasonable increase in participation in upcoming years, to calculate the incentive fulfillment costs for Sharecare, which were not included in its well-being administrative fee PEPM, ETF used an estimated 50,000 incentives earned for upcoming years with a percentage of hard cards versus digital cards selected by participants. Using redemption numbers and methods (digital vs. hard card) from past years, ETF estimated a percentage of digital vs. hard card redemptions to be 40% for digital cards and 60% for hard cards. Using these percentages and Sharecare's listed pricing for custom gift cards, $4.75 for hard cards and $2.00 for digital cards, ETF calculated the cost as follows:

- 40% of 50,000 incentives earned (20,000) for digital cards: 20,000 x $2.00 = $40,000 per year
- 60% of 50,000 for hard cards (30,000) for hard cards: 30,000 x $4.75 = $142,500 per year

In addition to the above, the cost of postage for mailing hard cards to participants at a cost of $0.45 per card mailed was included in ETF’s analysis: 30,000 x $0.45 = $13,500 per year. When added together (incentive plus mailing), the additional cost for incentive fulfillment was estimated by ETF at $196,000 per year, or an additional $0.15 PEPM. These costs were required to be included in Sharecare’s well-being administrative fee PEPM but were not.

ETF’s analysis also took into consideration the cost for printed mail campaigns, which were also required to be included in Sharecare’s PEPM but were not. (See RFP sections 6.5-Program Information and Communications; Appendix 1 – Specifications – General, 1.1-Implementation, paragraph D.12 and 1.8-Marketing and Communication, paragraph F.2, included below.) ETF’s estimate of the cost for postage for mail campaigns is $198,000 per year for four mail campaigns a year mailed to 110,000 participants, which amounts to an additional $0.15 PEPM. This cost does not include Sharecare’s cost for print fulfillment, which was stated as being actual cost plus a 15% administrative fee.

When the costs for incentive fulfillment, incentive postage, and mail campaign postage are added together, the additional PEPM is $0.30 or $394,000 per year.

Sharecare stated in its appeal that the $15,000 credit could be used to “cover the costs of postage and mailing the physical cards. (Sharecare Appeal page 13). Sharecare also stated in its November 14, 2022, email to ETF, that the $15,000 credit could be used to cover the $2,500 annual fee associated with ten file exports, or the fees for custom exports files at $200 per hour, or printing and mailing costs associated with print mail marketing campaigns. However, $15,000 does not substantially offset the missing and required items/services listed above.

Sharecare contends in its appeal:

> ***If more detailed estimates about physical mailing were included in the RFP, Sharecare could have better estimated its convenience credit.*** *(Appeal page 13)*
>
> ***Notably, nothing in the RFP suggests the State intends to physically mail multiple postcards and mailers to each participant during the year, and such practice would be unique given that the Department is seeking a technology-driven solution.*** *(Appeal page 12)*
>
> ***The Department’s adjustment to Sharecare’s price was unreasonable because Sharecare did not have any information regarding mailers and postage because the Department did not include any information in the RFP.*** *(Appeal page 12)*

> ***[T]he Department failed to provide information in its RFP that would have allowed non-incumbent offerors to include certain cost information important to the Department’s pricing evaluation, which unfairly benefited WebMD in its proposal as compared to other offerors.*** *(Appeal page 14)*

Language in the RFP contradicts Sharecare’s statements above. The RFP included the following language:

> **RFP Section 6.5-Program Information and Communications**
> This section must address the Services to be provided to participating Employers and the marketing and communications of the Program to all Members. The marketing philosophy and approach used by the Contractor to market the Program must be approved by the Department. The Contractor may be asked to develop emails, handouts, mailings, posters, informational bulletins, brochures, or newsletters directed to Employers and Members containing information pertinent to the Program. **All such marketing and communications, including printing and mailing expenses, must be included in Proposers’ pricing in Form I – Cost Proposal Workbook.** The Department retains publishing and approval rights of all materials prior to distribution to Employers or Members.
>
> **RFP Appendix 1 – Specifications – General**
> **1.1-Implementation**
> D.12. No later than **December 1, 2023**, Contractor will provide the Department Program Manager Contractor’s proposed content for the January 2024 informational **mailing** detailing all Contractor services and resources **to Member households**; the Department Program Manager will review and provide comments and proposed edits to the Contractor; the Department and Contractor will agree on a January mail date;
>
> **1.8-Marketing and Communication**
> F. Using a variety of delivery methods, the Contractor must promote the program to all eligible Members to assist with Program awareness and goals, and available tools and resources. All materials must be pre-approved by the Department for content, design, and format prior to distribution.
> 1. The Contractor will develop communications that can be sent to Employer groups for electronic distribution to Employees and posted at the Employer site to educate Employers and Employees on the Program and the Contractor.
> 2. The Contractor is responsible for developing, **printing**, posting (on the program web site and web-portal), emailing, texting, **and mailing (USPS) Program materials and notices**. **In addition, the Contractor must send the following materials by USPS each year, unless otherwise specified, in a format approved by the Department (e.g., postcards, flyers)**:

a. **At least one (1) direct mailing each year** of the Contract to all households with eligible Members describing the Program and providing direction for accessing the Program web-portal no later than January 31 of each year of the Contract. For GHIP program enrollment start dates that occur outside of the open enrollment period, Contractor will send the direct mailing to newly enrolled households with eligible Members within forty-five (45) Calendar Days of the Member's coverage start date;

b. For program Participants who have partially completed the annual Program incentive requirements, the Contractor must send at least three (3) Program incentive deadline reminders by email, text or via the web-portal. At least thirty (30) Calendar Days prior to the Program year incentive deadline the Contractor must issue a **reminder notice to the Participant by direct mail** notifying them of the incentive deadline and required steps for completion; and

c. **At least two (2) additional direct mailings each year for other Program promotions, education and/or outreach, as deemed necessary by the Department.**

Contractor may combine one or more of the above mailings if prior approval is received from the Department Program Manager.