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March 8, 2023

## VIA EMAIL

State of Wisconsin Group Insurance Board  
c/o Secretary, John Voelker, Wisconsin  
Department of Employee Trust Funds  
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**Re: 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**

Dear Group Insurance Board,

Sharecare, Inc. (“Sharecare”) protests the intent to award a contract issued pursuant to Request For Proposal Numbers ETB0047, ETB0049, and ETB0049 (“Solicitations” or “RFPs”) for Well-Being Services, Mental Health Services, and Chronic Condition Management Services to WebMD Health Services Group, Inc. (WebMD). 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.

The public employee trust fund, administered by the Department and the Group Insurance Board, is established “for the purpose of ensuring the fulfillment at the lowest possible cost of the benefit commitments to participants.” *Wis. Stat. § 40.01(2)*.

For these reasons, ETF should revoke the Notice of Intent to award a contract to WebMD and direct award to Sharecare.

## **BACKGROUND**

On May 5, 2022, the Wisconsin Department of Employee Trust Funds (“Department” or “ETF”), on behalf of the State of Wisconsin Group Insurance Board (the “Board”), issued three requests for proposals for third-party administration services for the State of Wisconsin Well Wisconsin Program (“Program”). The program is offered as part of the state’s Group Health Insurance Program (“GHIP”) for those in the Wisconsin Retirement System, State Employers, and local government entities. RFP at 4-5. The three RFPs are:

- RFP ETB0047: Well-Being Services
- RFP ETB0048: Mental Health Services
- RFP ETB0049: Chronic Condition Management Services

Vendors were invited to submit a Proposal for one, two, or all three of the RFPs. RFP at 5. The Department intended to award one or more contracts for these services but reserved the right to refrain from issuing one or more contracts. RFP at 14-15. The Board intended to award a contract for an initial term of contract execution to December 31, 2026, with two 2-year option periods potentially extending the contract through December 31, 2030. RFP at 14.

The Board adopted the Healthcare Triple Aim (1. health, 2. quality/satisfaction, and 3. cost) as their guiding principle for evaluating all GHIP programs and policies, noting in particular that “a return-on-investment (ROI) analysis was completed for the Program by the Board’s actuary for the first three years (2017 – 2019) of the Program and found that savings have not surpassed overall costs.” RFP at 6. The Department completes evaluations under this RFP against this backdrop and with these goals in mind. *Id.*

According to the RFP, the Department and the Board are seeking one or more innovative vendors who have a proven track record in offering well-being, mental health and/or chronic condition management services that change Participants’ long-term well-being behavior and improve health outcomes. RFP at 9. The vendor(s) must have capabilities to seamlessly service an account the size of the State’s and its location diversity and work collaboratively with the GHIP’s vendors to support overall population health.

The awarded Contractor(s) must:

- a. Be a strategic partner to the Department, the GHIP health plans, and the Board in wellness, mental health, and/or chronic condition management planning and strategic program and policy development;
- b. Market and promote the Program directly to Members and Employers and the GHIP health plans, minimizing Participant confusion between Program and individual health plan services;
- c. Provide engaging, evidence-based services to Participants, such as health coaching and web-based tools;

- d. Develop and maintain a user friendly, tailored, engaging and secure web-portal for Members and Department program administrators; and
- e. Use Program data and pharmacy claims data to assess needs, identify areas of opportunity, propose solutions, and evaluate impacts on health outcomes, Participant satisfaction and costs.

*Id.*

The Solicitations provided that proposals would initially be reviewed to determine if Form B – Mandatory Requirements and Qualifications are met. RFP at 21. Proposals that passed the preliminary evaluation would be reviewed by an evaluation committee. The evaluation committee reserved the right to stop reviewing a proposal at any point if they considered it “not reasonably apt to receive an award.” RFP at 22.

Proposals were scored by the evaluation committee according to the following criteria:

*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%
	<b>Proposal Total</b>	<b>1,000</b>	<b>100%</b>
TOP PROPOSERS ONLY	DESCRIPTION	TOTAL POINTS	%
-	Proposer Presentations/Portal Demonstrations	Not scored but used by the evaluation committee to clarify proposals	

The General Questionnaire section determines a proposer’s capability to undertake the Contract(s) and is the same information for all three RFPs. RFP at 26. It is worth a maximum of 350 points. *Id.* Proposers give point-by-point responses to each statement, request, and question in the Section. This includes:

6.1 Company Information, including a description of the company, corporate structure, acquisitions and mergers, websites, initiatives for health equity, collaboration experience (including experience with specific listed vendors), innovations and opportunities to enhance the existing program, anticipated required assistance from the Department, and banking information.

6.2 Organization Capabilities, including past performance details on the number of public sector clients in each group range, a list of the five largest public sector clients, removals or replacements, intentions to establish a Wisconsin-based office, and services to support adult child dependents.

6.3 Staff Qualifications, including identifying the Account Manager, the qualifications of other team members, the turnover rate, and whether outside resources will be necessary.

6.4 Customer Service, including a plan for meeting customer service needs, performance standards, number of staff for customer service, training staff for the Program, details on a mobile application, plans for a Program website, and options for people without internet access to find program information and utilize services.

6.5 Program Information and Communications, including a plan to inform Employers of the Program; previous experience and examples of such communication materials; and other examples of materials to support employers in educating their employees about the services.

6.6 Advisory Services Provided to the Department

6.7 Record-Keeping and Accounting Services Experience

6.8 Implementation

The Technical Questionnaire, worth 450 points, includes certain sections that apply to all RFPs and certain sections that only apply to specific RFPs. RFP at 34. The highest possible score that a proposal can receive for each RFP is 450 points. More specifically, all Proposers were required to complete Sections 7.1 to 7.5, regardless of which RFP(s) they were competing. *Id.* These sections are, as follows:

7.1 Information Technology

7.2 Computer and Data Processing Facilities, Data Policies

7.3 Information Security

7.4 Data Privacy

7.5 Audit

In addition, the Proposers were required to complete Sections 7.6, 7.7, and/or 7.8, depending upon the specific RFP(s) for which they were competing. Sections 7.6 to 7.8 correspond to the following RFPs:

7.6 RFP ETB0047 for Well-Being Services

7.7 RFP ETB0048 for Mental Health Services

7.8 RFP ETB0049 for Chronic Condition Management

Each of the proposals was scored by four evaluators, each of whom evaluated the proposals against the questions specified in the General and Technical Questionnaire, assigning a score of 0 to 5 for each such question, based on the following guidance:

<p><b>0 ITEM NOT ADDRESSED OR UNACCEPTABLE.</b> This score should be given when no response is provided, or the response provided cannot be understood. If there is any meaningful response, however, it should receive a score of 1 or more.</p>
<p><b>1 FAILS TO MEET EXPECTATIONS.</b> This score indicates a response that fails to meet the RFP request. The Proposer may have demonstrated knowledge of the subject in question only and/or may leave you wondering just how well the response complies with the request in the RFP as it is lacking information.</p>
<p><b>2 MEETS SOME EXPECTATIONS.</b> This score indicates a poor or below average response that minimally meets some of the RFP's request for information.</p>
<p><b>3 MEETS MOST EXPECTATIONS.</b> This score indicates an average response that meets the RFP request and would work for ETF with no apparent shortcomings. A response earning a 3 would be considered average, while a response earning a higher score may provide some additional information that helps educate you about the subject being evaluated.</p>
<p><b>4 MEETS ALL EXPECTATIONS.</b> This score indicates the response is very good and above average. A score of 4 would indicate the response provided useful information and demonstrated experience and knowledge. A response at this level is well thought-out and provides additional information that includes insight into the Proposer's understanding of the request/requirement but does not exceed expectations.</p>
<p><b>5 EXCEEDS EXPECTATIONS.</b> This score should be given only when the response fully exceeds the RFP request. A response in this category demonstrates the Proposer's full understanding of the request/requirement/question and includes additional information and recommendations that are "above and beyond" what is listed in the request/requirement. The proposed solution is highly valuable and beneficial to ETF.</p>

The Scoresheets gave more detailed guidance on scoring for each question. For example, the Scoresheets provided the following guidance for Question 6.2.2:

<p><b>6.2.2</b></p> <p>6.2.2 Provide a list of your five (5) largest public sector clients for which your organization currently provides wellness and/or chronic condition management services (do not include the State of Wisconsin); include:</p> <p>a. Client's name</p> <p>b. Client's number of eligible participants</p> <p>c. Client's total number of actual participants in your well-being, mental health and/or chronic condition management program</p> <p>d. The number of years your organization has provided services to the client</p>	<p>0 points = No response provided, or it can't be understood</p> <p>1 point = Response given, but it fails to meet requirements</p> <p>2 points = Response meets some of the requirements, but not all</p> <p>3 points = Response includes the name of at least 5 public sector employers, including the number of eligible participants, actual participants, and number of years servicing clients. Additionally:</p> <p>-At least 1 public sector employer with 50,000 eligible has been serviced for at least 5 years; and</p> <p>-The average participation rate across the 5 clients (actual/eligible) is at least 30%.</p> <p>Add 1 pt if more than 1 public sector employer with 50,000+ eligible participants has been serviced for at least 5 years.</p> <p>Add 1 pt if the average participation rate is greater than 30% across the 5 clients.</p>
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Cost scores were calculated by giving the lowest price proposal the maximum of 200 points, with the remaining cost proposals receiving prorated scores based on the proportion that costs of the Proposals vary from the lowest cost Proposal. RFP at 24.

The Department reserved the right to solicit one or more BAFOs and conduct discussions with vendors. *Id.* As relevant here, the Department solicited BAFOs from Sharecare and WebMD.

The Proposal(s) determined to best meet the goals of the benefits program were to be selected by the Board for further action. The Board has the fiduciary responsibility and authority to make the final contract award decision. RFP at 24-25. According to the RFP, 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. RFP at 25.

Vendor questions were due May 26, 2022. RFP at 14. Also due on that date were vendors' letters of intent to submit a proposal. *Id.* The Department responded to questions on June 24, 2022, and revised some aspects of the RFPs. Proposals were due on August 4, 2022. RFP at 14. On February 22, 2023, the Department issued a Notice of Intent to Award to

WebMD. The Intent to Award included Individual Section Scores for all Proposers, as well as cost scores. The technical scores for Proposers were:

Wisconsin Dept. of Employee Trust Funds - RFPs ETB0047-49 Well-Being, Mental Health, Chronic Condition Management Bid Abstract													
Vendor ->	ActiveHealth	AMC Health	HealthCheck360	Limeade	Nowr	Omada	Optum	Quest	ShareCare	Vida	VirginPulse	Vitality	WebMD
<b>Individual Section Scores:</b>													
General Score	248.22	168.09	175.92	225.89	186.51	201.25	215.99	175.00	241.78	211.38	243.62	199.87	280.23
Tech. Well-Being			207.75	279.75	236.25		246.00	171.00	321.00	0.00	324.75	256.50	351.75
Tech. Mental Health				281.88	250.63		274.38	0.00	308.75	248.13	271.25	231.88	300.00
Tech. Chron Cond Mgmt	326.64	156.72	186.98	301.03	231.98	243.62	268.45	221.90	306.47	260.69	306.47	252.16	332.07
<b>General Score + Technical Score:</b>													
General + Tech. Well-Being			383.67	505.64	422.76		461.99	346.00	562.78		568.37	456.37	631.98
General + Tech. Mental Health				507.76	437.14		490.36		550.53	459.51	514.87	431.74	580.23
General + Tech. Chronic Cond Mgmt	574.86	324.82	362.90	526.92	418.50	444.87	484.44	396.90	548.24	472.07	550.08	452.02	612.30

The Best and Final Offer cost scores, which were only for Sharecare and WebMD, were:

BAFO Cost Score (no PEPM discounts applied):	ShareCare	WebMD
BAFO Cost Score Well-Being	200	101.82
BAFO Cost Score Mental Health	131.03	200
BAFO Cost Score Chron Cond Mgmt	200	57.14
<b>General Score + Technical Score + BAFO Cost Score (no PEPM discounts applied):</b>		
Well-Being (General + Tech. Well-Being + BAFO Cost)	762.78	733.80
Mental Health (General + Tech. Mental Health + BAFO Cost)	681.56	780.23
Chron Cond Mgmt (General + Tech. Chron Cond Mgmt + BAFO Cost)	748.24	669.44

A footnote under these scores stated that “the Group Insurance Board (Board) instructed the ETF Secretary to issue a notice of intent to award contracts for RFPs ETB0047-49 to WebMD. The Board is not required to award contracts to the highest scoring proposer or the lowest cost proposer.”

**TIMELINESS**

This appeal is timely submitted. According to RFP Section 3.11 and the Notice of Intent to Award, a protester must provide the Department with notice of the intent to appeal the award decision within five (5) business days of the notice. Sharecare notified the Department of its intent to appeal within five business days of the February 22, 2023 award, on February 28, 2023. Following that notice, the appeal letter must be submitted within ten (10) business days of the notice of intent to award. This appeal letter, dated March 8, 2023, falls within ten business days of the notice letter.

In addition, Sharecare has standing to appeal the proposed award to WebMD. Sharecare submitted a responsive proposal to the RFPs. Moreover, Sharecare had the overall lowest proposed price and the highest overall score for two out of three RFPs.

**STANDARD OF REVIEW**

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 *at the lowest possible cost* 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).

“Statutory bidding requirements are designed to prevent fraud, collusion, favoritism and improvidence in the administration of public business, as well as to insure that the public receives

the best work or supplies at the most reasonable price practicable.” *Aqua-Tech, Inc. v. Como Lake Prot. & Rehab. Dist.*, 71 Wis. 2d 541, 550, 239 N.W.2d 25 (1976). The proper standard for reviewing the department’s exercise of discretion [ ] is whether its decision to do so was “arbitrary or unreasonable.” *Glacier State Distribution Servs., Inc. v. Wisconsin Dep’t of Transp.*, 221 Wis.2d 359, 368 (1998).

In other words, the Department cannot make an award that is based on an arbitrary evaluation, or that is unreasonable in light of the evaluation record.

**BASIS FOR APPEAL**

**I. The Source Selection Authority Unreasonably Modified Evaluator Scores.**

When comparing individual evaluator scores to the master scoresheet, it is quickly apparent that certain scores increased or decreased before inclusion in the master scoresheet. 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. In *Prism Maritime, LLC*, B-409267.2; B-409267.3, Apr. 7, 2014, the protestor contended that the SSA improperly applied unstated evaluation criteria and failed to consider deficiencies identified by the evaluation board when changing the scores of the awardee. The GAO held that the SSA unreasonably reached a contrary conclusion on the eligibility of a proposal to that of the evaluation board. Similarly here, the 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. Below is a chart tracking every score change for WebMD. Highlighted scores have increased for WebMD:

Question	E1		E2		E3		E4	
	Master	Original	Master	Original	Master	Original	Master	Original
6.5.1					4	3		
7.6.6	4	3						
7.6.8					4	3		
7.7.2.a.			4	5				
7.7.2.f.					4	5		
7.7.4			4	5			3	2
7.7.5	3	2			3	2	3	2
7.7.7							3	2
7.7.8	4	3			4	3		
7.7.10			3	5	3	4	3	1
7.8.1.a.							3	4
7.8.1.c.			3	5				
7.8.8					3	4	3	1

Below is a chart tracking every score change for Sharecare. Highlighted scores have decreased for Sharecare:

Question	E1		E2		E3		E4	
	Master	Original	Master	Original	Master	Original	Master	Original
6.1.8	3	5			2	3		
6.5.1					2	3		
7.6.1.c.	4	1						
7.6.1.d.	1	5			1	3		
7.6.1.f.					5	3		
7.6.3.	3	0						
7.6.6					3	1		
7.7.1					3	2		
7.7.12					3	2		5
7.8.1.e.	2	0			3	2		

There is no basis in the record for the scoring adjustments reflected in the charts above. These changes are egregious and call the entire evaluation into question. Accordingly, the intent to award must be rescinded, and a fair evaluation must be completed.

**II. The Department Unreasonably Failed to Select the Proposal Offering the Best Value to the State of Wisconsin, Resulting in Wasted Taxpayer Funds.**

It is a fundamental principle of government procurement that the government should award the contract to the proposal that is the best value to the government. The Department’s evaluation demonstrates that Sharecare’s proposal represents the best value to the State of Wisconsin and the roughly 160,000 subscribers and participants. Specifically, Sharecare’s proposals were rated higher overall for Well-Being and Chronic Condition Management. Moreover, as discussed further herein, the 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.

Furthermore, Sharecare’s total price is substantially lower than WebMD’s proposed price for all of the services requested by Wisconsin.<sup>1</sup> Although the Department has asserted that Sharecare’s price would need to be higher in order to address all of the RFP requirements, those positions are undermined by Sharecare’s proposal and clarifications provided to the Department in a timely manner during the evaluation (as established in more detail below).

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<sup>1</sup> 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.



Despite the Department's evaluation confirming that Sharecare offered the best overall solution at the best price, the Department has unreasonably chosen to charge taxpayers and state employee health subscribers more money for a technical solution that has repeatedly failed to deliver a positive return on investment. As addressed herein, the unreasonable nature of the decision is exacerbated by mistakes made during the evaluation, which, if corrected, would result in further disparity between WebMD and Sharecare.

For these reasons, the protest should be sustained, and the Department should award a contract to Sharecare for the Well-Being Services, Mental Health Services, and Chronic Condition Management Services.

### **III. Sharecare Should Have Been Higher Technically Scored.**

Agencies should adhere to the terms of the solicitation. As federal bid protest case law makes clear, agencies' award decisions must have a rational basis and must not be contrary to the requirements of the RFP. *See, e.g., Kilgore Corp.*, B-253672 et al., Oct. 13, 1993, 93-2 CPD ¶ 220 at 5 ("While procuring agencies have broad discretion in determining the evaluation plan they will use, they do not have the discretion to announce in the solicitation that one plan will be used and then follow another in the actual evaluation.") To do otherwise is to undermine the public's faith in the fairness of the procurement process. This principle is also recognized in administrative rules promulgated by the Department of Administration which requires proposals to be evaluated using a predetermined method and criteria. *See Wis. Admin. Code § ADM 10.08(3),(4)(a)*.

Here, the Department repeatedly failed to adhere to the evaluation criteria by ignoring content in Sharecare's Proposal and by failing to ask clarifying questions.

According to the RFP, the Department is empowered to ask vendors clarifying questions about their proposals. RFP at 22. Additionally, the Department had the power to request presentations from down-selected vendors, an option they exercised with four vendors: Sharecare, WebMD, Virgin Pulse and ActiveHealth. RFP 23-24. Sharecare has email exchanges that demonstrate that the Department *did* ask some clarifying questions, but not on other important issues described herein. As a result, the Department's failure to ask clarifying questions on these topics was unreasonable, arbitrary, and capricious.

The evaluation documents reveal that evaluators had questions about Sharecare's proposal, but failed to ask relevant questions, even during the presentation phase. *See Evaluation Roll Up*. Indeed, the evaluation documents confirm that the evaluators wanted certain questions answered and if the Department had done so, it would have resulted in higher technical ratings for Sharecare. The decision to refrain from asking Sharecare clarifying questions was unreasonable, especially given Sharecare's significantly lower price than WebMD. Rather than asking clarifying questions that could have resulted in a higher technical score, evaluators unreasonably pointed to ambiguities in Sharecare's proposal to justify lower technical ratings.

For example, in 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.

Similarly, under 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.

It was unreasonable for the Department to not seek answers for these simple ambiguities either during the presentation or at any other time during the evaluation. The Department should have been more motivated to clarify these questions given Sharecare's significantly lower price. Additionally, if 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.<sup>2</sup> Adm. 10.08(5).

#### **IV. The Department Overscored WebMD's Proposal and Held Sharecare to a Higher Standard Than WebMD.**

As a general matter, Sharecare's proposal met the RFP requirements and frequently exceeded them. Sharecare offered an excellent product at the lowest price, but WebMD was unjustifiably rated higher on various sections. Upon reviewing WebMD's proposal, it became clear that the Department overscored WebMD's proposal while simultaneously underscoring Sharecare's. A key aspect of government procurement is treating offerors equally. *See Barnes Aerospace Group*, B-298864; B-298864.2, Dec. 26, 2006, 2006 CPD ¶ 204 at 14 (sustaining protest where record showed that agency treated offerors unequally with respect to application of its qualification requirements). Based on the clear errors in WebMD's proposal, along with the underscoring in Sharecare, it is clear that the Department held Sharecare to a higher standard when reviewing its proposal.

There are numerous examples where the Department overscored WebMD's proposal, but there are two outright incorrect examples that best demonstrate WebMD's proposal was generously evaluated. First, Section 6.2.4 of the proposal required offerors to provide details on whether they had a Wisconsin office or would open one. The section scoring guidance stated:

- 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

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<sup>2</sup> As explained below, Sharecare is still waiting on relevant correspondence to be produced in response to its records requests.

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 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.

Second, 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.

## V. The Pricing Evaluation Was Flawed.

### A. The Department Failed to Adequately Consider Price.

Chapter 10 of the Wisconsin Administrative Code lays out regulations designed "to ensure that contracts for contractual services are entered into only in the best interests of the state." Adm 10.02. These regulations aim to ensure that the state "will procure at the lowest possible price, without sacrifice in quality, the contractual services required..." *Id.* 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.

Indeed, it is even more unreasonable if the proposal in question is both higher rated and lower priced, which Sharecare's is. The RFP specifically notes that, in previous years, where WebMD was the incumbent, Wisconsin has not experienced the cost savings it had hoped for. RFP at 6 ("However, a return-on-investment (ROI) analysis was completed for the Program by the Board's actuary for the first three years (2017 – 2019) of the Program and found that that savings have not surpassed overall costs"). Sharecare's price is lower than WebMD's price. Without

considering the above arguments that Sharecare's technical rating should be higher, Sharecare's technical offering is close enough that there is no reasonable justification for forcing Wisconsin taxpayers to pay more money for a solution that has not delivered desired results. Furthermore, the Department fails to explain why it believes that it should pay more for an inferior solution.

#### B. Sharecare's Price Was Not Higher than Quoted.

On a call on March 7, 2023, the Department explained that it 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 (add'l \$0.30 PEPM); does not include fulfillment cost + 15% admin fee for Sharecare mail campaigns (these expenses should have been included in Sharecare's PEPM)." As established below, any adjustment to Sharecare's pricing was unreasonable and inappropriate because Sharecare addressed the concerns in its proposal and in email correspondence with Beth Bucaida.

##### 1. Postage and Mailing Fees, Including the 15% Administrative Fee

In an email dated November 11, 2022, ETF asked questions about Sharecare's pricing proposal, including the PEPM fee. ETF asked "[Sharecare] stated 'unique digital client marketing campaigns (16);' What about physical, mail marketing campaigns? Are those included in the PEPM, if so, how many?" See Exhibit 1.

Sharecare responded

Yes, these are included in the PEPM and are not limited. Mail campaign development is part of the PEPM, however, print fulfillment and mail costs are separate from our PEPM. The **convenience credits included can be applied to the printing and mailing costs.** We are able to provide the source files for the State to print or Sharecare can provide printing services. Our pricing model for printing and mailing is as follows: Print fulfillment: Cost + 15% administration fee; Print fulfillment: Postage at pass-through rates."

*Id.* (emphasis added).

The \$15,000 per year convenience fee was offered to cover costs of printing and mailing. Sharecare's estimate of the anticipated printing and mailing costs was a good faith estimate based on the participation numbers in the RFP and Sharecare's unique approach to digital engagement, which includes push notifications, text messaging, in-app notifications, digital gift cards, and more. 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.

If the Department has an issue with the amount of the credit, it could have asked a clarifying question, or negotiated a different amount with Sharecare. 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.

Accordingly, holding Sharecare responsible for an alleged failure to accurately estimate the credit that was intended to offset mailing costs is unreasonable and contrary to law.

## **2. Physical Gift Card Rewards**

During the March 7, 2023 call, Ms. Bucaida also informed Sharecare that the Department had concerns regarding gift cards, as the State assumed that 40% of the redeemed giftcards would be digital and 60% physical (information that was not included in the RFP). The pricing from Sharecare provided that “Redemptions of up to 50,000 custom-branded physical Visa cards or mutually agreed retailer cards per year are included.”<sup>3</sup> Convenience credits (addressed above) cover the costs of postage and mailing the physical cards. As mentioned above, Sharecare made a good faith effort to estimate a convenience credit that would cover mailing and printing costs. If more detailed estimates about physical mailing were included in the RFP, Sharecare could have better estimated its convenience credit.

## **3. Biometric Requirement**

On the March 7 call, Ms. Bucaida suggested that Sharecare failed to include pricing for required biometric screening for privacy screens, resulting in an artificially deflated price. That is not accurate. Sharecare exchanged emails with Ms. Bucaida about biometric screenings on November 10, 2022. This exchange is attached as Exhibit 2. In that exchange, Sharecare made very clear that privacy screens were included in the price for biometric screens: “Two privacy screens per station for biometric screenings are included.”

The Department’s upward adjustment of Sharecare’s prices was unreasonable. Sharecare explicitly provided the convenience fee to cover certain costs, resulting in a net cost of zero to the State. If the convenience fee was too low, this could have been adjusted during negotiations, at which point the Department could have better informed Sharecare about the expected volume of mail. Instead, the Department unreasonably unilaterally adjusted Sharecare’s pricing, ignoring Sharecare’s clarifications and explanations of its model.

## **VI. The Department’s Flawed Technical Evaluation Prejudiced Sharecare.**

The Department’s flawed technical evaluation prejudiced Sharecare by tipping the selection decision in favor of WebMD based on the faulty belief that WebMD’s technical proposals were sufficiently superior to Sharecare’s proposals to merit a vastly higher price. WebMD’s perceived technical superiority, however, is illusory for several reasons. First, WebMD’s scores were changed by the Department without justification. Second, as demonstrated above, the evaluation team overlooked and failed to credit Sharecare’s proposals for responses to certain questions. Third, the Department failed to seek clarification of certain responses. Fourth, the Department’s interpretation of certain Sharecare capabilities articulated in the proposal and

---

<sup>3</sup> 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.

clarifications was unreasonable and represents a lack of understanding. Fifth, the 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. Lastly, the Department overscored WebMD's proposal by assigning scores that are objectively unjustifiable.

## **VII. The State Has Failed to Produce Requested Documents.**

On February 23, 2023, Sharecare requested documents under Wisconsin's State Public Records Law. Wis. Stat. §§ 19.31 to 19.39. Sharecare requested "all publicly available vendor documentation from this procurement, including but not limited to technical responses, pricing, evaluations / scorecards (including individual reviewee evaluations), presentations and any email correspondence relating to the procurement(s)."

The Department responded quickly on February 24, 2023, but with an incomplete response. Sharecare notes that the Department has been working with Sharecare on its request. The Department has indicated that it will not provide cost proposals, until after negotiations are complete. Further, the Department has stated that WebMD's entire presentation is "confidential" and cannot be provided, which undermines the State's public records laws, given that it is very unlikely that all information contained in the presentation qualifies under an exemption. The RFP makes clear that cost proposals are publicly available, and does not inform the public that the Department will withhold them prior to executing a contract. Indeed, there is no basis for withholding the cost proposals because Sharecare has already submitted a cost proposal that it is generally required to honor, even if it is selected for negotiations. Indeed, if parties were not required to honor cost proposals, what is the point of obtaining such proposal?

Due to this withholding of documents, Sharecare reserves the right to supplement its appeal within 10 business days of receiving all of the requested documents.<sup>4</sup>

## **CONCLUSION**

The Department's award to WebMD was contrary to the requirements of the RFP and the procurement regulations and principles established by the State of Wisconsin. It also demonstrates a disregard for the purpose of the contracting activity, as established in Chapter 40.02(2), which is to ensure the fulfillment of benefits at the lowest possible cost. Accordingly, Sharecare requests that the Board withdraw its notice of intent to award the contracts to WebMD and direct award instead to Sharecare as the best value offeror for all three RFPs. In the alternative, Sharecare requests that the Board terminate award to WebMD and direct the Department to re-evaluate and award the contract in accordance with the RFP.

---

<sup>4</sup> Sharecare is also still waiting for requested communications, which we understand the Department has been working hard to provide.

Sincerely,

A handwritten signature in blue ink that reads "Steve Cave". The signature is written in a cursive style with a large, looped "S" and a distinct "Cave".

Steven Cave  
Partner

A handwritten signature in blue ink that reads "Zachary Bemis". The signature is written in a cursive style with a large, looped "Z" and a distinct "Bemis".

Zachary Bemis  
Attorney  
Godfrey & Kahn, S.C.

**From:** [David Myatt](#)  
**To:** [Bucaida, Beth - ETF](#)  
**Subject:** Re: [EXTERNAL] ETF RFP ETB0047-49  
**Attachments:** [image006.png](#)  
[image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

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Hi Beth,

Here is some clarification on both imports and exports. I am more than happy to set up a quick call, if that would help, too.

**For file imports.....**There is no additional cost for ingesting any of the 21 files we have included, on a *daily* basis. This is included in our cost.

**For the file exports.....**There is also no additional cost for those to be sent *daily*. The \$2,500 covers the costs of development. The frequency of delivery does not impact that cost.

Best,  
Dave

**David Myatt | Vice President, Midwest**

M : 312.758.0313

[David.myatt@sharecare.com](mailto:David.myatt@sharecare.com)

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**From:** Bucaida, Beth - ETF <Beth.Bucaida@etf.wi.gov>

**Date:** Monday, November 14, 2022 at 8:30 AM

**To:** David Myatt <David.Myatt@sharecare.com>

**Subject:** RE: [EXTERNAL] ETF RFP ETB0047-49

Hi David,

To clarify:

What is the frequency of eligibility file imports and file exports that are included in the PEPM? (assuming ETF's standard file format). [Sharecare can support a file frequency that is best for the State and can ingest files as frequently as daily. You indicated, for exports "Additional standard format file exports, beyond the 10 included, are \\$2,500 each per year and available convenience credits can be used](#)



*to offset/mitigate some, or all, such costs.” What is the cost for the daily eligibility file imports? And, for file exports, what if those have to occur daily or monthly?*

Thanks,

Beth



**Beth Bucaida**

Contracts Specialist

Budget, Contract Administration & Procurement

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---

**From:** David Myatt <David.Myatt@sharecare.com>

**Sent:** Monday, November 14, 2022 8:13 AM

**To:** Bucaida, Beth - ETF <Beth.Bucaida@etf.wi.gov>

**Subject:** Re: [EXTERNAL] ETF RFP ETB0047-49

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Good morning, Beth!

Thank you for the additional questions. Our intent is to provide a comprehensive package inclusive of the needs of the State.

Please see below [in blue](#) for our responses and don't hesitate to reach out if we can provide further clarification.

Best,

Dave

**David Myatt | Regional Vice President, Midwest**

M : 312.758.0313

[David.myatt@sharecare.com](mailto:David.myatt@sharecare.com)

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**From:** Bucaida, Beth - ETF <[Beth.Bucaida@etf.wi.gov](mailto:Beth.Bucaida@etf.wi.gov)>

**Date:** Friday, November 11, 2022 at 2:17 PM

**To:** David Myatt <[David.Myatt@sharecare.com](mailto:David.Myatt@sharecare.com)>

**Subject:** [EXTERNAL] ETF RFP ETB0047-49

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Hi David,

Please answer the following questions before 10:00 a.m. central time on Monday, Nov. 14:

In Sharecare's cost proposal, Well-Being Cost tab, cell E13:

This PEPM fee will be invoiced based on the unique count of employees eligible **at any point during the service month**. Standard features and support included with certain limits as follows: file imports for eligibility (1) / **non-eligibility** (20); standard file exports (10); care console reporting licenses (4); other care console licenses (4); unique digital client marketing campaigns (16); unique white-glove challenges (12); **unique external listings for the Benefits Hub** (20); and SSO's for the Benefits Hub (3). Incentive administration for up to 10 unique configurations and up to one Rewards Marketplace Website setup is included. The face value of rewards will be pre-funded (initial and ongoing deposits) by Client. 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. Also includes up to two (2) dedicated onsite Program Managers to support engagement efforts, and event coordination for biometric and flu events.

- What is the frequency of eligibility file imports and file exports that are included in the PEPM? (assuming ETF's standard file format). [Sharecare can support a file frequency that is best for the State and can ingest files as frequently as daily.](#)
- What is meant by "non-eligibility" file?  
[Examples of non-eligibility files included: biometrics data file, claims file, or a program completion file for 3<sup>rd</sup> party program.](#)
- How much is a file export beyond the 10 included?

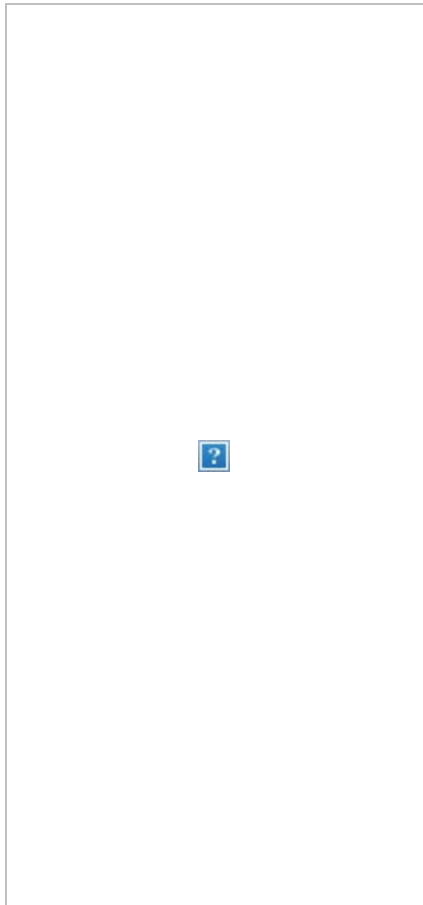
Additional standard format file exports, beyond the 10 included, are \$2,500 each per year and available convenience credits can be used to offset/mitigate some, or all, such costs.

- How much are custom export files?

Custom export files can be developed for Wisconsin Department of Employee Trust Funds, and fees will be commensurate with the level of custom work required. Sharecare provides custom support at a rate of \$200/hour and available convenience credits can be used to offset/mitigate some, or all, such costs.

- What is meant by a “unique external listings for the Benefits Hub?” Does this refer to a health plan or other ETF specified vendor?

Yes, this refers to the listing of Benefits provided to employees or spouses by the State. We will configure this experience based upon the relevant cohort of the user (i.e UHC vs. Dean Health Insurance, employee vs. spouse, etc.)



- You stated “unique digital client marketing campaigns (16);” What about physical, mail marketing campaigns? Are those included in the PEPM, if so, how many?

Yes, these are included in the PEPM and are not limited. Mail campaign development is part of the PEPM, however, print fulfillment and mail costs are separate from our PEPM. The convenience credits included can be applied to the printing and mailing costs. We are able to provide the source files for the State to print or Sharecare can provide printing services..

Our pricing model for printing and mailing is as follows:

- Print fulfillment: Cost + 15% administration fee
- Print fulfillment: Postage at pass-through rates

On the Cost Assumptions Tab, Item 2:

Assumes all eligible members flowing through the Department contract will be aggregated on a single eligibility file (or a very limited number of eligibility files with extra fees applicable as defined in the well-being cost proposal); up to five (5) **distinct configurations** to which participating groups may be assigned; Sharecare's direct interactions and support will be primarily with the Department; Sharecare may also have limited interactions in coordination with the Department for particularly large participating groups as necessary, but **direct account team** interaction with 350+ employer groups is explicitly not included.

- What do you consider a “distinct configuration” for a participating group? We’re not sure what this means.

A distinct configuration refers to the programming of a unique set of challenges, incentives, files, benefits and programs for a user- more or less a completely unique app experience. While we anticipate that the State will have several unique configurable items for different cohorts (employees vs. spouses, etc.) participating in different challenges or having unique incentive plans, we’d like to limit the net-new instances of these complete configurations to 5. Based upon previous materials provided and conversation with the State, we do not anticipate any issues with fulfilling your configuration needs.

- Are your program managers considered part of the “direct account team?”

No, we would expect that the program managers are interacting with your employer groups across the state on a frequent basis.

Thank you.



**Beth Bucaida**

Contracts Specialist

Budget, Contract Administration & Procurement

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**From:** [David Myatt](#)  
**To:** [Bucaida, Beth - ETF](#)  
**Subject:** Re: [EXTERNAL] Wisconsin Dept. of Employee Trust Funds RFP ETB0047-49 BAFO Request  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

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Hi Beth,

Two privacy screens per station for biometric screenings are included.

Privacy screens for flu shots are \$35 each. Those are just pass-through costs with Quest Diagnostics. We can find a way to be more flexible there if need be.

Dave

**David Myatt, Vice President, Enterprise Sales, Midwest**

M : [312.758.0313](tel:312.758.0313)

[David.myatt@sharecare.com](mailto:David.myatt@sharecare.com)

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**From:** Bucaida, Beth - ETF <[Beth.Bucaida@etf.wi.gov](mailto:Beth.Bucaida@etf.wi.gov)>  
**Sent:** Thursday, November 10, 2022 5:24:11 PM  
**To:** David Myatt <[David.Myatt@sharecare.com](mailto:David.Myatt@sharecare.com)>  
**Subject:** RE: [EXTERNAL] Wisconsin Dept. of Employee Trust Funds RFP ETB0047-49 BAFO Request

Hi David,

Was the cost of privacy screens for flu vaccine clinics and biometric screenings included in your pricing? If not, what is the per screen price?

Thanks,

Beth



**Beth Bucaida**

Contracts Specialist  
Budget, Contract Administration & Procurement  
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**From:** David Myatt <David.Myatt@sharecare.com>  
**Sent:** Thursday, November 10, 2022 10:40 AM  
**To:** Bucaida, Beth - ETF <Beth.Bucaida@etf.wi.gov>  
**Subject:** Re: [EXTERNAL] Wisconsin Dept. of Employee Trust Funds RFP ETB0047-49 BAFO Request

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Thank you. Was worried we wouldn't be accepted.

Dave

**David Myatt | Vice President, Midwest**

M : 312.758.0313

[David.myatt@sharecare.com](mailto:David.myatt@sharecare.com)

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**From:** Bucaida, Beth - ETF <[Beth.Bucaida@etf.wi.gov](mailto:Beth.Bucaida@etf.wi.gov)>  
**Date:** Thursday, November 10, 2022 at 11:36 AM  
**To:** David Myatt <[David.Myatt@sharecare.com](mailto:David.Myatt@sharecare.com)>  
**Subject:** RE: [EXTERNAL] Wisconsin Dept. of Employee Trust Funds RFP ETB0047-49 BAFO Request

Yes, I received your email; thanks for checking.

Beth



**Beth Bucaida**

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**From:** David Myatt <[David.Myatt@sharecare.com](mailto:David.Myatt@sharecare.com)>  
**Sent:** Thursday, November 10, 2022 10:09 AM  
**To:** Bucaida, Beth - ETF <[Beth.Bucaida@etf.wi.gov](mailto:Beth.Bucaida@etf.wi.gov)>  
**Subject:** Re: [EXTERNAL] Wisconsin Dept. of Employee Trust Funds RFP ETB0047-49 BAFO Request

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Good morning, Beth.

Would you mind confirming receipt of our BAFO and Form I? I noticed when I hit send yesterday, the file took a long time to send. Just want to make sure there were no issues.

Thanks so much,  
Dave

**David Myatt, Vice President, Enterprise Sales, Midwest**  
M : 312.758.0313  
[David.myatt@sharecare.com](mailto:David.myatt@sharecare.com)

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**From:** David Myatt <[David.Myatt@sharecare.com](mailto:David.Myatt@sharecare.com)>  
**Sent:** Wednesday, November 9, 2022 5:04 PM  
**To:** Bucaida, Beth - ETF <[Beth.Bucaida@etf.wi.gov](mailto:Beth.Bucaida@etf.wi.gov)>

**Cc:** Bucaida, Beth - ETF <[Beth.Bucaida@etf.wi.gov](mailto:Beth.Bucaida@etf.wi.gov)>

**Subject:** Re: [EXTERNAL] Wisconsin Dept. of Employee Trust Funds RFP ETB0047-49 BAFO Request

Beth,

Again, thank for the opportunity to submit our Best and Final Offer (BAFO). We are thrilled to be part of the cost evaluation phase.

Attached, please find an updated Form I for your review, containing the following updates to our pricing:

**Tab B. Well-being Cost Proposal**

- Lines 13-15. We have reduced our PEPM, impacting estimated total annual cost
- Line 34: We have added a comment on the provision of custom gift cards
- Lines 39-41: We have reduced our PEPM

**Tab C. Mental Health Cost Proposal**

- Lines 13-15. We have reduced our PEPM, impacting estimated total annual cost

**Tab D. Condition Management Cost Proposal**

- Lines 13-15. We have reduced our PEPM
- Lines 32-34. We have reduced our PEPM

As a committed partner, Sharecare looks forward to the opportunity to innovate and grow with the Department and the GHIP, driving positive change for members. Thank you for including Sharecare in your search for a new partner. We look forward to future discussion.

Best regard,  
Dave

**David Myatt | Vice President, Midwest**

M : 312.758.0313

[David.myatt@sharecare.com](mailto:David.myatt@sharecare.com)

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**From:** Bucaida, Beth - ETF <[Beth.Bucaida@etf.wi.gov](mailto:Beth.Bucaida@etf.wi.gov)>

**Date:** Wednesday, November 2, 2022 at 2:48 PM

**To:** David Myatt <[David.Myatt@sharecare.com](mailto:David.Myatt@sharecare.com)>

**Cc:** Bucaida, Beth - ETF <[Beth.Bucaida@etf.wi.gov](mailto:Beth.Bucaida@etf.wi.gov)>

**Subject:** [EXTERNAL] Wisconsin Dept. of Employee Trust Funds RFP ETB0047-49 BAFO Request



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Hello David,

The evaluation committee has completed its technical review of the qualified proposals submitted in response to the State of Wisconsin Department of Employee Trust Funds' RFPs for Well-Being, Mental Health, and Chronic Condition Management Services. We are now moving on to the cost evaluation phase.

ETF is requesting Best and Final Offers. If you would like to provide ETF a Best and Final Offer (BAFO), please modify the workbook (RFP Form I) you submitted with your proposal, provide an explanation of all items that you have modified, and email me the revised Excel workbook. Proposers are not required to submit a BAFO.

If you submit a revised cost proposal workbook, it will be scored using the same process outlined in the RFP. If you do not submit a revised cost proposal workbook, your original cost proposal will be used for scoring.

If you choose to revise your cost proposal, please email it to me at [beth.bucaida@etf.wi.gov](mailto:beth.bucaida@etf.wi.gov), no later than **4:00 p.m. central time on Wednesday, November 9, 2022**. If you do not wish to submit revised pricing, please respond to me by email by the same date stating your cost proposal remains as originally submitted.

Thank you,

Beth Bucaida, JD/MBA  
Contracts Specialist - Advanced  
[beth.bucaida@etf.wi.gov](mailto:beth.bucaida@etf.wi.gov)  
608-267-3933



**Beth Bucaida**

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