

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protests of:

MedImpact Healthcare Systems

Express Scripts Holding Company

Public Employee Benefit Authority
Request for Proposals for Pharmacy
Benefit Management Services For the
State Health Plan

BEFORE THE CHIEF PROCUREMENT OFFICER

DETERMINATION TO LIFT STAY

CASE NO's.: 2013-128 & 129

POSTING DATE: September 16, 2013

MAILING DATE: September 16, 2013

By way of background, South Carolina Public Employee Benefit Authority (PEBA) seeks to procure Pharmacy Benefit Management (PBM) Services for the State Health Plan. Express Scripts Holding Company and MedImpact Healthcare Systems protested the intent to award to Catamaran PBM of Illinois, Inc. and the Chief Procurement Officer (“CPO”) has denied the protests. PEBA has requested that the automatic stay of procurement during protests provision be lifted based on Section 11-35-4210(7) of the South Carolina Consolidated Procurement Code (“Code”). See request from PEBA Interim Executive Director, David Avant attached.

Briefly, according to Mr. Avant, premium contributions made by public employees and employers, including active and retired employees of approximately 682 state agencies, school districts, and participating local governments, a total of 427,143 subscribers, spouses, and children, nearly 10% of the State’s population, fund the State Health Plan. Pharmacy benefits amount to one-third of the Plan’s total annual benefits. The total award for this contract is approximately \$38 million over two years (the guaranteed portion of the potential term of five years).

Mr. Avant’s request was submitted to the CPO during the hearing on the matter, which offered the CPO the opportunity to hear arguments on this request. Not surprisingly, Express Scripts and MedImpact argued against granting the request. As an alternative, Express Scripts, the incumbent

contractor recommended extending its contract arguing that, as the incumbent, it could implement the EGWP plan most efficiently, which would allow time for the protests to be pursued through all appeals.

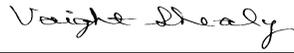
However, a great deal is at stake. The contract requires the contractor to transition pharmacy benefits to an EGWP-style plan design, which alters the management of benefits for Medicare eligible participants. That transition is expected to produce annual savings of \$37 million, but the EGWP plan must start January 1, 2014 or the anticipated savings for year one would be endangered. According to Catamaran, the awarded offeror, in order to accomplish the implementation of the EGWP by January 1, 2014, the winning offeror requires an absolute minimum of 90 days to implement the plan. According to Catamaran, the “drop dead” date for implementation is September 27, 2013. The protestants argued the EGWP plan could be implemented mid-year, but they acknowledged they had never implemented such a plan any date but January 1st.

The State’s predicament is most unfortunate, but as noted in the decision on the protests, PEBA attempted a first solicitation, starting in February 2013, that failed because all offerors were nonresponsive. This solicitation became necessary only as a result of the failure of the first solicitation. After a two day hearing, this CPO denied the protests of both Express Scripts and MedImpact.

Regarding the automatic stay, the Consolidated Procurement Code reads, “In the event of a timely protest pursuant to subsection (1), the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel except that solicitation or award of a protested contract is not stayed if the appropriate chief procurement officer, after consultation with the head of the using agency, makes a written

determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the State. [11-35-4210(7) Automatic Stay of Procurement During Protests]

Based on consultation with Mr. Avant, the testimony over two days, and the decision in this case, I find that the award of the contract without further delay is necessary to protect the best interests of the State. Therefore, the automatic stay is lifted, and PEBA may proceed with the award of the contract without delay.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

09/16/2013
Date

Columbia, S.C.

STATEMENT OF RIGHT TO ADMINISTRATIVE REVIEW
Written Determination Appeal Notice (Revised June 2013)

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b) states:

- (1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
- (b) requests for review of other written determinations, decisions, policies, and procedures arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

Copies of the Panel’s decisions and additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Requests must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2013 General Appropriations Act, “[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived.” **PLEASE MAKE YOUR CHECK PAYABLE TO THE “SC PROCUREMENT REVIEW PANEL.”**

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

-
1. What is your/your company's monthly income? _____
 2. What are your/your company's monthly expenses? _____
 3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this
_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.

South Carolina
PUBLIC EMPLOYEE BENEFIT AUTHORITY

PEBA

David K. Avant
Interim Executive Director
Insurance Benefits

September 6, 2013

Dear Mr. Shealy,

The South Carolina Public Employee Benefit Authority (PEBA) administers the self-insured Group Health Benefits Plan of the Employees of the State of South Carolina, the Public School Districts, and Participating Entities (State Health Plan or Plan) pursuant to S.C. Code Ann. § 1-11-710. As you know, two protests have been filed in response to our Intent to Award the contract for the Solicitation: Provide Pharmacy Benefit Management Services for the State Health Plan.

Pursuant to S.C. Code Ann. § 11-35-4210(7), as Interim Director of the South Carolina Public Employee Benefit Authority (PEBA), I, David K. Avant, am sending this letter to the Chief Procurement Officer in consultation in support of lifting the automatic stay.

FACTS IN SUPPORT OF LIFTING THE AUTOMATIC STAY

As you may know, the State Health Plan is “self-insured,” meaning all funds in the Plan, which it uses to pay all medical and prescription claims, come entirely from premium contributions made by public employees and employers, including active and retired employees of approximately 682 state agencies, school districts, and participating local governments. As of May 2013, 242,391 subscribers are enrolled in the Plan, with a total of 427,143 participants insured by the Plan, including subscribers, spouses, and children. The funds in the Plan contain no assets from a private insurer; its funds are all public funds.

As the largest contributing employer, the State quite obviously has a large financial interest in the Plan and its funds. In addition, it has fiduciary obligations as the holder of the

South Carolina Retiree Health Insurance Trust (SCHRI Trust) created pursuant to § 1-11-705, which contributes the “employer” share of premiums on behalf of state retirees funded pursuant to § 1-11-730. This structure reinforces the importance and weight the State places on its obligations to the State Health Plan and the funds at issue.

Health care expenses are among the fastest-rising in the American and, in turn South Carolinian, economy over the last decade. The U.S. Census Bureau reports the population of the State of South Carolina at 4.724 million as of 2012. Currently, given the numbers listed earlier in this consultation letter, the State Health Plan covers nearly 10% of the State’s population and has an interest in the Plan’s fiscal stability. The State Health Plan is the state’s largest health insurer other than Medicaid.

The automatic stay in the above-captioned protest will have negative financial impact on the State Health Plan. Pharmacy benefit expenditures account for one-third of the Plan’s total annual benefits, a total of almost \$900,000,000 over the past two years. In addition, federal law has placed stringent restrictions on modifications to the Plan’s benefit design, making the re-solicitation of the Pharmacy Benefit Management Services, including the transition to an EGWP-style plan design and financing arrangement, one of the few areas left in which dynamic design change and cost-savings may be had to the State Health Plan.

In order to accomplish the implementation of the EGWP for January 1, 2014, as planned and budgeted for the Fiscal Year, the winning vendor informs us that it requires an absolute minimum of 90 days to implement the program. The “drop dead” date for implementation is therefore September 27, 2013. As the CPO is aware, the date of this letter is September 6, 2013, leaving 21 days until the September 27, 2013 “drop dead” date for implementation.

The total award for this contract is approximately \$38 million over two years. An annual savings of \$37 million dollars per year over two years is projected, for a total of \$74 million of

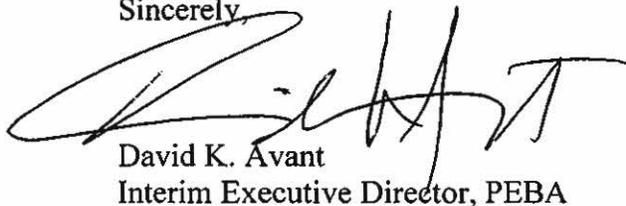
savings, by the State's actuaries for this implementation of this Pharmacy Benefit Management Services Contract. I am attaching a copy of this analysis comparing our present arrangements with those provided by the successful offeror.

CONCLUSION

The best interests of the State of South Carolina are to control rising health care costs for the greatest number of its people. Lifting the stay, as a matter of public policy, provides you with special managerial and decision-making protection by procurement statute. Its application is couched in terms of an assessment and consultation with the agency head—discretionary language, acknowledging dynamic matters of statewide importance. A more-appropriate application of the remedy in this provision would be hard to envision. As illustrated above, \$74 million dollars belonging to 400,000 citizens—1/10th of the population of this state, dollars that are subject to fiduciary protections, necessitate the award of the contract without further delay so that the implementation deadline may be met for the upcoming year. I therefore provide this information and these considerations as the consultation component of the statute and ask that you lift the stay in the best interests of the State of South Carolina.

If you have any questions regarding the information in this letter, please do not hesitate to contact me.

Sincerely,



David K. Avant
Interim Executive Director, PEBA

Component	Current Contract	
	Terms and Conditions	Final Catamaran Terms and Conditions
Administrative Cost (Per member per month fee)	\$4,038,480.00	\$38,645,881.20
Claim Cost (Ingredient costs and dispensing fees less member share and EGWP subsidization and reinsurance)	\$859,884,964.32	\$785,617,113.79
Rebates (Amount per branded prescription)	\$93,841,516.59	\$128,206,858.00
Total Net Cost	\$770,081,927.73	\$696,056,136.99
Two year savings (Comparing projection using simulation data and current contractual terms to projection based on terms and conditons of the successful bid):	\$74,025,790.74	

Notes:

Procurement simulation is used to project claims and rebates under each scenario.

Assumed enrollment:

EGWP:

67,417

Non EGWP:

356,050

Subscribers (Basis for current administrative fee):

237,000

Assumes 100% participation of EGWP eligible members in the the EGWP