

**STATE OF SOUTH CAROLINA**

**COUNTY OF RICHLAND**

In the Matter of Protest of:  
Catamaran, LLC

South Carolina Public Benefit Authority  
Solicitation No.: PEBA0012015  
Pharmacy Benefit Management Services

**BEFORE THE SOUTH CAROLINA  
PROCUREMENT REVIEW PANEL**

**WRITTEN DETERMINATION**

**CASE NO. 2015-153**

**POSTING DATE: 07/23/2015**

This matter was originally before the Chief Procurement Officer (CPO) pursuant to a protest filed by Catamaran, LLC (Catamaran) under authority of South Carolina Code Section 11-35-4210. The South Carolina Public Employee Benefit Authority (“PEBA” or “The Agency”) seeks to procure Pharmacy Benefit Management (PBM) Services for the State Health Plan. On April 21, 2015, PEBA posted its intent to award to Express Scripts, Inc. (ESI). Catamaran protested the intent to award to ESA. The CPO denied the protest on May 26, 2015. (CPO Decision). On June 4, 2015, Catamaran appealed the CPO Decision to the South Carolina Procurement Review Panel (Panel). On July 10, a hearing was held before the Panel on substantive motions filed by PEBA, ESI and the CPO. The Panel granted the motions to dismiss all protest grounds with the exception of one protest ground. A written order from the Panel is forthcoming. The Panel scheduled a merits hearing on the remaining protest ground to be heard July 24, 2015; however, on July 23, 2015, Catamaran withdrew its remaining protest ground.

On June 5, 2015, the CPO received a request from the Executive Director of PEBA, the head of the using agency, to lift the automatic stay pursuant to South Carolina Code Section 11-35-4210(7). A copy of the request from PEBA Executive Director, Peggy Boykin, is attached. On June 19, 2015, the CPO received a supplemental request from the Executive Director of PEBA providing additional justification for the lifting of the stay being in the best interest of the State. A copy of the supplemental request from PEBA Executive Director, Peggy Boykin, is

attached. On July 23, 2015, subsequent to Catamaran's withdrawal of its remaining protest ground, PEBA requested a written determination be issued concerning its pending request to lift the stay. Moreover, the CPO has received written confirmation from counsel for Catamaran that Catamaran does not oppose the request to lift the stay. See email from M. Elizabeth Crum, counsel for Catamaran, attached hereto.

**Decision**

After careful consideration and consultation with the head of the procuring agency, the current posture of the case, and in consideration of the receipt of consent from Catamaran, 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.

  
John St. C. White  
Interim Chief Procurement Officer  
for Supplies and Services

7/23/2015

Date

Columbia, South Carolina

South Carolina  
PUBLIC EMPLOYEE BENEFIT AUTHORITY

**PEBA**

Peggy G. Boykin, CPA  
Executive Director  
Insurance Benefits

June 5, 2015

**VIA-Email and US Mail**

John White  
CPO Construction and Materials Management  
State Budget and Control Board  
Procurement Services Division  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201

Re: Appeal of the Decision of the Chief Procurement Officer denying Catamaran, LLC's Protest in In the Matter of Protest of: Catamaran, LLC, South Carolina Public Employee Benefit Authority Solicitation No.: PEBA0012015 Pharmacy Benefit Management Services, Case No. 2015-153, Posting Date: 5/26/2015

Dear Mr. White,

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, an appeal of the protests has been filed in response to our April 21, 2015 Intent to Award the contract for Solicitation No.: PEBA0012015 Pharmacy Benefit Management Services.

Pursuant to S.C. Code Ann. § 11-35-4210(7), as Director of the South Carolina Public Employee Benefit Authority (PEBA), I, Peggy G. Boykin, 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 681 state agencies, school districts, and participating local governments. As of June 2015, 256,375 subscribers are enrolled in the Plan, with a total of 464,899 participants insured by the Plan, including subscribers, spouses, and children. The U.S. Census Bureau reports the

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population of the State of South Carolina at 4.832 million as of 2014. Accordingly, the State Health Plan covers nearly 10% of the State's population. The State Health Plan is the state's largest health insurer other than Medicaid.

Catamaran currently serves as Pharmacy Benefits Manager for the State under a contract that commenced January 1, 2014 and the initial term will expire 12:00 midnight December 31, 2015.

The automatic stay in the above-captioned protest will have a negative impact on PEBA's ability to implement successfully a very complicated program affecting nearly 10% of the State's population and businesses across the State. This concern is not hypothetical. Pharmacies and State Health Plan participants experienced significant disruptions following an abbreviated implementation period for a previous Pharmacy Benefit Manager contract. These problems caused a tremendous increase in participant complaints and resulted in multiple legislative hearings. To avoid a repeat of these implementation problems, implementation must begin now for a contract commencing January 1, 2016. Indeed, the RFP contemplated that an implementation plan was to have been in place by May 15, 2015; we are already past that date.

Managing a pharmacy program for over 460,000 participants is a complex undertaking. The Pharmacy Benefits Manager needs to begin work immediately to, among other things, develop and put in place appropriate data systems and IT programming, to develop communications materials for a large group of participants, to put in place appropriate pharmacy networks, to discuss with PEBA clinical rules to put in place, communicate those rules to participants and pharmacies, and to discuss strategies to address high cost areas of pharmacy spend.

Importantly, design of the State Health Plan for 2016 will take place in July 2015, and it is critical for the Pharmacy Benefits Manager, who handles one-third of the SHP's expenditures, to participate in the design process. The design of the 2016 plan will drive a great deal of the implementation work such as the content of communications and IT programming. Communication materials are under preparation now and require completion later this summer; full discussion of procedural updates for 2016 is essential to a positive member experience with the pharmacy program.

## CONCLUSION

The best interests of the State of South Carolina are to avoid disruption of pharmacy services to over 460,000 South Carolinians depending on the State Health Plan for their health care needs. 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 set out above, further delay of the implementation of the new Pharmacy Benefit Manager contract will imperil effective delivery of the pharmacy benefits for nearly 1/10 of the State's population. 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,

A handwritten signature in cursive script that reads "Peggy G. Boykin".

Peggy G. Boykin, CPA  
Executive Director  
South Carolina Public Employee Benefit Authority

cc: Michael H. Montgomery, Esquire  
M. Elizabeth Crum, Esquire

South Carolina  
PUBLIC EMPLOYEE BENEFIT AUTHORITY

**PEBA**

Peggy G. Boykin, CPA  
Executive Director  
Insurance Benefits

June 19, 2015

**VIA-Email and US Mail**

John White  
CPO Construction and Materials Management  
State Budget and Control Board  
Procurement Services Division  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201

Re:

Appeal of the Decision of the Chief Procurement Officer denying Catamaran, LLC's Protest in In the Matter of Protest of: Catamaran, LLC, South Carolina Public Employee Benefit Authority Solicitation No.: PEBA0012015 Pharmacy Benefit Management Services, Case No. 2015-153, Posting Date: 5/26/2015  
Panel Case No. 2015-2

Dear Mr. White,

I am writing to follow up on my June 8, 2015 request that the automatic stay be lifted in the above referenced matter pursuant to S.C. Code Ann. § 11-35-4210(7) so that PEBA could proceed with award and begin implementation of Solicitation No.: PEBA0012015 Pharmacy Benefit Management Services. As you know, the hearing before the South Carolina Procurement Review Panel (Panel) will not take place until Friday, July 24, 2015. Additionally, counsel to the Panel, believes that the pending motions to dismiss the appeal will not be heard until the morning of July 24<sup>th</sup>. Unfortunately, this may result in a decision not being issued until late August of 2015 when the current contract expires 12:00 midnight December 31, 2015.

Waiting until late August to commence implementation of a new Pharmacy Benefit Manager is not feasible. PEBA has realized a 17.8% increase per member in claims expense from 2014 year to date in 2015. Consultation with our 2016 contractor is imperative to address excessive growth in a sustainable way. The 2016 South Carolina Health Plan must be approved by the PEBA Board in July and by the Budget and Control Board in August. Additionally, each year, PEBA hosts a conference called Benefits@Work to prepare benefits administrators for the various participating employers for the fall enrollment period and for plan changes for the coming plan

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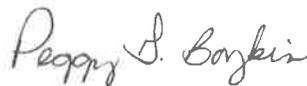
year. Having the automatic stay in place will significantly hinder all of these events and deadlines.

We also ask that you consider Express Scripts support for the stay being lifted and Catamaran's May 14, 2015 enclosed letter to the CPO indicating that it "agrees with PEBA's desire to implement the 2016 PBM Services in a timely and orderly manner."

Given that the Panel decision is not expected for over 2 months from today, PEBA is uncertain whether or not Catamaran still opposes our Consultation Letter and request to lift automatic stay. However, Catamaran's suggestions in their June 9, 2015 correspondence that (1) "Indirect EGWP with Wrap Plan has been implemented and operational since January 1, 2014" and (2) "PEBA can extend the contract with Catamaran for an additional year or six months to allow for the protest to be pursued through all appeals" are misleading and without merit. First, the statement "Indirect EGWP with Wrap Plan has been implemented and operational since January 1, 2014" implies that EGWP was properly and successfully implemented by Catamaran. This week PEBA was notified of a critical issue with an alleged \$731,614.67 financial impact to PEBA that resulted from Catamaran's errors processing the Wrap Plan. Given these issues compounded with other issues, extension of the existing Catamaran contract is not a feasible option for the State.

In closing, PEBA respectfully reiterates its requests that you lift the stay related to Solicitation No.: PEBA0012015 Pharmacy Benefit Management Services as it is necessary to protect the substantial interest of the State of South Carolina. PEBA understand and appreciate the CPO's request to the Panel to expedite the hearing to potentially avoid the need to lift the stay. Unfortunately, the hearing has been scheduled at a point in time that creates significant hardship for the State and we are left with no choice but to restate and supplement our request to lift the stay in accordance with the Code. If you have any questions regarding the information in this letter, please do not hesitate to contact me.

Sincerely,



Peggy G. Boykin, CPA  
Executive Director  
South Carolina Public Employee Benefit Authority

cc: Michael H. Montgomery, Esquire  
M. Elizabeth Crum, Esquire