

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND	)	
	)	
	)	ORDER
IN RE: Request for Review of Written	)	
Determination by Express Scripts Holding	)	Case No. 2013-10
Company; Appeal by Express Scripts	)	
Holding Company	)	
	)	
Solicitation Conducted by the S.C. Public	)	
Employee Benefit Authority (PEBA) to	)	
Provide Pharmacy Benefit Management	)	
Services	)	

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This matter came before the South Carolina Procurement Review Panel (the Panel) for a hearing on December 18, 2013, pursuant to a request for review by Express Scripts Holding Company (Express Scripts) under section 11-35-4410 of the South Carolina Consolidated Procurement Code (the Procurement Code). Express Scripts sought review of the September 16, 2013, written determination lifting the automatic stay imposed by section 11-35-4210(7) of the Procurement Code by the Chief Procurement Officer for Supplies and Services (the CPO). In the Panel’s hearing, Express Scripts was represented by Melissa J. Copeland, Esquire, and John E. Schmidt, III, Esquire. William Dixon Robertson, III, Esquire, represented the CPO. In addition, M. Elizabeth Crum, Esquire, and Amber B. Carter, Esquire, represented Catamaran PBM of Illinois, Inc. (Catamaran). Finally, the S.C. Public Benefit Authority (PEBA) was represented by Craig K. Davis, Esquire, and Colleen T. Q. Clark, Esquire.

**Procedural Background**

On September 26, 2013, Express Scripts filed two separate requests for review with the Panel. The first request received by the Panel was a request for review of the CPO’s written determination lifting the automatic stay in regard to the PEBA’s solicitation seeking to procure Pharmacy Benefit Management (PBM) Services for the State Health Plan. Express Scripts’

second request was an appeal to the Panel of the CPO's decision denying its protest of the intended award of the PBM services contract to Catamaran.<sup>1</sup> By way of context, the underlying solicitation sought to add an Indirect Employee Group Waiver Plan (EGWP) with Wrap Plan as part of the PBM services for PEBA. Generally speaking, the Indirect EGWP and Wrap Plan are products to manage pharmacy benefits for retirees eligible for Medicare and are related to Medicare Part D. The current contract with Express Scripts did not provide an EGWP + Wrap Plan. The Panel elected to conduct a hearing on the automatic stay issue first and will address only that issue in this order.<sup>2</sup>

In her opening statement to the Panel on December 18th, counsel for Express Scripts moved for judgment as a matter of law. In support of its position, Express Scripts first argued that the CPO impermissibly considered only the potential cost savings to the State represented by the intended award to Catamaran in determining to lift the stay. Citing federal case law, Express Scripts asserted that cost savings cannot be the sole basis for lifting the automatic stay. Express Scripts next argued that the CPO did not determine that lifting the stay was "necessary." Express Scripts urged the Panel to adopt a Florida procurement decision which interpreted "necessity" to mean that there was no reasonable alternative to lifting the stay. Express Scripts asserted that it had offered the reasonable alternative of extending its existing contract with the State and adding the EGWP plan, but that the CPO failed to consider that alternative.

Catamaran opposed Express Scripts' motion for summary judgment and argued that the Panel conducts a *de novo* review and is entitled to receive additional evidence. In addition,

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<sup>1</sup> The intended award to Catamaran was also protested by MedImpact Healthcare Systems. The CPO denied both protests on September 16, 2013. See *In the Matter of Protests of MedImpact Healthcare Systems [and] Express Scripts Holding Company* at [http://www.mmo.sc.gov/webfiles/MMO\\_spo/Protest%20Decisions/2013-128\\_%26\\_129.pdf](http://www.mmo.sc.gov/webfiles/MMO_spo/Protest%20Decisions/2013-128_%26_129.pdf) (posted September 16, 2013; last accessed December 19, 2013). MedImpact has not appealed any issue to the Panel.

<sup>2</sup> On December 31, 2013, the Panel issued a notice of hearing for Express Scripts' appeal of the denial of its protest. That hearing is scheduled to be held on January 31, 2014.

Catamaran argued that the Panel need not adopt federal or Florida law because there is existing South Carolina precedent upon which the Panel could rely. Specifically, Catamaran argued that it was proper for the CPO to consider the cost savings represented by Catamaran's offer when deciding whether lifting the stay was in "the best interests of the State." Furthermore, Catamaran argued that South Carolina appellate courts have declined to interpret the word "necessary" to mean that the solution chosen be the only option or sole solution. Finally, Catamaran reminded the Panel that the CPO reached his determination lifting the stay after hearing two days of testimony on Express Scripts' and MedImpact's protests, as well as considering the procurement record before him and the letter of PEBA's interim director requesting that the CPO lift the stay.

PEBA also opposed Express Scripts' motion for summary judgment, pointing out that Express Scripts bears the burden of proving before the Panel that the CPO's decision was "clearly erroneous, arbitrary, capricious, or contrary to law." PEBA disputed Express Scripts' assertion that the CPO relied only upon the cost savings to the State in reaching his decision. In particular, PEBA argued that the CPO also considered the urgency of beginning the transition to the new PBM services contract so that the addition of the EGWP + Wrap would be in place by January 1, 2014.<sup>3</sup> PEBA also emphasized that it made its request that the stay be lifted at the end of the CPO's hearing in the interest of fairness to the parties. In summary, PEBA argued that the CPO's decision was not contrary to law, not arbitrary and capricious, and not based solely on price.

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<sup>3</sup> In its final pre-hearing brief to the Panel, Express Scripts conceded that it would not be able to implement the EGWP + Wrap until May 1 if its current contract were extended and admitted that "delay in this implementation would only cost the State some limited monies in federal matching funds." Express Scripts' Memorandum of Law and Response to Returns by Catamaran, PEBA, and the CPO at page 11 (dated December 16, 2013). PEBA challenged Express Scripts' characterization of the federal matching funds as "limited monies" in argument to the Panel.

The CPO did not take an express position on Express Scripts' motion for summary judgment. Rather, the CPO discussed the unusual procedural posture of the case and suggested that the Procurement Code did not provide a remedy if the Panel were to determine that the CPO had lifted the stay in error. In support of his suggestion, the CPO argued that the statutory provision<sup>4</sup> enumerating the remedies the Panel is authorized to grant upon hearing an appeal from a protest necessarily require the Panel to consider the merits of the appeal and that the Panel was not in a position to consider the merits in a hearing limited to the stay issue. In addition, the CPO agreed with Express Scripts that lifting the automatic stay was not a normal procurement method and asserted that the CPO rarely and carefully exercised his authority when requested to lift a stay. Finally, the CPO opined that the Panel could determine that the CPO acted properly in lifting the stay, but that it did not have the authority to reinstate the stay under the Procurement Code.

After consideration of the parties' oral and written arguments, the Panel denied Express Scripts' motion for judgment as a matter of law and indicated it would like to hear testimony. After receiving the Panel's ruling on its motion, Express Scripts informed the Panel that it did not intend to offer any testimony, but that it might call a witness in response to the testimony offered by the other parties. PEBA then moved for directed verdict for Express Scripts' failure to carry its burden of proof, and Catamaran and the CPO joined the PEBA's motion. For the reasons discussed below, the Panel granted PEBA's motion for directed verdict.

### **The CPO's Written Determination**

Because Express Scripts did not offer any testimony, the Panel's review is effectively limited to the CPO's written determination and the letter to the CPO from PEBA's Interim

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<sup>4</sup> See S.C. Code Ann. § 11-35-4310 (2011) (listing the remedies available should the CPO or Panel determine that a contract was awarded in violation of law).

Executive DirectDavid K. Avant, which asks the CPO to lift the automatic stay. The Panel has attached copies of the CPO’s written determination and Mr. Avant’s letter and incorporates them herein by reference. Record at PRP5 – PRP16 (Panel Attachment A). The Panel notes that both Mr. Avant’s letter and the CPO’s written determination discuss factors other than the cost savings to the State.<sup>5</sup> Moreover, the Panel notes that the CPO, contrary to Express Scripts’ assertion, did consider Express Scripts’ offer to extend its contract in his written determination. Record at PRP5 – PRP6.

### **Conclusions of Law**

As an initial matter, the Panel finds that it is unnecessary for it to consider federal or Florida law in this instance because the relevant language of South Carolina’s Procurement Code is not sufficiently similar to the statutory provisions discussed in the authorities Express Scripts and Catamaran have cited to the Panel. Moreover, the Panel finds that the Procurement Code itself and existing Panel precedent provides an ample framework for analysis here.

The Panel must first consider the Procurement Code’s provision regarding the automatic stay. In the event of a timely protest to the CPO or a timely appeal to the Panel, the Procurement Code imposes an automatic stay precluding the State from “proceed[ing] further with the solicitation or award of the contract” until ten days after a CPO’s decision is posted or until after the Panel renders a decision if an appeal has been made. S.C. Code § 11-35-4210(7) (2011). However, this provision of the Procurement Code also provides the following exception:

[S]olicitation 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.

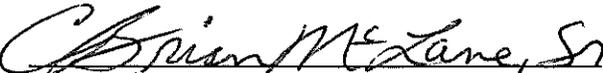
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<sup>5</sup> The Panel finds it significant that Mr. Avant’s letter was attached to the CPO’s order because the letter discusses factors other than the cost savings of Catamaran’s offer, particularly the federal law requirements relating to modifications to PBM plans.

*Id.* In addition, a CPO's written determination lifting the automatic stay is "final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A) (2011). Furthermore, as the party challenging the CPO's written determination, Express Scripts bears the burden of proving by a preponderance of the evidence that that decision was "clearly erroneous, arbitrary, capricious, or contrary to law." *See In re: Protest of Value Options*, Panel Case 20017-7 (August 3, 2001) (wherein the Panel applied the "clearly erroneous" standard of review to an appeal challenging a finding of responsibility and noted that the party challenging the finding bore the burden of proof before the Panel). In the case currently before the Panel, Express Scripts declined to present any testimony, even after the Panel denied its motion for summary judgment and indicated it would like to hear testimony. Therefore, the Panel concludes that Express Scripts failed to carry its burden of proof and hereby grants PEBA's motion for directed verdict. *See In re: Protest by MTC Service Maintenance*, Panel Case No. 1997-2, pages 9 - 10 (February 28, 1997) (wherein the Panel granted the State's motion for directed verdict for failure to meet the burden of proof where the protestant "indicated it did not intend to call any witnesses, but would question witnesses called by the State, as well as rely on the evidence in the record before the Panel.")

**IT IS SO ORDERED.**

**SOUTH CAROLINA PROCUREMENT REVIEW PANEL**

BY:   
C. BRIAN MCLANE, SR., CHAIRMAN

This 7<sup>th</sup> day of January, 2014.

Columbia, South Carolina

**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 &amp; 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 1<sup>st</sup>.

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*

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.

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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](http://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**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City                      State                      Zip

\_\_\_\_\_  
Business Phone

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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: \_\_\_\_\_

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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

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Mailing Address:  
Post Office Box 11661  
Columbia, South Carolina 29211-1661

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

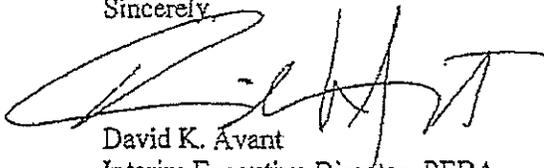
savings, by the State's actuaries for this implementation of this Pharmacy Benefit Management Services Contract. I am attaching a copy of this analysis comparing our present arrangements with those provided by the successful offeror.

#### 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—1/10<sup>th</sup> 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 conditions 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

South Carolina  
PUBLIC EMPLOYEE BENEFIT AUTHORITY

PRP14

**PEBA**

David K. Avant  
Interim Executive Director  
Insurance Benefits

September 6, 2013

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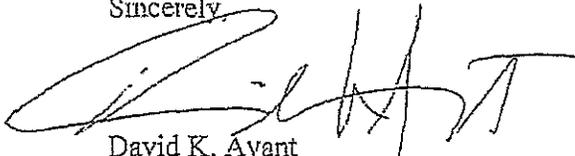
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### CONCLUSION

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—1/10<sup>th</sup> 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