

**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 CHIEF PROCUREMENT OFFICER**

DECISION

CASE NO. 2015-153

POSTING DATE: 5/26/2015

This matter is 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. With this request for proposals (RFP), the Public Employee Benefit Authority (PEBA) attempts to procure Pharmacy Benefit Management (PBM) Services. After evaluating the proposals received, PEBA posted its intent to award on April 21, 2015, to Express Scripts, Inc. (ESI). On May 1, 2015, Catamaran timely filed a protest and May 6, 2015 Catamaran timely filed an amended protest which “sets forth the protest grounds upon which Catamaran will proceed.”

Catamaran, is represented by M. Elizabeth Crum, Esquire; ESI, is represented by Michael H. Montgomery, Esquire; and PEBA, is represented by Henry P. Wall, Esquire.

On May 12, 2015, Catamaran requested that the CPO issue an order protecting information in ESI’s proposal which ESI designated as confidential and direct that information be released to Catamaran. On May 14, 2015, ESI filed a response opposing this request.

On May 14, 2015, both ESI and PEBA filed motions to dismiss Catamaran’s protest. On May 19, 2015, Catamaran filed a response.

The CPO conducted an administrative review without a hearing. This decision is based on the procurement file, memoranda filed by the attorneys, and applicable law.

## NATURE OF PROTEST

The amended letter of protest is attached as Exhibit A and incorporated herein by reference.

## FINDINGS OF FACT

The following dates are relevant to the protest:

1. On January 7, 2015, PEBA published the Request for Proposals (RFP). [Ex. 1] PEBA subsequently issued four Amendments to the RFP. [Ex. 2]
2. On March 20, 2015, PEBA opened proposals received from four offerors, including proposals submitted by ESI and Catamaran. [Exhibits 3 and 4 respectively]
3. On April 14, 2015, following their independent evaluations, Georgia Gillens, Procurement Manager for PEBA, held the panel selection meeting with the evaluators. The evaluators ranked ESI's proposal as the proposal most advantageous to the state with Catamaran receiving the second highest ranking. [Ex. 4]
4. On April 21, 2015, PEBA and ESI concluded negotiations. [Ex. 5] On the same day, PEBA posted its intent to award to ESI. [Ex. 6]
5. On May 1, 2015, Catamaran filed its protest.
6. On May 6, 2015, Catamaran filed its amended protest

## DISCUSSION

Catamaran's amended protest sets forth three grounds:

1. "ESI's Total Net Cost Does Not Observe Reasonable Commercial Standards of Fair Dealing in Violation of S.C. Code Ann. § 11-35-30."
2. Alternatively, There is a Mistake Either in ESI's Tab A-9 or Tab A-10 or in PEBA's calculation of the Total Cost.
3. By offering a Commercially Unreasonable or Unrealistic Financial Proposal, ESI is not a Responsible Offeror."<sup>1</sup>

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<sup>1</sup> These characterizations of the three grounds of protest are quoted verbatim from Catamaran's Memorandum in Opposition to PEBA's Motion to Dismiss.

All three grounds of protest allege that ESI's total price is unreasonable. In support of this claim, Catamaran notes that there is a significant difference in the total calculated cost of ESI's proposal vis-à-vis the other evaluated proposals.

While PEBA received four proposals, only ESI, Catamaran and MedImpact Healthcare Systems, Inc. (MedImpact) submitted responsive proposals and PEBA only evaluated those proposals. Using each responsive offeror's performance guarantees (Tab A-9 of each proposal) and financial proposal (Tab A-10 of each proposal), PEBA calculated the total cost of each proposal to the state over the initial three year term. PEBA calculated ESI's total cost to be \$2,154,082,043.02, Catamaran's total to be \$2,834,007,116.48 and MedImpact's to be \$2,868,533,221.60. [Ex. 7] The calculated total cost for ESI's proposal is \$679,925,073.46 less than Catamaran's.

I. Catamaran's Claim that the Award must be Vacated because "ESI's Total Net Cost Does Not Observe Reasonable Commercial Standards of Fair Dealing in Violation of S.C. Code Ann. § 11-35-30."

Catamaran alleges that ESI's financial proposal (i.e. price) is commercially unreasonable and further, that an unreasonable price proposal or bid is a violation of the obligation of good faith. This argument appears to be a novel one in a protest under the Consolidated Procurement Code (Code).

Section 11-35-30 states:

Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

Relying on this provision of the Code, Catamaran asserts that ESI's financial proposal is "commercially unreasonable or unrealistic" and "will prohibit the development of a robust pharmacy network that maximizes participation by the chain, institutional and government-

owned pharmacies and prohibit ESI from meeting the essential requirements of Section III, SCOPE OF WORK, B. Pharmacy Network Management Requirements, RFP, p. 29-29. [Ex. 1] In short, this is nothing more than an argument that ESI is not responsible because it will not be able to perform its contractual obligations for the prices and guarantees it proposes. The CPO addresses the claim of non-responsibility in his discussion on the third item of protest.

In addition to assertions that ESI will not be able to perform its contractual obligations, Catamaran cites *Star Mountain, Inc.*, U.S. Comp. Gen. No. B-285883 (Oct. 25, 2000) to support its assertion that ESI's proposal should be rejected for allegedly unreasonable or unrealistic pricing.

The RFP at issue in *Star Mountain* provided that "an offeror's cost/price proposal would be evaluated for realism regarding the relationship between the proposed cost/price and the technical proposal." *Id.* at 3. In his opinion, the Comptroller General stated:

Cost realism ordinarily is not considered in the evaluation of proposals for a fixed-price contract such as the one involved here, since a fixed-price contract provides for a definite price and places the risk and responsibility for all contract costs and resulting profit or loss upon the contractor. *Volmar Constr., Inc.*, B-272188.2, Sept. 18, 1996, 96-2 CPD ¶ 119 at 5.... An agency **may provide**, as here, **for the use of a price realism analysis** in a solicitation for the award of a fixed-price contract for such purposes as measuring an offeror's understanding of the solicitation's requirements and assessing the risk inherent in an offeror's proposal. *Consolidated Eng'g Servs., Inc.*, B-279565.5, Mar. 19, 1999, 99-1 CPD ¶ 76 at 10.... The nature and extent of an agency's price realism analysis ultimately are matters within the sound exercise of the agency's discretion. *Cardinal Scientific, Inc.*, B-270309, Feb. 12, 1996, 96-1 CPD ¶ 70 at 4.

When a federal RFP does not provide for a price realism analysis, the agency does not perform a price realism analysis since the "risk and responsibility for all contract costs and resulting profit or loss" rest with the vendor. See also, *Ferguson Surveying and Engineering*, B-244570.2, 1991 WL 243193, at \*1 (Comp. Gen. Nov. 8, 1991) ("A protester's claim that another offeror has submitted an unreasonably low price or even that the price is below the cost of performance - **is not a valid basis for protest**. A bidder or offeror, in its business judgment, properly may decide to submit a price that is extremely low."); *Indeck Power Equipment Co.*, 8 -259151.2, 1995 WL

150472, at \*2 (Comp. Gen. April 3, 1995) (“As the *inclusion of “unrealistically” low prices under some line items also does not violate any statute or regulation*, Nationwide’s preparing its bid in this manner does not provide a basis for rejecting it. In this regard, we have recognized that a bidder, for various reasons in its business judgment, may decide to submit a below-cost bid, and there generally is *no basis for objecting* to the submission or acceptance of such a bid”) (emphasis added); *PHT Corp.*, B-297313, 2005 WL 3533303, at \*3 (U.S. Comp. Gen. Dec. 8, 2005) (“[A] protestor’s claim that an offeror submitted an ‘unreasonably’ low price- even that the price is below the cost of performance - is not a valid basis for protest. An offeror, in its business judgment, properly may decide to submit a price that is extremely low.”); *CC Distributors. Inc. v. U.S.*, 65 Fed. Cl. 813, 816-17 (Fed. Cl. 2005) (finding that losing bidder CCD was unlikely to succeed on merits of claim that agency acted arbitrarily and capriciously in selecting offer from Mara tech that was 104% less overall than CCD’s proposal and 25,000% less as to certain items, because the “fact that Maratech’s proposal on a single item may have been 25,000% less may be eye-catching, but it does not prove that CCD’s prices were reasonable or that Maratech’s were not”).

The very large difference between ESI’s total cost and the total cost for Catamaran and MedImpact’s proposals does catch one’s attention. However, the decision to make an award to ESI under these circumstances is a matter within the sound exercise of the PEBA’s discretion. PEBA employed an expert to assist them with the evaluation of proposals. Moreover, PEBA has received assurances from ESI that it can and will perform the contract and that there are no mistakes in its proposal. Therefore, PEBA’s decision to proceed with ESI is neither arbitrary nor capricious. Moreover, it is not contrary to law. The CPO will not substitute his judgment for the judgment of the procurement officer under such circumstances. Instead, PEBA asked for and received from ESI fixed pricing and guarantees. The “risk and responsibility for all contract costs and resulting profit or loss” rest with ESI.

## II. Catamaran's Claim that there is a Mistake Either in ESI's Tab A-9 or Tab A-10 or in PEBA's calculation of the Total Cost

Catamaran's claim can be broken into two parts, a claim of mistake by ESI and a claim of mistake by PEBA. The CPO will address each in order.

### A. Claim of Mistake by ESI.

An offeror who has made a mistake has the option of honoring its bid or proposal as submitted or submitting a written request to modify or withdraw its bid or proposal due to mistake. Reg. 19-445.2085. ESI has not made a request to modify or withdraw its proposal due to mistake.<sup>2</sup> Therefore, there is nothing for the Procurement Officer to do under the Code. The Code does not impose an obligation on the state to inquire further when an offer denies they have made a mistake. Catamaran's claim of mistake by ESI fails to state a claim for which relief can be granted since it does not allege a violation of the Code.

### B. Claim of Mistake by PEBA in Calculation of Total Cost

Each financial proposal contained a combination of administrative fees, ingredient costs, dispensing fees, and rebate guarantees in a format dictated by the RFP. PEBA used a standard formula into which the administrative fees, ingredient costs, dispensing fees, and rebate guarantees were inputted to determine total cost.<sup>3</sup> PEBA used the same formula for all three proposals. Moreover, a review of ESI's financial proposal and guarantees against PEBA's calculation of ESI's total cost shows that PEBA accurately incorporated ESI's administrative fees, ingredient costs, dispensing fees, and rebate guarantees into its formula for calculating total

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<sup>2</sup> To the contrary, ESI expressly denies any mistake and stands by its proposal. [Express Scripts Motion to Dismiss]

<sup>3</sup> Offerors submitted their pricing and guarantees on an Excel spreadsheet provided by PEBA. The pricing and guarantees spreadsheets were plugged into another Excel spreadsheet which calculated total cost. Therefore, the process and formulas were identical for each offeror with little to no room for error on the part of PEBA in properly entering in pricing and guarantee information into the formula spreadsheet.

cost. The CPO found nothing in the record to indicate that PEBA made a mistake in calculation of ESI's total cost.

### III. Catamaran's Claim that ESI is not a Responsible Offeror Because ESI's Financial Proposal is Commercially Unreasonable or Unrealistic

By making an award to ESI, PEBA has affirmed that it has determined ESI to be responsible. Catamaran has the burden of proving upon the preponderance of the evidence that PEBA determination of responsibility is "clearly erroneous, arbitrary, capricious, or contrary to law." *Protest of Brantley Construction Co., Inc.*, Panel Case No. 1999-3. In other words, PEBA's determination regarding responsibility is a matter of discretion that cannot be overturned absent a showing that it is "clearly erroneous, arbitrary, capricious, or contrary to law." *See Protest of CollegeSource, Inc.*, Panel Case No. 2008-4. Since agency decisions regarding responsibility are a matter of business judgment, Catamaran must demonstrate a lack of reasonable or rationale basis for the responsibility determination. *See Protest of Value Options, et al.*, Panel Case No. 2001-7.

For many years ESI successfully provided PEBA or its predecessor with pharmacy benefits management services. Based on past experience, references, and other available information, PEBA had a reasonable and rational basis to find ESI responsible. On the other hand, Catamaran's allegation of non-responsibility is nothing more than speculation about future health and performance of ESI. Conjecture about the future health of an entity by a protestant, and not by the state that actually bears the risk, cannot be the basis for a determination of non-responsibility. *See, e.g., ASC Medicare Service, Inc.*, B-213724 (Comp.Gen.), 84-1 CPD P 45, 1983 WL 27814 (1983); *Kitco, Inc.*, B- 221386 (Comp.Gen.), 86-1 CPD P 321, 1986 WL 63328 (1986).

**DETERMINATION**

For the reasons stated above, the protests are denied.



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John S. C. White  
Interim Chief Procurement Officer  
For Supplies and Services

5/26/2015

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Date

Columbia, S.C.

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised October 2014)*

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

**FILE BY CLOSE OF BUSINESS:** Appeals 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 2014 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 financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing.” 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

- 
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.**

# EXHIBIT 1

	<b>State of South Carolina</b>	Solicitation Number: PEBA0012015	PEBA0012015
	<b>Request for Proposal</b>	Date Issued: 01/07/2015	01/07/2015
		Procurement Officer: Georgia Gillens, CPPO, CPPB	Georgia Gillens, CPPO, CPPB
		Phone: (803) 734-0010	(803) 734-0010
		E-Mail Address: GGillens@peba.sc.gov	GGillens@peba.sc.gov

DESCRIPTION: **Pharmacy Benefits Management Services**

USING GOVERNMENTAL UNIT: **S.C. Public Employee Benefit Authority (PEBA)**

*The Term "Offer" Means Your "Bid" or "Proposal". Unless submitted on-line, your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Offer" provision.*

SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL: <http://www.procurement.sc.gov>

SUBMIT OFFER BY (Opening Date/Time): **02/12/2014 2:30 PM E.S.T.** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **See Page 3. If no redacted copy is being provided, initial here**

CONFERENCE TYPE: <b>Mandatory Pre-Proposal Meeting</b>	LOCATION: <b>S.C. Public Employee Benefit Authority, 202 Arbor Lake Drive, Columbia SC 29203</b>
DATE & TIME: <b>01/29/2015 10:00 AM</b>	
<small>(As appropriate, see "Conferences - Pre-Bid/Proposal" &amp; "Site Visit" provisions)</small>	

<b>AWARD &amp; AMENDMENTS</b>	Award will be posted on <b>03/12/2015</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="http://www.procurement.sc.gov">http://www.procurement.sc.gov</a>
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Unless submitted on-line, you must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" and "Electronic Signature" provisions.)

NAME OF OFFEROR <small>(full legal name of business submitting the offer)</small>		Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the Offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
AUTHORIZED SIGNATURE <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>		
TITLE <small>(business title of person signing above)</small>		TAXPAYER IDENTIFICATION NO. <small>(See "Taxpayer Identification Number" provision)</small>
DATE SIGNED		STATE VENDOR NO. <small>(Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>
PRINTED NAME <small>(printed name of person signing above)</small>	DATE SIGNED	STATE OF INCORPORATION <small>(If you are a corporation, identify the state of incorporation.)</small>

OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.)		
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	<input type="checkbox"/> Other _____
<input type="checkbox"/> Corporate entity (not tax-exempt)	<input type="checkbox"/> Corporation (tax-exempt)	<input type="checkbox"/> Government entity (federal, state, or local)

**EXHIBIT 2**

	<p align="center"><b>State of South Carolina</b></p> <p align="center"><b>Request for Proposal Amendment 1</b></p>	Solicitation Number:	PEBA0012015
		Date Issued:	01/20/2015
		Procurement Officer:	Georgia Gillens, CPPO, CPPB
		Phone:	(803) 734-0010
		E-Mail Address:	GGillens@peba.sc.gov

DESCRIPTION: **Pharmacy Benefits Management Services**  
 USING GOVERNMENTAL UNIT: **S.C. Public Employee Benefit Authority (PEBA)**

*The Term "Offer" Means Your "Bid" or "Proposal". Unless submitted on-line, your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Offer" provision.*

SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL: <http://www.procurement.sc.gov>

SUBMIT OFFER BY (Opening Date/Time): **02/19/2015 3:00 PM E.S.T.** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **See Page 3. If no redacted copy is being provided, initial here** \_\_\_\_\_

CONFERENCE TYPE: <b>Mandatory Pre-Proposal Meeting</b> DATE & TIME: <b>01/29/2015 10:00 AM</b> <small>(As appropriate, see "Conferences - Pre-Bid/Proposal" &amp; "Site Visit" provisions)</small>	LOCATION: <b>S.C. Public Employee Benefit Authority, 202 Arbor Lake Drive, Columbia SC 29203</b>
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<b>AWARD &amp; AMENDMENTS</b>	Award will be posted on <b>03/12/2015</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="http://www.procurement.sc.gov">http://www.procurement.sc.gov</a>
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Unless submitted on-line, you must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" and "Electronic Signature" provisions.)

<b>NAME OF OFFEROR</b>  <small>(full legal name of business submitting the offer)</small>		Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the Offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
<b>AUTHORIZED SIGNATURE</b>  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>		<b>TAXPAYER IDENTIFICATION NO.</b>  <small>(See "Taxpayer Identification Number" provision)</small>
<b>TITLE</b>  <small>(business title of person signing above)</small>		<b>STATE VENDOR NO.</b>  <small>(Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>
<b>PRINTED NAME</b>  <small>(printed name of person signing above)</small>	<b>DATE SIGNED</b>	<b>STATE OF INCORPORATION</b>  <small>(If you are a corporation, identify the state of incorporation.)</small>

<b>OFFEROR'S TYPE OF ENTITY: (Check one)</b> <span style="float: right;"><small>(See "Signing Your Offer" provision.)</small></span>		
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	<input type="checkbox"/> Other _____
<input type="checkbox"/> Corporate entity (not tax-exempt)	<input type="checkbox"/> Corporation (tax-exempt)	<input type="checkbox"/> Government entity (federal, state, or local)

## EXHIBIT 2

	<b>State of South Carolina</b>  Request for Proposal Amendment #2	Solicitation Number: PEBA0012015 Date Issued: 02/11/2015 Procurement Officer: Georgia Gillens, CPPO, CPPB Phone: (803) 734-0010 E-Mail Address: GGillens@peba.sc.gov
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DESCRIPTION: **Pharmacy Benefits Management Services**

USING GOVERNMENTAL UNIT: **S.C. Public Employee Benefit Authority (PEBA)**

*The Term "Offer" Means Your "Bid" or "Proposal". Unless submitted on-line, your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Offer" provision.*

**SUBMIT YOUR OFFER by the appropriate date and time below and following the instructions on Page 3.**

SUBMIT OFFER BY (Opening Date/Time): **03/02/2014 2:30 PM E.S.T.** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **02/12/2015 4:00 PM** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **See Page 3. If no redacted copy is being provided, initial here \_\_\_\_\_**

CONFERENCE TYPE: <b>Mandatory meeting held previously.</b> DATE & TIME: <b>01/29/2015 10:00 AM</b>  (As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)	LOCATION: _____
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AWARD & AMENDMENTS	Award will be posted on <b>03/17/2015</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="http://www.procurement.sc.gov">http://www.procurement.sc.gov</a>
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Unless submitted on-line, you must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" and "Electronic Signature" provisions.)

NAME OF OFFEROR  (full legal name of business submitting the offer)	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the Offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.	
AUTHORIZED SIGNATURE  (Person must be authorized to submit binding offer to contract on behalf of Offeror.)	TAXPAYER IDENTIFICATION NO.  (See "Taxpayer Identification Number" provision)	
TITLE  (business title of person signing above)	STATE VENDOR NO.  (Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a> )	
PRINTED NAME  (printed name of person signing above)	DATE SIGNED	STATE OF INCORPORATION  (If you are a corporation, identify the state of incorporation.)
OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.)  <input checked="" type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other		

Corporate entity (not tax-exempt)       Corporation (tax-exempt)       Government entity (federal, state, or local)

## EXHIBIT 2

	<b>State of South Carolina</b>  <b>Request for Proposal Amendment #3</b>	Solicitation Number: PEBA0012015 Date Issued: 02/13/2015 Procurement Officer: Georgia Gillens, CPPO, CPPB Phone: (803) 734-0010 E-Mail Address: GGillens@peba.sc.gov
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DESCRIPTION: **Pharmacy Benefits Management Services**

USING GOVERNMENTAL UNIT: **S.C. Public Employee Benefit Authority (PEBA)**

*The Term "Offer" Means Your "Bid" or "Proposal". Unless submitted on-line, your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Offer" provision.*

**SUBMIT YOUR OFFER** by the appropriate date and time below and following the instructions on Page 3.

SUBMIT OFFER BY (Opening Date/Time): **03/02/2014 2:30 PM E.S.T.** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **Deadline has passed.** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **See Page 3. If no redacted copy is being provided, initial here** \_\_\_\_\_

CONFERENCE TYPE: <b>Mandatory meeting held previously.</b> DATE & TIME: <b>01/29/2015 10:00 AM</b>  <small>(As appropriate, see "Conferences - Pre-Bid/Proposal" &amp; "Site Visit" provisions)</small>	LOCATION: _____
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<b>AWARD &amp; AMENDMENTS</b>	Award will be posted on <b>03/17/2015</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="http://www.procurement.sc.gov">http://www.procurement.sc.gov</a>
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Unless submitted on-line, you must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" and "Electronic Signature" provisions.)

NAME OF OFFEROR  <small>(full legal name of business submitting the offer)</small>	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the Offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
AUTHORIZED SIGNATURE  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>	TAXPAYER IDENTIFICATION NO.  <small>(See "Taxpayer Identification Number" provision)</small>
TITLE  <small>(business title of person signing above)</small>	STATE VENDOR NO.  <small>(Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>
PRINTED NAME  <small>(printed name of person signing above)</small>	DATE SIGNED
STATE OF INCORPORATION  <small>(If you are a corporation, identify the state of incorporation.)</small>	
OFFEROR'S TYPE OF ENTITY: (Check one) <span style="float: right;"><small>(See "Signing Your Offer" provision.)</small></span> <input checked="" type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other	

Corporate entity (not tax-exempt)    
  Corporation (tax-exempt)    
  Government entity (federal, state, or local)

## EXHIBIT 2

	<b>State of South Carolina</b>  <b>Request for Proposal Amendment #4</b>	Solicitation Number: PEBA0012015 Date Issued: 02/26/2015 Procurement Officer: Georgia Gillens, CPPO, CPPB Phone: (803) 734-0010 E-Mail Address: GGillens@peba.sc.gov	
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DESCRIPTION: **Pharmacy Benefits Management Services**

USING GOVERNMENTAL UNIT: **S.C. Public Employee Benefit Authority (PEBA)**

*The Term "Offer" Means Your "Bid" or "Proposal". Unless submitted on-line, your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Offer" provision.*

**SUBMIT YOUR OFFER by the appropriate date and time below and following the instructions on Page 3.**

SUBMIT OFFER BY (Opening Date/Time): **03/02/2014 3:00 PM E.S.T.** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **Deadline has passed.** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **See Page 3. If no redacted copy is being provided, initial here \_\_\_\_\_**

CONFERENCE TYPE: <b>Mandatory meeting held previously.</b> DATE & TIME: <b>01/29/2015 10:00 AM</b>  <small>(As appropriate, see "Conferences - Pre-Bid/Proposal" &amp; "Site Visit" provisions)</small>	LOCATION: _____
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AWARD &	Award will be posted on <b>03/17/2015</b> . The award, this solicitation, any amendments, and any related
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AMENDMENTS notices will be posted at the following web address: <http://www.procurement.sc.gov>

Unless submitted on-line, you must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" and "Electronic Signature" provisions.)

NAME OF OFFEROR  <small>(full legal name of business submitting the offer)</small>	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the Offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
AUTHORIZED SIGNATURE  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>	TAXPAYER IDENTIFICATION NO.  <small>(See "Taxpayer Identification Number" provision)</small>
TITLE  <small>(business title of person signing above)</small>	STATE VENDOR NO.  <small>(Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>
PRINTED NAME  <small>(printed name of person signing above)</small>	DATE SIGNED  <small>(If you are a corporation, identify the state of incorporation.)</small>
OFFEROR'S TYPE OF ENTITY: (Check one) <span style="float: right;"><small>(See "Signing Your Offer" provision.)</small></span> <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other	

Corporate entity (not tax-exempt)       Corporation (tax-exempt)       Government entity (federal, state, or local)

**PHARMACY BENEFIT MANAGEMENT SERVICES  
PEBA0012015 COMPOSITE SCORE SHEET**

**EXHIBIT 3**

EVALUATOR #1		CATAMARAN	ESI	MEDIMPACT
AWARD	POINT	POINTS	POINTS	POINTS
CRITERIA	RANGE	AWARDED	AWARDED	AWARDED
(Cost)	0-35	26.600	35.000	26.280
Qualifications, Background	0-20	16.000	18.000	12.000
Pharmacy Network Mgmt	0-14	12.000	12.000	10.000
Formulary Analysis	0-13	11.000	11.000	8.000
Service Description	0-12	9.000	10.000	8.000
Performance Guarantees	0-6	5.000	4.000	2.000
<b>Total Points:</b>		<b>79.600</b>	<b>90.000</b>	<b>66.280</b>

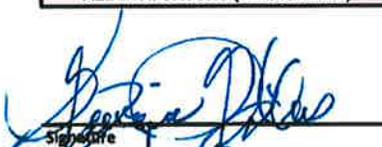
EVALUATOR #2		CATAMARAN	ESI	MEDIMPACT
AWARD	POINT	POINTS	POINTS	POINTS
CRITERIA	RANGE	AWARDED	AWARDED	AWARDED
(Cost)	0-35	26.600	35.000	26.280
Qualifications, Background	0-20	15.000	20.000	10.000
Pharmacy Network Mgmt	0-14	10.000	14.000	7.000
Formulary Analysis	0-13	12.000	12.000	12.000
Service Description	0-12	10.000	12.000	6.000
Performance Guarantees	0-6	4.000	6.000	2.000
<b>Total Points:</b>		<b>77.600</b>	<b>99.000</b>	<b>63.280</b>

EVALUATOR #3		CATAMARAN	ESI	MEDIMPACT
AWARD	POINT	POINTS	POINTS	POINTS
CRITERIA	RANGE	AWARDED	AWARDED	AWARDED
(Cost)	0-35	26.600	35.000	26.280
Qualifications, Background	0-20	18.000	18.000	17.000
Pharmacy Network Mgmt	0-14	13.000	13.000	11.000
Formulary Analysis	0-13	11.000	13.000	11.000
Service Description	0-12	11.000	11.000	8.000
Performance Guarantees	0-6	5.000	5.000	4.000
<b>Total Points:</b>		<b>84.600</b>	<b>95.000</b>	<b>78.280</b>

EVALUATOR #4		CATAMARAN	ESI	MEDIMPACT
AWARD	POINT	POINTS	POINTS	POINTS
CRITERIA	RANGE	AWARDED	AWARDED	AWARDED
(Cost)	0-35	26.600	35.000	26.280
Qualifications, Background	0-20	14.000	16.000	10.000
Pharmacy Network Mgmt	0-14	11.000	11.000	11.000
Formulary Analysis	0-13	12.000	12.000	10.000
Service Description	0-12	11.000	10.000	9.000
Performance Guarantees	0-6	4.000	4.000	3.000
<b>Total Points:</b>		<b>78.600</b>	<b>88.000</b>	<b>69.280</b>

EVALUATOR #5		CATAMARAN	ESI	MEDIMPACT
AWARD	POINT	POINTS	POINTS	POINTS
CRITERIA	RANGE	AWARDED	AWARDED	AWARDED
(Cost)	0-35	26.600	35.000	26.280
Qualifications, Background	0-20	15.000	20.000	12.000
Pharmacy Network Mgmt	0-14	14.000	14.000	10.000
Formulary Analysis	0-13	13.000	13.000	11.000
Service Description	0-12	12.000	12.000	9.000
Performance Guarantees	0-6	6.000	6.000	4.000
<b>Total Points:</b>		<b>86.600</b>	<b>100.000</b>	<b>72.280</b>

<b>ALL EVALUATORS (Sum of Points)</b>	<b>407.000</b>	<b>472.000</b>	<b>349.400</b>
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Signature

07/14/15  
Date

**EXHIBIT 4**



**State of South Carolina**

**RECORD OF NEGOTIATIONS**

Solicitation Number : PEBA0012015  
Procurement Officer : Georgia Gillens  
Phone : (803) 734-0010  
E-Mail Address : ggillens@peba.sc.gov  
Address : 202 Arbor Lake Drive  
Columbia SC 29223

**CONTRACT DESCRIPTION: PROVIDE PJHARMACY BENEFITS MANAGEMENT SERVICES**

**USING GOVERNMENTAL UNIT: SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY**

**OFFEROR'S NAME AND ADDRESS: EXPRESS SCRIPTS  
ONE EXPRESS WAY  
ST. LOUIS MO 63121**

**IMPORTANT NOTICE:**

Offeror is required to sign this document and return 1 copies to the procurement officer named above by the following date: April 21, 2015.

DESCRIPTION OF NEGOTIATED CHANGES: (attach additional pages if necessary)	
As a result of negotiations, PEBA was able to save the State an additional \$36,311,717.26 over the initial term of the contract per negotiated financial proposal.	
Except as provided herein, all terms and conditions of the Offer and the Solicitation remain unchanged and remain in full force and effect.	
OFFEROR'S CERTIFICATE OF CURRENT COST OR PRICING DATA: The Offeror certifies that, to the best of its knowledge and belief, the cost or pricing data (as defined by 48 C.F.R. 2.101) submitted, either actually or by specific identification in writing, by the Offeror to the Procurement Officer in support of the proposed contract are accurate, complete, and current as of the date this record of negotiations is signed. [Procurement Officer must initial here _____ if Certificate inapplicable to this Record of Negotiations] <small>(See "Pricing Data - Audit - Inspection" provision.) (Reference § 11-35 1830 &amp; R. 19-445.2120)</small>	
SIGNATURE OF PERSON AUTHORIZED TO SUBMIT BINDING OFFER TO ENTER A CONTRACT ON BEHALF OF OFFEROR:	SIGNATURE OF PERSON AUTHORIZED TO APPROVE NEGOTIATED MODIFICATIONS ON BEHALF OF USING GOVERNMENTAL ENTITY:
By: <u>[Signature]</u> (authorized signature)	By: <u>[Signature]</u> (authorized signature)
<u>DAVID A. QUELLER</u> (printed name of person signing above)	<u>Georgia Gillens</u> (printed name of person signing above)
Its: <u>Sr. Vice President</u> (title of person signing above)	Its: <u>Procurement Director</u> (title of person signing above)
Date: <u>April 21, 2015</u>	Date: <u>April 21, 2015</u>

STATE OF SOUTH CAROLINA  
SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY  
202 ARBOR LAKE DRIVE  
COLUMBIA, SOUTH CAROLINA 29223

**EXHIBIT 5**

**Intent to Award**  
**Posting Date: April 21, 2015**

This is a statement of intent to award a contract and becomes final effective 5:00:00 PM local time, Friday, May 1, 2015, with performance to commence at 8:00:00 AM local time Monday, May 4, 2015, unless otherwise suspended or canceled. Vendors are cautioned not to begin work on the contract or incur any costs associated with the contract prior to the date for commencement of performance of the contract. The State assumes no liability for the expenses incurred by vendors prior to that date.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten (10) days of the date notification of award is posted in accordance with this Code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]

PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing (a) by email to protest-mmo@mmo.sc.gov, (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

**Solicitation: Provide Pharmacy Benefit Management Services**

**Issue Date:** 01/07/2015

**Opening Date:** 03/02/2015

**Awarded To:** Express Scripts  
One Express Way  
St. Louis MO 63121

**Initial Contract Period:** January 1, 2016 through December 31, 2018

**Maximum Contract Period:** January 1, 2016 through December 31, 2020

**Total Net Cost:** \$3,529,617,209.60



**Georgia Gillens, CPPO, CPPB**  
**Procurement Officer**





**MedImpact Administrative Fees**

**EXHIBIT 6**

	1/1/16 - 12/31/16	#of lives	1/1/17 - 12/31/17	#of lives	1/1/18 - 12/31/18	#of lives
Non-Medicare	\$1.65	371,087	\$1.65	371,087	\$1.65	371,087
Medicare (EGWP)	\$8.00	76,153	\$8.00	76,153	\$8.00	76,153
		447,240		447,240		447,240
		<b>1,221,517.55</b>		<b>1,221,517.55</b>		<b>1,221,517.55</b>

Total Admin Fee \$3,664,552.65

Total Claims Cost 2,864,868,668.95

Total Cost \$2,868,533,221.60