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November 23, 2022

VIA EMAIL AND HAND-DELIVERY

Mr. Robert Gleason
Director Broward County Purchasing Division
115 S. Andrews Avenue, Room 212
Fort Lauderdale, FL 33301
RGLEASON@broward.org

Re: United Healthcare Insurance Company - Protest of Final Ranking
Recommendations for RFP No. GEN2123334P1 - Group Vision Insurance

Dear Mr. Gleason:

On behalf of United Healthcare Insurance Company ("United"), pursuant to section 21.65 of the Broward County Code of Ordinances, we are submitting this Protest of the Final Ranking Recommendation posted by Broward County (the "County") on November 16 through November 23, 2022. A bid protest filing fee of \$3,000 is enclosed. This Protest is timely filed within five business days of posting of the Final Ranking Recommendation and in accordance with the requirements of section 21.65 of Chapter 21, Part X of the County Procurement Code as well as the e-mail notice provided to United on November 16, 2022 by Latoya Clark- Forbes of the County Procurement Office.

United is a nationwide health insurance company which currently contracts with Broward County to provide several lines of health insurance and is the incumbent group vision service provider for the County. United timely submitted a response to the RFP and was scored by the evaluators as having the best proposal of all submitted based on the identified scoring criteria. There were several other health plans that submitted a response to the RFP including Humana Insurance Company ("Humana") and Metropolitan Life Insurance Company d/b/a MetLife, Inc., both of whom are also large insurance companies with operations in multiple states across the country. Even though United received the highest total technical and pricing score from the evaluators, the final rankings posted by the County procurement office, propose to award the contract to Humana based upon an erroneous interpretation and application of the "Local Business" tiebreaker preference. There is no basis in law or fact for Humana to be accorded a Local Business preference over United. Both United and Humana are national health plans that have multiple business operations in Broward County. In fact, United is the incumbent vendor for the vision contract that is being re-procured through this RFP and has an established presence in the County directly related to those services. The County's determination that Humana is entitled to the Local Business Preference and the County's ranking of Humana as number one is inconsistent

with the provisions of the RFP and the Broward County Procurement Code, is arbitrary and capricious, and contrary to competition.

Humana's Response to the RFP does not contain sufficient information on which the County can determine that Humana met the definition of a Local Business to be entitled to the preference. Humana does not operate and perform, on a day-to-day basis, a substantial component of the specific goods or services required by the RFP from its office located in the County as required by the RFP and section 1-74 of the Broward County Code.

On September 19th, 2022, United submitted objections to the proposed recommended ranking that indicated Humana was claiming entitlement to the local business preference. United pointed out in its comments that Humana is not conducting "day-to-day operations that are exactly the type of services being offered to Broward County in connection with this RFP." The Procurement Office subsequently exchanged multiple communications with Humana regarding the objections raised by United. During the course of those exchanges, Humana apparently submitted information that was not in its response to the RFP regarding its operations in Broward County. The Procurement Office did not inquire of United as to its business operations in Broward County. If it had done so, United would have been able to demonstrate that it has a more significant presence and operations in Broward County than Humana.

The RFP requested proposals for providing a comprehensive, fully insured, voluntary, pre-tax, 100% member-paid, group vision insurance plan ("Group Vision Plan") which includes access to a national vision provider network and in-and-out of network benefits. United is already providing those services for Broward County using multiple employees in the County. As it relates specifically to the services required for the Group Vision Plan, United has a much more significant presence in the County than Humana. In fact, considering all existing insurance lines, United's presence in Broward is larger than Humana's.

In 2020, the Board of County Commissioners amended its Code of Ordinances to strengthen the preference in competitive procurements for local businesses. At the bottom of the posting of the final rankings, the tiebreaker preference adopted by the County Commission in 2020 is summarized as follows: "if, upon the completion of final rankings, (technical and price combined) by the evaluation committee, a nonlocal vendor is the highest ranked vendor and one or more Local Businesses (as defined by section 1-74 of the Broward County Code of Ordinances) or within five percent (5%) of the total points obtained by the nonlocal vendor, the highest ranked Local Business will be deemed the highest ranked vendor overall, and the County shall proceed to negotiations with that vendor."

The statement at the bottom of the Final Ranking Posting mirrors Section Q of the RFP which provides:

Q. Local Preference

The following local preference provisions shall apply except where otherwise prohibited by federal or state law or other funding source restrictions.

If, upon the completion of final rankings (technical and price combined, if applicable) by the Evaluation Committee, a nonlocal vendor is the highest ranked vendor and one or more Local Businesses (as defined by Section 1-74 of the Broward County Code of Ordinances) are within five percent (5%) of the total points obtained by the nonlocal vendor, the highest ranked Local Business shall be deemed to be the highest ranked vendor overall, and the County shall proceed to negotiations with that vendor. If impasse is reached, the County shall next proceed to negotiations with the next highest ranked Local Business that was within five percent (5%) of the total points obtained by the nonlocal vendor, if any. [Emphasis added.]

Section 1-74 of the Broward County Code defines a "Local Business" as follows:

Local business means the vendor has continuously maintained, for at least the one (1) year period immediately preceding the bid posting date, a physical business address located within the limits of Broward County, listed on the vendor's valid business tax receipt issued by Broward County (unless exempt from business tax receipt requirements), in an area zoned for the conduct of such business, that the vendor owns or has the legal right to use **and from which the vendor operates and performs on a day-to-day basis business that is a substantial component of the goods or services being offered to Broward County in connection with the applicable competitive solicitation ("Local Business Location")**. Vendors shall be required to submit documentation, including the Broward County business tax receipt (unless exempt), to the satisfaction of the Director of Purchasing, demonstrating the Local Business Location for the required duration. A post office box does not qualify as a Local Business Location. [Emphasis added.]

United did not claim the Local Business Preference in its Response. Even though it has a strong presence in the County, including at least 4 local employees dedicated exclusively to providing services to the County (two of which are located in the downtown County office), United, like Humana, has its call center and several other operations that are involved in performing the specific vision care services under the contract located outside the County. While Humana claimed the Local Business Preference in its Response to the RFP, there is no substantive difference between United and Humana's local presence in the County. In fact, United asserts that it has more of a presence in Broward County than Humana as it relates to the Group Vision Plan and health insurance products, generally.

United was the highest ranked bidder with an overall technical and pricing score of 270.99. Humana received a score of 268.45. It is only because the Procurement Office allowed Humana to claim the Local Preference that Humana was moved in the rankings ahead of United. Other than Humana checking the box for the local preference and providing documentation that it has an office in the County, there is nothing in its Response to the RFP that would support its entitlement to the preference. Humana's answers in the RFP are vague, the personnel that would be located and work in the local business pursuant to the Contract to be awarded under the RFP are not

delineated in the Response. For example, in describing its alleged strong local presence in its Response, Humana states:

Strong Local Presence - We have a strong local presence in Palm Beach, Broward, and Miami-Dade Counties as well as surrounding counties to support the County. We have a dedicated local Account Management team with extensive experience in servicing the unique needs of the County. With over 1,700 employees in Broward and Miami- Dade Counties, Humana is dedicated to the South Florida community. Through our Bold Goal health initiative, we are a proud supporter of local charitable organizations and have been dedicated to helping make our Broward community healthier. [Humana Response, p. 42] [Emphasis added]

This description, however, does not provide a basis to determine that, on a day-to-day basis, Humana operates and performs a substantial component of the goods or services being offered to Broward County in connection with this RFP from its Miramar office.

Based on available information, the majority of the services that would be provided by Humana if awarded the contract would take place outside of the state of Florida. For example, its customer service center is located in Mason, Ohio. See Humana Response p. 53. Only two employees are identified as being located in the Miramar office and one of those is noted as working remotely. There is no specification as to the amount of time that these employees would spend toward this specific Contract. See Humana, Response, pp. 51, 58, 60. Humana's Response fails to demonstrate that Humana operates and performs business on a day-to-day basis at its office in the County that is a substantial component of the goods or services required by the RFP. If Humana meets the definition of a Local Business, then so does United. Determination that only Humana is entitled to the preference in this instance is contrary to the provisions of the RFP and the Broward County Code, is arbitrary and capricious and is contrary to competition.

The County is required to uniformly interpret and apply the provisions of the RFP and the Broward County Code when evaluating the RFP responses and making the contract award. It is evident from United and Humana's Responses that there is no meaningful difference in United and Humana's local presence. In fact, as the incumbent, United has more staff dedicated to providing Group Vision Services to the County than Humana. There is no legally defensible basis for the County to afford the Local Preference only to Humana when Humana has less of a presence in Broward County than United.

The Final Rankings that have Humana ranked number one based the Local Business Preference is erroneous. Humana's Response to the RFP does not demonstrate that it qualifies for the Local Business preference. United requests that the Local Business Preference not be applied to any entity that is not currently providing in Broward County substantial components of the Group Vision Care Services required by the RFP on a day-to-day basis. Alternatively, United requests that the Local Business Preference be applied uniformly and consistently to all

venders based on objective factors. In either case, United should be ranked number one and awarded the contract. If not, this matter should be forwarded to the Division of Administrative Hearings for a hearing.

Sincerely,



J. Stephen Menton

SM/sc
cc: Brian Garrison
James Moore