ONE CITY. ONE JACKSONVILLE.

City of Jacksonville, Florida

Lenny Curry, Mayor

Procurement Division
Ed Ball Building
214 N. Hogan Street, Suite 800
Jacksonville, Florida 32202

MEMORANDUM

TO: Professional Services Evaluation Committee

FROM: Gregory Pease, Chief Procurement

DATE: August 13, 2020

SUBJECT: **PROTEST – RFP No: P-23-20**
Title: Group Vision Insurance Plan

The attached bid protest filed by **EyeMed Vision Care, LLC.,** is presented for action by the Professional Services Evaluation Committee, on Thursday, August 13, 2020 at 10:00 AM.

The Professional Services Evaluation Committee action is as follows:

UPHELD:	**DENIED:**
Chief of Procurement or Designee	Chief of Procurement or Designee
General Counsel or Designee	General Counsel or Designee
Finance Department or Designee	Finance Department or Designee

ACTION OF COMMITTEE
Date _____

_____ **Approved**

_____ **Disapproved**

Signature of Authentication _____

City of Jacksonville, Florida

Lenny Curry, Mayor

Procurement Division
Ed Ball Building
214 N. Hogan Street, Suite 800
Jacksonville, Florida 32202

ONE CITY. ONE JACKSONVILLE.

July 29, 2020

Via Email

Melissa J. Copeland
Schmidt & Copeland
Capital Center, 1201 Main Street, Suite 1100
Columbia, South Carolina 29201

RE: Notice to Appear – P-23-20 Group Vision Insurance Plan

Dear Ms. Copeland,

I am in receipt of your protest letter filed on behalf of EyeMed Vision Care, LLC dated July 21, 2020 for the above referenced solicitation.

We request that you and/or a representative of your firm appear before the Professional Services Evaluation Committee on Thursday, August 13, 2020 at 10:00a.m. being by virtual meeting via Zoom platform to present arguments limited to and in support of the issues in your letter. Links to the Zoom meeting will be forwarded to you under separate notice.

Furthermore, by copy of this letter, I will formally request that all other firms having standing in this matter have a representative appear before the PSEC on the above-mentioned date and time, if they desire to be heard in this matter.

If you have any questions, comments, or concerns, please do not hesitate to call.

Sincerely,

Gregory Pease, Chief
Procurement Division

cc: Alex Baker, Professional Services Specialist
Tiffiny Pinkstaff, Office of General Counsel
Mark Tafuri, VSP
Nihal Kekec, Procurement Division
Bid File

John E. Schmidt, III
803.348.2984
John@SchmidtCopeland.com

SCHMIDT & COPELAND

ATTORNEYS AND COUNSELORS AT LAW

Melissa J. Copeland
803.309.4686
Missy@SchmidtCopeland.com

July 21, 2020

Via Fax to (904) 255-8837 and email to gpease@coj.net

Gregory Pease, Chief
City of Jacksonville Procurement Division
214 N. Hogan St., 8th floor
Jacksonville, FL 32202

Re: P-23-20 Group Vision Insurance Plan

Dear Mr. Pease:

On behalf of EyeMed Vision Care, LLC ("EyeMed"), we submit the following protest regarding the above-referenced RFP and the City's intent to award a contract to Vision Service Plan ("VSP").

In accordance with RFP Section 2.18 and the referenced ordinances, EyeMed submits as follows:

This written Notice of Protest:

(i) Is addressed to the Chief [of Jacksonville's Procurement Division];

(ii) Identifies the solicitation, decision, or recommended award in question by number and title or any other language sufficient to enable the Chief to identify the same;

This protest relates to P-23-20 Group Vision Insurance Plan and the intended award to VSP as indicated in the Professional Services Evaluation Committee ("PSEC") Meeting Agenda for July 23, 2020. Section 2.6 of the RFP provides that a protest of this decision is appropriate at this juncture: "***Based on the evaluation and negotiation results, Buyer shall electronically post a notice of intended award at Buyer's website.*** Please contact the Contact Person if you are uncertain of Buyer's website address or if you experience problems accessing it. ***Any person who is adversely affected by the decision shall file with Buyer a notice of protest in accordance with the Protest provisions of the RFP***. Buyer does not intend to provide tabulations or notices of award by telephone."

(iii) States the timeliness of the protest;

This protest is timely because it is being submitted within 48 hours of the posting of the PESC Agenda for the July 23, 2020 meeting. This is the proper point of entry for EyeMed to protest the initial evaluation of VSP's offer with respect to responsiveness, scoring, etc. because it is the first

point in the procurement in which the City has posted any intended decision harmful to EyeMed's interests. *E.g.*, *AT&T Corp. v. Dep't of Mgmt. Servs.*, 201 So. 3d 852, 858-59 (Fla. 1st DCA 2016) (rejecting argument that disappointed offeror included in shortlist waived its challenge to awardee's responsiveness by failing to protest within 48 hours of shortlisting announcement).

To the extent the City has indicated to EyeMed that offerors like itself – who were included in the "short list,"[1] were required to file "anticipatory" or "defensive" protests challenging the co-inclusion of their competitors, the City's reading of the Protest Procedure is unreasonable. When the Protest Procedures are read reasonably it only requires offerors to protest a recommended exclusion from the "shortlist," and not the co-inclusion of a competitor.

Because EyeMed was included in the "shortlist," it could still win the award and was therefore not harmed by VSP's preliminary co-inclusion. Nonetheless, the City has advised EyeMed its position is that EyeMed was that time of "shortlisting" required to speculate that, instead of recognizing and correcting the preliminary errors it committed when evaluating VSP's offer, the City would harm EyeMed's interests by making an arbitrary and unlawful award to VSP and to protest at that time. Not only would such an "anticipatory" or "defensive" protest run counter to the presumption government personnel act lawfully and in good faith, *Hillsborough Cnty. Aviation Auth. v. Taller*, 245 So. 2d 100, 102-03 (Fla. 2d DCA 1971), under Florida law a protest may not be pursued based on such speculative harm. *Compare* Protest Procedure § 126.106(e)(1)(b) (authorizing protests by "any person or entity that is adversely affected by a decision or an intended decision" "and who has standing to protest said decision or intended decision under Florida law") to *Advocacy Ctr. for Persons with Disabilities, Inc. v. State, Fla. Dep't of Child. with Disabilities*, 721 So. 2d 753, 754-55 (Fla. 1st DCA 1998) ("Section 120.57(3)(b)" "permits [protests by] 'any person who is adversely affected by the agency decision or intended decision'" "**To establish that one is adversely affected**, it must be shown that the proposed action will cause **immediate injury in fact**") (emphases added).

Thus, the City is unreasonably reading its Protest Procedures in a manner that nullifies "shortlisted" bidders' right to challenge the evaluation of their competitors' offers by requiring them to raise such protests at a time when they lack standing to pursue them.[2] *E.g.*, *Fla. Indus. Power Users Grp. v. Graham*, 126 So. 3d 1056 (Fla. 2013) (table opinion) ("We hereby dismiss the case for lack of standing because the Appellant did not demonstrate that it is adversely affected by the Appellee's decision" To "have standing" a party "must demonstrate that it is adversely

[1] EyeMed does not concede that the City actually used a "short list" in this competition as that term of art is used in the City's Procurement Ordinance or Protest Procedure. However, this argument is being made to explain why the City's reading of its Protest Procedure is wrong assuming arguendo that a "short list" was actually used.

[2] Similarly, under the City's interpretation, in order to preserve its right to protest a first-ranked bidder would have to speculate that its negotiations with the City will be unsuccessful and challenge its competitors at the time of "short-listing." But, a first ranked bidder would never have standing to pursue such a protest because it has not sustained any injury.

affected" and "mere speculation regarding" "adverse impacts is insufficient") (citations omitted); *Punsky v. Clay Cnty. Bd. of Cnty. Comm'rs*, 60 So. 3d 1088, 1092 (Fla. 1st DCA 2011) ("To establish standing, a party must demonstrate "an injury which is both real and immediate, not conjectural or hypothetical.") (citations omitted).

(iv) states Protestant's legal standing to protest;

EyeMed is an actual offeror in this procurement. Moreover, as explained herein, EyeMed would have won the contract "but for" the City's arbitrary and unlawful decision to award to VSP. Therefore, EyeMed is an interested party with standing to protest. *Madison Highlands, LLC v. Fla. Housing Fin. Corp.*, 220 So. 3d 467, 473–74 (Fla. 5th DCA 2017) (a disappointed offeror has standing under the "adversely affected" standard when it alleges it would have won "but for" the agency's improper handling of the procurement).

(v) clearly states with particularity the issue(s), material fact(s) and legal authority upon which the protest is based.

According to the scoring matrix only one point separated EyeMed and VSP – VSP scored an 88.50 and EyeMed scored an 87.50. EyeMed scored higher than VSP in every category except for "Proximity to Project," "Time and Budget," and "Volume of Current and Prior Work for Using Agencies." As shown below, VSP's proposal was non-responsive to the material requirements of the RFP and should have been rejected from consideration. Furthermore, a review of VSP's proposal shows that the scoring was arbitrary and capricious because the information contained in VSP's proposal failed to contain the required information set forth in the evaluation criteria and therefore should not have resulted in the assigned scoring.

1. **VSP[3] is not responsible and its Proposal was non-responsive in that it failed to offer benefits that matched the current benefits as required by the RFP and failed to identify the deviations as required.**

The RFP provided as follows:

> Please find in this section the RFP requested benefits for the City of Jacksonville's Voluntary Vision Plans. The following pages will provide you with a detailed description of the RFP requested vision benefit plans. ***Please quote the vision plans as closely as possible***. The vision copays will remain the same as current. ***If your company cannot provide a specific benefit, co- payment, and particular***

[3] EyeMed also protests that an award to VSP is not proper as the award notice is in the name of "VSP," but the proposal was submitted by "Vision Services Plan (VSP) (see VSP Proposal, p. 1) and the entity identified as registered to do business in Florida is "Vision Service Plan Insurance Company" (see VSP Proposal, p. 32).

> ***service or have contract differences, please provide a listing of the deviations.***

RFP, Section 5, p. 28 (emphases added).

> Please provide a quote that includes all of the benefits and services currently being offered by EyeMed/Combined Insurance Company of America.

RFP, Section 5, p. 28.

> 16. Confirm Proposer can administer benefit options as outlined in Section 5. ***Provide any deviations to the benefit options covered services and limitations/exclusions.*** Failure to disclose deviations that contribute to additional claims cost may result in the selected Proposer being financially liable for the additional claims cost.

RFP, Section 6, Number 16, p. 32 (emphasis added).

RFP, Attachment A, Response Format provided for Section 5 - Listing of All Plan/Contract Deviations. The RFP Evaluation Matrix provided as follows:

> **ABILITY TO DESIGN AN APPROACH AND WORK PLAN TO MEET THE PROJECT REQUIREMENTS.** Describe the Contractor's understanding of the requirements of this solicitation, and its ability, approach and/or plan to satisfy the same in complete compliance with all applicable federal, state and local laws, statutes, ordinances, rules and regulations. Requested Vison Plan of Benefits including any deviations or restrictions as referenced in Section 5, Vision Provider Network (Section 7), and the RFP Questionnaire (Section 6) will be used to score this section. **(15 points maximum score)**

RFP, p. 40.

VSP failed to list any plan deviations in its Proposal and confirmed that its offering met the required plan design. *See* VSP Proposal, pp. 30-31; see also p. 35 ("16. Confirm Proposer can administer benefit options as outlined in Section 5. Provide any deviations to the benefit options covered services and limitations/exclusions. Failure to disclose deviations that contribute to additional claims cost may result in the selected Proposer being financially liable for the additional claims cost. Confirmed.")

In spite of its assurance that it had made no plan deviations, VSP failed to provide a quote on the same benefits and services currently being offered. In fact, VSP failed to offer the same out of network benefits that are currently offered, thus precluding an apples to apples comparison between proposals. VSP's Proposal offered inferior out of network benefits on exams and lenses:

- VSP was required to offer a $50 out of network benefit for exams, but only offered $41;
- VSP was required to offer a $50 out of network benefit for single vision lenses but only offered $45;
- VSP was required to offer a $75 out of network benefit for lined bifocal lenses but only offered $65; and
- VSP was required to offer a $125 out of network benefit for lenticular lenses but offered no such benefit.

VSP's Proposal, pp. 27 and 29. VSP's Proposal did not identify any of these deviations as required by the RFP, and therefore should have been rejected as non-responsive, as it failed to quote the same benefits *and* failed to identify the deviations in its offer as required. Instead, VSP falsely[4] confirmed that it was offering the current benefits. Accordingly, VSP's Proposal should have never been scored, but at the least it should never have scored the maximum points for "Time and Budget" since its proposal was far inferior to the current benefit offering that it was required to quote.

VSP materially misrepresented the benefit it provided and misled evaluators by so doing when it represented that its benefits were the same as EyeMed was providing, and by not listing or disclosing the differences as required. These material misrepresentations taint the process and warrant disqualification.

2. VSP's Proposal failed to offer a rate guarantee for the entire contract period.

The RFP provided for a five-year contract term. RFP, Section 1.3, p.3. In response to the RFP Questionnaire regarding the rate guarantee, VSP responded that "[o]ur rates are guaranteed for the course of the contract period, which is four years (January 1, 2021 through December 31, 2024)." VSP Proposal, p. 35. However, contrary to VSP's assertion here, the contract period is five years, not four years. Given the failure to include a rate guarantee for the full contract period, VSP's Proposal should have been found non-responsive. Furthermore, because of this failure, it was

[4] VSP's letter to Ms. DiPerna dated July 17, 2020 confirmed that VSP's Proposal should have been rejected. The letter states that the plan offering "duplicates the *fundamental* plan design of the current programs" and "[w]hile we attempted to mirror all aspects of the plans there are things that are structurally done differently between VSP and EyeMed." If VSP could not meet the RFP requirements, it was required to submit a specification protest; it is not allowed to submit a proposal and provide a false confirmation and fail to identify the deviations as required.

arbitrary and capricious for VSP to be scored the maximum points for this section, especially in comparison to contractors that offered a rate guarantee for the full 5-year contract period.[5]

3. **VSP improperly listed Costco and Wal-Mart as in-network providers when they are actually out of network providers with substantially different benefits thereby resulting in an arbitrary and capricious score on the competence criteria.**

One issue raised during the Professional Services Evaluation Committee ("PSEC") meeting was the disparity in scoring between EyeMed and VSP on the "Competence" evaluation criteria. The reasoning provided for the lower score in that criteria was due to a smaller network. It was specifically noted during the PSEC meeting that the smaller network was not concerning ***because the VSP network included Costco and Wal-Mart***. *See* PSEC Recording 7-2-20 at around minute 15-17. VSP's Proposal makes it appear that Costco and Wal-Mart are both in-network providers. See VSP Proposal, pp. 38, 39. However, a review of the footnotes in VSP's Proposal indicates that Costco and Wal-Mart do not offer in-network benefits:

> Promotion/featured frame brands are subject to change. The additional $50 promotion doesn't apply to Walmart or Costco.

VSP's Proposal, p. 38, footnote 3.

> Based on applicable laws, benefits and savings may vary by location. Benefits may also vary at participating retail chains.
> Promotions like rebates are continually evaluated and subject to change without notice. Promotions and featured frame brands do not apply at Walmart®.
> Walmart® allowance of $60 is equivalent to the frame allowance at VSP doctor locations and participating retail chains.

VSP's Proposal, pp. 27 and 29, Disclaimers and Exclusions.

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[5] RFP, p. 40 ("**QUOTATION OF RATES, FEES OR CHARGES AND OTHER DETAILED COST PROPOSAL OR COST BREAKDOWN INFORMATION.** Describe the Contractor's overall willingness to meet both time and budget requirements for the project, and subject to Chapter 126, Part 3 of Jacksonville Ordinance Code, Section 126.302(e) in particular, proposed total compensation or unit price quotations, including, without limitation, hourly rates, fees, or other charges that will ultimately be used during, contract negotiations to calculate or determine total compensation. The rates listed on the price sheet, (Form 1), Vision Provider Network (Section 7) and the RFP Questionnaire (Section 6) will be used to evaluate this section. **(20 points maximum score).")**

Publicly available information from the VSP website shows that Wal-Mart is an out of network provider. *See* Print-Out from VSP website available on-line at https://www.vspdirect.com/vision-hub/vsp-vision-insurance-faq-part-2 and attached as Exhibit 1.

There is an important distinction between the doctor side and materials side of these locations. The independent doctors practicing at these locations are contracted individually with VSP and can choose to participate or not to participate in their network. Therefore, not all doctors at these locations are necessarily in-network.

VSP's Proposal only shows two Costco locations within the covered area. VSP's Proposal, p. 39. It lists 22 Wal-Mart locations, but those locations are all out of network and therefore provide significantly lower benefits for City of Jacksonville employees than in-network providers. VSP failed to adequately note this distinction and the City improperly scored and considered that the Costco and Wal-Mart locations were in-network providers as evidenced by the discussion in the PSEC meeting noted above. ***To be clear***, VSP was scored as if City of Jacksonville employees would have full in-network access to Costco and Wal-Mart locations when that is not true. The City of Jacksonville employees will not only have a much reduced network of providers than what they currently have available (as noted in the PSEC discussion referenced above), but even the limited providers that are available will not all offer in-network benefits, but instead the inferior out of network benefits which are not as robust as the out of network benefits currently being offered on which VSP was required to but did not quote as part of its proposal (as stated under Item 1 above). Accordingly, the scoring of VSP's Proposal with regard to the "Competence" criteria was arbitrary and capricious and should be vacated.

4. **EyeMed was improperly penalized in scoring for being the incumbent and the scoring of the current and prior work criteria was unfairly applied as between VSP and EyeMed.**

The RFP provided the following evaluation criteria:

> **THE VOLUME OF CURRENT AND PRIOR WORK PERFORMED FOR USING AGENCIES SHALL BE CONSIDERED A MINUS FACTOR**. Provide a list of all local government projects including the fees awarded for each on which Contractor has been awarded during the past five (5) years. Include only those projects on which Contractor was the Prime Contractor (do not delete fees paid to subcontractors or others). Such list shall include all work for the City of Jacksonville and its various "using agencies," which is defined in the Jacksonville Ordinance Code as "a department, division, office, board, agency, commission or other unit of Buyer and independent agency required by law or voluntarily requesting to utilize the services of the [Procurement] Division"; and with any of Buyer's Independent Authorities"; and on projects

> undertaken with others that are similar in nature to the size and scope of professional services and/or work required for the project solicitation herein. If the Contractor has not performed work for any of these agencies during the past five (5) years, the response should so clearly state. The minus factor methodology for these criteria will be based on the fees awarded. The higher the volume of fees the lower the score, less volume of fees the higher the score. **(5 points maximum score)**

RFP, pp. 40-41. It seems appropriate for the City to consider other work that the Contractor will be performing ***during the term of the contract being bid*** in determining whether the Contractor has sufficient resources to manage the City's business should it be awarded.

Here, in response to this evaluation criteria, VSP's Proposal provided that "VSP has not proposed nor undertaken local government projects within the City or any of its "using agencies" that are similar in nature, size and scope of professional services and/or work required for the project solicitation herein.[6]" VSP's Proposal, p. 25. EyeMed's Proposal provided that it had no work other than as the incumbent on this very contract being re-bid which would go away if not awarded this contract or be replaced by the work under this contract – in any event that volume would not separately continue in addition to the work under the contract being procured by the RFP.

Therefore, VSP and EyeMed had the exact same answer about other work that would be performed during this contract – no other City of Jacksonville work volume – yet they were scored very differently. VSP was given a 3.5 for this section while EyeMed was only given a 1.5. The work on which EyeMed is an incumbent for the City should not be considered as a minus factor because that prior, incumbent work will not continue, but will be replaced upon the award of this contract. Accordingly, EyeMed was improperly penalized for being the incumbent and arbitrarily scored in relation to VSP since their answers regarding other government work were equal.

5. **VSP's Proposal should be analyzed to determine if the offered implementation credit is a violation of State or City laws or ordinances governing gifts and kickbacks to public entities.**

VSP's Proposal offered as part of its "Rate Details" as follows:

> Rates are based on 4,000 eligible employees, are guaranteed for four years, and are valid until 01/01/21. Coverage offered: 100% employee paid. Net of commission. $***10K implementation credit*** and $10K implementation guarantee. Rates include any applicable

[6] Given the 623 Florida clients that VSP touts in its Proposal response, it is difficult to believe that it had none that should have been disclosed in response to this criteria. *See* VSP's Proposal, p. 10.

> taxes and health assessment fees known as of the date of the proposal.

VSP Proposal, pp. 27 and 29 (emphasis added). The implementation credit was further described in VSP's Proposal as follows:

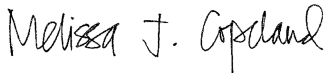
> Additionally, we understand there may be costs involved with changing vision carriers, particularly related to communicating a new plan to members and/or modifying membership reporting systems. To help defray those costs, VSP is offering a one-time transition credit of $10,000. VSP will reimburse the City for actual expenses, up to the credit amount of $10,000, incurred and submitted within 12 months of the VSP vision plan implementation effective date.
>
> As part of our agreement to offer a $10,000 transition credit to the City, VSP requests that you provide us with email addresses for your eligible employees. This will allow us to most effectively drive high enrollment by communicating the benefits and value of the VSP plan directly to your employees. The email information provided to VSP is protected under our HIPAA-compliant privacy policies, and will only be used for this purpose.

VSP Proposal, p. 51. An implementation credit was not requested as part of the RFP here. Florida State laws as well as City of Jacksonville Ordinances address requirements and prohibitions related to gifts, gratuities, and kickbacks. The City should analyze this offering to determine whether it is in compliance with such laws. VSP's failure to comply with law would be a basis for rejection of its proposal and a basis for determining that VSP is not a responsible offeror.

CONCLUSION

EyeMed requests that any award be stayed and that a hearing be held to address its protest issues. EyeMed reserves the right to amend this protest should additional protestable issues arise. If the City does not consider the issues raised herein now, EyeMed will be forced to pursue a judicial remedy.

Very truly yours,



Melissa J. Copeland
Counsel for EyeMed Vision Care, LLC

Andrew E. Schwartz
Shutts & Bowen LLP
200 East Broward Boulevard,
Suite 2100
Fort Lauderdale, FL 33301
Direct: (954) 847-3878
ASchwartz@shutts.com
Local Counsel for EyeMed Vision Care, LLC

Enclosure

vsp individual vision plans

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Richard Lee

Category: Vision Insurance

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Vision Insurance FAQ: What to know now that you have VSP vision insurance Part 2

Now that you have read part one of our VSP vision insurance frequently-asked-questions, you may have additional questions about coverage. In-network eye doctors versus out-of-network? Where can I buy eyeglasses and contacts? Here is part two of our frequently-asked-questions about VSP vision insurance.

Who is my vision insurance provider?

If you choose a plan with VSP vision insurance, then VSP is your insurance provider.

Who takes VSP vision insurance?

Eye doctors and eye care professionals within VSP's provider network. With the nation's largest network of independent doctors, there's always an optometrist nearby. Don't believe it? Take a look in your area:

Where can I find a full list of vision care providers?

Search VSP's provider network to find an eye doctor close to you: https://www.vsp.com/find-eye-doctors.html.

Exhibit 1

What is the difference between in-network providers and out-of-network providers?

An in-network provider is an eye doctor that has met VSP's requirements for quality of service and accepted specific rates negotiated by VSP to save you money on your services. An out-of-network provider does not have the same discounted rates for their services. You will typically pay much less going to a VSP network doctor.

How do I submit a claim for an out-of-network provider reimbursement?

If you choose to see an out-of-network provider, your coverage will be less than when you see a VSP network doctor. For more details, please call Member Services at 1.800.877.7195.

Can I get my eye exam at one location and the glasses at another?

Yes. You just need to make sure to have the optometrist who performs your eye exam provide you with your eye health records and a prescription for you to take to the location where you'd like to purchase your eyewear.

Can I use VSP vision insurance to buy contacts online?

Yes, but first you should have a fitting and evaluation with your eye doctor and you'll need your current prescription. Your eyes change over time, including size and shape, so do not assume your old prescription and fitting are still best for your eyes. Generally, it's a good idea to know how your eyes respond to specific brands of contact lenses beforehand. Therefore, ordering online is best suited for *reordering* contacts you already trust and feel comfortable with.

Can I use VSP to buy glasses online?

If you do prefer to shop online, you can visit Eyeconic.com, which seamlessly connects your eyewear, your VSP insurance coverage, and your eye doctor's expertise. Plus, you'll enjoy a wide selection of stylish frames and lens enhancements to choose from.

Can I use 1-800 CONTACTS to order contacts?

Yes, but the benefits will be out-of-network, requiring a separate, additional claims step. 1-800 CONTACTS provides this specific information on their website: "We are also accepted as an out-of-network provider by most major insurance companies, such as VSP.... You can simply purchase your contacts (online or by phone) and complete the out of network form (click here to download), then submit both the invoice from your order and the completed form to your insurance company for reimbursement. It's that easy." To get the most out of your vision insurance benefits, and avoid filing any claims, we recommend getting your contacts online at Eyeconic.com, where VSP members have access to additional discounts and savings.

Which vision insurance does Costco accept?

Costco accepts most vision insurance plans, including VSP. However, your allowance may differ.

Which vision insurance does Walmart accept?

Walmart is an out-of-network provider for VSP. If you have an out-of-network benefit included in your plan, then for reimbursement simply submit your itemized receipt from your order along with a VSP out-of-network reimbursement form to VSP.

Is LASIK also covered by my plan?

If you've been itching to correct one or both of your eyes with laser eye surgery, then look no further than VSP. Through your vision plan, you'll have access to Exclusive Member Extras which includes savings on LASIK. You'll receive around a 15% discount on your surgery. That could be as much as $500 in savings.

Can my vision insurance be used for sunglasses?

Yes! Every VSP plan has a set frame allowance that you may put towards new prescription eyeglasses, contact lenses, and even prescription sunglasses. Additionally, even if you've already exceeded your frame allowance for the year, when you purchase a new pair of sunglasses you'll receive a 20% discount. And this discount applies to any number of additional sun- or eyeglasses. Amazing, right?

Are prescription eyeglasses and contact lenses tax deductible?

According to form 104, Schedule A from the IRS, prescription eyeglasses and contact lenses may be claimed as itemized deductions on your taxes, because they qualify as medical expenses. Contact lens cleaners and saline solutions are also on this list, along with a large number of other medical-related items. To reach the required 10% AGI mentioned in the previous question, it's advised to count as many medical expenses as possible, just be sure to verify them against the IRS's list. To ensure that you are following your state's tax laws, it would be best to check with a CPA who can advise you on this type of deduction.

Hopefully, you feel much more equipped to get the most out of your plan's benefits and discounts to keep your vision clear and eyes healthy, but if you still have questions about your plan, then you can speak directly with our knowledgeable customer service team at **800.785.0699**. Our service center is open **Monday through Friday from 7a.m. to 7p.m.** Central Time. We're happy to do what we can to help you get even more from your VSP vision insurance!

EXPLORE PLANS

FIND A DOCTOR

TOP 5 SUMMER TRENDS FOR EYEGLASS FRAMES IN 2019

THE BEST FOODS FOR HEALTHY VISION

VISION INSURANCE FAQ: WHAT TO KNOW NOW THAT YOU HAVE VSP VISION INSURANCE PART 1

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Sec. 126.304. - Contract negotiation and award; other cases.
In all cases to which Section 126.303 does not apply, PSEC, subject to Sections 126.201(d)(2) and 126.302(f) hereof, shall forward to the Mayor the alphabetical list consisting of no fewer than three best qualified, interested and available proposers, in order of first, second and third best qualified. The Mayor shall approve or disapprove the recommendation of PSEC. Upon approval, PSEC shall negotiate with the first most qualified proposer and recommend to the Mayor, for approval, mutually satisfactory terms of employment, including the professional fee to be charged. If negotiations with the first most qualified proposer reach an impasse, PSEC shall recommend to the Mayor that said negotiations be terminated, and, upon the Mayor's approval, PSEC shall terminate said negotiations by written notice, and shall commence the negotiation process with the second most qualified proposer. Upon reaching an impasse and terminating negotiation with the second most qualified proposer, PSEC shall commence the negotiation process with the third most qualified proposer. This selection and negotiation procedure may be continued with additional selected proposers in order of best qualified until a mutual agreement is approved by the Mayor or until the list of selected best-qualified proposers is exhausted. If the negotiation process results in the Mayor's approval of a mutual agreement, the Mayor shall then order the award of a contract for the performance of the required professional services to the proposer with whom a mutual agreement is reached. If the negotiation process fails to result in a mutual agreement for the performance of the required professional services, then the selection process shall terminate and all proposals shall be deemed rejected, and the using agency in question, with the assistance of the Division, may modify the specifications or scope of services and resolicit proposals, which modifications shall be documented in writing and maintained in the resulting contract file. If delays resulting from resolicitation efforts will be substantially detrimental to the City's best interest, PSEC, upon the approval of the Mayor, may reinitiate the negotiation process described herein, beginning with the first most qualified proposer, which reinitiated negotiations may include, without limitation, modifications to the specifications or scope of services set forth in the initial solicitation, which modifications shall be documented in writing and maintained in the resulting contract file. If the reinitiated negotiation process results in the Mayor's approval of a mutual agreement, the Mayor shall then order the award of a contract for the performance of the required professional services to

ALSTON & BIRD

333 South Hope Street, 16th Floor
Los Angeles, CA 90071-1410
213-576-1000 | Fax: 213-576-1100

Jessica L. Sharron Direct Dial: **213-576-1164** Email: **jessica.sharron@alston.com**

August 11, 2020

Via email to gpease@coj.net

Gregory Pease
Chief of Procurement Division
City of Jacksonville
214 North Hogan Street, 8th floor
Jacksonville, FL 32202

Re: RFP No. P-23-20 for a Group Vision Insurance Plan, Response to July 21 Protest of EyeMed

Dear Mr. Pease:

We represent Vision Service Plan d/b/a Vision Service Plan Insurance Company ("VSP") and are in receipt of the July 21, 2020 protest (the "Protest") filed by EyeMed Vision Care, LLC ("EyeMed") regarding the City of Jacksonville's ("City") RFP No. P-23-20 for a Group Vision Insurance Plan ("RFP"). We appreciate the opportunity to be heard in advance of the City's August 13, 2020 Professional Services Evaluation Committee ("PSEC") hearing.

This Protest is actually EyeMed's third protest in as many weeks, and its first two protests were summarily dismissed as untimely. This third Protest directly copies and pastes the arguments from the second dismissed protest, without any basis to revisit the earlier dismissal decisions. As a result, VSP requests that the Protest again be dismissed and the August 13 hearing cancelled. By failing to file a timely protest, EyeMed has no "right, remedy, or relief available" under Section 126.106(e)(3)(c) of the City's Procurement Protest Procedures. EyeMed should not be permitted to prolong its incumbency by filing serial protests that burden the City with the same arguments.

Even if the City entertained EyeMed's arguments (it should not), on the merits, there are none. EyeMed has not met its burden to show that the City's recommended award to VSP was clearly erroneous, arbitrary or capricious, fraudulent, or otherwise without any basis in fact or law. The City determined VSP is both the most qualified offeror for the RFP and will provide significant cost savings to City employees—***with VSP rates over 11% lower than current EyeMed rates***. That decision is sound. As detailed below, the City should proceed with VSP's contract to start realizing its operational and financial benefits.

BACKGROUND

A. Scope and Evaluation Criteria of the Procurement

On April 7, 2020, the Employee Services Department of the City of Jacksonville, Florida issued Request for Proposal No. P-23-20 for a Voluntary Vision Insurance Plan seeking "one (1) Vision Insurance Company to offer voluntary vision coverage, network access, and services to the employees of the City of Jacksonville (COJ)." *RFP § 1.2.* Proposals would include two voluntary visions plans: one voluntary vision plan providing standard benefits and another voluntary vision plan providing benefits at higher allowances. *RFP § 5.* Proposals were due May 27, 2020. *RFP § 1.8.* The RFP would conclude by negotiating a single contract, effective January 1, 2021 with an initial term of one year and a potential term of five years. *RFP §§ 1.3, 2.6.*

In evaluating the responses, the RFP provided the "Buyer will determine the qualifications, interest and availability of Contractors by reviewing all Responses" and "Buyer reserves the right to accept or reject any and all Responses, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if Buyer determines that doing so will serve Buyer's best interests." *RFP § 2.5.* Evaluations were based upon the following criteria: competence (10 points); current workload (10 points); financial responsibility (10 points); ability to observe and advise whether plans and specifications are being complied with, where applicable (10 points); past and present record of professional accomplishments with city agencies and others (5 points); proximity to the project (5 points); past and present demonstrated commitment to small and minority businesses and contributions toward a diverse marketplace (10 points); ability to design an approach and work plan to meet the project requirements (15 points); quotation of rates, fees or charges and other detailed cost proposal or cost breakdown information (20 points); and the volume of current and prior work performed for using agencies shall be considered a minus factor (5 points). *RFP Attachment B.* Therefore, of the 100 total possible points, rates and cost represented the single largest component.

B. RFP Scoring and Notice of Intent to Award

Six bids were received for the RFP and VSP—which the City had favorable experience with "prior to EyeMed, [when it] had VSP with no issues at all"—proposed rates that were "11% lower than EyeMed." *July 2, 2020 PSEC Meeting Recording, at 15:49.* PSEC determined that VSP's "rates were just so different, so much lower with VSP, which will benefit the employees in the long run." *Id., at 17:26.* On June 26, 2020, the PSEC evaluation subcommittee submitted its completed review of the proposals and VSP came in first place with the overall highest score at 88.50 points. *Ex. 1, June 26, 2020 Selection Memorandum.* The evaluation scores for each proposal were:

FIRM	COMPETENCE	CURRENT WORKLOAD	FINANCIAL RESPONSIBILITY	ABILITY TO OBSERVE COMPLIANCE WITH PLANS	PROFESSIONAL ACCOMPLISHMENTS RECORD	PROXIMITY TO PROJECT	Past & Present Demonstrated Commitment to Small & Minority Businesses & Contributions Toward A Diverse Market Place	ABILITY TO DESIGN AN APPROACH AND WORK PLAN	TIME & BUDGET	VOLUME OF CURRENT AND PRIOR WORK FOR USING AGENCIES	OVERALL
Maximum Points	10	10	10	10	5	5	10	15	20	5	100
AVESIS	8.50	9.00	10.00	9.50	3.50	2.50	9.50	9.75	17.00	5.00	84.25
EYEMED	10.00	9.50	10.00	10.00	5.00	2.00	9.50	13.00	17.00	1.50	87.50
HUMANA	7.25	9.00	10.00	9.50	5.00	4.50	9.50	13.00	11.50	1.50	80.75
METLIFE	8.75	8.50	10.00	9.50	4.00	4.00	10.00	8.25	9.00	3.50	75.50
NVA	6.75	9.00	10.00	9.50	3.50	3.00	9.00	12.75	18.00	5.00	86.50
VSP	6.75	9.00	10.00	9.50	5.00	3.00	9.50	12.25	20.00	3.50	88.50

Evaluation Matrix Attachment to Ex. 1, June 26, 2020 Selection Memorandum.

The selection memorandum and evaluation matrix referenced above were made publicly available on June 30, 2020. On that date, the "notice of intended decision for the Professional Services Evaluation Committee to approve the scoring, ranking and recommendation to negotiate with the number one ranked respondent was posted," both under PSEC's "webpage for agendas and minutes" and "at the identified bulletin board directly outside [PSEC's] Bid Room located on the first floor of 214 N. Hogan Street." *Ex. 2, July 20, 2020 Denial of EyeMed Protests, p. 1.* Additionally, ***before*** the July 2 PSEC meeting, the posted agenda for that meeting announced the conclusion of the RFP, recommending that "**fee and contract negotiations may begin with <u>VSP</u>, the number one selection**":

Mary DiPerna Carolina Teran-Oceguera	P-23-20	**Subcommittee Report** **Group Vision Plan** Employee Services Department	It is the consensus of the committee that of the six(6) companies/firms responding to the Request for Proposal (RFP) all were found to be responsive, interested, qualified and available to provide the services required by the RFP. The ranking of first, second and third designates the order of qualification of these firms to perform the required services and alphabetically they are: 2) EYEMED 3) NVA 1) VSP We recommend that the above list is forwarded to the Mayor for final selection so that fee and contract negotiation may begin with <u>VSP,</u> the number one selection

Ex. 3, July 2, 2020 PSEC Agenda (emphasis in original). PSEC unanimously approved this recommendation on July 2, in a publicly accessible meeting, as reflected in its meeting recording and published minutes:

Mary DiPerna✓ Carolina Teran-Oceguera✓	P-23-20	**Subcommittee Report** **Group Vision Plan** Employee Services Department	It is the consensus of the committee that of the six(6) companies/firms responding to the Request for Proposal (RFP) all were found to be responsive, interested, qualified and available to provide the services required by the RFP. The ranking of first, second and third designates the order of qualification of these firms to perform the required services and alphabetically they are: 2) EYEMED 3) National Vision Administrators 1) VSP Vision Care We recommend that the above list is forwarded to the Mayor for final selection so that fee and contract negotiation may begin with <u>VSP,</u> the number one selection		Approved 5-0 Greg Pease Mary DiPerna Carolina Oceguera James McCain Paul Barrett

Ex. 4, July 2, 2020 PSEC Minutes; July 2, 2020 PSEC Meeting Recording, at 18:00.

C. EyeMed's First and Second Untimely Protests Are Dismissed

After close of business on Monday, July 6, 2020, EyeMed submitted a public records request related to the RFP, recognizing that its protest clock was ticking and requesting an immediate response: "Given the short time within which to file a protest, I would request your response within one (1) business day." *Ex. 5, Email Correspondence Between M. Copeland and G. Pease.* The City immediately responded the next morning, on Tuesday, July 7, advising EyeMed that "any protest concerning the award decision at this point would be untimely. As stated in our protest procedures sec 126.106(e)(3) below, it must be received within 48 hours of the posting or written notification of Procurement's decision or intended decision whichever occurs first. ***The award decision was posted last Tuesday June 30 and awarded on July 2***." *Id.* (emphasis added) (noting "any attempt to protest the decision, scoring and ranking that took place last Thursday would be untimely").

After receiving this guidance from the City, EyeMed filed its first protest on July 7. Perhaps unaware of the existing public record, EyeMed's first protest incorrectly stated that the "only posting regarding this matter was on ***July 2, 2020***. Although EyeMed is registered to receive notices and has checked the public listing ***there were no earlier notices***." *Ex. 6, July 7 Protest, p. 1* (emphasis added). EyeMed claimed the first protest was "timely because it is being submitted within 48 hours of the only notice EyeMed has received regarding this matter which posting occurred on July 2." *Id., p. 3.* Lacking any of the "particularity" required under Section 126.106(e)(3)(d) of the City's Procurement Protest Procedures, the entirety of EyeMed's grounds for protest were as follows:

> EyeMed protests that an award to a vendor other than EyeMed is arbitrary, capricious, contrary to law and in violation of the requirements of the RFP and applicable ordinances; that VSP and NVA are not responsive and responsible bidders and failed to meet all material requirements of the RFP; and that the scoring and evaluation process was arbitrary, capricious and contrary to law.

Ex. 6, July 7 Protest, p. 3.

Once EyeMed filed its July 7 protest, the City informed EyeMed it had "sent you links to the notice of intended decision, scoring and negotiation recommendation documents already so I would consider that portion of the request fulfilled." *Ex. 5, Email Correspondence Between M. Copeland and G. Pease.* All of these materials were previously publicly posted on June 30. Undeterred, EyeMed filed a second untimely protest on July 10, claiming "EyeMed was not aware and has never seen" the City's June 30 posted award decision and supporting materials. *Ex. 7, July 10 Protest, p. 1 n.1.* EyeMed's second protest alleged that VSP's proposal should have been rejected as nonresponsive and the evaluation subcommittee should have scored VSP's proposal lower for failing to include information related to identification of deviations, rate guarantees, out of network providers, volume of work, and implementation credits. *Id., pp. 4-10.*

On July 20, the City dismissed EyeMed's first and second protests as untimely. Contrary to EyeMed's incorrect belief that the City first posted its notice of intent to award VSP a contract on July 2, the City made clear this notice actually occurred on June 30:

> The notice of intended decision for the Professional Services Evaluation Committee to approve the scoring, ranking and recommendation to negotiate with the number one ranked respondent was posted on our website June 30, 2020, under our webpage for agendas and minutes. It was also posted at the identified bulletin board directly outside our Bid Room located on the first floor of 214 N. Hogan Street. We received your Notice of Protest challenging the intended decision(s) July 7, 2020, which is well beyond 48 hours from June 30, 2020. Therefore, your protest is untimely and no hearing will be scheduled.

Ex. 2, July 20, 2020 Denial of EyeMed Protests, p. 1.

D. EyeMed Files a Third Untimely Protest

On July 21, 2020, approximately ***three weeks*** after the City announced the results of the RFP and ***after*** EyeMed's first and second protests were dismissed as untimely, EyeMed yet again protested the City's intent to contract with VSP. The Protest replicates, nearly ***verbatim***, all five substantive arguments that have already been dismissed from the second protest. *Compare Protest, with Ex. 7, July 10 Protest; see also Ex. 8* (comparison of July 10 protest and July 21 Protest). EyeMed now claims it "would have won the contract 'but for' the City's arbitrary and unlawful decision to award to VSP." *Protest, p. 3.*

For the reasons detailed herein, EyeMed's third Protest is likewise untimely, and it should be denied for that reason alone. Nonetheless, even if the PSEC finds that the third Protest is timely (it is not), EyeMed's substantive arguments are meritless. Accordingly, VSP respectfully requests that the City deny EyeMed's Protest.

ARGUMENT

A. STANDARD OF REVIEW

To prevail on its Protest, it is EyeMed's burden to prove that the "Procurement Division recommendation or the decision or intended decision in question was clearly erroneous, arbitrary or capricious, fraudulent, or otherwise without any basis in fact or law." *City of Jacksonville, Procurement Protest Procedures § 121.106(e)(7)(c); see also RFP § 1, ¶ 2.18.* EyeMed cannot meet this heavy burden, and therefore its Protest should be denied. *See, e.g., State Contr. & Eng'g Corp. v. DOT*, 709 So. 2d 607, 609 (Fla. Dist. Ct. App. 1998) ("The burden is on the party protesting the award of the bid to establish a ground for invalidating the award."); *Miami-Dade Cty. v. Church & Tower*, 715 So. 2d 1084, 1089-90 (Fla. Dist. Ct. App. 1998) (finding that a protestant failed to demonstrate a substantial likelihood of success on its protest where its "bid protest shows substantial

disagreement with the action of the commission, [but] it falls far short of a showing of arbitrary or capricious action, much less illegality, fraud, oppression or misconduct").

B. THE PROTEST SHOULD BE SUMMARILY DISMISSED AS UNTIMELY

Before delving too deeply into the Protest's arguments, PSEC should summarily dismiss the Protest as untimely just as the first two protests were dismissed. Simply put, it was filed several ***weeks*** too late and it raises the same protest grounds that were previously raised. Nothing relevant has changed and the result should be the same.

Under Section 126.106(e)(3) of the City's Procurement Protest Procedures:

> A Protestant shall have ***48 hours after either the posting or written notification of a decision or intended decision***, whichever is earlier, in which to file a written Notice of Protest in order to timely challenge or seek relief from a Procurement Division recommended award of an exceptional purchase or an award or ***recommended conclusion to any bid or proposal solicitation process***, including without limitation: (i) a recommendation to reject a bid or proposal; (ii) a contract award; or (iii) the short-listing of bidders or proposers.

(Emphasis added). The RFP put all offerors on notice that the City intended to negotiate a single contract with the top-ranked offeror. *RFP § 2.6.* EyeMed wastes much ink building up and knocking down a strawman "shortlist" argument (*Protest, pp. 1-3*), but that argument is nothing more than a red herring. Regardless of whether the City employed a shortlist procedure,[1] the City posted the Procurement Division's "recommended conclusion to any bid or proposal solicitation process" ***no later than June 30*** when it posted the July 2 agenda and meeting package online, which included the June 26 selection memorandum and scoring matrix, and stated the City's intent to enter into contract negotiations to award a contract to VSP: "**We recommend that the above list is forwarded to the Mayor for final selection so that fee and contract negotiation may begin with <u>VSP</u>, the number one selection**."[2] Thus, the Protest was due, at the latest, by ***July 2***.

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[1] In its second protest (but not in its third Protest), EyeMed previously noted that shortlists are used for "requests for qualifications" or RFQs, and "[t]hat circumstance has not happened here." *Ex. 7, July 10 Protest, p. 1 n.1*. On this limited point, VSP agrees. Announcing the intent to negotiate a contract with the top-ranked offeror at the conclusion of an ***RFP*** process is distinct from being excluded from an ***RFQ*** shortlist. In an RFQ-RFP competition, there is typically first an open RFQ, and then an RFP where only RFQ finalists are prequalified to submit proposals. As a result, once prequalified firms are announced, protests regarding the complete exclusion from the later RFP process may follow the RFQ. In contrast, EyeMed was not shortlisted after an RFQ or excluded from any RFP process. It fully participated in the RFP process, which the City announced the results of on June 30.

[2] *Available at* https://www.coj.net/departments/finance/procurement/agendas-and-minutes (emphasis in original). The City's recommendation appears in both the July 2 meeting

Consistent with Section 126.106(e)(3), EyeMed concedes its July 21 Protest had to be "submitted within 48 hours of the posting of … any intended decision harmful to EyeMed's interests." *Protest, pp. 1-2*. Again, that posting occurred on ***June 30***. Accordingly, EyeMed's failure to file its Protest within the applicable time limitation or period "constitute[s] a waiver of any right, remedy, or relief available" and the Protest should be summarily dismissed as untimely. *City of Jacksonville, Procurement Protest Procedures § 121.106(e)(3)(c); see also Helicopter Applicators, Inc. v. S. Fla. Water*, 892 So. 2d 1114, 1115 (Fla. Dist. Ct. App. 2004) (affirming the dismissal of a protest as untimely when not filed within 72 hours of material becoming public record, since a "[l]ate filing is presumed to be a waiver of rights").

C. EYEMED'S PROTEST ARGUMENTS ARE WITHOUT MERIT

If EyeMed's third Protest is not entirely dismissed as untimely and duplicative of its second protest, each of EyeMed's Protest grounds should be denied on the merits. The City's evaluation of a proposal is a matter within the sound discretion of the Procurement Division that holds the expertise in this area. Disagreements with subjective scoring determinations are insufficient to show the procurement division's decision was "clearly erroneous, arbitrary or capricious, fraudulent, or otherwise without any basis in fact or law." *City of Jacksonville, Procurement Protest Procedures § 121.106(e)(7)(c).* In its Protest, EyeMed impermissibly seeks to replace the Procurement Division's considered judgment with EyeMed's subjective judgment about what is best for the City. *See, e.g., Liberty Cty. v. Baxter's Asphalt & Concrete*, 421 So. 2d 505, 507 (Fla. 1982) (holding "a public body has wide discretion in soliciting and accepting bids for public improvements and its decision, when based on an honest exercise of this discretion, will not be overturned by a court even if it may appear erroneous and even if reasonable persons may disagree").

1. VSP Is Responsible and Its Proposal Was Responsive.

EyeMed alleges "VSP is not responsible" and VSP's "Proposal was non-responsive in that it failed to offer benefits that matched the current benefits as required by the RFP and failed to identify the deviations as required." *Protest, pp. 3-5.* The RFP provided:

> Please find in this section the RFP requested benefits for the City of Jacksonville's Voluntary Vision Plans. The following pages will provide you with a detailed description of the RFP requested vision benefit plans. Please quote the vision plans ***as closely as possible.*** The vision copays will remain the same as current. ***If your company cannot provide a specific benefit, co- payment, and particular service or have contract differences, please provide a listing of the deviations.***

RFP § 5 (emphasis added).

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agenda and the July 2 meeting minutes, which is consistent with the June 26 selection memorandum and scoring matrix.

As a threshold matter, EyeMed conflates an offeror's overall ***responsibility*** with its ***responsiveness*** to the RFP. Under Florida law, a "responsive" vendor "means a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation," whereas a "responsible" vendor "means a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance." *See* Fla. Stat. § 287.012(25) & (27). EyeMed fails to allege a single fact that would question VSP's ***responsibility***. *Protest, pp. 3, 9.*[3] Further, with respect to responsiveness, VSP's proposal was responsive. To be responsive to the RFP, VSP was not required to quote the exact same benefits that EyeMed currently provides to the City at a higher cost. That would be contrary to the common sense understanding that different vision plans have different networks and benefits. Rather, VSP was only required to quote requested benefits "as closely as possible." *RFP § 5.* Indeed, such language shows that the RFP contemplates the inherent differences in capabilities, resources, and experience between offerors that would make it impossible for any two proposals to be exactly the same.

Moreover, contrary to EyeMed's assertion, VSP never "materially misrepresented the benefit it provided." *Protest, p. 5.* VSP was completely transparent in disclosing the few minor differences in VSP's out-of-network benefits, as noted by EyeMed's own Protest. *Compare Protest, p. 5, with VSP Proposal, pp. 26-29.* Further, VSP does in fact "offer a $125 out of network benefit for lenticular lenses" to the City, so this issue is moot. Accordingly, VSP complied with the RFP by disclosing the fundamental details of its plan. Nonetheless, even if any immaterial differences in out-of-network benefits had been omitted, the City reserved the right to waive any minor omission if the City determined it would serve its best interests. *RFP § 1.* Thus, EyeMed fails to identify any deviation that would "warrant disqualification" or a finding of non-responsiveness of VSP under the terms of the RFP. *Cf. Protest, p. 5.*

In a footnote, EyeMed also protests the City's award notice to "VSP" when its proposal was submitted by "Vision Services Plan (VSP)" doing business in Florida as "Vision Service Plan Insurance Company." *Protest, p. 3, n.3.* In addition to being especially untimely (this argument was not raised in prior protests), EyeMed is grasping at straws.[4] The City has first-hand prior experience with VSP and it obviously was using VSP as shorthand; indeed, it similarly abbreviated or used acronyms for other offerors including "EYEMED" and "NVA." *Ex. 3, July 2, 2020 PSEC Agenda.* In any event, VSP made clear, in its proposal, which entity would be performing for the City. For example, VSP provided a Florida Certificate of Authority for "Vision Service Plan Insurance Company" (*VSP Proposal Exhibit A, p. 80*), and responded to the RFP interrogatories and questionnaire, which asked for "the legal name of the Proposer," with: "The legal name of our

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[3] Indeed, VSP's responsibility is proven by the City's experience as prior to EyeMed, the City "had VSP with no issues at all." *July 2, 2020 PSEC Meeting Recording, at 15:49.*

[4] EyeMed neither identifies any legal requirement that the City violated with its award notice, nor how EyeMed would be prejudiced if "the award notice is in the name of 'VSP'" instead of Vision Service Plan Insurance Company. *Cf. Protest, p. 3, n.3.*

organization is Vision Service Plan (VSP). In Florida, we operate under our subsidiary vision plan, Vision Service Plan Insurance Company. VSP also operates under the trade name of 'VSP Vision Care.' We're properly licensed in all 50 states and the District of Columbia." *Compare RFP § 6, with VSP Proposal, p. 32*.

2. VSP's Rate Guarantee Complied with the RFP.

EyeMed faults VSP for offering the City a rate guarantee of four years instead of five years. *Protest, pp. 5-6.* Although the total potential term of the contract was five years, the RFP provided different options for multiyear rate guarantees: "If Proposer is proposing a multiyear rate guarantee, please show the rate guarantees for 12, 24, 36, 48 or 60 months." *RFP § 6*. VSP was not required to guarantee its rates for five years, but in any event, the issue is now moot because VSP has guaranteed its rates for the full term of the contract.[5] *Ex. 9, July 17, 2020 VSP Letter from M. Tafuri to M. DiPerna.*

3. VSP Correctly Described Costco and Wal-Mart Benefits.

EyeMed incorrectly alleges "VSP improperly listed Costco and Wal-Mart as in-network providers when they are actually out of network providers with substantially different benefits," resulting in arbitrary and capricious scoring. *Protest, pp. 6-7*.[6] Not so. As EyeMed recognizes, the independent optometrist providers within Wal-Mart and Costco are subcontractors, so VSP (like other vision plans) contracts with those optometrists directly for ***medical services***. *See Protest, p. 7.* PSEC understood and was satisfied with how VSP's relationship was structured: "they include Wal-Mart, Costco, and they have several different doctors in ***that*** network so we're not concerned about it." *July 2, 2020 PSEC Meeting Recording, at 16:12.*

For ***materials***, Wal-Mart and Costco are both directly contracted network providers for VSP, and so members receive an in-network experience when purchasing materials from these value-based outlets. EyeMed uses the difference in promotional pricing and allowances to categorically state that Wal-Mart and Costco do not offer in-network benefits. Contrary to EyeMed's allegation, the difference in allowances is to proportionally adjust pricing so that members receive a comparable value across all providers. For example, Wal-Mart and Costco already offer value-based pricing for their materials, with average frame prices at $64 for Wal-Mart and $68 for Costco. As such, VSP offers an allowance of $60 for the low plan option and $70 for the high plan option, which provides a comparable value to the frame allowance at all other VSP network doctors of $110 for

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[5] EyeMed's complaint is also curious given that its proposal, in at least one place, also offers "4-year rate guarantees." *Cf. EyeMed Proposal, § 1, p. 2.*

[6] In support of its allegation that Wal-Mart is an out-of-network provider for VSP, EyeMed cites to VSP's website. *See Protest, Exhibit 1*. However, the cited webpage is for the VSP Direct Individual Plan, and individual plan offerings are completely distinct from the group plan offerings that are the subject of this RFP.

the low plan option and $130 for the high plan option. Aside from the proportionally adjusted materials allowance, all the offerings and benefits are the same.

EyeMed essentially complains that VSP should be penalized for providing more and accessible options to benefit its members. The City thoroughly considered the comparative size of VSP's network, and as explained at the July 2 PSEC meeting, "we don't really have any concerns looking at their network," which is "large enough for the City." *July 2, 2020 PSEC Meeting Recording, at 16:05.*[7]

4. EyeMed's Evaluation Criteria Challenge Is Untimely and Incorrect.

EyeMed alleges it "was improperly penalized in scoring for being the incumbent and the scoring of the current and prior work criteria was unfairly applied as between VSP and EyeMed." *Protest, pp. 7-8.* However, as EyeMed recognizes, the RFP laid out the evaluation criteria, which included that "the volume of current and prior work performed for using agencies shall be considered a minus factor." *RFP Attachment B*. Regardless of what EyeMed now believes "seems appropriate" (*Protest, p. 8*) with respect to the RFP requirements and evaluation criteria, the RFP did not exempt EyeMed's current contract from consideration. *See RFP, pp. 40-41*. Indeed, EyeMed must have known that its score for that criteria would be based on its current contract, as it disclosed such contract in its response to this evaluation requirement. *See EyeMed Proposal, § 3, p. 14.* Therefore, if EyeMed had any objections to this evaluation criteria, it had to submit a protest challenging the RFP within 10 business days after the RFP was posted. *See City of Jacksonville, Procurement Protest Procedures § 121.106(e)(3)(b)* (requiring protests regarding "evaluation criteria" to be brought within "10 business days after the posting of a solicitation or 48 hours after the posted date and time of a pre-bid or pre-proposal conference, whichever is earlier"). EyeMed's failure to timely raise this issue waived its rights, so its Protest of the evaluation criteria must be dismissed. *Id., § 121.106(e)(3)(c)* ("Failure to file a written Notice of Protest within the applicable time limitation or period shall constitute a waiver of any right, remedy, or relief available hereunder.").

5. VSP's Implementation Credit Is Common and Proper.

Without pointing to a single law, ordinance, or case decision, EyeMed brazenly suggests VSP's offer to "reimburse the City for actual expenses, up to the credit amount of $10,000, incurred" in the transition of vision plans ***might*** be an inappropriate "kickback." *Protest, p. 9.* Offering an implementation credit for transitioning plans is common practice,

[7] EyeMed finds fault in that "VSP's Proposal only shows two Costco locations within the covered area" (*Protest, p. 7*), but there are ***only*** two Costco locations in Jacksonville. *See* https://www.costco.com/warehouse-locations.

and EyeMed itself surely knows this, since it too has offered nearly identical implementation credits.[8]

EyeMed does not even try to meet its burden to explain how VSP's similar offer to reimburse ***the City*** for some of its actual costs related to the City's transition would be a barred gift, gratuity, or kickback. Examples of regulated "gifts to the City" include such items as "tickets or travel to events where City or independent agency official or employee presence is requested, or travel and per diem to inspect products and equipment, or gifts of personal property to the City or independent agency." *City of Jacksonville, Code of Ordinances § 602.702*.[9] While reimbursing some of the City's actual implementation expenses incurred is in no way a prohibited gift to the City, we understand the City has not sought any future reimbursement, so this issue too is moot.

* * *

VSP offered a highly competitive proposal and the evaluation subcommittee properly determined that VSP was both the most qualified offeror for the RFP and will provide significant cost savings to City employees. If EyeMed's third Protest is not summarily dismissed as untimely, then it should otherwise be denied in full. EyeMed cannot supplant the evaluation subcommittee's evaluation with its own, and EyeMed has failed to clearly establish the City's decision was clearly erroneous, arbitrary or capricious, fraudulent, or otherwise without any basis in fact or law. EyeMed's subjective disagreements with the evaluation committee falls woefully short of meeting its burden and its protest must be denied.

CONCLUSION

For the foregoing reasons, VSP respectfully requests that the Chief dismiss EyeMed's Protest as untimely or deny the Protest. VSP reserves the right to amend or supplement this response based on any further supplemental protests filed by EyeMed.

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[8] For example, EyeMed's current contract with the State of Michigan provides: "Implementation Credits: The Contractor must provide Plan Sponsor with an $80,000 implementation credit or allowance. The Plan Sponsor can utilize the credit to offset any expenses related to changing vision care vendors, and/or the implementation, including consulting fees, as deemed appropriate by the Plan Sponsor. The Contractor will reimburse all expenses upon receipt of proper documentation of incurred costs." *Ex. 10, p. 21,* https://www.michigan.gov/documents/micontractconnect/7700186_602008_7.pdf. (relevant excerpt highlighted).

[9] Additionally, City ordinances distinguish between the "prohibition of gifts to individuals" (*i.e.*, to an "officer or employee of the City or of any independent agency") and prohibited "gifts to the city." *Compare City of Jacksonville, Code of Ordinances § 602.701, with id. § 602.702*. The City's policy "strive[s] for maximum transparency and minimum acceptance of gifts ***by employees and officials of the City***" (*id. § 602.701(b)* (emphasis added)), neither of which is affected by a public offer to reimburse actual transition expenses of the City itself.

Sincerely,

Jessica L. Sharron
jessica.sharron@alston.com
Michael J. Mortorano
mike.mortorano@alston.com
MJ Kim
mj.kim@alston.com
ALSTON & BIRD LLP

Counsel for Vision Service Plan Insurance Company

Enclosures

Cc: Tiffiny Douglas Pinkstaff, Assistant General Counsel, tpinkstaff@coj.net
Melissa J. Copeland, Counsel for EyeMed, missy@schmidtcopeland.com
Andrew E. Schwartz, Counsel for EyeMed, aschwartz@shutts.com

Exhibit 1

City of Jacksonville, Florida

Lenny Curry, Mayor

Employee Services Department
City Hall, 117 West Duval St., Suite 150
Jacksonville, Florida 32202

ONE CITY. ONE JACKSONVILLE.

MEMORANDUM

To: Greg Pease, Chairperson

Professional Services Evaluation Committee

From: Mary DiPerna, Chief, Compensation and Benefits

Carolina Teran-Oceguera, Manager, Compensation and Benefits

Re: P – 23-20 – Group Vision Insurance Plan

Date: June 26, 2020

The subcommittee received six (6) proposals for the Group Vision RFP. All were found to be responsive, interested, qualified, and available to provide services required by the Request for Proposal. The proposals were evaluated using the criteria outlined in the Purchasing Code as augmented by the RFP and the proposals.

Based on the above, the following firms listed alphabetically and ranked, were determined to be the most qualified:

(2) Eyemed
(3) NSV
(1) VSP

The subcommittee requests to meet with the Professional Services Evaluation Committee at your earliest convenience for the purpose of submitting our recommendation to the Mayor for final selection. Upon his signature, we request permission to immediately conduct fee and contract negotiations.

Attachments: Evaluation Matrix

Evaluation Matrix

EVALUATION SCALE

1----------20

QUALIFIED — EXTREMELY QUALIFIED

PROJECT NO. P-23-20

PROJECT TITLE: GROUP VISION PLAN

FIRM	COMPETENCE	CURRENT WORKLOAD	FINANCIAL RESPONSIBILITY	ABILITY TO OBSERVE COMPLIANCE WITH PLANS	PROFESSIONAL ACCOMPLISHMENTS RECORD	PROXIMITY TO PROJECT	Past & Present Demonstrated Commitment to Small & Minority Businesses & Contributions Toward A Diverse Market Place	ABILITY TO DESIGN AN APPROACH AND WORK PLAN	TIME & BUDGET	VOLUME OF CURRENT AND PRIOR WORK FOR USING AGENCIES	OVERALL
Maximum Points	10	10	10	10	5	5	10	15	20	5	100
AVESIS	8.50	9.00	10.00	9.50	3.50	2.50	9.50	9.75	17.00	5.00	84.25
EYEMED	10.00	9.50	10.00	10.00	5.00	2.00	9.50	13.00	17.00	1.50	87.50
HUMANA	7.25	9.00	10.00	9.50	5.00	4.50	9.50	13.00	11.50	1.50	80.75
METLIFE	8.75	8.50	10.00	9.50	4.00	4.00	10.00	8.25	9.00	3.50	75.50
NVA	6.75	9.00	10.00	9.50	3.50	3.00	9.00	12.75	18.00	5.00	86.50
VSP	6.75	9.00	10.00	9.50	5.00	3.00	9.50	12.25	20.00	3.50	88.50

Exhibit 2

ONE CITY. ONE JACKSONVILLE.

City of Jacksonville, Florida

Lenny Curry, Mayor

Procurement Division
Ed Ball Building
214 N. Hogan Street, Suite 800
Jacksonville, Florida 32202

July 20, 2020

Melissa J. Copeland
Schmidt & Copeland
Capital Center, 1201 Main Street, Suite 1100
Columbia, South Carolina 29201

RE: Notice of Protest for RFP #P-23-20 Group Vision Insurance Plan

Dear Ms. Copeland,

I am in receipt of your referenced letter and subsequent supplemental information related to same. Please be advised that in order to timely file a notice of protest one must meet the following criteria pursuant to City of Jacksonville Protest Procedures 126.106(e)(3) Timely Notice of Protest:

(a) Recommendation of Award and/or Bid Rejection. A Protestant shall have 48 hours after either the posting or written notification of a decision or intended decision, whichever is earlier, in which to file a written Notice of Protest in order to timely challenge or seek relief from a Procurement Division recommended award of an exceptional purchase or an award or recommended conclusion to any bid or proposal solicitation process, including without limitation: (i) a recommendation to reject a bid or proposal; (ii) a contract award; or (iii) the short-listing of bidders or proposers.

The City of Jacksonville Protest Procedures 126.106(e)(2) Definitions defines posting as;

(b) "Posting" means the notification of solicitations, decisions or intended decisions, or other matters relating to procurement on a centralized Internet website, by placing the same on the bulletin boards(s) designated by the Procurement Division for this purpose, or as may be consistent with Sec 126.102(m) of the Code.

The notice of intended decision for the Professional Services Evaluation Committee to approve the scoring, ranking and recommendation to negotiate with the number one ranked respondent was posted on our website June 30, 2020, under our webpage for agendas and minutes. It was also posted at the identified bulletin board directly outside our Bid Room located on the first floor of 214 N. Hogan Street. We received your Notice of Protest challenging the intended decision(s) July 7, 2020, which is well beyond 48 hours from June 30, 2020. Therefore, your protest is untimely and no hearing will be scheduled.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Greg Pease
Chief of Procurement
City of Jacksonville

GP/
cc: RFP File
Lawsikia Hodges, Deputy General Counsel
Dan Pearson, Assistant Manager Purchasing Services
Mary Diperna, Chief of Compensation and Benefits
Alex Baker, Professional Services Specialist

Exhibit 3

PUBLIC NOTICE
AGENDA
PROFESSIONAL SERVICES EVALUATION COMMITTEE MEETING
Thursday, July 2, 2020, , 10:00 a.m.

Join Zoom Meeting
https://zoom.us/j/259925317?pwd=T1dIaStIandTbUlRZ2JpL1IrVWdoQT09

Meeting ID: 259 925 317
Password: 759509

One tap mobile (pick either location)
+16465588656,,259925317# US (New York)
+13126266799,,259925317# US (Chicago)

Dial by your location (pick either location)
+1 646 558 8656 US (New York)
+1 312 626 6799 US (Chicago)x

Meeting ID: 259 925 317

Committee Members: Greg Pease, Chairman
Randall Barnes, Treasury
James McCain, Jr., OGC

Subcommittee Members	*ITEM #*	*TITLE & ACTION*	*MOTION*	*CONTRA EXP*	*OUTCOME*
Dave McDaniel **William Joyce**	**P-08-19**	**Contract Amendment No. 1 (Deferred 6/25/20)** **Comprehensive Cemetery Assessment Services** Department of Public Works	**That Contract Number 10235-01, originally executed August 20, 2019 between the City and Environmental Services, Inc., for Comprehensive Cemetery Assessment Services; be amended to: (i) incorporate the attached Scope of Services identified as Exhibit C and Contract Fee Summary identified as, Exhibit D; (ii) increase the lump-sum amount for Comprehensive Cemetery Assessment Services by $35,000.00 to a new from an upset limit of $1,293,325.35 to a new not-to-exceed amount of $1,328,325.35. All other terms and conditions shall remain the same.**	*02/19/21*	
William Joyce **Guy Parola**	**P-30-20**	**Introduce & Review Scope (Deferred 6/25/20)** **Professional Engineering Services for 2-Way Mobility/Safety Enhancement Analysis Services** Department of Public Works	**That the committee approves the Scope of Services/Request for Proposal (RFP) as presented with such minor changes thereto as may be approved by the Chief Procurement Officer and the Office of General Counsel to clarify the intent of the using agency and to ensure compliance with the City's ordinances, Procurement policies and procedures and applicable state and federal laws.**		
Mary DiPerna **Carolina Teran-Oceguera**	**P-23-20**	**Subcommittee Report** **Group Vision Plan** Employee Services Department	**It is the consensus of the committee that of the six(6) companies/firms responding to the Request for Proposal (RFP) all were found to be responsive, interested, qualified and available to provide the services required by the RFP. The ranking of first, second and third designates the order of qualification of these firms to perform the required services and alphabetically they are:** **2) EYEMED** **3) NVA** **1) VSP** **We recommend that the above list is forwarded to the Mayor for final selection so that fee and contract negotiation may begin with VSP, the number one selection**		

Kristin De Han **Michael Chao**	**P-71-17**	**Contract Amendment No. 5** **Asbestos Abatement Consultant Services** Municipal Code Compliance Division	**That Contract No. 10384 between the City of Jacksonville and Apex Companies, LLC, for Asbestos Abatement Consulting Services is amended to: (i) exercise the third and final renewal option extending the period of service from October 1, 2020 through September 30, 2021, with no renewal remaining; (ii) the maximum indebtedness shall remain a not-to-exceed amount of $700,000.00. All other terms and conditions shall remain the same except for such changes as the Office of General Counsel may deem appropriate to ensure compliance with the City's ordinances, Procurement policies and procedures and applicable federal and state laws.**	*09/30/20*	
Twane Duckworth **James Taylor**	**P-42-19 PB#3**	**Contract Amendment No. 1** **Piggyback JEA Contract # 177014** **Industrial Performance Program** Risk Management Division	**That Contract No. 10668 between the City of Jacksonville and Unify Health Services, LLC, for the agreement utilizing JEA Contract # 177014 for an Industrial Performance Program per Purchasing Code 126.211/126.309 with Unify Health Services, LLC, be amended by: (i) incorporating the attached Fee Contract identified as Exhibit 'A-1' and Scope of Services identified as Exhibit 'B-1'; (ii) exercising the first of two (2) one-year renewal options extending the period of services from October 1, 2020 through September 30, 2021 with one renewal remaining; and (iii) increasing the maximum indebtedness by $95,000.00 for the services to a new total maximum of $190,000.00. All other terms and conditions are per the City's standard contract language.**	*09/30/20*	
Twane Duckworth **Bibinia Centeno**	**P-18-18**	**Contract Amendment No. 2** **Casualty Actuarial Services** Risk Management Division	**That Contract No. 9925-01 between the City of Jacksonville and AMI Risk Casualty, Inc., for the provision of Casualty Actuarial Services, be amended to (i) exercise the first of four (4) one-year renewal options extending the period of service from October 1, 2020 through September 30, 2021, with two renewal options remaining; (ii) provide $27,200.00 for the annual services; and (iii) increase the maximum indebtedness by $27,200.00 to a new not-to-exceed total maximum of $81,600.00. All other terms and conditions shall remain the same except for such changes as the Office of General Counsel may deem appropriate to ensure compliance with the City's ordinances, Procurement policies and procedures and applicable federal and state laws.**	*09/30/20*	
Twane Duckworth **Barbara Holton**	**P-19-18**	**Contract Amendment No. 2** **Worker's Compensation Managed Care Services** Risk Management Division	**That Contract No. 9926-01 between the City of Jacksonville and USIS, Inc., d/b/a AmeriSys, for Workers' Compensation Managed Care Services, be amended to (i) exercise the second renewal option extending the period of service from October 1, 2020 through September 30, 2021, with two renewal options remaining; (ii) provide $356,450.00 for the services; thereby (iii) increasing the maximum indebtedness by $356,450.00 to a new not-to-exceed total maximum of $1,044,250.00. All other terms and conditions shall remain the same except for such changes as the Office of General Counsel may deem appropriate to ensure compliance with the City's ordinances, Procurement policies and procedures and applicable federal and state laws.**		
	MEETING ADJOURNED				

cc: Council Auditor
Subcommittee Members

Exhibit 4

PROFESSIONAL SERVICES EVALUATION COMMITTEE MEETING
MINUTES FOR Thursday, July 2, 2020, , 10:00 a.m.

Join Zoom Meeting
https://zoom.us/j/259925317?pwd=T1dIaStIandTbUlRZ2JpL1IrVWdoQT09

Meeting ID: 259 925 317
Password: 759509

One tap mobile (pick either location)
+16465588656,,259925317# US (New York)
+13126266799,,259925317# US (Chicago)

Dial by your location (pick either location)
+1 646 558 8656 US (New York)
+1 312 626 6799 US (Chicago)x

Meeting ID: 259 925 317

Committee Members: Greg Pease, Chairman
Randall Barnes, Treasury
James McCain, Jr., OGC

Subcommittee Members	*ITEM #*	*TITLE & ACTION*	*MOTION*	*CONTRA EXP*	*OUTCOME*
Dave McDaniel✓ ~~William Joyce~~	P-08-19	**Contract Amendment No. 1 (Deferred 6/25/20)** **Comprehensive Cemetery Assessment Services** Department of Public Works	That Contract Number 10235-01, originally executed August 20, 2019 between the City and Environmental Services, Inc., for Comprehensive Cemetery Assessment Services; be amended to: (i) incorporate the attached Scope of Services identified as Exhibit C and Contract Fee Summary identified as, Exhibit D; (ii) increase the lump-sum amount for Comprehensive Cemetery Assessment Services by $35,000.00 to a new from an upset limit of $1,293,325.35 to a new not-to-exceed amount of $1,328,325.35. All other terms and conditions shall remain the same.	*02/19/21*	Approved 4-0 Greg Pease Dave McDaniel Paul Barrett James McCain
~~William Joyce~~ Guy Parola✓	P-30-20	**Introduce & Review Scope (Deferred 6/25/20)** **Professional Engineering Services for 2-Way Mobility/Safety Enhancement Analysis Services** Department of Public Works	That the committee approves the Scope of Services/Request for Proposal (RFP) as presented with such minor changes thereto as may be approved by the Chief Procurement Officer and the Office of General Counsel to clarify the intent of the using agency and to ensure compliance with the City's ordinances, Procurement policies and procedures and applicable state and federal laws.		Approved 4-0 Greg Pease Guy Parola Paul Barrett James McCain
Mary DiPerna✓ Carolina Teran-Oceguera✓	P-23-20	**Subcommittee Report** **Group Vision Plan** Employee Services Department	It is the consensus of the committee that of the six(6) companies/firms responding to the Request for Proposal (RFP) all were found to be responsive, interested, qualified and available to provide the services required by the RFP. The ranking of first, second and third designates the order of qualification of these firms to perform the required services and alphabetically they are: 2) EYEMED 3) National Vision Administrators 1) VSP Vision Care We recommend that the above list is forwarded to the Mayor for final selection so that fee and contract negotiation may begin with VSP, the number one selection		Approved 5-0 Greg Pease Mary DiPerna Carolina Oceguera James McCain Paul Barrett

Kristin De Han✓ **~~Michael Chao~~**	**P-71-17**	**Contract Amendment No. 5** **Asbestos Abatement Consultant Services** Municipal Code Compliance Division	**That Contract No. 10384 between the City of Jacksonville and Apex Companies, LLC, for Asbestos Abatement Consulting Services is amended to: (i) exercise the third and final renewal option extending the period of service from October 1, 2020 through September 30, 2021, with no renewal remaining; (ii) the maximum indebtedness shall remain a not-to-exceed amount of $700,000.00. All other terms and conditions shall remain the same except for such changes as the Office of General Counsel may deem appropriate to ensure compliance with the City's ordinances, Procurement policies and procedures and applicable federal and state laws.**	*09/30/20*	**Approved 4-0** **Greg Pease** **Kristin DeHan** **Paul Barrett** **James McCain**
Twane Duckworth✓ **James Taylor✓**	**P-42-19 PB#3**	**Contract Amendment No. 1** **Piggyback JEA Contract # 177014** **Industrial Performance Program** Risk Management Division	**That Contract No. 10668 between the City of Jacksonville and Unify Health Services, LLC, for the agreement utilizing JEA Contract # 177014 for an Industrial Performance Program per Purchasing Code 126.211/126.309 with Unify Health Services, LLC, be amended by: (i) incorporating the attached Fee Contract identified as Exhibit 'A-1' and Scope of Services identified as Exhibit 'B-1'; (ii) exercising the first of two (2) one-year renewal options extending the period of services from October 1, 2020 through September 30, 2021 with one renewal remaining; and (iii) increasing the maximum indebtedness by $95,000.00 for the services to a new total maximum of $190,000.00. All other terms and conditions are per the City's standard contract language.**	*09/30/20*	**Approved 5-0** **Greg Pease** **James Taylor** **Twane Duckworth** **Paul Barrett** **James McCain**
Twane Duckworth✓ **~~Bibinia Centeno~~** **Barbara Holton✓**	**P-18-18**	**Contract Amendment No. 2** **Casualty Actuarial Services** Risk Management Division	**That Contract No. 9925-01 between the City of Jacksonville and AMI Risk Casualty, Inc., for the provision of Casualty Actuarial Services, be amended to (i) exercise the first of four (4) one-year renewal options extending the period of service from October 1, 2020 through September 30, 2021, with renewal options remaining; (ii) provide $27,200.00 for the annual services; and (iii) increase the maximum indebtedness by $27,200.00 to a new not-to-exceed total maximum of $81,600.00. All other terms and conditions shall remain the same except for such changes as the Office of General Counsel may deem appropriate to ensure compliance with the City's ordinances, Procurement policies and procedures and applicable federal and state laws.**	*09/30/20*	**Approved 5-0** **Greg Pease** **Twane Duckworth** **Barbara Holton** **Paul Barrett** **James McCain**
Twane Duckworth✓ **Barbara Holton✓**	**P-19-18**	**Contract Amendment No. 2** **Worker's Compensation Managed Care Services** Risk Management Division	**That Contract No. 9926-01 between the City of Jacksonville and USIS, Inc., d/b/a AmeriSys, for Workers' Compensation Managed Care Services, be amended to (i) exercise the second renewal option extending the period of service from October 1, 2020 through September 30, 2021, with two renewal options remaining; (ii) provide $356,450.00 for the services; thereby (iii) increasing the maximum indebtedness by $356,450.00 to a new not-to-exceed total maximum of $1,044,250.00. All other terms and conditions shall remain the same except for such changes as the Office of General Counsel may deem appropriate to ensure compliance with the City's ordinances, Procurement policies and procedures and applicable federal and state laws.**	*09/30/20*	**Approved 5-0** **Greg Pease** **Twane Duckworth** **Barbara Holton** **Paul Barrett** **James McCain**
	MEETING ADJOURNED 10:28 A.M.				

cc: Council Auditor
Subcommittee Members

Exhibit 5

From: Pease, Gregory <GPease@coj.net>
Sent: Wednesday, July 8, 2020 1:18 PM
To: Missy Copeland
Subject: RE: P-23-20 Group Vision Insurance Plan ("RFP") Public Records Request

Ms. Copeland,

I received your message and should be able to call you back this afternoon around 3:00p.m. if that's convenient.

Thank you,

Gregory W. Pease
Chief of Procurement
Finance and Administration Department
Procurement Division
City of Jacksonville
214 N. Hogan St
Jacksonville, FL 32202
Ph. 904.255.8801
Fax 904.255.8838

CITY OF JACKSONVILLE

****** Please note that under Florida's very broad public records law, email communications to and from city officials are subject to public disclosure. ******

From: Pease, Gregory
Sent: Tuesday, July 7, 2020 4:43 PM
To: 'Missy Copeland' <missy@schmidtcopeland.com>
Cc: Baker, Alex <ABAKER@coj.net>; John Schmidt <john@schmidtcopeland.com>; Pearson, Daniel <Pearson@coj.net>; Andrew E. Schwartz <ASchwartz@shutts.com>
Subject: RE: P-23-20 Group Vision Insurance Plan ("RFP") Public Records Request

Ms. Copeland,

Let me attempt to clarify. In your original public records request you requested, among other documents, scoring information and you needed it quickly in order to potentially file a protest. My response to you may have been worded incorrectly that the protest would be untimely because it has already been awarded. The intent, as described in my follow-up e-mail, was to notify you that any attempt to protest the decision, scoring and ranking that took place last Thursday would be untimely.

We are not taking the position that the contract has already been awarded. The scoring and ranking have been approved by the awarding authority and final negotiations will still need to be approved.

Lastly, we will do our best to have your request fulfilled by close of business tomorrow.

Incidentally, I have sent you links to the notice of intended decision, scoring and negotiation recommendation documents already so I would consider that portion of the request fulfilled. The remaining items will be sent tomorrow if possible.

I hope this helps.

Gregory W. Pease
Chief of Procurement
Finance and Administration Department
Procurement Division
City of Jacksonville
214 N. Hogan St
Jacksonville, FL 32202
Ph. 904.255.8801
Fax 904.255.8838

CITY OF JACKSONVILLE

****** Please note that under Florida's very broad public records law, email communications to and from city officials are subject to public disclosure. ******

From: Missy Copeland <missy@schmidtcopeland.com>
Sent: Tuesday, July 7, 2020 2:45 PM
To: Pease, Gregory <GPease@coj.net>
Cc: Baker, Alex <ABAKER@coj.net>; John Schmidt <john@schmidtcopeland.com>; Pearson, Daniel <Pearson@coj.net>; Andrew E. Schwartz <ASchwartz@shutts.com>; Public Record Request <PRR@coj.net>
Subject: Re: P-23-20 Group Vision Insurance Plan ("RFP") Public Records Request

EXTERNAL EMAIL: This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Mr. Pease -

Can you please confirm that we will have a response to our public records request within 24 hours? If the City is taking the position that this contract has already been awarded then we need these records promptly in order to pursue all available administrative and judicial remedies.

Thank you -

Missy

Missy Copeland | Schmidt & Copeland LLC | 1201 Main Street, Suite 1100, Columbia, SC 29201| Missy@SchmidtCopeland.com| T:803.309.4686 | www.SchmidtCopeland.com

On Jul 7, 2020, at 9:40 AM, Pease, Gregory <GPease@coj.net> wrote:

Ms. Copeland,

We'll continue to process your public records request; however, please be advised that any protest concerning the award decision at this point would be untimely. As stated in our protest procedures sec 126.106(e)(3) below, it must be received within 48 hours of the posting or written notification of Procurement's decision or intended decision whichever occurs first. The award decision was posted last Tuesday June 30 and awarded on July 2.

"126.106(e)(3) Timely Notice of Protest

(a) Recommendations of Award and/or Bid Rejection. A Protestant shall have 48 hours after either the posting or written notification of a decision or intended decision, whichever is earlier, in which tofile a written Notice of Protest in order to timely challenge or seek relief from a Procurement Division recommended award of an exceptional purchase or an award or recommended conclusion to any bid orproposal solicitation process, including without limitation: (i) a recommendation to reject a bid or proposal; (ii) a contract award; or (iii) the short-listing of bidders or proposers."

Thank you,

Gregory W. Pease
Chief of Procurement
Finance and Administration Department
Procurement Division
City of Jacksonville
214 N. Hogan St
Jacksonville, FL 32202
Ph. 904.255.8801
Fax 904.255.8838
<image001.jpg>

****** Please note that under Florida's very broad public records law, email communications to and from city officials are subject to public disclosure. ******

From: Missy Copeland <missy@schmidtcopeland.com>
Sent: Monday, July 6, 2020 5:11 PM
To: Baker, Alex <ABAKER@coj.net>; Pease, Gregory <GPease@coj.net>
Cc: John Schmidt <john@schmidtcopeland.com>
Subject: P-23-20 Group Vision Insurance Plan ("RFP") Public Records Request

EXTERNAL EMAIL: This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Re: P-23-20 Group Vision Insurance Plan ("RFP")
Pursuant to the state open records law Fla. Stat. Secs. 119.01 to 119.15, I write to request access to and a copy of (1) the proposal submitted by VSP in response to the RFP; (2) all scoring and evaluation documentation related to the RFP including scorer's notes; and (3) all communications and correspondence of evaluators and all communications with VSP related to the RFP, including any best and final offers, finalist presentations, clarifications, or negotiations.
If this request needs to be submitted to someone else in your agency, please let me know the proper custodian's name and email address.

I agree to pay any reasonable copying and postage fees. I prefer to receive the documents electronically, if possible.
Given the short time within which to file a protest, I would request your response within one(1) business day.
If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.
Thank you for your assistance.

Missy Copeland | Schmidt & Copeland LLC | 1201 Main Street, Suite 1100, Columbia, SC 29201| Missy@SchmidtCopeland.com| T:803.309.4686 | www.SchmidtCopeland.com

Exhibit 6

John E. Schmidt, III
803.348.2984
John@SchmidtCopeland.com

SCHMIDT & COPELAND

ATTORNEYS AND COUNSELORS AT LAW

Melissa J. Copeland
803.309.4686
Missy@SchmidtCopeland.com

July 7, 2020

Via Fax to (904) 255-8837 and email to gpease@coj.net
Gregory Pease, Chief
City of Jacksonville Procurement Division
214 N. Hogan St., 8th floor
Jacksonville, FL 32202

Re: P-23-20 Group Vision Insurance Plan

Dear Mr. Pease:

On behalf of EyeMed Vision Care, LLC ("EyeMed"), we submit the following protest regarding the above-referenced RFP and all intended decisions and decisions to award a contract to any vendor other than EyeMed Vision Care, LLC.

In accordance with RFP Section 2.18 and the referenced ordinances, EyeMed submits as follows:

This written Notice of Protest:

(i) Is addressed to the Chief [of Jacksonville's Procurement Division];

(ii) Identifies the solicitation, decision, or recommended award in question by number and title or any other language sufficient to enable the Chief to identify the same;

This protest relates to P-23-20 Group Vision Insurance Plan and any and all decisions or intended decisions to award a contract to any vendor other than EyeMed. The only posting regarding this matter was on July 2, 2020. Although EyeMed is registered to receive notices and has checked the public listing there were no earlier notices. The notice provided on July 2, 2020 is not of an award and requires an additional public notice before award can be made accordance with RFP and City Ordinance provisions:

> Section 2.6 of the RFP: Based on the evaluation and negotiation results, Buyer shall electronically post a notice of intended award at Buyer's website. Please contact the Contact Person if you are uncertain of Buyer's website address or if you experience problems accessing it. Any person who is adversely affected by the decision shall file with Buyer a notice of protest in accordance with the Protest provisions of the RFP. Buyer does not intend to provide tabulations or notices of award by telephone.

Sec. 126.304. - Contract negotiation and award; other cases.
In all cases to which Section 126.303 does not apply, PSEC, subject to Sections 126.201(d)(2) and 126.302(f) hereof, shall forward to the Mayor the alphabetical list consisting of no fewer than three best qualified, interested and available proposers, in order of first, second and third best qualified. The Mayor shall approve or disapprove the recommendation of PSEC. Upon approval, PSEC shall negotiate with the first most qualified proposer and recommend to the Mayor, for approval, mutually satisfactory terms of employment, including the professional fee to be charged. If negotiations with the first most qualified proposer reach an impasse, PSEC shall recommend to the Mayor that said negotiations be terminated, and, upon the Mayor's approval, PSEC shall terminate said negotiations by written notice, and shall commence the negotiation process with the second most qualified proposer. Upon reaching an impasse and terminating negotiation with the second most qualified proposer, PSEC shall commence the negotiation process with the third most qualified proposer. This selection and negotiation procedure may be continued with additional selected proposers in order of best qualified until a mutual agreement is approved by the Mayor or until the list of selected best-qualified proposers is exhausted. If the negotiation process results in the Mayor's approval of a mutual agreement, the Mayor shall then order the award of a contract for the performance of the required professional services to the proposer with whom a mutual agreement is reached. If the negotiation process fails to result in a mutual agreement for the performance of the required professional services, then the selection process shall terminate and all proposals shall be deemed rejected, and the using agency in question, with the assistance of the Division, may modify the specifications or scope of services and resolicit proposals, which modifications shall be documented in writing and maintained in the resulting contract file. If delays resulting from resolicitation efforts will be substantially detrimental to the City's best interest, PSEC, upon the approval of the Mayor, may reinitiate the negotiation process described herein, beginning with the first most qualified proposer, which reinitiated negotiations may include, without limitation, modifications to the specifications or scope of services set forth in the initial solicitation, which modifications shall be documented in writing and maintained in the resulting contract file. If the reinitiated negotiation process results in the Mayor's approval of a mutual agreement, the Mayor shall then order the award of a contract for the performance of the required professional services to

> the proposer with whom a mutual agreement is reached. To the extent a contract awarded hereunder is terminated, PSEC, upon the Mayor's approval, shall have the discretion to: (i) commence negotiations as described in this Section 126.304, beginning with the next most qualified proposer, for the professional services remaining and/or necessary for the completion of said contract; or (ii) to procure said professional services pursuant to Part 3, hereof.

(iii) States the timeliness of the protest;

This protest is timely because it is being submitted within 48 hours of the only notice EyeMed has received regarding this matter which posting occurred on July 2. In accordance with applicable timeliness rules, Friday, July 3 as a legal holiday and the intervening weekend do not count towards the time deadline. Furthermore, no award has been made and therefore an award protest remains timely. EyeMed is further informed and believes that negotiations provided for by the RFP *as a precedent to a protestable award* have not even taken place yet.

(iv) states Protestant's legal standing to protest;

EyeMed as a bidder in this process has standing to protest.

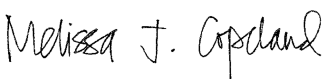
(v) clearly states with particularity the issue(s), material fact(s) and legal authority upon which the protest is based.

EyeMed protests that an award to a vendor other than EyeMed is arbitrary, capricious, contrary to law and in violation of the requirements of the RFP and applicable ordinances; that VSP and NVA are not responsive and responsible bidders and failed to meet all material requirements of the RFP; and that the scoring and evaluation process was arbitrary, capricious and contrary to law.

EyeMed has submitted a public records request for information and as of the date of this notice has not received requested records. EyeMed hereby requests an extension of at least three (3) business days after the date of this Notice of Protest is timely received (or such later date of available records are not provided within that time), in which to provide supplemental protest documentation.

EyeMed requests that any award be stayed; that a hearing be held to address its protest issues; that it be promptly provided its requested records and that it be given additional time to supplement based on a review of the records.

Very truly yours,



Melissa J. Copeland

Exhibit 7

John E. Schmidt, III
803.348.2984
John@SchmidtCopeland.com

SCHMIDT & COPELAND

ATTORNEYS AND COUNSELORS AT LAW

Melissa J. Copeland
803.309.4686
Missy@SchmidtCopeland.com

July 10, 2020

Via Fax to (904) 255-8837 and email to gpease@coj.net

Gregory Pease, Chief
City of Jacksonville Procurement Division
214 N. Hogan St., 8th floor
Jacksonville, FL 32202

Re: P-23-20 Group Vision Insurance Plan

Dear Mr. Pease:

On behalf of EyeMed Vision Care, LLC ("EyeMed"), we submit the following additional information in support of the protest regarding the above-referenced RFP and all intended decisions and decisions to award a contract to any vendor other than EyeMed Vision Care, LLC[1].

In accordance with RFP Section 2.18 and the referenced ordinances, EyeMed submits as follows:

This written Notice of Protest:

(i) Is addressed to the Chief [of Jacksonville's Procurement Division];

(ii) Identifies the solicitation, decision, or recommended award in question by number and title or any other language sufficient to enable the Chief to identify the same;

[1] Although the City appears to be taking the position that the approval of the Agenda recommendation on July 2 to negotiate with VSP (or some earlier posted notice of which EyeMed was not aware and has never seen) was a triggering point for a protest, EyeMed respectfully disagrees with that position and asserts that the RFP provisions and the City's Protest Procedures do not support the City's position. A protest is required of "an award or recommended conclusion to any bid or solicitation process, including without limitation: (i) a recommendation to reject a bid or proposal; (ii) a contract award; or (iii) the short-listing of bidders or proposers." Procurement Protest Procedures § 126.106(e)(3). At this stage there has been no award and no recommended *conclusion* to the solicitation process. There has been no recommendation to reject EyeMed's proposal. There has been no short-listing of bidders or proposers. Short-listing is referred to in City Ordinances at § 126.701(b) and is a circumstance where, on the basis of a request for qualifications, the government limits responses to an RFP to only a selected short list of bidders or offers, thereby excluding those not on the short list. That circumstance has not happened here. EyeMed is still ranked and eligible for negotiations should negotiations not conclude successfully with VSP. Thus, there has been no triggering point for a protest. However, out of an abundance of caution and in an effort to have these issues addressed and resolved early, EyeMed submitted this protest.

This protest relates to P-23-20 Group Vision Insurance Plan and any and all decisions or intended decisions to award a contract to any vendor other than EyeMed. The only posting regarding this matter was on July 2, 2020. Although EyeMed is registered to receive notices and has checked the public listing there were no earlier notices. The notice provided on July 2, 2020 is not of an award and requires an additional public notice before award can be made accordance with RFP and City Ordinance provisions:

> Section 2.6 of the RFP: Based on the evaluation and negotiation results, Buyer shall electronically post a notice of intended award at Buyer's website. Please contact the Contact Person if you are uncertain of Buyer's website address or if you experience problems accessing it. Any person who is adversely affected by the decision shall file with Buyer a notice of protest in accordance with the Protest provisions of the RFP. Buyer does not intend to provide tabulations or notices of award by telephone.
>
> **Sec. 126.304. - Contract negotiation and award; other cases.**
> In all cases to which Section 126.303 does not apply, PSEC, subject to Sections 126.201(d)(2) and 126.302(f) hereof, shall forward to the Mayor the alphabetical list consisting of no fewer than three best qualified, interested and available proposers, in order of first, second and third best qualified. The Mayor shall approve or disapprove the recommendation of PSEC. Upon approval, PSEC shall negotiate with the first most qualified proposer and recommend to the Mayor, for approval, mutually satisfactory terms of employment, including the professional fee to be charged. If negotiations with the first most qualified proposer reach an impasse, PSEC shall recommend to the Mayor that said negotiations be terminated, and, upon the Mayor's approval, PSEC shall terminate said negotiations by written notice, and shall commence the negotiation process with the second most qualified proposer. Upon reaching an impasse and terminating negotiation with the second most qualified proposer, PSEC shall commence the negotiation process with the third most qualified proposer. This selection and negotiation procedure may be continued with additional selected proposers in order of best qualified until a mutual agreement is approved by the Mayor or until the list of selected best-qualified proposers is exhausted. If the negotiation process results in the Mayor's approval of a mutual agreement, the Mayor shall then order the award of a contract for the performance of the required professional services to the proposer with whom a mutual agreement is reached. If the negotiation process fails to result in a mutual agreement for the performance of the required professional services, then the selection process shall

> terminate and all proposals shall be deemed rejected, and the using agency in question, with the assistance of the Division, may modify the specifications or scope of services and resolicit proposals, which modifications shall be documented in writing and maintained in the resulting contract file. If delays resulting from resolicitation efforts will be substantially detrimental to the City's best interest, PSEC, upon the approval of the Mayor, may reinitiate the negotiation process described herein, beginning with the first most qualified proposer, which reinitiated negotiations may include, without limitation, modifications to the specifications or scope of services set forth in the initial solicitation, which modifications shall be documented in writing and maintained in the resulting contract file. If the reinitiated negotiation process results in the Mayor's approval of a mutual agreement, the Mayor shall then order the award of a contract for the performance of the required professional services to the proposer with whom a mutual agreement is reached. To the extent a contract awarded hereunder is terminated, PSEC, upon the Mayor's approval, shall have the discretion to: (i) commence negotiations as described in this Section 126.304, beginning with the next most qualified proposer, for the professional services remaining and/or necessary for the completion of said contract; or (ii) to procure said professional services pursuant to Part 3, hereof.

(iii) States the timeliness of the protest;

This protest is timely because it is being submitted within 48 hours of the only notice EyeMed has received regarding this matter which posting occurred on July 2. In accordance with applicable timeliness rules, Friday, July 3 is a legal holiday and the intervening weekend does not count towards the time deadline. Furthermore, no award has been made and therefore an award protest remains timely. EyeMed is further informed and believes that negotiations provided for by the RFP *as a precedent to a protestable award* have not even taken place yet. *See* Footnote 1, herein.

EyeMed received documents in response to its public records request at 1:22pm on July 8, 2020. Upon review of these documents, the additional protest issues outlined below became apparent for the first time.

(iv) states Protestant's legal standing to protest;

EyeMed as a bidder in this process has standing to protest. At this point, EyeMed does not believe that there has been a triggering point for a protest. A protest is required of "an award or recommended conclusion to any bid or solicitation process, including without limitation: (i) a recommendation to reject a bid or proposal; (ii) a contract award; or (iii) the short-listing of bidders or proposers." Procurement Protest Procedures § 126.106(e)(3). At this stage there has been no

award and no recommended *conclusion* to the solicitation process. There has been no recommendation to reject EyeMed's proposal. There has been no short-listing of bidders or proposers. Short-listing is referred to in City Ordinances at § 126.701(b) and is a circumstance where, on the basis of a request for qualifications, the government limits responses to an RFP to only a selected short list of bidders or offers, thereby excluding those not on the short list. That circumstance has not happened here. EyeMed is still ranked and eligible for negotiations should negotiations not conclude successfully with VSP. Thus, there has been no triggering point for a protest. However, out of an abundance of caution and in an effort to have these issues addressed and resolved early, EyeMed submits these issues for consideration.

(v) clearly states with particularity the issue(s), material fact(s) and legal authority upon which the protest is based.

According to the scoring matrix only one point separated EyeMed and VSP – VSP scored an 88.50 and EyeMed scored an 87.50. EyeMed scored higher than VSP in every category except for "Proximity to Project," "Time and Budget," and "Volume of Current and Prior Work for Using Agencies." As shown below, VSP's proposal was non-responsive to the material requirements of the RFP and should have been rejected from consideration. Furthermore, a review of VSP's proposal shows that the scoring was arbitrary and capricious because the information contained in VSP's proposal failed to contain the required information set forth in the evaluation criteria and therefore should not have resulted in the assigned scoring.

1. **VSP is not responsible and its Proposal was non-responsive in that it failed to offer benefits that matched the current benefits as required by the RFP and failed to identify the deviations as required.**

The RFP provided as follows:

> Please find in this section the RFP requested benefits for the City of Jacksonville's Voluntary Vision Plans. The following pages will provide you with a detailed description of the RFP requested vision benefit plans. ***Please quote the vision plans as closely as possible***. The vision copays will remain the same as current. ***If your company cannot provide a specific benefit, co- payment, and particular service or have contract differences, please provide a listing of the deviations.***

RFP, Section 5, p. 28 (emphases added).

> Please provide a quote that includes all of the benefits and services currently being offered by EyeMed/Combined Insurance Company of America.

RFP, Section 5, p. 28.

> 16. Confirm Proposer can administer benefit options as outlined in Section 5. ***Provide any deviations to the benefit options covered services and limitations/exclusions.*** Failure to disclose deviations that contribute to additional claims cost may result in the selected Proposer being financially liable for the additional claims cost.

RFP, Section 6, Number 16, p. 32 (emphasis added).

RFP, Attachment A, Response Format provided for Section 5 - Listing of All Plan/Contract Deviations. The RFP Evaluation Matrix provided as follows:

> **ABILITY TO DESIGN AN APPROACH AND WORK PLAN TO MEET THE PROJECT REQUIREMENTS.** Describe the Contractor's understanding of the requirements of this solicitation, and its ability, approach and/or plan to satisfy the same in complete compliance with all applicable federal, state and local laws, statutes, ordinances, rules and regulations. Requested Vison Plan of Benefits including any deviations or restrictions as referenced in Section 5, Vision Provider Network (Section 7), and the RFP Questionnaire (Section 6) will be used to score this section. **(15 points maximum score)**

RFP, p. 40.

VSP failed to list any plan deviations in its Proposal and confirmed that its offering met the required plan design. *See* VSP Proposal, pp. 30-31; see also p. 35 ("16. Confirm Proposer can administer benefit options as outlined in Section 5. Provide any deviations to the benefit options covered services and limitations/exclusions. Failure to disclose deviations that contribute to additional claims cost may result in the selected Proposer being financially liable for the additional claims cost. Confirmed.")

In spite of its assurance that it had made no plan deviations, VSP failed to provide a quote on the same benefits and services currently being offered. In fact, VSP failed to offer the same out of network benefits that are currently offered, thus precluding an apples to apples comparison between proposals. VSP's Proposal offered inferior out of network benefits on exams and lenses:

- VSP was required to offer a $50 out of network benefit for exams, but only offered $41;
- VSP was required to offer a $50 out of network benefit for single vision lenses but only offered $45;

- VSP was required to offer a $75 out of network benefit for lined bifocal lenses but only offered $65; and
- VSP was required to offer a $125 out of network benefit for lenticular lenses but offered no such benefit.

VSP's Proposal, pp. 27 and 29. VSP's Proposal did not identify any of these deviations as required by the RFP, and therefore should have been rejected as non-responsive, as it failed to quote the same benefits *and* failed to identify the deviations in its offer as required. Instead, VSP falsely confirmed that it was offering the current benefits. Accordingly, VSP's Proposal should have never been scored, but at the least it should never have scored the maximum points for "Time and Budget" since its proposal was far inferior to the current benefit offering that it was required to quote.

VSP materially misrepresented the benefit it provided and misled evaluators by so doing when it represented that its benefits were the same as EyeMed was providing, and by not listing or disclosing the differences as required. These material misrepresentations taint the process and warrant disqualification.

2. **VSP's Proposal failed to offer a rate guarantee for the entire contract period.**

The RFP provided for a five-year contract term. RFP, Section 1.3, p.3. In response to the RFP Questionnaire regarding the rate guarantee, VSP responded that "[o]ur rates are guaranteed for the course of the contract period, which is four years (January 1, 2021 through December 31, 2024)." VSP Proposal, p. 35. However, contrary to VSP's assertion here, the contract period is five years, not four years. Given the failure to include a rate guarantee for the full contract period, VSP's Proposal should have been found non-responsive. Furthermore, because of this failure, it was arbitrary and capricious for VSP to be scored the maximum points for this section, especially in comparison to contractors that offered a rate guarantee for the full 5-year contract period.[2]

3. **VSP improperly listed Costco and Wal-Mart as in-network providers when they are actually out of network providers with substantially different benefits thereby resulting in an arbitrary and capricious score on the competence criteria.**

One issue raised during the Professional Services Evaluation Committee ("PSEC") meeting was the disparity in scoring between EyeMed and VSP on the "Competence" evaluation criteria. The reasoning provided for the lower score in that criteria was due to a smaller network. It was

[2] RFP, p. 40 ("**QUOTATION OF RATES, FEES OR CHARGES AND OTHER DETAILED COST PROPOSAL OR COST BREAKDOWN INFORMATION.** Describe the Contractor's overall willingness to meet both time and budget requirements for the project, and subject to Chapter 126, Part 3 of Jacksonville Ordinance Code, Section 126.302(e) in particular, proposed total compensation or unit price quotations, including, without limitation, hourly rates, fees, or other charges that will ultimately be used during, contract negotiations to calculate or determine total compensation. The rates listed on the price sheet, (Form 1), Vision Provider Network (Section 7) and the RFP Questionnaire (Section 6) will be used to evaluate this section. **(20 points maximum score).")**

specifically noted during the PSEC meeting that the smaller network was not concerning ***because the VSP network included Costco and Wal-Mart***. *See* PSEC Recording 7-2-20 at around minute 15-17. VSP's Proposal makes it appear that Costco and Wal-Mart are both in-network providers. See VSP Proposal, pp. 38, 39. However, a review of the footnotes in VSP's Proposal indicates that Costco and Wal-Mart do not offer in-network benefits:

> Promotion/featured frame brands are subject to change. The additional $50 promotion doesn't apply to Walmart or Costco.

VSP's Proposal, p. 38, footnote 3.

> Based on applicable laws, benefits and savings may vary by location. Benefits may also vary at participating retail chains.
> Promotions like rebates are continually evaluated and subject to change without notice. Promotions and featured frame brands do not apply at Walmart®.
> Walmart® allowance of $60 is equivalent to the frame allowance at VSP doctor locations and participating retail chains.

VSP's Proposal, pp. 27 and 29, Disclaimers and Exclusions.

Publicly available information from the VSP website shows that Wal-Mart is an out of network provider. *See* Print-Out from VSP website available on-line at https://www.vspdirect.com/vision-hub/vsp-vision-insurance-faq-part-2 and attached as Exhibit 1.

There is an important distinction between the doctor side and materials side of these locations. The independent doctors practicing at these locations are contracted individually with VSP and can choose to participate or not to participate in their network. Therefore, not all doctors at these locations are necessarily in-network.

VSP's Proposal only shows two Costco locations within the covered area. VSP's Proposal, p. 39. It lists 22 Wal-Mart locations, but those locations are all out of network and therefore provide significantly lower benefits for City of Jacksonville employees than in-network providers. VSP failed to adequately note this distinction and the City improperly scored and considered that the Costco and Wal-Mart locations were in-network providers as evidenced by the discussion in the PSEC meeting noted above. ***To be clear***, VSP was scored as if City of Jacksonville employees would have full in-network access to Costco and Wal-Mart locations when that is not true. The City of Jacksonville employees will not only have a much reduced network of providers than what they currently have available (as noted in the PSEC discussion referenced above), but even the limited providers that are available will not all offer in-network benefits, but instead the inferior out of network benefits which are not as robust as the out of network benefits currently being offered on which VSP was required to but did not quote as part of its proposal (as stated under

Item 1 above). Accordingly, the scoring of VSP's Proposal with regard to the "Competence" criteria was arbitrary and capricious and should be vacated.

4. **EyeMed was improperly penalized in scoring for being the incumbent and the scoring of the current and prior work criteria was unfairly applied as between VSP and EyeMed.**

The RFP provided the following evaluation criteria:

> **THE VOLUME OF CURRENT AND PRIOR WORK PERFORMED FOR USING AGENCIES SHALL BE CONSIDERED A MINUS FACTOR**. Provide a list of all local government projects including the fees awarded for each on which Contractor has been awarded during the past five (5) years. Include only those projects on which Contractor was the Prime Contractor (do not delete fees paid to subcontractors or others). Such list shall include all work for the City of Jacksonville and its various "using agencies," which is defined in the Jacksonville Ordinance Code as "a department, division, office, board, agency, commission or other unit of Buyer and independent agency required by law or voluntarily requesting to utilize the services of the [Procurement] Division"; and with any of Buyer's Independent Authorities"; and on projects undertaken with others that are similar in nature to the size and scope of professional services and/or work required for the project solicitation herein. If the Contractor has not performed work for any of these agencies during the past five (5) years, the response should so clearly state. The minus factor methodology for these criteria will be based on the fees awarded. The higher the volume of fees the lower the score, less volume of fees the higher the score. **(5 points maximum score)**

RFP, pp. 40-41. It seems appropriate for the City to consider other work that the Contractor will be performing ***during the term of the contract being bid*** in determining whether the Contractor has sufficient resources to manage the City's business should it be awarded.

Here, in response to this evaluation criteria, VSP's Proposal provided that "VSP has not proposed nor undertaken local government projects within the City or any of its "using agencies" that are similar in nature, size and scope of professional services and/or work required for the project solicitation herein.[3]" VSP's Proposal, p. 25. EyeMed's Proposal provided that it had no work other than as the incumbent on this very contract being re-bid which would go away if not awarded this

[3] Given the 623 Florida clients that VSP touts in its Proposal response, it is difficult to believe that it had none that should have been disclosed in response to this criteria. *See* VSP's Proposal, p. 10.

contract or be replaced by the work under this contract – in any event that volume would not separately continue in addition to the work under the contract being procured by the RFP.

Therefore, VSP and EyeMed had the exact same answer about other work that would be performed during this contract – no other City of Jacksonville work volume – yet they were scored very differently. VSP was given a 3.5 for this section while EyeMed was only given a 1.5. The work on which EyeMed is an incumbent for the City should not be considered as a minus factor because that prior, incumbent work will not continue, but will be replaced upon the award of this contract. Accordingly, EyeMed was improperly penalized for being the incumbent and arbitrarily scored in relation to VSP since their answers regarding other government work were equal.

5. **VSP's Proposal should be analyzed to determine if the offered implementation credit is a violation of State or City laws or ordinances governing gifts and kickbacks to public entities.**

VSP's Proposal offered as part of its "Rate Details" as follows:

> Rates are based on 4,000 eligible employees, are guaranteed for four years, and are valid until 01/01/21. Coverage offered: 100% employee paid. Net of commission. $***10K implementation credit*** and $10K implementation guarantee. Rates include any applicable taxes and health assessment fees known as of the date of the proposal.

VSP Proposal, pp. 27 and 29 (emphasis added). The implementation credit was further described in VSP's Proposal as follows:

> Additionally, we understand there may be costs involved with changing vision carriers, particularly related to communicating a new plan to members and/or modifying membership reporting systems. To help defray those costs, VSP is offering a one-time transition credit of $10,000. VSP will reimburse the City for actual expenses, up to the credit amount of $10,000, incurred and submitted within 12 months of the VSP vision plan implementation effective date.
>
> As part of our agreement to offer a $10,000 transition credit to the City, VSP requests that you provide us with email addresses for your eligible employees. This will allow us to most effectively drive high enrollment by communicating the benefits and value of the VSP plan directly to your employees. The email information provided to VSP is protected under our HIPAA-compliant privacy policies, and will only be used for this purpose.

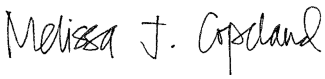
VSP Proposal, p. 51. An implementation credit was not requested as part of the RFP here. Florida State laws as well as City of Jacksonville Ordinances address requirements and prohibitions related to gifts, gratuities, and kickbacks. The City should analyze this offering to determine whether it is in compliance with such laws. VSP's failure to comply with law would be a basis for rejection of its proposal and a basis for determining that VSP is not a responsible offeror.

CONCLUSION

EyeMed protests that an award to a vendor other than EyeMed is arbitrary, capricious, contrary to law and in violation of the requirements of the RFP and applicable ordinances; that VSP and NVA are not responsive and responsible bidders and failed to meet all material requirements of the RFP; and that the scoring and evaluation process was arbitrary, capricious and contrary to law.

EyeMed requests that any award be stayed; that a hearing be held to address its protest issues; that any negotiations with VSP be stayed pending a full hearing on the matters raised herein; and that negotiations be commenced with EyeMed as the responsive and responsible highest ranked offeror. EyeMed reserves the right to amend this protest should additional protestable issues arise. If the City does not consider the issues raised herein now or agree that they can be raised as part of a later protest of the intended award when it is posted, EyeMed will be forced to pursue a judicial remedy.

Very truly yours,



Melissa J. Copeland
Counsel for EyeMed Vision Care, LLC

Andrew E. Schwartz
Shutts & Bowen LLP
200 East Broward Boulevard,
Suite 2100
Fort Lauderdale, FL 33301
Direct: (954) 847-3878
ASchwartz@shutts.com
Local Counsel for EyeMed Vision Care, LLC

Enclosure

vsp individual vision plans

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Richard Lee

Category: Vision Insurance

06/07/2019 12:00 am

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Vision Insurance FAQ: What to know now that you have VSP vision insurance Part 2

Now that you have read part one of our VSP vision insurance frequently-asked-questions, you may have additional questions about coverage. In-network eye doctors versus out-of-network? Where can I buy eyeglasses and contacts? Here is part two of our frequently-asked-questions about VSP vision insurance.

Who is my vision insurance provider?

If you choose a plan with VSP vision insurance, then VSP is your insurance provider.

Who takes VSP vision insurance?

Eye doctors and eye care professionals within VSP's provider network. With the nation's largest network of independent doctors, there's always an optometrist nearby. Don't believe it? Take a look in your area:

Where can I find a full list of vision care providers?

Search VSP's provider network to find an eye doctor close to you: https://www.vsp.com/find-eye-doctors.html.

Exhibit 1

What is the difference between in-network providers and out-of-network providers?

An in-network provider is an eye doctor that has met VSP's requirements for quality of service and accepted specific rates negotiated by VSP to save you money on your services. An out-of-network provider does not have the same discounted rates for their services. You will typically pay much less going to a VSP network doctor.

How do I submit a claim for an out-of-network provider reimbursement?

If you choose to see an out-of-network provider, your coverage will be less than when you see a VSP network doctor. For more details, please call Member Services at 1.800.877.7195.

Can I get my eye exam at one location and the glasses at another?

Yes. You just need to make sure to have the optometrist who performs your eye exam provide you with your eye health records and a prescription for you to take to the location where you'd like to purchase your eyewear.

Can I use VSP vision insurance to buy contacts online?

Yes, but first you should have a fitting and evaluation with your eye doctor and you'll need your current prescription. Your eyes change over time, including size and shape, so do not assume your old prescription and fitting are still best for your eyes. Generally, it's a good idea to know how your eyes respond to specific brands of contact lenses beforehand. Therefore, ordering online is best suited for *reordering* contacts you already trust and feel comfortable with.

Can I use VSP to buy glasses online?

If you do prefer to shop online, you can visit Eyeconic.com, which seamlessly connects your eyewear, your VSP insurance coverage, and your eye doctor's expertise. Plus, you'll enjoy a wide selection of stylish frames and lens enhancements to choose from.

Can I use 1-800 CONTACTS to order contacts?

Yes, but the benefits will be out-of-network, requiring a separate, additional claims step. 1-800 CONTACTS provides this specific information on their website: "We are also accepted as an out-of-network provider by most major insurance companies, such as VSP.... You can simply purchase your contacts (online or by phone) and complete the out of network form (click here to download), then submit both the invoice from your order and the completed form to your insurance company for reimbursement. It's that easy." To get the most out of your vision insurance benefits, and avoid filing any claims, we recommend getting your contacts online at Eyeconic.com, where VSP members have access to additional discounts and savings.

Which vision insurance does Costco accept?

Costco accepts most vision insurance plans, including VSP. However, your allowance may differ.

Which vision insurance does Walmart accept?

Walmart is an out-of-network provider for VSP. If you have an out-of-network benefit included in your plan, then for reimbursement simply submit your itemized receipt from your order along with a VSP out-of-network reimbursement form to VSP.

Is LASIK also covered by my plan?

If you've been itching to correct one or both of your eyes with laser eye surgery, then look no further than VSP. Through your vision plan, you'll have access to Exclusive Member Extras which includes savings on LASIK. You'll receive around a 15% discount on your surgery. That could be as much as $500 in savings.

Can my vision insurance be used for sunglasses?

Yes! Every VSP plan has a set frame allowance that you may put towards new prescription eyeglasses, contact lenses, and even prescription sunglasses. Additionally, even if you've already exceeded your frame allowance for the year, when you purchase a new pair of sunglasses you'll receive a 20% discount. And this discount applies to any number of additional sun- or eyeglasses. Amazing, right?

Are prescription eyeglasses and contact lenses tax deductible?

According to form 104, Schedule A from the IRS, prescription eyeglasses and contact lenses may be claimed as itemized deductions on your taxes, because they qualify as medical expenses. Contact lens cleaners and saline solutions are also on this list, along with a large number of other medical-related items. To reach the required 10% AGI mentioned in the previous question, it's advised to count as many medical expenses as possible, just be sure to verify them against the IRS's list. To ensure that you are following your state's tax laws, it would be best to check with a CPA who can advise you on this type of deduction.

Hopefully, you feel much more equipped to get the most out of your plan's benefits and discounts to keep your vision clear and eyes healthy, but if you still have questions about your plan, then you can speak directly with our knowledgeable customer service team at **800.785.0699**. Our service center is open **Monday through Friday from 7a.m. to 7p.m.** Central Time. We're happy to do what we can to help you get even more from your VSP vision insurance!

EXPLORE PLANS

FIND A DOCTOR

TOP 5 SUMMER TRENDS FOR EYEGLASS FRAMES IN 2019

THE BEST FOODS FOR HEALTHY VISION

VISION INSURANCE FAQ: WHAT TO KNOW NOW THAT YOU HAVE VSP VISION INSURANCE PART 1

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Exhibit 8

July ~~10~~21, 2020

Via Fax to (904) 255-8837 and email to gpease@coj.net

Gregory Pease, Chief
City of Jacksonville Procurement Division
214 N. Hogan St., 8th floor
Jacksonville, FL 32202

Re: P-23-20 Group Vision Insurance Plan

Dear Mr. Pease:

On behalf of EyeMed Vision Care, LLC ("EyeMed"), we submit the following ~~additional information in support of the~~ protest regarding the above-referenced RFP and ~~all intended decisions and decisions~~the City's intent to award a contract to ~~any vendor other than EyeMed~~ Vision ~~Care, LLC~~[1]Service Plan ("VSP").

In accordance with RFP Section 2.18 and the referenced ordinances, EyeMed submits as follows:

This written Notice of Protest:

(i) Is addressed to the Chief [of Jacksonville's Procurement Division];

(ii) Identifies the solicitation, decision, or recommended award in question by number and title or any other language sufficient to enable the Chief to identify the same;

This protest relates to P-23-20 Group Vision Insurance Plan and ~~any and all decisions or intended decisions to award a contract to any vendor other than EyeMed. The only posting regarding this matter was on July 2, 2020. Although EyeMed is registered to receive notices and has checked the public listing there were no earlier notices. The notice provided on July 2, 2020 is not of an award and requires an additional public notice before award can be made accordance with RFP and City Ordinance provisions:~~

the intended award to VSP as indicated in the Professional Services Evaluation Committee ("PSEC") Meeting Agenda for July 23, 2020. Section 2.6 of the RFP~~:~~ provides that a protest of this decision is appropriate at this juncture: "***Based on the evaluation and negotiation results,***

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[1] ~~Although the City appears to be taking the position that the approval of the Agenda recommendation on July 2 to negotiate with VSP (or some earlier posted notice of which EyeMed was not aware and has never seen) was a triggering point for a protest, EyeMed respectfully disagrees with that position and asserts that the RFP provisions and the City's Protest Procedures do not support the City's position. A protest is required of "an award or recommended conclusion to any bid or solicitation process, including without limitation: (i) a recommendation to reject a bid or proposal; (ii) a contract award; or (iii) the short listing of bidders or proposers." Procurement Protest Procedures § 126.106(e)(3). At this stage there has been no award and no recommended *conclusion* to the solicitation process. There has been no recommendation to reject EyeMed's proposal. There has been no short listing of bidders or proposers. Short listing is referred to in City Ordinances at § 126.701(b) and is a circumstance where, on the basis of a request for qualifications, the government limits responses to an RFP to only a selected short list of bidders or offers, thereby excluding those not on the short list. That circumstance has not happened here. EyeMed is still ranked and eligible for negotiations should negotiations not conclude successfully with VSP. Thus, there has been no triggering point for a protest. However, out of an abundance of caution and in an effort to have these issues addressed and resolved early, EyeMed submitted this protest.~~

Buyer shall electronically post a notice of intended award at Buyer's website. Please contact the Contact Person if you are uncertain of Buyer's website address or if you experience problems accessing it. ***Any person who is adversely affected by the decision shall file with Buyer a notice of protest in accordance with the Protest provisions of the RFP***. Buyer does not intend to provide tabulations or notices of award by telephone."

~~Sec. 126.304. - Contract negotiation and award; other cases.~~

~~In all cases to which Section 126.303 does not apply, PSEC, subject to Sections 126.201(d)(2) and 126.302(f) hereof, shall forward to the Mayor the alphabetical list consisting of no fewer than three best qualified, interested and available proposers, in order of first, second and third best qualified. The Mayor shall approve or disapprove the recommendation of PSEC. Upon approval, PSEC shall negotiate with the first most qualified proposer and recommend to the Mayor, for approval, mutually satisfactory terms of employment, including the professional fee to be charged. If negotiations with the first most qualified proposer reach an impasse, PSEC shall recommend to the Mayor that said negotiations be terminated, and, upon the Mayor's approval, PSEC shall terminate said negotiations by written notice, and shall commence the negotiation process with the second most qualified proposer. Upon reaching an impasse and terminating negotiation with the second most qualified proposer, PSEC shall commence the negotiation process with the third most qualified proposer. This selection and negotiation procedure may be continued with additional selected proposers in order of best qualified until a mutual agreement is approved by the Mayor or until the list of selected best qualified proposers is exhausted. If the negotiation process results in the Mayor's approval of a mutual agreement, the Mayor shall then order the award of a contract for the performance of the required professional services to the proposer with whom a mutual agreement is reached. If the negotiation process fails to result in a mutual agreement for the performance of the required professional services, then the selection process shall terminate and all proposals shall be deemed rejected, and the using agency in question, with the assistance of the Division, may modify the specifications or scope of services and resolicit proposals, which modifications shall be documented in writing and maintained in the resulting contract file. If delays resulting from resolicitation efforts will be substantially detrimental to the City's best interest, PSEC, upon the approval of the Mayor, may reinitiate the negotiation process described herein, beginning with the first most qualified proposer, which reinitiated negotiations may include, without limitation, modifications to the specifications or scope of services set forth in the initial solicitation, which modifications shall be documented in writing and maintained in the resulting contract file. If the reinitiated negotiation process results in the Mayor's approval of a mutual agreement, the Mayor shall then order the award of a contract for the performance of the required professional services to the proposer with whom a mutual agreement is reached. To the extent a contract awarded hereunder is terminated, PSEC, upon the Mayor's approval, shall have the discretion to: (i) commence negotiations as described in this Section 126.304, beginning with the next most qualified proposer, for the professional services remaining and/or necessary for the~~

completion of said contract; or (ii) to procure said professional services pursuant to Part 3, hereof.

(iii) States the timeliness of the protest;

This protest is timely because it is being submitted within 48 hours of the only notice EyeMed has received regarding this matter which posting occurred on July 2. In accordance with applicable timeliness rules, Friday, July 3 is a legal holiday and the intervening weekend does not count towards the time deadline. Furthermore, no award has been made and therefore an award protest remains timely. EyeMed is further informed and believes that negotiations provided for by the RFP *as a precedent to a protestable award* have not even taken place yet. *See* Footnote 1, herein.posting of the PESC Agenda for the July 23, 2020 meeting. This is the proper point of entry for EyeMed to protest the initial evaluation of VSP's offer with respect to responsiveness, scoring, etc. because it is the first point in the procurement in which the City has posted any intended decision harmful to EyeMed's interests. *E.g.*, *AT&T Corp. v. Dep't of Mgmt. Servs.*, 201 So. 3d 852, 858-59 (Fla. 1st DCA 2016) (rejecting argument that disappointed offeror included in shortlist waived its challenge to awardee's responsiveness by failing to protest within 48 hours of shortlisting announcement).

EyeMed received documents in response to its public records request at 1:22pm on July 8, 2020. Upon review of these documents, the additional protest issues outlined below became apparent for the first time.

To the extent the City has indicated to EyeMed that offerors like itself – who were included in the "short list,"[1] were required to file "anticipatory" or "defensive" protests challenging the co-inclusion of their competitors, the City's reading of the Protest Procedure is unreasonable. When the Protest Procedures are read reasonably it only requires offerors to protest a recommended exclusion from the "shortlist," and not the co-inclusion of a competitor.

Because EyeMed was included in the "shortlist," it could still win the award and was therefore not harmed by VSP's preliminary co-inclusion. Nonetheless, the City has advised EyeMed its position is that EyeMed was that time of "shortlisting" required to speculate that, instead of recognizing and correcting the preliminary errors it committed when evaluating VSP's offer, the City would harm EyeMed's interests by making an arbitrary and unlawful award to VSP and to protest at that time. Not only would such an "anticipatory" or "defensive" protest run counter to the presumption government personnel act lawfully and in good faith, *Hillsborough Cnty. Aviation Auth. v. Taller*, 245 So. 2d 100, 102-03 (Fla. 2d DCA 1971), under Florida law a protest may not be pursued based on such speculative harm. *Compare* Protest Procedure § 126.106(e)(1)(b) (authorizing protests by "any person or entity that is adversely affected by a decision or an intended decision" "and who has standing to protest said decision or intended decision under Florida law") to *Advocacy Ctr. for Persons with Disabilities, Inc. v. State, Fla. Dep't of Child. with Disabilities*, 721 So. 2d 753, 75455 (Fla. 1st DCA 1998) ("Section 120.57(3)(b)" "permits [protests by] 'any person who is adversely affected by the agency decision or intended decision'" "**To establish that one is adversely**

[1] EyeMed does not concede that the City actually used a "short list" in this competition as that term of art is used in the City's Procurement Ordinance or Protest Procedure. However, this argument is being made to explain why the City's reading of its Protest Procedure is wrong assuming arguendo that a "short list" was actually used.

affected, it must be shown that the proposed action will cause **immediate injury in fact**") (emphases added).

Thus, the City is unreasonably reading its Protest Procedures in a manner that nullifies "shortlisted" bidders' right to challenge the evaluation of their competitors' offers by requiring them to raise such protests at a time when they lack standing to pursue them.[2] *E.g.*, *Fla. Indus. Power Users Grp. v. Graham*, 126 So. 3d 1056 (Fla. 2013) (table opinion) ("We hereby dismiss the case for lack of standing because the Appellant did not demonstrate that it is adversely affected by the Appellee's decision" To "have standing" a party "must demonstrate that it is adversely affected" and "mere speculation regarding" "adverse impacts is insufficient") (citations omitted); *Punsky v. Clay Cnty. Bd. of Cnty. Comm'rs*, 60 So. 3d 1088, 1092 (Fla. 1st DCA 2011) ("To establish standing, a party must demonstrate "an injury which is both real and immediate, not conjectural or hypothetical.") (citations omitted).

(iv) states Protestant's legal standing to protest;

~~EyeMed as a bidder in this process has standing to protest. At this point, EyeMed does not believe that there has been a triggering point for a protest. A protest is required of "an award or recommended conclusion to any bid or solicitation process, including without limitation: (i) a recommendation to reject a bid or proposal; (ii) a contract award; or (iii) the short-listing of bidders or proposers." Procurement Protest Procedures § 126.106(e)(3). At this stage there has been no award and no recommended *conclusion* to the solicitation process. There has been no recommendation to reject EyeMed's proposal. There has been no short-listing of bidders or proposers. Short-listing is referred to in City Ordinances at § 126.701(b) and is a circumstance where, on the basis of a request for qualifications, the government limits responses to an RFP to only a selected short list of bidders or offers, thereby excluding those not on the short list. That circumstance has not happened here. EyeMed is still ranked and eligible for negotiations should negotiations not conclude successfully with VSP. Thus, there has been no triggering point for a protest. However, out of an abundance of caution and in an effort to have these issues addressed and resolved early, EyeMed submits these issues for consideration.~~

EyeMed is an actual offeror in this procurement. Moreover, as explained herein, EyeMed would have won the contract "but for" the City's arbitrary and unlawful decision to award to VSP. Therefore, EyeMed is an interested party with standing to protest. *Madison Highlands, LLC v. Fla. Housing Fin. Corp.*, 220 So. 3d 467, 473–74 (Fla. 5th DCA 2017) (a disappointed offeror has standing under the "adversely affected" standard when it alleges it would have won "but for" the agency's improper handling of the procurement).

(v) clearly states with particularity the issue(s), material fact(s) and legal authority upon which the protest is based.

According to the scoring matrix only one point separated EyeMed and VSP – VSP scored an 88.50 and EyeMed scored an 87.50. EyeMed scored higher than VSP in every category except for "Proximity to Project," "Time and Budget," and "Volume of Current and Prior Work for Using

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[2] Similarly, under the City's interpretation, in order to preserve its right to protest a first-ranked bidder would have to speculate that its negotiations with the City will be unsuccessful and challenge its competitors at the time of "short-listing." But, a first ranked bidder would never have standing to pursue such a protest because it has not sustained any injury.

Agencies." As shown below, VSP's proposal was non-responsive to the material requirements of the RFP and should have been rejected from consideration. Furthermore, a review of VSP's proposal shows that the scoring was arbitrary and capricious because the information contained in VSP's proposal failed to contain the required information set forth in the evaluation criteria and therefore should not have resulted in the assigned scoring.

1. **VSP[3] is not responsible and its Proposal was non-responsive in that it failed to offer benefits that matched the current benefits as required by the RFP and failed to identify the deviations as required.**

The RFP provided as follows:

> Please find in this section the RFP requested benefits for the City of Jacksonville's Voluntary Vision Plans. The following pages will provide you with a detailed description of the RFP requested vision benefit plans. ***Please quote the vision plans as closely as possible***. The vision copays will remain the same as current. ***If your company cannot provide a specific benefit, co- payment, and particular service or have contract differences, please provide a listing of the deviations.***

RFP, Section 5, p. 28 (emphases added).

> Please provide a quote that includes all of the benefits and services currently being offered by EyeMed/Combined Insurance Company of America.

RFP, Section 5, p. 28.

> 16. Confirm Proposer can administer benefit options as outlined in Section 5. ***Provide any deviations to the benefit options covered services and limitations/exclusions.*** Failure to disclose deviations that contribute to additional claims cost may result in the selected Proposer being financially liable for the additional claims cost.

RFP, Section 6, Number 16, p. 32 (emphasis added).

RFP, Attachment A, Response Format provided for Section 5 - Listing of All Plan/Contract Deviations. The RFP Evaluation Matrix provided as follows:

> **ABILITY TO DESIGN AN APPROACH AND WORK PLAN TO MEET THE PROJECT REQUIREMENTS.** Describe the

[3] EyeMed also protests that an award to VSP is not proper as the award notice is in the name of "VSP," but the proposal was submitted by "Vision Services Plan (VSP) (see VSP Proposal, p. 1) and the entity identified as registered to do business in Florida is "Vision Service Plan Insurance Company" (see VSP Proposal, p. 32).

> Contractor's understanding of the requirements of this solicitation, and its ability, approach and/or plan to satisfy the same in complete compliance with all applicable federal, state and local laws, statutes, ordinances, rules and regulations. Requested Vison Plan of Benefits including any deviations or restrictions as referenced in Section 5, Vision Provider Network (Section 7), and the RFP Questionnaire (Section 6) will be used to score this section. **(15 points maximum score)**

RFP, p. 40.

VSP failed to list any plan deviations in its Proposal and confirmed that its offering met the required plan design. *See* VSP Proposal, pp. 30-31; see also p. 35 ("16. Confirm Proposer can administer benefit options as outlined in Section 5. Provide any deviations to the benefit options covered services and limitations/exclusions. Failure to disclose deviations that contribute to additional claims cost may result in the selected Proposer being financially liable for the additional claims cost. Confirmed.")

In spite of its assurance that it had made no plan deviations, VSP failed to provide a quote on the same benefits and services currently being offered. In fact, VSP failed to offer the same out of network benefits that are currently offered, thus precluding an apples to apples comparison between proposals. VSP's Proposal offered inferior out of network benefits on exams and lenses:

- VSP was required to offer a $50 out of network benefit for exams, but only offered $41;
- VSP was required to offer a $50 out of network benefit for single vision lenses but only offered $45;
- VSP was required to offer a $75 out of network benefit for lined bifocal lenses but only offered $65; and
- VSP was required to offer a $125 out of network benefit for lenticular lenses but offered no such benefit.

VSP's Proposal, pp. 27 and 29. VSP's Proposal did not identify any of these deviations as required by the RFP, and therefore should have been rejected as non-responsive, as it failed to quote the same benefits *and* failed to identify the deviations in its offer as required. Instead, VSP falsely[4] confirmed that it was offering the current benefits. Accordingly, VSP's Proposal should have never been scored, but at the least it should never have scored the maximum points for "Time and Budget" since its proposal was far inferior to the current benefit offering that it was required to quote.

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[4] VSP's letter to Ms. DiPerna dated July 17, 2020 confirmed that VSP's Proposal should have been rejected. The letter states that the plan offering "duplicates the *fundamental* plan design of the current programs" and "[w]hile we attempted to mirror all aspects of the plans there are things that are structurally done differently between VSP and EyeMed." If VSP could not meet the RFP requirements, it was required to submit a specification protest; it is not allowed to submit a proposal and provide a false confirmation and fail to identify the deviations as required.

VSP materially misrepresented the benefit it provided and misled evaluators by so doing when it represented that its benefits were the same as EyeMed was providing, and by not listing or disclosing the differences as required. These material misrepresentations taint the process and warrant disqualification.

2. VSP's Proposal failed to offer a rate guarantee for the entire contract period.

The RFP provided for a five-year contract term. RFP, Section 1.3, p.3. In response to the RFP Questionnaire regarding the rate guarantee, VSP responded that "[o]ur rates are guaranteed for the course of the contract period, which is four years (January 1, 2021 through December 31, 2024)." VSP Proposal, p. 35. However, contrary to VSP's assertion here, the contract period is five years, not four years. Given the failure to include a rate guarantee for the full contract period, VSP's Proposal should have been found non-responsive. Furthermore, because of this failure, it was arbitrary and capricious for VSP to be scored the maximum points for this section, especially in comparison to contractors that offered a rate guarantee for the full 5-year contract period.[25]

3. VSP improperly listed Costco and Wal-Mart as in-network providers when they are actually out of network providers with substantially different benefits thereby resulting in an arbitrary and capricious score on the competence criteria.

One issue raised during the Professional Services Evaluation Committee ("PSEC") meeting was the disparity in scoring between EyeMed and VSP on the "Competence" evaluation criteria. The reasoning provided for the lower score in that criteria was due to a smaller network. It was specifically noted during the PSEC meeting that the smaller network was not concerning ***because the VSP network included Costco and Wal-Mart***. *See* PSEC Recording 7-2-20 at around minute 15-17. VSP's Proposal makes it appear that Costco and Wal-Mart are both in-network providers. See VSP Proposal, pp. 38, 39. However, a review of the footnotes in VSP's Proposal indicates that Costco and Wal-Mart do not offer in-network benefits:

> Promotion/featured frame brands are subject to change. The additional $50 promotion doesn't apply to Walmart or Costco.

VSP's Proposal, p. 38, footnote 3.

> Based on applicable laws, benefits and savings may vary by location. Benefits may also vary at participating retail chains. Promotions like rebates are continually evaluated and subject to

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[25] RFP, p. 40 ("**QUOTATION OF RATES, FEES OR CHARGES AND OTHER DETAILED COST PROPOSAL OR COST BREAKDOWN INFORMATION.** Describe the Contractor's overall willingness to meet both time and budget requirements for the project, and subject to Chapter 126, Part 3 of Jacksonville Ordinance Code, Section 126.302(e) in particular, proposed total compensation or unit price quotations, including, without limitation, hourly rates, fees, or other charges that will ultimately be used during, contract negotiations to calculate or determine total compensation. The rates listed on the price sheet, (Form 1), Vision Provider Network (Section 7) and the RFP Questionnaire (Section 6) will be used to evaluate this section. **(20 points maximum score).")**

> change without notice. Promotions and featured frame brands do not apply at Walmart®.
> Walmart® allowance of $60 is equivalent to the frame allowance at VSP doctor locations and participating retail chains.

VSP's Proposal, pp. 27 and 29, Disclaimers and Exclusions.

Publicly available information from the VSP website shows that Wal-Mart is an out of network provider. *See* Print-Out from VSP website available on-line at https://www.vspdirect.com/vision-hub/vsp-vision-insurance-faq-part-2 and attached as Exhibit 1.

There is an important distinction between the doctor side and materials side of these locations. The independent doctors practicing at these locations are contracted individually with VSP and can choose to participate or not to participate in their network. Therefore, not all doctors at these locations are necessarily in-network.

VSP's Proposal only shows two Costco locations within the covered area. VSP's Proposal, p. 39. It lists 22 Wal-Mart locations, but those locations are all out of network and therefore provide significantly lower benefits for City of Jacksonville employees than in-network providers. VSP failed to adequately note this distinction and the City improperly scored and considered that the Costco and Wal-Mart locations were in-network providers as evidenced by the discussion in the PSEC meeting noted above. ***To be clear***, VSP was scored as if City of Jacksonville employees would have full in-network access to Costco and Wal-Mart locations when that is not true. The City of Jacksonville employees will not only have a much reduced network of providers than what they currently have available (as noted in the PSEC discussion referenced above), but even the limited providers that are available will not all offer in-network benefits, but instead the inferior out of network benefits which are not as robust as the out of network benefits currently being offered on which VSP was required to but did not quote as part of its proposal (as stated under Item 1 above). Accordingly, the scoring of VSP's Proposal with regard to the "Competence" criteria was arbitrary and capricious and should be vacated.

4. EyeMed was improperly penalized in scoring for being the incumbent and the scoring of the current and prior work criteria was unfairly applied as between VSP and EyeMed.

The RFP provided the following evaluation criteria:

> **THE VOLUME OF CURRENT AND PRIOR WORK PERFORMED FOR USING AGENCIES SHALL BE CONSIDERED A MINUS FACTOR**. Provide a list of all local government projects including the fees awarded for each on which Contractor has been awarded during the past five (5) years. Include only those projects on which Contractor was the Prime Contractor (do not delete fees paid to subcontractors or others). Such list shall include all work for the City of Jacksonville and its various "using agencies," which is defined in the Jacksonville Ordinance Code as "a department, division, office, board, agency, commission or other unit of Buyer and independent agency required by law or voluntarily requesting to utilize

> the services of the [Procurement] Division"; and with any of Buyer's Independent Authorities"; and on projects undertaken with others that are similar in nature to the size and scope of professional services and/or work required for the project solicitation herein. If the Contractor has not performed work for any of these agencies during the past five (5) years, the response should so clearly state. The minus factor methodology for these criteria will be based on the fees awarded. The higher the volume of fees the lower the score, less volume of fees the higher the score. **(5 points maximum score)**

RFP, pp. 40-41. It seems appropriate for the City to consider other work that the Contractor will be performing ***during the term of the contract being bid*** in determining whether the Contractor has sufficient resources to manage the City's business should it be awarded.

Here, in response to this evaluation criteria, VSP's Proposal provided that "VSP has not proposed nor undertaken local government projects within the City or any of its "using agencies" that are similar in nature, size and scope of professional services and/or work required for the project solicitation herein.[36]" VSP's Proposal, p. 25. EyeMed's Proposal provided that it had no work other than as the incumbent on this very contract being re-bid which would go away if not awarded this contract or be replaced by the work under this contract – in any event that volume would not separately continue in addition to the work under the contract being procured by the RFP.

Therefore, VSP and EyeMed had the exact same answer about other work that would be performed during this contract – no other City of Jacksonville work volume – yet they were scored very differently. VSP was given a 3.5 for this section while EyeMed was only given a 1.5. The work on which EyeMed is an incumbent for the City should not be considered as a minus factor because that prior, incumbent work will not continue, but will be replaced upon the award of this contract. Accordingly, EyeMed was improperly penalized for being the incumbent and arbitrarily scored in relation to VSP since their answers regarding other government work were equal.

5. VSP's Proposal should be analyzed to determine if the offered implementation credit is a violation of State or City laws or ordinances governing gifts and kickbacks to public entities.

VSP's Proposal offered as part of its "Rate Details" as follows:

> Rates are based on 4,000 eligible employees, are guaranteed for four years, and are valid until 01/01/21. Coverage offered: 100% employee paid. Net of commission. $***10K implementation credit*** and $10K implementation guarantee**.** Rates include any applicable taxes and health assessment fees known as of the date of the proposal.

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[36] Given the 623 Florida clients that VSP touts in its Proposal response, it is difficult to believe that it had none that should have been disclosed in response to this criteria. *See* VSP's Proposal, p. 10.

VSP Proposal, pp. 27 and 29 (emphasis added). The implementation credit was further described in VSP's Proposal as follows:

> Additionally, we understand there may be costs involved with changing vision carriers, particularly related to communicating a new plan to members and/or modifying membership reporting systems. To help defray those costs, VSP is offering a one-time transition credit of $10,000. VSP will reimburse the City for actual expenses, up to the credit amount of $10,000, incurred and submitted within 12 months of the VSP vision plan implementation effective date.
>
> As part of our agreement to offer a $10,000 transition credit to the City, VSP requests that you provide us with email addresses for your eligible employees. This will allow us to most effectively drive high enrollment by communicating the benefits and value of the VSP plan directly to your employees. The email information provided to VSP is protected under our HIPAA-compliant privacy policies, and will only be used for this purpose.

VSP Proposal, p. 51. An implementation credit was not requested as part of the RFP here. Florida State laws as well as City of Jacksonville Ordinances address requirements and prohibitions related to gifts, gratuities, and kickbacks. The City should analyze this offering to determine whether it is in compliance with such laws. VSP's failure to comply with law would be a basis for rejection of its proposal and a basis for determining that VSP is not a responsible offeror.

CONCLUSION

~~EyeMed protests that an award to a vendor other than EyeMed is arbitrary, capricious, contrary to law and in violation of the requirements of the RFP and applicable ordinances; that VSP and NVA are not responsive and responsible bidders and failed to meet all material requirements of the RFP; and that the scoring and evaluation process was arbitrary, capricious and contrary to law.~~

EyeMed requests that any award be stayed~~;~~ and that a hearing be held to address its protest issues~~; that any negotiations with VSP be stayed pending a full hearing on the matters raised herein; and that negotiations be commenced with EyeMed as the responsive and responsible highest ranked offeror~~. EyeMed reserves the right to amend this protest should additional protestable issues arise. If the City does not consider the issues raised herein now~~ or agree that they can be raised as part of a later protest of the intended award when it is posted~~, EyeMed will be forced to pursue a judicial remedy.

Very truly yours,
Melissa J. Copeland
Counsel for EyeMed Vision Care, LLC

Andrew E. Schwartz
Shutts & Bowen LLP
200 East Broward Boulevard,

Suite 2100
Fort Lauderdale, FL 33301
Direct: (954) 847-3878
ASchwartz@shutts.com
Local Counsel for EyeMed Vision Care, LLC

Enclosure

Exhibit 9

Mark Tafuri
Market Director

July 17, 2020

Ms. Mary DiPerna, MAcc, CEBS
Chief of Compensation & Benefits Division
City of Jacksonville, Florida
Compensation & Benefits Division
117 West Duval Street
City Hall, Suite 150
Jacksonville, Florida 32202

RE: RFP No: P-23-20 Voluntary Vision Plan

Dear Ms. DiPerna,

We have reviewed the RFP and our plan offering for the City of Jacksonville and I wanted to first confirm that our plan designs for both the High and Low plans duplicate the fundamental plan design of the current programs. While we have attempted to mirror all aspects of the plans there are things that are structurally done differently between VSP and EyeMed. These differences such as the Option tier copays vary on the low plan for Progressives and both plans for Anti-Reflective Coating. Certain Option tier copays are lower with VSP and others are lower with EyeMed. These tiers are specifically designed by each Carrier and are proprietary. As a whole, the plans In-network stack up extremely close and provide the same outcome.

There are a few differences that I wanted to point out, Our Out of Network allowance structure does not permit us to make any alterations as these numbers are filed with the State. Typically, we do not see high out of network usage. In addition, we offer our members the opportunity for a 20% discount on the second pair of glasses. VSP has opted not to offer discounts on the purchase of additional Conventional Contact lenses as only about 1% of all contact lens wearers actually use Conventional Lenses. Instead, we are offering our members rebates as high as $200 on brands such as Bausch and Lomb.

Finally, we will be willing to reduce our rates as requested by 1% for the full term of the contract. The new rates will be

High Plan	$6.92/ $11.13/ $10.40/ $17.72
Low Plan	$3.56/ $6.80/ $6.36/ $10.87

Please let me know if you have any further questions or need any additional information.

Sincerely,

Mark Tafuri

4521 PGA Blvd. #161, Palm Beach Gardens, FL 34418 | P 561.410.0394 | F 770.263.6008 | vsp.com

Exhibit 10

STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
525 W. ALLEGAN ST. LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **071B7700186**
between
THE STATE OF MICHIGAN
and

CONTRACTOR	EyeMed Vision Care, LLC
	4000 Luxottica Place
	Mason, Ohio 45040
	Joani Fontaine
	(513) 765-3881
	Joani.fontaine@eyemed.com
	3195

STATE	Program Manager	Sarah Paszko	DTMB-ORS
		(517) 284-4566	
		PaszkoS@michigan.gov	
	Contract Administrator	Mary Ostrowski	DTMB
		(517) 284-7021	
		OstrowskiM@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: Administration Services for Post-Employment Vision Insurance for Michigan Public School Employees' Retirement System (MPSERS) - Department of Technology, Management and Budget (DTMB) – Office of Retirement Services (ORS)			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW**
September 25, 2017	December 31, 2021	4 – One Year	December 31, 2021
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-card ☐ Direct Voucher (DV) ☐ Other			☐ Yes ☒ No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			**$27,700,000.00**

STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and EyeMed Vision Care, LLC ("**Contractor**"), a Delaware limited liability company. This Contract is effective on September 25, 2017 ("**Effective Date**"), and unless terminated, expires on December 31, 2021. The Transitional Implementation Period will be the time period between the Contract Effective Date and the Services Begin Date on January 1, 2018. Contractor must commence performance of all Services to all Members, without interruption, on January 1, 2018.

This Contract may be renewed for up to four additional one-year year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Schedule A – Statement of Work** (the "**Contract Activities**"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Schedule A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Mary Ostrowski 525 W Allegan St., 1st Flr NE Lansing MI 48909 ostrowskim@michigan.gov 517-284-7021	Lukas Rueker 4000 Luxottica Place Mason, OH 45040 Lukas.Ruecker@eyemed.com 617-331-7167

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "**Contract Administrator**"):

16. The Contractor must not hold a Member, a Provider or the Plan Sponsor financially responsible for the Contractor's errors that are identified in an audit. If a pattern of payment errors is identified for a particular Provider, the Contractor must assume the cost of auditing that Provider.

I. Data

1. The Contractor must agree to work with the Plan Sponsor-chosen data management contractor (hereafter referred to as the "data contractor") in a manner inclusive of, but not limited to, the following:
    a. The Contractor must provide the data contractor claims data as described in Schedule F Data Vendor Layout. This information is to be provided to the data contractor monthly and by a date no later than the 15th Day from the last Day of the reporting month.
    b. Data must be securely maintained for the duration of this Contract.
    c. Upon termination or expiration of the Contract, Contractor must deliver all data to the data contractor within 5 Days of a request for the same.
    d. The Contractor is responsible for all expenses, including the cost of any subcontractors, related to producing the data and providing it to the data contractor. This includes any costs associated with resubmissions and processing costs incurred by the data contractor due to the transmittal of incomplete, inaccurate, or unreadable data files belonging to the Plan Sponsor.
    e. The Contractor is responsible to work with the data contractor, including developing any process improvement procedures needed, to correct all issues that impede or prevent accurate data reporting from the database.

2. The physical/geographic location of the active hosting data center and all related services must be based in the continental United States of America.

3. If the Plan Sponsor adds additional vendors, the Contractor must provide data feeds to these vendors without additional costs.

J. Service Level Agreements (SLAs)- see also Schedule G

1. The Contractor must ensure that the SLAs (identified in Schedule G) are measurable using the Contractor's standard management information systems. SLAs must be measured using data attributable only to the Plan Sponsor's membership. The Contractor must provide process documentation detailing out the Contractor's internal processes used to gather and measure the data needed to verify the Contractor's performance. This process documentation must be provided to the Plan Sponsor no later than the end of the first quarter of the contract period and anytime thereafter when a significant change is made to the process.

2. Every SLA must have a report provided that has been approved by the Plan Sponsor to verify the SLA has been met; SLAs without a corresponding report will be deemed unmet and subject to the penalty. Samples of reports that will be used for SLA compliance are required in advance for Plan Sponsor's prior approval. The Plan Sponsor reserves the right to independently verify the Contractor's assessment of its performance, either by State employee or third party review. Disagreements regarding SLAs will be subject to Dispute Resolution (See Standard Contract Terms, Section 47). See also Section 4.3 Reporting for additional SLA reporting requirements.

3. The SLAs are related to ongoing Services and will apply throughout the duration of the Contract, including any optional renewal periods (if exercised). SLAs are for all Services provided under this Contract for the Plan Sponsor. Penalties will be assessed for the month in which performance was assessed. No individual SLA shall be assessed more than one penalty for the month, quarter, or year in which performance was assessed.

4. Plan Sponsor has the right to reallocate the total amount at risk among the various individual guarantees annually. Reallocation cannot increase the annual value of any one component by more than 10% of the original value. Reallocation will not increase the overall aggregate value of the penalties. Any such reallocation must be received by Contractor at least 10 business days prior to the applicable calendar year, otherwise attempted reallocations will be of no effect.

K. Credits

1. Implementation Credits: The Contractor must provide Plan Sponsor with an $80,000 implementation credit or allowance. The Plan Sponsor can utilize the credit to offset any expenses related to changing vision care vendors, and/or the implementation, including consulting fees, as deemed appropriate by the Plan Sponsor. The Contractor will reimburse all expenses upon receipt of proper documentation of incurred costs. These credits do not expire during the Contract term.

2. The Contractor must accommodate a pre- or post- implementation audit at the Contractor's expense, providing a fund in order to verify the Contractor's readiness to administer the Plan Sponsor program. The pre-implementation audit must be completed before the program effective date and the post-implementation audit must be conducted at a mutually agreed upon timeframe post effective date. These audits may include, but are not limited to; ID card production and turnaround time, eligibility, claims processing, customer service, plan design, and overall pricing. The review must be conducted by an audit firm selected by Plan Sponsor and would include test claims developed independently by the audit firm to represent Plan Sponsor's unique requirements.

L. Claims Processing

1. The Contractor must administer claims in conformity with the Plan Design, and in compliance with any changes made to the Plan Design by the Plan Sponsor.

2. The Contractor must only pay Eligible Claims for Eligible Members. If a claim payment for an ineligible member is made, the Contractor must reimburse the Plan Sponsor. If a paid claim or member is later determined to be ineligible and can be identified, the Contractor must recover such payments from participants or reimburse Plan Sponsor for such payments from Contractor's own funds.

3. The Contractor must only charge against the Plan Sponsor's account Claim payments authorized under the Plan Sponsor's Plan Design.

4. The Contractor must undertake responsibility for providing Organization Determinations, including full and fair review of Claims Appeals by Members that have been denied either in full or in part. The Contractor's Claims Appeals process must be the Plan Sponsor's Claims Appeals process. The Contractor's Claims Appeals reporting must comply with Plan Sponsor's Claims Appeals reporting requirements.

5. The Contractor must maintain confidentiality of all data collected by the Contractor, according to all applicable laws, rules and regulations.

6. The Contractor must adjudicate Eligible Claims so as to reflect the status of Members' cost share amounts pursuant to the Plan, as of the commencement of its administration. The Contractor must be able to provide Members with an Explanation of Benefits that accurately reflects the approved listed items in a format that is easily understood by Members.

7. The Contractor must maintain a claims processing department that is experienced in processing high volume and complex claims, and have experienced staff to handle claims that require manual intervention.

8. The Contractor must maintain an on-line Claim processing system that interfaces with its Eligibility System to verify coverage when processing Claims. This system must be updated as Eligible Claims are paid and must include sufficient information to link Claims to Eligibility.

9. The Contractor must capture and store all Claim data elements involved in the processing or payment of Claims.

10. The Contractor must have the ability to capture additional Claim data elements, if requested by Plan Sponsor.

11. The Contractor must provide access to the Plan Sponsor to Claims data once services begin at the onset of the Contract, by means of a secured Internet portal for the term of the Contract and any end-of-Contract transition periods.

12. The Contractor's system, processes, subcontractors, and partners must comply with HIPAA. The Contractor must provide the Plan Sponsor with an annual attestation that it meets this requirement.

13. The Contractor must comply with the statutory mandate for Coordination of Benefits (COB) found in the Public School Employees Retirement Act (PA 300 of 1980).

14. The Contractor must process Direct Member Reimbursement Claims.

15. The Contractor must have processes in place to prevent, detect, and correct non-compliance with billing requirements.