

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



TRANSMITTAL

To:	Mr. Edward M. Birn Director Department of Administration 590 South Marine Corps Drive, ITC Building, Suite 224 Tamuning, Guam 96913 Phone: (671) 475-1101/1250 Fax: (671) 477-6788 Email: edward.birn@doa.guam.gov	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	9 (including cover page)
CC:	Mr. Louie J. Yanza, Esq. Attorney for Appellant TakeCare Insurance Company, Inc. Law Office of Louie J. Yanza, P.C. MVP Building 862 S. Marine Corps. Dr., Ste. 203 Tamuning, Guam 96913 Phone: (671) 989-3009 Email: admin@jurisguam.com	Date:	September 19, 2024
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-24-003 Notice of Receipt of Appeal

For Review
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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910
Phone: (671) 475-0390 / FAX: (671) 472-7951

September 19, 2024

Mr. Edward M. Birn
Director
Department of Administration
590 South Marine Corps Drive, ITC Building, Suite 224
Tamuning, Guam 96913

VIA EMAIL: edward.birn@doa.guam.gov

Re: Notice of Receipt of Appeal – OPA-PA-24-003

Dear Mr. Birn,

Please be advised that TakeCare Insurance Company Inc. (hereinafter referred to as “TakeCare”) filed an appeal with the Office of Public Accountability (OPA) on September 18, 2024, regarding the Department of Administration (DOA)’s denial of its protest decision related to the procurement for FY 20245 Health Insurance Program (Request for Proposal No. DOA/HRD/EB-RFP-GHI-25-001). OPA has assigned this appeal case number OPA-PA-24-003.

Immediate action is required of DOA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at www.opaguam.org. The first seven pages of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeal. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Thursday, September 26, 2024**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Thursday, October 3, 2024**, ten work days following receipt of this notice.

When filing all required documents with our office, please provide one original and one copy to OPA (**electronic filings will be acceptable and highly encouraged, and can be emailed to jhernandez@guamopa.com**), and serve a copy to TakeCare.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at jhernandez@guamopa.com or 475-0390 ext. 204 should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Six Pages of the Notice of Appeal – OPA-PA-24-003

Cc: Louie J. Yanza, Esq., Attorneys for TakeCare



**Appendix A: Notice of Appeal Form
PROCUREMENT APPEAL**

PART I- To be completed by OPA

In the Appeal of)
) **NOTICE OF APPEAL**
)
TakeCare Insurance Company, Inc.)
(Name of Company), APPELLANT) Docket No. OPA-PA _____
)
)

PART II- Appellant Information

Name: TakeCare Insurance Company, Inc.
Mailing Address: P.O. Box 6578
Tamuning, Guam 96931
Business Address: 219 S. Marine Corps Dr. Ste. 200 Century Plaza
Tamuning, Guam 96913
Email Address: arvin.lojo@takecareasia.com
Daytime Contact No: (671) 300-7147
Fax No.: (671) 647-3551

PART III- Appeal Information

- A) Purchasing Agency: Department of Administration
- B) Identification/Number of Procurement, Solicitation, or Contract: DOA/HRD/EB-RFP-GHI-25-001
- C) Decision being appealed was made on September 4, 2024 (date) by:
 Chief Procurement Officer Director of Public Works X Head of Purchasing Agency

Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.

D) Appeal is made from:

(Please select one and attach a copy of the Decision to this form)

- X Decision on Protest of Method, Solicitation or Award
 Decision on Debarment or Suspension
 Decision on Contract or Breach of Contract Controversy
(Excluding claims of money owed to or by the government)
 X Determination on Award not Stayed Pending Protest or Appeal
(Agency decision that award pending protest or appeal was necessary to protect the
substantial interests of the government of Guam)

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

<u>Calvo's SelectCare</u>	_____
<u>NetCare</u>	_____
_____	_____
_____	_____
_____	_____

PART IV- Form and Filing

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including **BUT NOT LIMITED TO**:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

Note: Please refer to 2 GAR § 12104 for the full text of filing requirements.

PART V- Declaration Re Court Action

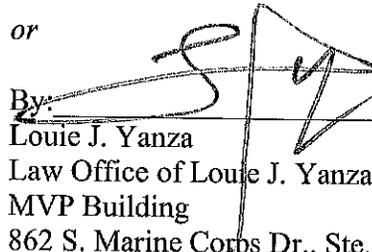
Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 18 day of Sept., 2021.

By: _____
APPELLANT

or

By:  _____
Louie J. Yanza
Law Office of Louie J. Yanza, P.C.
MVP Building
862 S. Marine Corps Dr., Ste. 203
Tamuning, Guam 96913
(671) 477-7059/7060
admin@jurisguam.com

PART IV: ADDITIONAL INFORMATION SUBMITTED BY APPELLANT

1. A CONCISE, LOGICALLY ARRANGED, AND DIRECT STATEMENT OF THE GROUNDS FOR APPEAL:

First, the issue is to determine whether TakeCare Insurance Company's bid to the Request for Proposal DOA/HRD/EB-FRP-GHI-25-001 ("RFP") was the lowest bid and provided the Territory greater purchasing value of public funds. 5 GCA § 5001.

As part of the RFP response submission, potential bidders were required to submit TPA fees under Exhibit E. The TPA fee exhibit excludes expected claims cost information. TakeCare's position was based on the information that it proposed the lowest TPA fees to GovGuam for fiscal year 2024-2025.

DOA's response stated that costs were not based solely on proposed TPA fees and it includes expected claims cost. However, any expected cost information was not required nor requested as part of Exhibit E nor any other information relating to it was requested under the RFP. There is no clear information on the RFP on how expected claims cost will be derived and what will be the basis for calculating the expected cost. Although Exhibit B includes some questions on provider discounts, this information does not provide a complete indication on the level of the actual claims cost. Consideration such as but not limited to health care delivery pathways, and utilization management strategies must be factored in the calculation of expected cost. A health plan with vigorous disease management, wellness and case management processes will support better cost management compared to just relying on provider contract discounts. Likewise, health care delivery pathways impact cost especially if services are driven to more cost-effective providers with better outcomes and this is incentivized under the proposed benefit plans.

Second, DOA has also denied a stay of the procurement and proceeded to award SelectCare and NetCare. The issue is to determine whether to award the Request for Proposal DOA-FRP-No. GHI-20-001 ("RFP") without delay is necessary to protect the substantial interests of the Territory.

Once a timely protest is made, an automatic stay of procurement until final resolution of that protest is required by both 5 GCA, Chapter 5, and 2 GAR, Div. 4, Chapter 9. The automatic stay provision of 5 GCA, Chapter 5, is found at 5 GCA § 5425(g) and states as follows:

In the event of a timely protest under Subsection (a) of this Section or under Subsection (a) of § 5480 of this Chapter, the Territory shall not proceed further with the solicitation or with the award of the contract prior to final resolution

of such protest, and any such further action is void

5 GCA § 5425(g).

The statute further provides conditions allowing the purchasing agency to continue with an appealed award if "necessary to protect substantial interests of the Territory" ² 5 GCA § 5425(g)(1).

Procurement regulation 2 GAR § 9101(e) closely mirrors the statutory automatic stay requirement:

Stay of Procurement During Protest. When a protest has been filed within [fourteen (14)] days and before an award has been made, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency shall make no award of the contract prior to final resolution of such protest, and any such further action is void

2 GAR § 9101(e).

The regulations provide similar necessity exceptions to 5 GCA § 5425(g).³

²The stay is lifted if:

(1) The Chief Procurement Officer or the Director of Public Works after consultation with and written concurrence of the head of the using or purchasing agency and the Attorney General or designated Deputy Attorney General, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the Territory; and

(2) Absent a declaration of emergency by the Governor, the protestant has been given at least two (2) days notice (exclusive of territorial holidays); and

(3) If the protest is pending before the Public Auditor or the Court, the Public Auditor or Court has confirmed such determination, or if no such protest is pending, no protest to the Public Auditor of such determination is filed prior to expiration of the two (2) day period specified in Item (2) of Subsection (g) of this Section.

5 GCA § 5425(g)(1)-(3).

³The regulations provide that the stay is lifted if:

1. The Chief Procurement Officer, the Director of Public Works, or the head of the Purchasing Agency, makes a written determination that the award of the contract without delay is necessary to protect the substantial interests of the government of Guam; and

2. Absent a declaration of emergency by the Governor, the protestor has been given at least two-days notice (exclusive of government of Guam holidays); and

3. If the protest is pending before the Board or Court, the Board or Court has

Id.

By maintaining the status quo during the pendency of a protest, violations of the procurement code can be remedied before the work on the contract proceeds so far that effective remedies, for the protestor and the public, are precluded by expense and impracticality.

Thus, under applicable statutes and regulations, DOA is required to refrain from further action on the bids at issue until "final resolution" of TakeCare's protest unless DOA has chosen to invoke the necessity exception, which in this case DOA has invoked. Teleguam Holdings LLC v. Territory of Guam, 2015 Guam 13, ¶¶24-25.

2. CONCLUSION

Based on the lack of information or transparency on how the TPA will be chosen and the basis for this choice, then it is TakeCare's position that the RFP was insufficient in its requirements for potential bidders to provide information on how it will demonstrate that it will be the most economical and beneficial TPA carrier for GovGuam.

In addition, DOA is in violation of the automatic stay as DOA is required to stay the procurement until final resolution.

This warrants a cancellation of the current RFP and proceeding with an issuance of another RFP.

3. SUPPORTING EXHIBITS, EVIDENCE, OR DOCUMENTS

Department of Administration September 4, 2024 Denial of Protest.

Exhibit "B" and "E" – RFP

confirmed such determination, or if no such protest is pending, no protest to the Board of such determination if filed prior to the expiration of the two-day period specified in item 2 of this subsection.



**Appendix D: Hearing Request/Waiver Form
PROCUREMENT APPEAL**

In the Appeal of)
)
) **HEARING**
) **REQUEST/WAIVER**
)
TakeCare Insurance Company, Inc.,)
APPELLANT) Docket No. OPA-PA _____
_____)

Please select one:

- Pursuant to 2 GAR § 12108(a), the undersigned party does hereby request a hearing on the appeal stated above.
- Pursuant to 2 GAR § 12108(a), the undersigned party does hereby waive his/her right to a hearing and is submitting the appeal stated above on record without a hearing.

Submitted this 18 day of Sept., 2024.

By: (Please select one)

- APPELLANT
- Chief Procurement Officer
- Director of Public Works
- Head of Purchasing Agency



Signature

Louie J. Yanza for
TakeCare Insurance Company, Inc.

Print Name