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IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

IN THE APPEAL OF: **TAKECARE INSURANCE COMPANY, INC.,** **Appellant,** **AND** **DEPARTMENT OF ADMINISTRATION,** **Purchasing Agency.**	**DOCKET NO. OPA-PA-18-003** **RESPONSE TO TAKECARE'S REBUTTAL TO DEPARTMENT OF ADMINISTRATION'S AGENCY REPORT**

COMES NOW, pursuant to 2 G.A.R. § 12104(c)(4), the following is Department of Administration's ("DOA") response to Appellant TakeCare's ("Appellant") Rebuttal to DOA's Agency Report filed on May 31, 2018.

GUAM LAW DOES NOT REQUIRE THE NEGOTIATING TEAM'S RULES OF PROCEDURE TO CONTAIN "MINIMUM QUALIFICATIONS" FOR GROUP HEALTH INSURANCE PROPOSALS

Appellant makes several arguments that the Negotiating Team failed to "develop minimum qualification for proposals" and "develop its rules of procedure in accordance with the Administrative Adjudication Law." See TakeCare's Rebuttal pg. 2. Appellant admits in its rebuttal that rules and procedures were developed by the Negotiating Team. See TakeCare's Rebuttal pg. 3. In regards to the "minimum qualifications" argument, Appellant interprets the statute to require that the Rules and Procedure must contain a process or list of factors that the Negotiating Team will consider when developing "minimum qualifications." A plain reading of the statute does not require, nor does the Rules state, that a process or list of factors should be finalized in deciding the "minimum qualifications" for the Negotiation Team.

Additionally, "minimum qualifications" are not determined arbitrarily, as the rules require the Negotiating Team to make decisions based upon a proper motion with an affirming vote of at least five of the voting members present. See P.L. 32-83, Section VIII. Furthermore, the "minimum qualifications" are developed by the Negotiating Team with the professional assistance of an actuary. See 4 G.C.A. §4302(c).

Appellant cites to cases in support of their argument that government agencies are not allowed to apply informal standards on a case-by-case basis because it results in arbitrary and capricious actions. These cases are not applicable as they are not government procurement cases. Therefore, the standard does not directly apply to this procurement case.

Additionally, Appellant cites to a recent Superior Court case involving DFS Guam L.P. and Guam International Airport Authority ("GIAA"). The Court in that case invalidated the award of a multimillion dollar contract because GIAA failed to establish rules and procedures relating to the operation of a concession. DFS Guam L.P. v. GIAA pgs. 10-13 (Feb. 2, 2018). Unlike the law

governing this procurement, GIAA's statutory language specifically requires the establishment of a criteria for the operation of a concession pursuant to Administrative Adjudication Law ("AAL"). It provides that a "criteria established for the operation of a concession, other business or service provider at the ABWPGIAA, which criteria shall be reviewed at a public hearing held within ninety (90) days of the effective date of this Section, and held in accordance with the Administrative Adjudication Law." See 12 G.C.A. § 1203.l(a)(2). Title 4 Section 4302(c) of the Guam Code Annotated merely requires the Negotiating Team to develop minimum qualifications for proposals.

REQUIRING GUAM REGIONAL MEDICAL CITY ("GRMC") TO BE IN NETWORK IS MEANT TO MAINTAIN "PARITY"/ "LEVEL PLAYING FIELD"

Appellant argues that the requirement of GRMC would not result in parity or a level playing field. See TakeCare's Rebuttal pg. 5. The Negotiation Team determined it is necessary that GRMC should be included in network by a carrier with an exclusive contract to ensure adequate coverage of essential services. See Response to Protest Bates Stamp No. 001098. By requiring all offerors to include GRMC in their provider network allows an apple to apple comparison or equivalent network design among offers. Equivalent network design among offerors promotes parity and a level playing field with potential offerors.

Appellant makes an additional argument that because GRMC costs more for certain types of treatment, it would make it a more expensive option. If the Negotiating Team were to proceed as such, then Appellant's interpretation of the "lowest cost option" would entail the Government to provide bare bones health care coverage. By virtue of this argument, Appellant would rather emphasize the pursuit of health care with barely no coverage as that would be the lowest cost option.

GRMC IS REQUIRED TO PROVIDE TREATMENT NOT AVAILABLE AT GMH

This is true but the cost of services borne by our GovGuam families would be much higher unless GRMC is in network. The result would be detrimental to employees, retirees and the government as the subscriber for foster children.

CONTRACTS WITH SPECIFIC PRIVATE HOSPITALS

Appellant makes the argument that the Negotiating Team has never required in any RFP a "minimum qualification" to include a specific private hospital in its network. See TakeCare Rebuttal pg. 8. DOA acknowledges that the Negotiating Team may have never required a minimum qualification to include a private hospital in network. But, on February 19, 2018, P.L. No. 34-83 changed the selection process in acquiring health insurance coverage. The Negotiating Team had to adapt to the requirements of the new law and determined that GRMC should be included in a carrier's network as the exclusive provider.

CONFIDENTIAL DOCUMENTS

Appellant is arguing that certain documents that cite meetings in DOA's privilege log should be produced. See TakeCare's Rebuttal pg. 9. Due to information that is not a matter of public knowledge or available to the public, DOA is unable to produce documents that contain information obtained in meetings without a Court Order. Appellant misapplies the law by claiming information is not confidential until proposals are received. The law states, "Team members, delegates of members, consultants, and applicable Department of Administration staff acknowledge that no information contained in the proposals, meetings or negotiations can be divulged to any person outside of the Negotiating Team." P.L. 32-83; Section IV.

Furthermore, Assistant Attorney General Shannon Taitano ("AAG Taitano") is not a statutory member of the Negotiating Team as defined in 4 G.C.A. § 4302(c). Pursuant to P.L. 32-83; Section II (C), the Attorney General or her designee shall act as legal advisor during all phases

of the solicitation or procurement process. AAG Taitano is designated by the AG to serve as legal advisor to the Negotiating Team. Lastly, Appellant indicates its intent to file a formal motion to compel the production of evidence. DOA will reserve a more detailed response once a formal motion is filed.

Submitted this 7th day of June, 2018.

OFFICE OF THE ATTORNEY GENERAL
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By: _____
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