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 PROCUREMENT APPEALS
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 24-003

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Attorneys for the Government of Guam

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

IN THE APPEAL OF:)	DOCKET NO. OPA-PA-24-003
)	
TAKECARE INSURANCE)	
COMPANY, INC.)	PURCHASING AGENCY
)	AGENCY REPORT
Appellant.)	
)	

Comes now, the Department of Administration (“DOA”), by and through its counsel and files its Agency Report and Statement pursuant to 2 GAR § 12104(3) in response to the appeal by TakeCare Insurance Company, Inc., (“TakeCare”) protesting the Proposal of Procurement No. DOA/HRD/EB-RFP-GHI-25-001, (“RFP”).

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ORIGINAL

1 **I. PURCHASING AGENCY INFORMATION**

2 **Name:** Department of Administration

3 **Address:** Department of Administration (DOA)
4 ITC Bldg.
5 590 S. Marine Corps Dr.
6 Tamuning, Guam

7 **Contact:** For the purpose of this Appeal, please direct correspondence to the
8 Office of the Attorney General (“OAG”), D. Graham Botha, Assistant
9 Attorney General, gbotha@oagguam.org, and Douglas Womack,
10 Deputy Attorney General, dwomack@oaggua.org., Office of the
11 Attorney General, 590 S. Marine Corps Dr., Suite 802, ITC Bldg.,
12 Tamuning, Guam. Tel. No. (671) 475-2709; Fax No. (671) 472-2493.

13 **II. APPEAL INFORMATION**

- 14 a. Purchasing Agency: Department of Administration
- 15 b. RFP No. DOA/HRD/EB-RFP-GHI-25-001
- 16 c. Date of RFP: May 23, 2024
- 17 d. This appeal is made by TakeCare Insurance Company, Inc. – Decision
18 on Protest of Method, Solicitation or Award.
- 19 e. Name of Competing Bidder(s): Calvo’s SelectCare, NetCare and Island
20 Home Insurance Company Stay Well.

21 **III. AGENCY REPORT**

22 Pursuant to 2 GAR § 12104(3) DOA’s Agency Report is providing the
23 following:

24 (a) A copy of the protest: ***Previously submitted to the Office of the Public***
25 ***Auditor (“OPA”) on October 4, 2024, by DOA.***

 (b) A copy of the bid or offer submitted by the Appellant and a copy of the bid
or offer that is being considered for award or whose bid or offer is being protested, if any

1 had been submitted prior to the protest: ***Previously submitted to the Office of the***
2 ***Public Auditor (“OPA”) on October 4, 2024, by DOA.***

3 (c) A copy of the solicitation, including the specification or portions thereof
4 relevant to the protest: ***Previously submitted to the Office of the Public Auditor***
5 ***(“OPA”) on October 4, 2024, by DOA.***

6 (d) A copy of the abstract of bids or offers or relevant portions thereof relevant
7 to the protest: ***Previously submitted to the Office of the Public Auditor (“OPA”) on***
8 ***October 4, 2024, by DOA.***

9 (e) Any other documents which are relevant to the protest, including the
10 contract, if one has been awarded, pertinent amendments, and plans and drawings:
11 ***Previously submitted to the Office of the Public Auditor (“OPA”) on October 4,***
12 ***2024, by DOA.***

13 (f) The decision from which the Appeal is taken, if different than the decision
14 submitted by Appellant: ***Previously submitted to the Office of the Public Auditor***
15 ***(“OPA”) on October 4, 2024, by DOA.***

16 (g) A statement answering the allegation of the Appeal and setting forth findings,
17 actions, and recommendations in the matter together with any additional evidence or
18 information deemed necessary in determining the validity of the Appeal. The statement
19 shall be fully responsive to the allegations of the Appeal:

20 The FY2025 RFP for Third Party Administrators (TPA) for medical, vision and
21 pharmacy benefits and dental benefits was distributed via the Department of
22 Administration’s website on May 23, 2024. The winning TPA would administer the
23 Government’s self-funded medical and dental insurance plan covering its employees.
24 The government was looking to identify the lowest cost option given comparable
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1 services, or the TPA that offered the lowest annual funding rate, which is the cost that
2 the Government and its employees would pay each month for medical insurance. The
3 funding rate has two components consisting of (1) the administrative fees that the TPA
4 charges; and (2) the projected cost of claims, which incorporates the number and types
5 of claims and the corresponding fees that the respective TPA negotiated with physicians
6 and hospitals.

7 TakeCare Insurance alleges that it was the lowest bidder based on its erroneous
8 conclusion that the only basis for the lowest cost option was its proposal offering lower
9 TPA fees than other bidders. A comparison of the projected claims shows that
10 SelectCare offered the lowest costs option because it charged a lower price for projected
11 claims. The Group Benefits statute, 4 GCA §4302(c)(9), authorizes I Maga'hagan
12 Guahan to make the selection of the most economical and beneficial health insurance
13 plan. The negotiating team provided the top two (2) TPAs to the Governor, one for
14 medical, vision and pharmacy benefits, and one for dental. The proposals were
15 TakeCare for medical and dental, and SelectCare for medical and NetCare for dental.

16 In accordance with 4 GCA §4302(c)(9) the Governor selected SelectCare for
17 medical and NetCare for dental. The governor signed the selection of TPAs for medical
18 and dental on August 13, 2024. TakeCare received the TPA notice selection and filed a
19 protest on August 27, 2024. The DOA responded to the protest and denied the protest
20 on September 4, 2024. TakeCare filed a protest with the OPA on September 18, 2024.

21 TakeCare requested a stay of procurement pursuant to 5 GCA §5425(g) which
22 was denied by DOA. The statute does allow the purchasing agency to continue with an
23 appealed award if "necessary to protect substantial interests of the Territory", 5 GCA
24 §5425(g)(1). "In the event of a timely protest ..., Guam shall not proceed further with
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1 the solicitation or with the award of the contract prior to final resolution of such protest,
2 and any such further action is void, unless: (1) The Chief Procurement Officer or the
3 Director of Public Works after consultation with and written concurrence of the head of
4 the using or purchasing agency and the Attorney General or designated Deputy
5 Attorney General, makes a written determination that the award of the contract without
6 delay is necessary to protect substantial interest of Guam; and (2) Absent a declaration
7 of emergency by the Governor, the protestant has been given at least two (2) days
8 notice (exclusive of territorial holidays); and (3) If the protest is pending before the Public
9 Auditor or the Court, the Public Auditor or Court has confirmed such determination, or if
10 no such protest is pending, no protest to the Public Auditor of such determination is filed
11 prior to expiration of the two (2) day period specific in Item (2) of Subsection (g) of this
12 Section.” 5 GCA §5425(g).

13 The Declaration of Substantial Government Interest in DOA/HRD/EB-RFT-GHI-
14 25-001, Group Health Insurance Procurement, pursuant to 5 GCA §5425(g), was signed
15 and approved by the Attorney General on September 19, 2024, and is attached hereto
16 as Exhibit “A”. The written determination provides multiple reasons why the Open
17 Enrollment Period must proceed without delay to protect substantial interest of the
18 Territory.

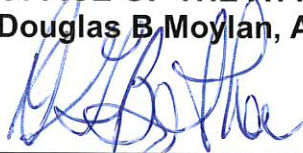
19 (h) If the award was made after receipt of the protest, the report will include the
20 determination required under 2 G.A.R. §9101(e): ***Previously submitted to the Office***
21 ***of the Public Auditor (“OPA”) on October 4, 2024, by DOA.***

22 (i) A statement in substantially the same format as Appendix B to this Chapter,
23 indicating whether the matter is the subject of a court proceeding: ***Submitted to the***
24 ***Office of the Public Auditor (“OPA”) on October 11, 2024.***

1 Dated this 11th day of October 2024.

2 **OFFICE OF THE ATTORNEY GENERAL**
3 **Douglas B. Moylan, Attorney General**

4 **By:**



5 **D. GRAHAM BOTHA**
6 Assistant Attorney General

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