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 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

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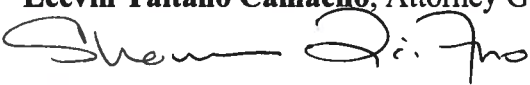
**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEAL**

IN THE APPEAL OF:)	DOCKET NO. OPA-PA-19-005
)	
TAKECARE INSURANCE COMPANY, INC.)	
)	DECLARATION OF SUBSTANTIAL INTEREST
Appellant.)	
)	
)	

Attached hereto is the Declaration of Substantial Interest of Robert Kono, Chief Procurement Officer, of the General Services Agency, containing his 5 GCA 5425(g) determination.

Filed contemporaneously herewith is a proposed confirmation of the Substantial Interest of the Territory for issuance by the Public Auditor of Guam or his designee.

Submitted this 11th day of July, 2019.

OFFICE OF THE ATTORNEY GENERAL
Leevin Taitano Camacho, Attorney General
 By: 
SHANNON J. TAITANO
 Assistant Deputy Attorney General

ORIGINAL



LOURDES A. LEON GUERRERO, Governor (Maga'håga)
JOSHUA F. TENORIO, Lt. Governor (Sigundo Maga'låhi)



EDWARD M. BIRN
Director (Direktot)
EDITH C. PANGELINAN
Deputy Director (Sigundo Direktot)

DIRECTOR'S OFFICE (Ufisinan Direktot)

July 11, 2019

Benjamin J.F. Cruz
Public Auditor
Office of the Public Accountability
238 Archbishop Flores Street
Suite 401 DNA Building
Hagåtña, Guam 96932

Dear Mr. Cruz:

Hafa Adai! Pursuant to 5 GCA 5425(g), the Chief Procurement Officer after consultation with the purchasing agency and review of the written determination of substantial government interest by the Director of Administration and concurred by the Attorney General, makes this written determination that the award of the contract without delay is necessary to protect substantial government interest and incorporates the Director of Administration's written determination or declaration of substantial government interest with the following comments:

1. As to item 2, the CPO notes that 6 months may not be adequate time to capture actual claims and recommends that the period should be longer.
2. As to Item 6, the CPO recognizes that open enrollment period is negotiated between GovGuam and carrier(s) and such scheduling would be in the best interest of enrollees and members who wish to join plans.
3. As to Item 8, the CPO is without knowledge of whether the Judiciary may potentially participate under the FY20 contract year.

Furthermore, award of the contract without delay is also necessary to allow the government to timely submit to the Legislature for consideration in the upcoming fiscal year budget as mandated in 4 GCA 4302.

Sincerely,

ROBERT H. KONO, Acting
CHIEF PROCUREMENT OFFICER





LOURDES A. LEON GUERRERO, Governor (Maga'håga)
JOSHUA F. TENORIO, Lt. Governor (Sigundo Maga'låhi)



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Director (Direktot)
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Deputy Director (Sigundo Direktot)

DIRECTOR'S OFFICE (Ufisinan Direktot)

JUN 26 2019

MEMORANDUM

To: Attorney General, Office of the Attorney General of Guam
From: Director, Department of Administration
SUBJECT: Declaration of Substantial Government Interest
DOA-RFP-No.GHI20-001 Health Insurance Procurement

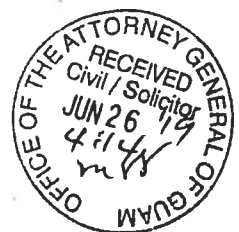
Buenas Yan Hafa Adai!

Submitted for your consideration and approval, is the Declaration of Substantial Interest to proceed without delay the procurement of the Fiscal Year 2020 Group Health Insurance Program. The substantial interest is necessary, amongst many important reasons, to avoid financial strains to the government and to ensure that the most economical and beneficial plan(s) is (are) aggressively negotiated under the procurement process. The health insurance procurement is the largest procurement for the government insuring approximately 13,000 enrolled members making this procurement an essential purchase for those involved.

Your favorable consideration to this request is appreciated. *Si Yu'us Ma'ase.*

Respectfully,

Edward M. Birn, Director





LOURDES A. LEON GUERRERO, Governor (Maga'håga)
JOSHUA F. TENORIO, Lt. Governor (Sigundo Maga'låhl)



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JUN 26 2019



DECLARATION OF SUBSTANTIAL GOVERNMENT INTEREST DOA-RFP-No. GHI-20-001 Health Insurance Procurement

The Department of Administration issued a Request for Proposal ("RFP") on April 1, 2019, to procure the Fiscal Year (FY) 2020 Group Health Insurance Program for employees, retirees and survivors of retirees, collectively members, as authorized by 4 GCA § 4301. The procurement of health insurance coverage involves approximately 13,000 members.

TakeCare filed a letter of protest on May 3, 2019, the last day of the RFP submission deadline, which resulted in a stay of the procurement process. Negotiations were tentatively scheduled for June 3 through June 17, 2019, to provide ample time for the required July 31, 2019 notice to the Legislature of budget costs. The timing of negotiations was also intended to provide a time to plan, schedule and issue notices of the Open Enrollment Period to all eligible subscribers in order that they would make informed decisions of coverage changes or enrollment.

To provide a brief history, the FY 2019 Group Health Insurance Program also previously resulted in a protest filed by TakeCare Insurance. Consequently, the government was unable to effectively negotiate under the FY 2019 RFP and requested the carriers to approve a "rollover" contract. Of the three (3) insurance carriers providing coverage in FY18, only two carriers, SelectCare and TakeCare agreed to the rollover request. NetCare Insurance opted not to continue coverage for FY19.

Guam law prohibits an agency from proceeding with a solicitation or award before a resolution of an ongoing protest. However, Guam law provides an exception to the general rule and provides, "[T]he 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) day's notice. . . ." 5 GCA § 5425(g)(1), (2) (emphasis added). In the present matter, the substantial interests of the Territory are numerous and as follows:

- 1. FY19 Rollover Contract** - The FY19 Group Health Insurance Negotiations resulted in a protest filed by the same company, TakeCare Insurance. As a result, the government was unable to effectively negotiate under the FY19 RFP and requested the carriers to approve a "rollover" contract. Of the three (3) carriers, only two (2) carriers opted to agree to

rollover the contract. As a result of the rollover, the government was unable to effectively negotiate its desired terms on behalf of its members.

2. **Contract Language Improvements** – In addition to the ability to modify plan design improvements and to mitigate costs as cited above, there are much needed contract language enhancements, such as the experience refund calculation. Language must be clarified and updated to strictly define costs which can be counted as claims, and perhaps more importantly, costs which should be excluded from the claims definition. For example, Quality Improvement Initiatives and Wellness Incentives outside of true member cost reimbursements should not be considered part of the medical loss ratio. Additionally, the time period measured should be moved from December to March to better capture actual claims run out and eliminate the potential overestimation of Incurred But Not Recorded claims. These enhancements are intended to more accurately define the loss ratio, but would also likely improve the potential for a Participating Contract Refund for the government. Other contractual improvements that are needed are performance guarantees, fees at risk, as well as other provisions that can only be achieved through the procurement process.
3. **Unattractive Market** – Offerors have invested time and resources into preparing proposals in response to the RFP. Further delays in the procurement process will make GovGuam an unattractive market for prospective offerors due to the constant looming protests. GovGuam may find itself once again in minimal submissions as in prior years forcing GovGuam to contract with that provider alone for continuity of coverage, could threaten the inclusion of the participating contract refund, or even risk not receiving any qualified proposals.
4. **Opting Out** - Continued delay may result in carriers opting out of continuing to contract with GovGuam as we have recently seen with NetCare for the FY19 rollover.
5. **Lowest Overall Rates** - The negotiating team's priority, through the negotiations process, is to negotiate the lowest overall rates with the required provider access and the most beneficial benefits under the Exclusive option. Under the Non-Exclusive plan, the priority is to negotiate the lowest rates consistent with plan design.
6. **Open Enrollment** – The timely scheduling of the Open Enrollment Period (OE) is in the best interest of GovGuam and its members, most especially for those who do not have coverage and who wish to enroll during the OE Period.
7. **PL35-2** - In light of PL35-2, the government must now ensure that its contracted carriers are in compliance with the required network providers.
8. **Inclusion of Judiciary Branch** - Judiciary branch has contracted coverage separately in the past years, however, they may now potentially participate under the FY20 contract year and we must now negotiate rates to include the additional branch.
9. **Loss Ratio may impact Rates** - GovGuam will have difficulties in negotiating with a carrier under a rollover contract, most especially if GovGuam was forced to rollover with

the one remaining qualified carrier under the new law. Although GovGuam received a qualified rate pass at the last renewal, given the loss ratios, we may have a tougher time negotiating without a full competitive process. The government's actuaries will attempt to get a fair renewal, but will be more effective in a competitive environment.

10. **No Guarantee to control costs** – GovGuam may lose the ability to negotiate for plan changes and other items that would allow GovGuam to control costs (removal of gym benefit for instance).
11. **“Economical and Beneficial” legislation** – No negotiations have been conducted, and thus no proposals have been considered by the Governor, since the passage of this legislation. Negotiations this year would provide the Governor's office the opportunity to select the most economical and beneficial offering and comply with this legislation.
12. **Non-Participating Provider High Costs** - Concern remains that GRMC is not a participating provider under one of the current contracts and the financial impact to existing members, especially in an emergency situation, can be significant as a result. TakeCare commented that our members are covered for emergency situations should they be brought to GRMC. GovGuam questioned the process for paying claims at a non-participating provider in an emergency situation but did not receive a definitive response. We have been advised by several members of the high charges they have received from GRMC as a result of not being a participating provider.
13. **Receipt of proposal submission** – The government is in receipt of several proposals from other well-known prospective offerors. The inability to effectively negotiate with these carriers will not foster competition and compromises the possibility to negotiate for a more economical bid. This could potentially be a deterrence from receiving future proposals from these offerors.
14. **Timing of scheduled hearing dates** – Hearing dates for the motion to dismiss and merit hearing have been scheduled for July 18 and August 12-13, respectively. The Open Enrollment Period is normally scheduled in September for effective dates to commence on October 1. These dates, as they stand, do not provide reasonable timeframes to implement a government wide Open Enrollment Period. In addition, the recent filing by TakeCare to reschedule the August hearing dates to after August 22 will further delay the already compressed timelines. The government will need at least one (1) month, at the minimum, to prepare, review proposals and negotiate with the carriers.

CONCLUSION


It is in the interest of the Territory that GovGuam members continue to receive health insurance coverage. It is not possible to be certain that a rollover request would result in a successful coverage agreement. Without such coverage, the operations and integrity of the Government might be compromised and Government funding be subjected to significant strain. Based on the foregoing, the present written determination evidences that the procurement must

proceed without delay to protect substantial interests of the Territory. We look forward to your favorable response.


EDWARD M. BIRN, Director
Department of Administration

June 26, 2019

Approval:
Benjamin J.F. Cruz, Public Auditor
Date

Approval CONCURRENCE:

Leevin T. Camacho, Attorney General
6/27/19
Date



Office of the Attorney General of Guam

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671.475.3324 extension 5015 ♦ Fax 671.477-4703 ♦ Email law@guamag.org

Hon. Leevin Taitano Camacho
Attorney General of Guam

June 24, 2019

MEMORANDUM

To: All Deputies, Supervisors and Employees
Fr: Attorney General
Subject: Appointment of Acting Attorney General

Hafa Adai. In my absence, Deputy Attorney General Fred Nishihira is herein appointed Acting Attorney General from Monday, June 24, 2019 to Sunday, June 30, 2019.

Your cooperation and courtesies due DAG Nishihira is appreciated.


LEEVIN TAITANO CAMACHO