



**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>	_____
_____	_____
_____	_____
_____	_____

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**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.*

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**PART V- Declaration Re Court Action**

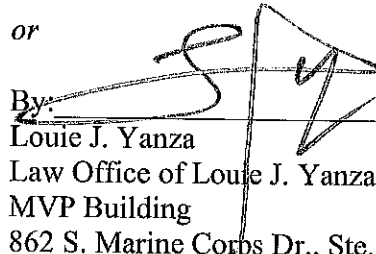
Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

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 . . . ." <sup>2</sup> 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).<sup>3</sup>

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<sup>2</sup>The 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).

<sup>3</sup>The 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

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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