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E-FILE: Appellee Department of Administration's Hearing Brief - OPA-24-003

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Good afternoon:

Please find attached for E-filing DOA's Hearing Brief in OPA-24-003.

Regards,

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 **DOA Hearing Brief - TakeCare v DOA OPA-24-003.pdf**
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11 **OFFICE OF THE PUBLIC AUDITOR**
12 **PROCUREMENT APPEALS**

13
14 IN THE APPEAL OF) **DOCKET NO. OPA-PA-24-003**
15)
16 TakeCare Insurance Company, Inc.,) **APPELLEE’S HEARING BRIEF**
17)
18 Appellant.)
19 _____)

20
21
22 **COMES NOW**, the DEPARTMENT OF ADMINISTRATION, by and through its counsel
23 of record, D. GRAHAM BOTHA, ESQ., and submits its Hearing Brief for the January 23, 2025,
24 hearing as follows.

25 **BACKGROUND**

26 On May 23, 2024, the Department of Administration (“DOA”) issued Request for
27 Proposal, DOA/HRD/EB-RFP-GHI-25-001, Government of Guam Group Health Insurance (Ex
28 A). The RFP was acknowledged by 6 TPAs, but proposals were only received from 4 TPAs,
29 NetCare, SelectCare, StayWell and TakeCare, which were screened under Phase 1, Initial
30 Screening. All four TPAs submitted proposals for medical, pharmacy, and dental benefits. In
31 Phase 2, the Negotiating Team evaluated all proposals and voted to invite all four TPAs to advance
32 to Phase 3 due to close scores. During Phase 3 negotiations, the Team evaluated the medical,
33 pharmacy, and dental proposals, including the financial terms. The Team scored the TPA
34 proposals from the finalists that were invited to the Phase 3 negotiations during Phase 4, Final

1 Ranking. Milliman conducted a financial analysis of the TPAs' pricing terms, which Team
2 members were instructed to consider in the final ranking of the pricing terms (Ex C).

3 The Milliman Team estimated claims costs for each bidder using the pricing terms
4 provided by the TPAs in their bid materials. The estimated FY2025 claims costs for SelectCare
5 was \$159.41M and for TakeCare was \$161.20M, a difference of \$1.79M between SelectCare and
6 TakeCare. The negotiating team recommended that TakeCare be awarded the exclusive TPA
7 contract for medical, pharmacy benefits, and dental benefits, with the second option to award
8 SelectCare the exclusive TPA contract for medical and pharmacy benefits, and NetCare the
9 exclusive TPA contract for dental benefits. This recommendation in the form of the Health
10 Insurance Team Recommendation was provided to the Governor on August 9, 2024 (Ex C, pgs.
11 1169-1187). The Governor made a selection on August 13, 2024 and selected SelectCare for
12 medical and pharmacy benefits, and NetCare for dental benefits. TPA Notices regarding selection
13 and non-selection were sent out on August 14, 2024 (Ex E, pgs. 1241-1266). TakeCare filed a
14 protest on August 27, 2024, and the protest was denied by DOA on September 4, 2024 (Ex F &
15 G). TakeCare filed an appeal to the OPA on September 18, 2024 (Ex I, pgs. 1281-1286). DOA
16 filed a Declaration of Substantial Interest approved by the Attorney General on September 19,
17 2024, which determined that the award of the contract without delay is necessary to protect
18 substantial interests of the Territory in accordance with 5 GCA §5425(g) (Ex J, pgs. 1287-1288).

19 II. DISCUSSION

20 A. THE GOVERNOR'S SELECTION OF SELECTCARE FOR MEDICAL AND
21 PHARMACY BENEFITS AND NETCARE FOR DENTAL BENEFITS WAS
22 PROPERLY AWARDED PURSUANT TO 4 GCA §4301(a) AS BOTH SELECTCARE
23 AND NETCARE MET THE SPECIFICATIONS IN THE RFP.
24

1 The selection of Group Health insurance is governed by 4 GCA §4301-4302. §4301.1(e)
2 states that “Exclusive proposal” means a proposal based upon the assumption that the government
3 will contract with only one (1) health insurance provided that is selected by the negotiating team
4 from up to three (3) different health insurance providers that negotiate best and final offers with
5 the negotiating team. §4302(c)(2) directs that the “Negotiating Team shall examine the financial
6 information of the prepaid health insurance companies, health care providers or other legal entities
7 for the purpose of developing the most economical and beneficial health plan for the government
8 of Guam employees and retirees, and foster children.” §4302(c)(9) states that the “Negotiating
9 Team upon selection and review of the best available proposal by participating healthcare
10 respondent(s)/provider(s), which reflect the most economical and beneficial healthcare insurance
11 proposal plans for government of Guam employees and retirees, and foster children, shall forward
12 the three (3) highest ranking qualified proposals to *I Maga’hagan/Maga’lahen Guahan* for
13 consideration and selection of the most economical and beneficial health insurance plan ...”

14 The RFP states that the “Negotiating Team shall determine which of the TPAs offering
15 exclusive coverage would be best for the government, and the forward the top two names for the
16 Governor for selection of one medical contract and one dental contract.” (Ex A, pg. 8). The criteria
17 for evaluation are set forth in the Phase II Evaluation Form and the Phase IV Evaluation Form (Ex
18 A, pgs. 289-303). The Phase II evaluation form provides 10 points for plan administration and
19 plan design and 20 points out of 100 points for “funding rate development and claims cost
20 management” (Ex A, pg. 289). The Phase IV Evaluation form provides 30 points out of 100 points
21 for the “final estimated funding rates for benefit costs (based on consultant analysis using
22 reimbursement rate information provided in Exhibit B, Questionnaire).” (Ex A, Pg. 290). Any
23 claims by TakeCare that the criteria for evaluation were unclear or improper should have been

1 made upon TakeCare’s receipt of the RFP or at the latest upon its submission of its proposal on
2 June 17, 2024. The Guam Supreme Court decision in *DFS Guam L.P. v. The A.B. Won Pat*
3 *International Airport Authority*, 2020 Guam 20, and decisions in OPA-24-002 and OPA-24-004,
4 make it clear that “A protest filed more than 14 days after the disappointed offeror or bidder had
5 notice of the grounds for the protest is barred as untimely. This is true “even if no contract has yet
6 been awarded, even if the protest was filed within 14 days of the agency’s selection of bidders or
7 offerors, and even if the protestant did not subjectively understand or appreciate the ground of
8 protest.” DFS par. 87. One of TakeCare’s issues protested is “whether the Department of
9 Administration’s (“DOA”) RFP included any expected cost information or any other information
10 relating to it as request by the RFP (Hearing Scheduling Order pg.1). This issue is untimely and
11 the OPA has no jurisdiction to hear this issue, as it should at the latest have been filed within 14
12 days of the submission by TakeCare of its proposal on June 17, 2024 which would be July 1, 2024.
13 TakeCare’s protest was filed on August 27, 2024 (Ex F, pgs. 1267-1269).

14 The Negotiating Team recommended awarding TakeCare the exclusive TPA contract for
15 medical, pharmacy and dental benefits, and provided a second option to award SelectCare the
16 exclusive TPA contract for medical and pharmacy benefits and NetCare the exclusive TPA
17 contract for dental benefits. This recommendation was provided to the Governor pursuant to 4
18 GCA §4302(c)(9) on September 9, 2024 (Ex C). The memo to the Governor provided an analysis
19 by Milliman, Inc., the government’s health insurance consultant, of estimated annual funding rates
20 for FY2024 and FY2025 and estimated FY2025 claims costs for medical, pharmacy, and dental
21 benefits. The use of a health insurance consultant is authorized by 4 GCA §4302(c)(7) “the
22 Negotiating Team, with the approval of *I Maga’haga/Maga’lahi*, is authorized to contract with an

1 actuary competent to develop proposed health insurance rates or other recognized expert to train
2 and/or advise the Negotiating Team.”

3 4 GCA §4301, Group Insurance, (a) provides that “*I Maga’haga/Maga’lahi* is authorized to
4 enter contracts and reject proposals, with the written concurrence of the Speaker of *I Liheslaturan*
5 *Guahan* or the Chief Justice of the Supreme Court of Guam whose consents may be withheld in
6 their sole discretion, with insurance companies, authorized to do business in Guam, for group
7 insurance, including, but not limited to hospitalization, medical care, life, and accident, for all
8 employees or separate groups of employees, and foster children, of the government of Guam....
9 Health benefits provided under this authority may be self-funded and administered by a third party
10 if it is determined to be cost-effective....”

11 The Governor selected SelectCare for medical and pharmacy benefits, and NetCare for
12 Dental benefits on September 13, 2024. Both 4 GCA §4301(a) and 4 GCA §4302(c)(9) authorize
13 the Governor to make the selection of the most economical and beneficial health insurance plan.
14 The negotiating teams’ responsibility is to forward the 3 highest ranking proposals to the Governor
15 for consideration and selection of the most economical and beneficial health insurance plan. The
16 Governor may select any of the proposals provided by the Negotiating Team and for FY2025
17 made the selection of SelectCare and NetCare.

18 While TakeCare alleges that it is the lowest cost proposal based on TPA fees, the analysis
19 provided by Milliman Inc., the health care consultant, shows that the combination of SelectCare
20 for medical and pharmacy benefits, and NetCare for dental benefits is the most economical and
21 beneficial health insurance plan. The estimated annual funding rates for FY2025 for the TakeCare
22 medical/dental/pharmacy proposal are \$192.79M and for the SelectCare/NetCare
23 medical/dental/pharmacy proposal are \$192.31M (Ex C, pg. 1169). The estimated FY2025

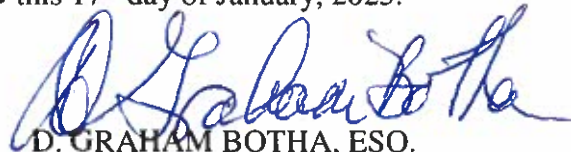
1 medical and pharmacy claims cost for SelectCare are \$159.41M and for TakeCare are \$161.20M, a
2 difference of \$1.79M (Ex C, pg. 1173).

3 The Governor's selection of SelectCare for medical and pharmacy benefits and NetCare for
4 dental benefits was properly awarded pursuant to 4 GCA §4301(a). The Milliman analysis shows
5 that this selection was the most economical and beneficial health plan for the government of Guam
6 employees, retirees, and foster children. No procurement stay was issued, as DOA with the
7 approval of the Attorney General determined that the award of the contract without delay is
8 necessary to protect substantial interests of the Territory in accordance with 5 GCA §5425(g).

9 CONCLUSION

10 DOA requests that the appeal of TakeCare Insurance Company, Inc. be dismissed, the
11 award of the FY2025 medical and pharmacy benefits to SelectCare and the award of the FY2025
12 dental benefits to NetCare be confirmed, and that the Public Auditor award all legal and equitable
13 remedies that DOA may be entitled to as a result.

14 **RESPECTFULLY SUBMITTED** this 17th day of January, 2025.

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D. GRAHAM BOTHA, ESQ.
GSA Procurement Counsel