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DATE: 06.15.18
TIME: 1:58 AM PM BY: JMO
FILE NO OPA-PA: 18-003

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**OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS**

IN THE APPEAL OF)	APPEAL NO. OPA-PA-18-003
)	
TAKECARE INSURANCE COMPANY,)	
INC.,)	TAKECARE'S MOTION TO
)	COMPEL PRODUCTION OF
Appellant)	DOCUMENTS
)	
)	
)	
)	

INTRODUCTION

The Director of Department of Administration (“DOA”) and the Negotiating Team (“NT”) have wrongfully refused to produce hundreds of pages of documents and audio records that are required by law to be a part of the Procurement Record. They have even refused to produce voting sheet(s) required by the NT Rule VIII, which clearly states that: “Upon the casting of votes, team members shall sign off on a voting sheet to document the decision made.” For the convenience of the Hearing Officer, copy of the NT Rules referred to herein are attached hereto as Tab 1.

In order to determine how, why or even whether the NT actually decided at a meeting to include GRMC as a “minimum qualification,” the Hearing Office and TakeCare

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must be allowed access to the information relating to how the RFP was developed, including, but not limited to, listening to the audio records of the NT meetings and reviewing the voting sheet(s) relating to those meetings. Neither the Hearing Officer nor TakeCare should be required to rely solely upon the Director of DOA's second-hand hearsay explanations as to the "reasons" behind including GRMC as a "minimum qualification." The best and only real evidence of those "reasons" is in the documents and audio recordings of the actual meetings prior to the RFP being published.

DISCUSSION

In its Protest, TakeCare requested that DOA and the NT produce "the complete procurement file and all supporting documents." TakeCare Protest 4/18/18 at 1. The Office of Public Accountability ("OPA") has also required that DOA and the NT "submit to the Public Auditor a complete copy of the Procurement Record relevant to the appeal within five (5) working days of receiving notice of an Appeal." OPA Rule 12104(c)(3). When a government agency refuses to produce the Procurement Record, "[t]he Public Auditor shall have the power to compel . . . production of documents by any employee of the Government of Guam . . ." OPA Rule 12103(a).

"Relevance is broadly construed at the discovery state of the litigation and a request for discovery should be considered relevant if there is any possibility the information sought may be relevant to the subject matter of the action." Height v. City of Hays, Kan., 300 F.R.D. 496, 499 (D. Kan. 2014). Inasmuch as TakeCare is challenging the method and procedures used by DOA and the NT to develop the RFP, the Procurement Record relating to the meetings and communications regarding the RFP at issue are highly relevant.

I. Missing Documents from Procurement Record.

DOA and the NT have produced an FY19 Communications Log which is attached hereto and marked as Tab 2. In addition to the documents identified in Tab 2, DOA and the NT have also produced two additional lists of documents and meetings that they claim to be privileged and confidential, which are attached hereto and marked as Tabs 3 and 4.

Unfortunately, the voting sheet(s) required by NT Rule VIII (Tab 1 at 7) have not been produced or identified on any list of documents provided by DOA and the NT. These voting sheets must be made and signed “[u]pon the casting of votes” by “team members.” If the voting sheets were not made and signed “upon the casting of votes,” then, according to NT Rule VIII, there has not been a “Decision” made by the NT.

DOA and the NT have also failed to produce some information that is referred to in Tab 2, but not contained on the list of allegedly privileged and confidential communications identified in Tabs 3 and 4. The information referred to on Tab 2 that has not been produced by DOA and the NT are as follows: (a) a copy of the March 3, 2018 email to AON regarding RFP modifications regarding GRMC (Tab 2 at Bates Stamp 000007); and, (b) a record of who Francis Santos (the GRMC representative) spoke to “in person” at DOA on March 30, 2018 about GRMC being included as a minimum requirement in the RFP (Tab 2 at Bates Stamp 000009).

II. Tab 3 – The Team Meetings to Develop the RFP.

According to DOA and the NT, the documents identified in Tab 3 cannot be produced because “Public Law 32-083 prohibits disclosure of information contained in meetings.” Public Law 32-083 is the Legislation that enacted the NT Rules. TakeCare respectfully submits that the “confidentiality” provision in NT Rule IV (Tab 1 at page 5) is

only intended to shield from disclosure information relating to proposals and the meetings/negotiations involving those proposals. Rule IV was never intended to shield from disclosure information about the meetings merely to develop the RFP itself. On this subject, Rule IV states:

Rule IV. Confidentiality. Members, delegates of member, consultants of the Negotiating Team, and applicable Department of Administration staff as determined by the Director of Administration **must adhere to the strictest of confidentiality and acknowledge that the proposals received are confidential.** Team members, delegates of members, consultants, and applicable Department of Administration staff acknowledge that **no information contained in proposals, meetings or negotiations can be divulged to any person outside the Negotiating Team.** Team members, delegates of members, consultants and applicable Department of Administration staff must sign a confidentiality agreement attesting to such. **Confidentiality agreements shall be signed prior to** the predetermined meeting date and time for **opening proposals** referenced in Section IX.

Notably, the two references in Rule IV to the words “confidential” and “confidentiality” are contained in sentences that also refer to “proposals,” not merely “meetings.” NT members are not even required by Rule IV to sign Confidentiality Agreement until “prior to . . . opening proposals.” In other words, NT members are allowed to prepare the RFP, issue the RFP, and are still not be required to sign a Confidentiality Agreement until “prior to . . . opening proposals.” Inasmuch as no proposals have yet been received, there is no legal requirement at this time that the NT members even sign a Confidentiality Agreement. Rule IV refers to “meetings” only once, and that is the context of “proposals” and “negotiations.”

“It is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole.” Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So.2d 452, 455 (Fl. 1992). Hence, Rule IV must be harmonized with Guam’s Procurement Law, which is intended to “provide for increased public confidence in the procedures followed in public procurement” and to allow “public access to all aspects of procurement consistent with the sealed bid procedure and integrity of the procurement process.” 5 G.C.A. Section 5001(b)(3) and (8). The integrity of the sealed bid procedure will not be compromised by disclosing to the public, TakeCare and the Hearing Officer the procedures and reasons for developing the RFP. To the contrary, this disclosure is required in order to foster increased “public confidence” that the NT acted properly.

There is simply no public policy reason for the NT to hide from the evidence (documents, audio recordings and voting sheets) showing when, how and why it actually decided to include GRMC as a “minimum requirement” when it developed the RFP. Doing so will not compromise the sealed bid process, because no proposals have yet been received. TakeCare is merely seeking information about how the RFP at issue was developed, which is directly at issue in this appeal.

Nothing in Guam law shields the procedures relating to the development of an RFP from public scrutiny. In fact, Guam laws expressly allows a “prospective offeror” prior to an award to challenge the “method of source selection.” 5 G.C.A. Sections 5451 and 5425(a) and 2 GAR Div. 4 Sections 9101(e) and 9101(c)(1). Prospective offerors are allowed to protest “any phase of solicitation” including its “preparation.” 2 GAR Div. 4 Section 9101(c)(2). In order to determine if the RFP and “method of source selection” and the “preparation” of the RFP are in compliance with Guam law, the Hearing Office

and TakeCare must be allowed access to information relating to how the RFP was drafted, including, but not limited to, listening to the audio records of the NT meetings relating to the RFP's development.

DOA and the NT are also being hypocritical and trying to have it both ways by disclosing the alleged "reasons" that the NT decided to include GRMC as a "minimum requirement," but, at the same time, refusing to provide the actual evidence relating to the meetings involving that decision. For example, in the denial of TakeCare's protest, the Director of DOA discloses several "reasons" that the NT allegedly decided to include GRMC as a "minimum qualification." *See e.g., Procurement Record 1098 Letter from DOA Director 5/2/18 at 1-2.* Similarly, DOA and the NT have also disclosed the alleged "reasons" for that decision on pages 3-5 in DOA's Response to TakeCare's Rebuttal to the Agency Report submitted to the OPA on June 7, 2018. Yet, at the same time, DOA and the NT are insisting that they cannot disclose the actual evidence (documents, audio records and voting sheets) of what really happened in the NT meetings. In order to confirm the actual "reasons" the NT decided to include GRMC as a "minimum qualification," the Hearing Officer and TakeCare must be allowed to examine the physical evidence (documents, audio recordings and voting sheets) of what happened in the NT meeting(s) where the decision was made to require GRMC be in a network of any potential offeror. Otherwise, DOA can simply make up "reasons" for including GRMC, which were never considered, discussed or agreed to by the NT.

Without the requested discovery about what really happened in the NT meetings, TakeCare will be denied both procedural and substantive due process because it will not be afforded an opportunity to adequately present its claim. Similarly, it will be denied

substantive and procedural due process because it will be unable to defend against the hearsay and second-hand claims of DOA as to the alleged reasons that the NT included GRMC as a “minimum requirement.”

III. Tab 4 - The Defective “Privilege Log”

DOA and the NT, in a privilege log attached hereto as Tab 4, have refused to produce 149 pages of documents in the Procurement Record that are marked Bates Stamp 001251-001400. “Courts disfavor assertions of evidentiary privilege because they shield evidence from the truth-seeking process.” RLI Ins. Co. Conseco, Inc., 477 F.Supp. 2d 741, 748 (E.D. Va. 2007); *See also*, Herbert v. Lando, 99 S. Ct. 1635, 60 (1979); In re Grand Jury Proceedings, 727 F.2d 1352, 1355 (4th Cir. 1984). “[T]he burden is on the proponent of the attorney-client privilege to demonstrate its applicability.” U.S. v. Lentz, 419 F. Supp. 2d 820, 827 (E.D. Va. 2005). The attorney-client privilege is also “strictly construed” and a “conclusory allegation that a communication is protected by the attorney-client privilege is inadequate to meet this burden.” RLI Ins., Id. at 750-751. “Generally, a privilege log should not only identify the date, the author, and all recipients of each document listed therein, but should also describe the document’s subject matter, purpose for its production, and specific explanation of why the document is privileged or immune from discovery.” U.S. v. Louisiana, 2015 WL 4619561 at *2.

The privilege log attached hereto as Tab 4 does not even indicate that an attorney actually participated in any of the meetings or was a party to any of the documents referred to in the privilege log. DOA’s privilege log also does not identify the attorney or the client relating to any specific document; does not identify who drafted each document; does not identify all the recipients of each document; and, does not explain why each document is

allegedly privileged. Simply stated, the privilege log is fatally defective as a matter of law on its face.

Even assuming some of the documents identified in Tab 4 were sent to Shannon Taitano, Esq. or sent by her to others, that does not automatically make them privileged. In order for a communication with Ms. Taitano to be privileged, DOA and the NT have the burden of showing that each such communication was: (a) either sent to Ms. Taitano or prepared by her; (b) that none of the communications to Ms. Taitano were disclosed to non-clients, such as third parties like AON; and, (c) that each communication to her was “for the purpose of seeking (her) legal advice.” RLI Ins., *Id.* 477 F.Supp. 2d at 751.

Furthermore, any communications that were sent to third party experts are not protected from disclosure, even if Ms. Taitano was a party to those communications. “The majority view and the better view . . . is that all things communicated to the expert and considered by the expert in forming an opinion must be disclosed even if it constitutes opinion otherwise protected as work product.” Ass’n. of Irrigated Residents v. Dairy, 2008 WL 250935 at *1; *See also U.S. v. Sierra Pacific Industries*, 2011 WL 2119078 at *7.

It is apparent from the face of the privilege log attached hereto as Tab 4, that many of the communications being withheld were in fact shared with a non-client third party expert from AON named Suzanne Kohlmann. *See e.g.*, Bates Stamp 001257, 001258, 001260, 001263, 001267, 001272, 001275, 001276, 001279, 001282, 001266, 001291, 001295, and 001353. The Attorney General’s Office represents the Government of Guam, not private companies or individuals, such as AON and Suzanne Kohlmann. Hence, all the communications between the Government of Guam representatives and AON representatives must be produced.

CONCLUSION

For the reasons discussed herein, TakeCare respectfully submits that DOA and the NT must be compelled to produce the documents identified herein and in the Proposed Order submitted simultaneously herewith. Otherwise, TakeCare will be denied both procedural and substantive due process to present its claim and defend the claims of DOA and the NT.

Respectfully submitted this 15th day of June, 2018.

MAIR & MAIR, Attorneys at Law
Attorneys for TakeCare Insurance Company, Inc.

By: 

DAVID A. MAIR

TAB 1

2 **Administrative Rules of Procedure**

3 **FOR**

4 **Government of Guam Health Insurance Negotiating Team**

5 **[Authority: §4302(c) of Article 3, Chapter 4, Title 4, Guam Code Annotated]**

6 **Department of Administration**

7 **PROPOSED - Rules of Procedure for Negotiating Team [as amended in**
8 **response to Public Hearing]**

9 **Approved by Negotiating Team on July 9, 2013.**

10 **I. Authority.** The Negotiating Team for the government of Guam,
11 responsible for the solicitation of group health insurance benefits for
12 employees and retirees of the government, is established by statute.
13 Pursuant to law, the Negotiating Team shall develop its rules of procedure in
14 accordance with the Administrative Adjudication Law. 4 GCA § 4302(c).

1 9. The Director of the Government of Guam Retirement Fund, or his
2 or her designee.

3 B. Non-Voting Members. The following members of the Negotiating Team
4 are non-voting members:

5 1. The Chairperson of the Committee on Health or the successor
6 committee of *I Liheslaturan Guåhan*, or his or her designee.

7 2. The Chairperson of the Committee on Appropriations or the
8 successor committee of *I Liheslaturan Guåhan*, or his or her
9 designee.

10 **IV. Confidentiality.** Members, delegates of members, consultants of the
11 Negotiating Team, and applicable Department of Administration staff as
12 determined by the Director of Administration must adhere to the strictest of
13 confidentiality and acknowledge that the proposals received are confidential
14 in nature. Team members, delegates of members, consultants, and
15 applicable Department of Administration staff acknowledge that no
16 information contained in the proposals, meetings or negotiations can be
17 divulged to any person outside of the Negotiating Team. Team members,
18 delegates of members, consultants and applicable Department of
19 Administration staff must sign a confidentiality agreement attesting to such.
20 Confidentiality agreements shall be signed prior to the predetermined
21 meeting date and time for opening proposals referenced in Section IX. A
22 delegate may brief the member of the Negotiating Team who made the
23 delegation about the business of the Negotiating Team but both parties are
24 subject to strict confidentiality throughout the entire process. Copies of all
25 correspondence between the negotiating team and the Judiciary or Governor,
26 shall also be transmitted to the Legislature.

1 C. Notwithstanding the foregoing, the Negotiating Team, at a properly
2 noticed meeting with a quorum present, may adjourn its business and
3 schedule a subsequent meeting for a time, day and place certain even
4 though notice as prescribed here cannot be given one business day before
5 the meeting. Nonetheless, written notice, by business email of such
6 subsequent meeting shall be provided to each member. Nothing here
7 prohibits additional forms of providing notice to ensure that all members
8 receive actual notice of a scheduled meeting.

9 D. The Chairperson is responsible for providing timely notice to all
10 members of the Negotiating Team of each meeting, as provided for in
11 this rule.

12 **VII. Quorum.** The Negotiating Team may conduct official business if a quorum
13 of its voting members is present at any properly noticed meeting. A quorum
14 of the Negotiating Team is seven (7) voting members.

15 **VIII. Decisions.** At any properly noticed meeting of the Negotiating Team where
16 a quorum is present, the Negotiating Team shall make decisions based upon
17 an affirming vote of at least five (5) of the voting members present, after a
18 motion is made by any member, and seconded by any other member. In any
19 circumstance, a failure to get an affirming vote of at least five (5) of the
20 voting members present shall mean that the motion being voted on fails for
21 lack of a majority. Upon the casting of votes, team members shall sign off
22 on a voting sheet to document the decision made.

23 **IX. Opening of Proposals.** Provisions shall be made in each Request For
24 Proposals that establish the process for receiving proposals, documenting the
25 reception of proposals, the initial opening of proposals to ensure a proper
26 count, documenting the count, and for adequately securing proposals

TAB 2

DATE	TO	FROM	SUBJECT	DESCRIPTION	TYPE
12.5.17	Governor	DOA	FY2019 Group Health Ins. Negotiating Team	Appointment request	letter
12.5.17	Chief Justice	DOA	FY2019 Group Health Ins. Negotiating Team	Confirmation to participate or appoint a representative	letter
12.5.17	Speaker	DOA	FY2019 Group Health Ins. Negotiating Team	Confirmation to participate or appoint a representative	letter
12.5.17	Committee on Health	DOA	FY2019 Group Health Ins. Negotiating Team	Confirmation to participate or appoint a representative	letter
12.5.17	BBMR	DOA	FY2019 Group Health Ins. Negotiating Team	Confirmation to participate or appoint a representative	letter
12.5.17	GGRF	DOA	FY2019 Group Health Ins. Negotiating Team	Confirmation to participate or appoint a representative	letter
12.5.17	DOE	DOA	FY2019 Group Health Ins. Negotiating Team	Confirmation to participate or appoint a representative	letter
12.5.17	Board of Trustees, GGRF	DOA	FY2019 Group Health Ins. Negotiating Team	Confirmation to participate or appoint a representative	letter
12.5.17	DISID	DOA	FY2019 Group Health Ins. Negotiating Team	Confirmation to participate or appoint a representative	letter
12.5.17	AG	DOA	FY2019 Group Health Ins. Negotiating Team	Appointment request	letter
12.11.17	DOA	AG	FY2019 Group Health Ins. Negotiating Team	AAG Shannon Taitano appointment	letter
12.11.17	DOA	Judiciary	FY2019 Group Health Ins. Negotiating Team	Robert Cruz appointment	letter
12.11.17	DOA	GGRF	Board of Trustees GGRF – FY19 Group Health Negotiating Team Appt.	Mike Carlson appointment	email
12.12.17	DOA	DOE	FY19 Group Health Negotiating Team Appt.	Sylvia Calvo appointment	email

1.5.18	NetCare	Aon	Mid-year plan update	Mid-year plan presentation	email
1.6.18	SelectCare	Aon	Mid-year plan update	Mid-year plan presentation	email
1.6.18	TakeCare	Aon	Mid-year plan update	Mid-year plan presentation	email
1.7.18	Aon	SelectCare	Mid-year plan update	Clarification	Email
1.8.18	NetCare, SelectCare, TakeCare	DOA	Aon site meetings	Site meetings	email
1.8.18	DOA	SelectCare	Aon site meetings	Acknowledgement	email
1.9.18	NetCare	Aon	Aon on site meetings	Clarification	email
1.10.18	SelectCare	Aon	Mid Year Plan Update	Timing	email
1.10.18	TakeCare	Aon	Mid-year plan update	Claims experience	email
1.10.18	DOA	DISID	DISID-FY19 Group Health Negotiating Team Appt.	Confirming DISID representative and Jeffery Warfield's appointment	email
1.17.18	Insurance Commissioner	DOA	Filing requirements	Any concerns and language for RFP	email
1.18.18	DOA	Committee on Health	Health Committee Chairman Designee	Charles "Chuck" Tanner appointment	letter
1.22.18	DOA	Insurance Commissioner	Filing requirements	Guam rate review minimum requirements	email
1.23.18	GGRF	DOA	FY19 Group Health Negotiating Team Appointment – Board of Trustees GGRF	Confirming the director's appointment to the Team	email
1.30.18	Aon	DOA	FY19RFP	Plan Designs	email
1.30.18	DOA	Speaker	Appointment	Matthew Santos as employee representative	letter
1.30.18	DOA	Speaker	Appointment	Ariana Villaverde as committee on appropriations nonvoting representative	letter
1.16.18	Aon	NetCare	Aon on site meetings	Topics for meeting	email
1.30.18	Aon	DOA	GovGuam Plan Design Questions	Questions	email
1.26.18	Aon	DOA	Tracking log	Agenda and Budget cuts	email
2.2.18	Aon	DOA	FY19 RFP	Plan Designs	email
2.5.18	DOA	AON	FY19 RFP	RFP draft	email
2.5.18	DOA	Aon	Questions	RFP questions	email
2.6.18	AON	DOA	Email with TakeCare	Mid year review visit	email

2.7.18	Roy Adonay	Office of the governor	Appointment	General member appointment	letter
2.9.18	Aon	Legal	RFP questions	Tax withholding and wage determination	email
2.9.18	Director/Deputy	PSIV	Timeline	Summary of timelines	email
2.9.18	Legal	Aon	RFP questions	Questions for RFP	email
2.13.18	Director	PSIC	RFP	Draft RFP	email
2.13.18	Aon	PSIV	FY19 Health/Budget/Alternatives	Request for assistance due to budget	email
2.13.18	Legal	DOA	Notary	Request for notary services	email
2.13.18	DOA	Legal	Notary	Confirming notary services	email
2.14.18	Aon	Legal	Legal questions for RFP re-write	DOL Wage determination/Exhibits	email
2.16.18	Aon	DOA	RFP Draft for Committee (updated)	RFP	email
2.16.18	Aon	NetCare	Feb location information	Tax laws	email
2.20.18	Legal	DOA	Bill 3-34	Requested copy	email
2.21.18	DOA	Legal	PL 34-83	Attached copy	email
2.21.18	Brenda Judicpa	Office of the governor	Appointment	General member appointment	letter
2.22.18	Aon	Team	Strategy Discussion	Presentation	copy
2.23.18	Team	DOA	PL 34-83	Attached copy	email
2.26.18	Aon	Legal	PL 34-83	Attached copy	email
2.27.18	DOA/Team	Paula Blas	RFP considerations	Remove requirement for pre-cert for registered dietician and preserve 100% coverage for Well Woman Exam (WWE)	email
2.28.18	SelectCare	Aon	GovGuam RFP data request	Additional data due 3/15	email
3.1.18	TakeCare	Aon	GovGuam RFP Data Request	Due 3/15	email
3.3.18	Aon	Legal	RFP modifications	Tax cuts, plan designs, GRMC, miscellaneous	email
3.3.18	Aon	DOA/legal	4301(g)	Request for copy re gym benefit	email
3.5.18	Aon	PSIV/GGRF	RFP Considerations	Registered Dieticians and WWE	email
3.6.18	Legal	Aon	Miscellaneous scoring questions	Aon requesting clarification on scoring and other factors	email
3.6.18	DOA	TEAM	2 nd FY19 Team Mtg	3/8	email
3.6.18	DOA	Legal	2 nd FY19 Team Mtg	Leave by 10:45	email
3.7.18	Legal	DOA		Scoring, confidentiality and miscellaneous	email

3.7.18	Aon	Legal	Legal Questions	RFP Plan Designs and Scoring	email
3.10.18	Aon	Legal	3 year contract	Contract terms	email
3.12.18	Team	DOA	Aon's presentation deck	Recalled message	email
3.12.18	DOA	Team	2 nd FY19 Group Health Insurance	Aon presentation deck 3.8.18	email
3.13.18	DOA/Team	Vicky Quenga via Chuck Tanner, member	RFP considerations	Stool DNA testing	email
3.14.18	DOA	Team	Aon's PP presentation	Summary approved slides	email
3.14.18	TakeCare	DOA	GovGuam RFP Data Request	RFP data	email
3.15.18	Retiree rep	DOA	Approval of motions by team	Clarification on motion	email
3.16.18	NetCare	Aon	GovGuam RFP data request	Due 3/15	email
3.16.18	Aon	DOA	FY19 RFP Final draft	Final review	email
3.16.18	TEAM	DOA	RFP	RFP review	email
3.18.18	DOA/Team	Mike Carlson	RFP considerations	RSP Plan Design suggested changes	email
3.18.18	Aon	NetCare	GovGuam RFP Data request	Completed data report	email
3.19.18	Legal	Aon	PL 34-83	Clarification on law	email
3.19.18	DOA	Team	3 rd FY19 Group Meeting	Meeting date and RFP as of 3.15.18	email
3.19.18	TakeCare	Aon	GovGuam RFP Data Request	Reviewing data	email
3.20.18	NetCare	Aon	GovGuam RFP Data Request	Data for RFP	email
3.20.18	DOA	Aon	Guam FY19 RFP -final draft	RSP suggestions	email
3.21.18	SelectCare	Aon	GovGuam RFP data request	Foster paid claims	email
3.22.18	SelectCare	Aon	GovGuam RFP Data request	Data for RFP	email
3.22.18	Team	Matt Santos	Forwarded emails from 2017	Referenced PL 32-189 eliminating gym	email
3.22.18	Team	Various team members	Gym benefit (PL 30-170 and PL 32-189)	Request of review of PL 30-170 by Chuck Tanner	team whatsapp chat
3.22.18	Retiree Rep	DOA	SOB	Updated SOB	email
3.23.18	DOA	Aon	Cancel check-in call this week	Cancel call	email
3.23.18	Aon	Legal	RFP, page 18	Verification of language in RFP	email
3.23.18	DOA	Retiree rep	Guam FY19 RFP -- final draft	Suggested edits	email

3.24.18	Aon	DOA	Guam FY19 RFP – Final Draft	Miscellaneous RFP/Verify if retiree reps. Changes were included re: RSP	email
3.25.18	Aon	DOA	Cancel call this week	RFP changes	email
3.27.18	Team	Legal/DOA	Reminder of ROP and affidavits	Confidentiality	email
3.27.18	DOA/Legal	Matt Santos	Breach of confidentiality	Concerned of potential breach	email
3.27.18	Aon	DOA	Guam/Aon RFP edits	Foster kids and Exhibits	email
3.27.18	Legal	DOA	Briefing to delegates	Requested clarification if members can brief person who made delegation/Affidavit requirement	email
3.28.18	DOA	Legal	Verification of gym benefits requirement	PL 30-170 was replaced by PL 30-187 as per Compiler of Law	email
3.28.18	Team	Chuck Tanner	Formal object to removal in gym benefit in RFP (in response to email of 3.28.18)	Verifying if removal of gym was a mistaken repeal. Legislative counsel reviewing. Request to include gym back in RFP.	email
3.28.18	Chuck Tanner (cc team)	Lester Carlson	Confidentiality	Inquiry on confidentiality	email
3.28.18	Lester Carlson (cc team)	Chuck Tanner	Confidentiality	Response to above	email
3.29.18	Legal	DOA	RFP	Requesting guidance on issue re gym benefit and issuance of RFP	email
3.29.18	Legal	DOA	PL30-170 RFP	Gym	email
3.29.18	DOA	Legal	FY19 RFP Sealed cost proposal	Sealed cost proposal (Due date and time)	Email
3.30.18; 12:08 p.m.	Team	DOA	Clarification Urgent Care co pay	Clarification APD or SOB	email
3.30.18	DOA	Francis Santos	RFP	Expressed concern if an exclusive carrier is selected and <u>GRMC</u> not being part of provider network	In person
3.30.18	GPA/GWA	DOA/Team	Request to observe team meetings	Memo dated 3.28.18	Memo

3.30.18; 10:09 a.m.	Legal	Team	PL 30-170	Reminder to forward all communications relative to the RFP as part of procurement requirements	email
3.30.18; 9:55 a.m.	Joe Mesgnon	All stakeholders	Notice of Public Hearing	Bill No. 243-34 amend items (a) and (b) of Sect. 4301 and Bill No. 227-34 act to add new section relative to breast cancer screening	email
3.30.18	Michael Schniep, Recruitment supervisor, DOA	PSIV	Request if GovGuam insures an employee who can provide health and dental insurance coverage.	Request for the purpose of a written determination	
3.31.18	Aon, Legal, DOA	Aon, Legal, DOA	FY19 RFP clarifications	Urgent care, scoring, gym, miscellaneous	Email
4.4.18 7:20 a.m.	Director, DOA	PSIV	Response on comments for RFP (draft)	Page 13, financial stability; page 36, Ex. K, Ex. G Affidavit	email
4.4.18	Business Insurance	PSIV	Advertisement	Inquiries on ad dates and costs	Email
4.6.18	Business Insurance	PSIV	Advertisement	Continued inquiries on advertisement	email
4.6.18	Potential vendors (TakeCare, SelectCare, NetCare and Staywell)	PSIV	FY19 RFP publications	Contacted carriers to advise that the FY19 RFP can be obtained via the DOA HR website and of the ad placed on Post.	Email (Staywell and TakeCare – unable to reach via phone) and phone
4.6.18	DOA	TakeCare	Acknowledgement Receipt	As required via RFP	email
4.9.18	DOA	Jim Moylan	RFP	Had questions on RFP. Advised him to put it in writing.	
4.9.18	DOA	Jadeen Tuncap	RFP	Inquired if RFP was issued and deadline date. Advised RFP was issued on April 6 with deadline date of May 7 as per the publication notice on The Post.	phone
4.9.18	Aon	DOA	Excel files for RFP	Requested verification to review exhibits for RFP (excel files).	email

				Notated that "gym" was referenced in exhibits. Aon responded that excel files are correct.	
4.9.18	DOA	SelectCare	Acknowledgement Receipt	Submitted as required per RFP	email
4.9.18	DOA	Team	Health Insurance FY19 RFP#19-001	Advising team that an amendment may be issued for exhibits (excel file). Advising team that DOA is verifying with Aon.	email
4.10.18	GPA/GWA	DOA	Response to GPA's memo dated March 28, 2018 requesting to observe negotiations	Advised GPA that it will be placed in agenda for team's decision.	email
4.10.18 – 4.17.18	Business Insurance	PSIV	Advertisement info	Advertisement inquiries and quotes	email
4.11.18	DOA	NetCare	Acknowledgement Receipt	As required per RFP	email
4.11.18	Aon	Washington Covena	GovGuam RFP notice	Request and determine interest	email
4.12.18	DOA	Aon	FY 19 RFP #19-001 – advising stateside insurance plans	Aon sent notices to potential bidders to the FY19 RFP (United, Cigna, and Aetna)	email
4.12.18	DOA	Aetna via NetCare	Acknowledgement Receipt	As required per RFP	Email
4.12.18	Aon	Washington Covena	GovGuam FY19 RFP notice	Confirmation will not be providing a proposal	email
4.13.18	DOA	Island Home	Acknowledgement Receipt	As required per RFP	Email
4.13.17	SelectCare	DOA	Questions	Questions to RFP	email
4.13.18	TakeCare	DOA	Questions	Questions to RFP	email
4.13.18	NetCare	DOA	Questions	Questions to RFP	email
4.16.18	Island Home	DOA	Inquiries to RFP	Advised to refer to inquiry deadline date	Email
4.16.18	Legal	DOA	None	Draft responses	email
4.17.18	DOA	Aon	Questions to RFP 2019	Responses	email
4.18.18	Legal	Retiree and GGRF representative	RSP Eligible	Revised language	Email
4.18.18	Aetna via NetCare	Aon	Clarification on conference call for Aetna	Message sent to Jerry Crisostomo reference phone call with Aetna	Email
4.18.18	Aon, DOA, legal	Aon, DOA, legal	Questions to RFP 2019	Questions/responses	email

4.18.18	Legal	DOA	Email from Aon re: conference call request from Aetna	Requested guidance if Aon should proceed with conference call from Aetna	Email
4.18.18	TakeCare	DOA	Protest	Protest to the FY19 RFP	Memo
4.18.18	DOA	Team	Protest	Sent protest memo from TakeCare	Email
4.20.18	Aon	DOA	Protest	Advised Aon that we are at a stay due to the memo received.	Email
4.20.18	DOA	Prospective carriers	Protest received from TakeCare	Advised prospective carriers of protest received and of FY19 RFP stay	email
4.24.18, 1:06 p.m.	Frank Campillo	DOA	Inquired on status ref: Protest	Advised we are at a stay and we will advise all once we are given clearance.	Phone
4.25.18	Wayne Chargualaf	DOA	Marianas Business Journal	DOA declined to return call	Phone
5.1.18	TakeCare	DOA	Deadline and responses to FY19 RFP	Status of stay, deadline and response to inquiries	Email
5.1.18	Jim Moylan	DOA Deputy Director	Status of protest	Requested status of stay (no response provided by deputy). See response 5.2.18 below.	Phone
5.1.18	Jim Moylan	DOA	Status of protest	Advised we are at a stay	Phone call/email response
5.2.18	Jim Moylan	DOA	Status of protest	Advised we are at a stay	Email
5.2.18	PSIV	Team	Draft response to protest filed	Requested members to review draft response and provide feedback	Email
5.2.18	DOA	TakeCare	Response to April 18, 2018 protest filed	Advised TakeCare of Negotiating team's decision/Protest denied (DOA memo dated 5.2.18)	Emailed 5.2.18 (original delivered on 5.3.18)
5.3.18	DOA Deputy	Janela Carrera Pacific News Center	FOIA	Request memos, emails and information on protest filed by TakeCare	Email
5.3.18	DOA	Legal	FOIA request ref: TakeCare protest	Requested for guidance	Email
5.3.18	DOA	NetCare	RFHP FY19	5/7 deadline	Email
5.4.18	NetCare	DOA	RFHP FY19	Stay	email

TAB 3

Government of Guam
FY19 Group Health Insurance Request for Proposal
RFP DOA/HRD-RFP-GHI-19-001
Meeting log
Public Law 32-083 prohibits the disclosure of information contained in meetings

Date/Time/Location	Subject	Participants
Date: 2.20.18 Time: 9:00 a.m. Venue: DOA	mid-year review	<u>SelectCare</u> DOA/Aon
Date: 2.20.18 Time: 2:30 p.m. Venue: DOA	Planning	DOA Aon
Date: 2.20.18 Time: 4:00 p.m. Venue: DOA	RFP review	OAG DOA Aon
Date: 2.21.18 Time: 9:00 a.m. Venue: DOA	mid-year review	TakeCare DOA Aon
Date: 2.21.18 Time: 1:00 p.m. Venue: DOA	mid-year	NetCare DOA Aon
Date: 2.22.18 Time: 9:20 a.m. Venue: DOA	Team meeting	Government of Guam FY19 Health Insurance Negotiating Team (Negotiating Team)
Date: 3.12.18 Time: 9:15 a.m. Location: GEDA	Team meeting	Negotiating Team

Date: 3.22.18 Time: 9:15 a.m. Venue: DOA	Team meeting	Negotiating Team
Date: 4.17.18 Time: 9:00 a.m. Venue: DOA	Team meeting	Negotiating Team
Date: 4.26.18 Time: 9:30 a.m. Location: DOA	Team meeting	Negotiating Team

TAB 4

TAKECARE INSURANCE CO., INC.



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Attorneys for the Government of Guam

Jenni Adams
 Received By/Department
 6/17/2016 3:13 pm
 Date/Time

RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS
 DATE: 05-17-18
 TIME: 2:10 AM PM BY: JM
 FILE NO OPA-PA: 18-003

**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

SEALED
PURCHASING AGENCY
ATTORNEY-CLIENT
PRIVILEGED AND CONFIDENTIAL
COMMUNICATION LOG

Date	Bate Stamp Page #	Client	Subject
01-10-18	001251	Leo Candaso, DOA	Mid-Year Plan Update
01-11-18	001252	Leo Candaso, DOA	Mid-Year Plan Update
01-11-18	001253	Suzanne Kohlmann, Aon	Mid-Year Plan Update
02-07-18	001257	Leiah Acfalle, DOA	Aon meeting
02-07-18	001258	Leo Candaso, DOA	Aon meeting
02-09-18	001260	Suzanne Kohlmann, Aon	RFP
02-13-18	001263	Suzanne Kohlmann, Aon	Business Privilege Tax in RFP

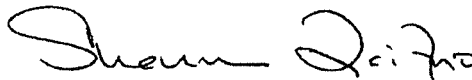
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02-13-18	001266	Leo Candoso	General Public Member
02-14-18	001267	Suzanne Kohlmann, Aon	RFP rewrite
02-23-18	001271	Leo Candaso, DOA	FY19 inquiries
03-03-18	001272	Suzanne Kohlmann, Aon	RFP modifications v. legislation
03-03-18	001275	Suzanne Kohlmann, Aon	4301(g)
03-04-18	001276	Aon and DOA	Exclusive and nonexclusive scoring
03-07-18	001279	DOA and Aon	RFP
03-08-18	001282	Suzanne Kohlmann, Aon	RFP
03-10-18	001266	Suzanne Kohlmann, Aon	3-year contract
03-10-18	001289	Leo Candaso, DOA	2 nd Team meeting
03-15-18	001291	Suzanne Kohlmann, Aon	PL34-83
03-20-18	001293	Leo Candaso, DOA	Written determination
03-21-18	001294	Leo Candaso, DOA	Procurement record
03-23-18	001295	Suzanne Kohlmann	Review – Page 18
03-27-18	001297	Leo Candaso, DOA	RFP Sample contracts
03-27-18	001297A	Leo Candaso, DOA and Matt Santos, Negotiating Team	Confidentiality breach
03-27-18	001297B	Negotiating Team	Confidentiality requirement
03-27-18	001298	Leo Candaso, DOA	Procurement record
03-28-18	001303	Leo Candaso, DOA	PL 30-170 & RFP
03-29-18	001305	Leo Candaso, DOA	PL 30-170 & RFP
03-29-18	001307	Leo Candaso, DOA	Public Law 30-170
03-29-18	001316	Negotiating Team	Public Law 30-170
03-29-18	001317	Leo Candaso, DOA	RFP sealed cost proposal
03-30-18	001319	Leo Candaso, DOA	RFP clarifications
03-30-18	001321	Negotiating Team	Communications log
03-30-18	001324	Leo Candaso, DOA	Written determination
03-30-18	001328	Leo Candaso, DOA	RFP Ex G
04-16-18	001329	Leo Candaso, DOA	RFP inquiries
04-16-18	001332	Leo Candaso, DOA	Vendor Q&A Draft
04-17-18	001340	Leo Candaso, DOA	Communication log
04-17-18	001343	Leo Candaso, DOA	RFP inquiry response
04-18-18	001353	Leo Candaso and Vince Arriola of DOA and Trey Sarsfield, Stephen Caulk and Suzanne Kohlman of Aon	RFP inquiry response
04-18-18	001354	Leo Candaso, DOA	RFP inquiry response
04-18-18	001356	Leo Candaso, DOA	RFP communications
04-18-18	001359	Leo Candaso, DOA	RFP amendments

04-19-18	001361	Leo Candaso, DOA	Procurement record
04-20-18	001384	Leo Candaso, DOA	Notice of protest
04-20-18	001385	Leo Candaso, DOA	Protest memo
05-01-18	001386	Leo Candaso, DOA	Draft Response to TakeCare's Protest
05-01-18	001389	Leo Candaso, DOA	TakeCare's RFP deadline inquiry
05-02-18	001391	Leo Candaso, DOA	timelines
05-02-18	001394	Leo Candaso, DOA	Procurement record
05-03-18	001395	Leo Candaso, DOA	FOIA
05-07-18	001399	Leo Candaso, DOA	Notice of Procurement
05-07-18	001400	Chuck Tanner, Negotiating Team	Clinical trials

Submitted this 17th day of May, 2018.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General



By:

SHANNON TAITANO
Assistant Attorney General