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RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

DATE: 10-19-18
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 FILE NO OPA-PA: 18-003/005

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

IN THE APPEAL OF:)	DOCKET NO. OPA-PA-18-003
)	DOCKET NO. OPA-PA-18-005
TAKECARE INSURANCE COMPANY,)	
INC.,)	
)	DOA'S PARTIAL OPPOSITION TO
Appellant,)	TAKECARE'S SECOND MOTION TO COMP
)	PRODUCTION OF DOCUMENTS
and)	
)	
DEPARTMENT OF ADMINISTRATION,)	
)	
Purchasing Agency.)	

Purchasing Agency, Department of Administration ("DOA"), hereby submits its partial Opposition to Appellant TakeCare's Insurance Company, Inc. ("TakeCare") Second Motion to Compel Production of Documents.

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ORIGINAL

INTRODUCTION

On August 2, 2018 DOA submitted an amended record of communications pursuant to the Hearing Officer's Order of July 17, 2018. TakeCare filed a Second Motion to Compel requesting for specific documents it argues are not confidential or relevant to the case.

DISCUSSION

I. Protecting the Integrity of the Procurement Process

One of the underlying purposes and policies of the Guam Procurement Law is to require public access to all aspects of procurement consistent with the sealed bid procedure and the integrity of the procurement process. *See 5 G.C.A. § 5001(b)(8)*. The public policy to protect the integrity of the procurement process and to provide public access to the record at the earliest possible time is again emphasized in 5 G.C.A. § 5252.

These policies should be applied harmoniously and allow access of the record without compromising the integrity of the procurement process. The Request for Proposal DOA/HRD-RFP-GHI-19-001 ('RFP') has yet to be canceled and the procurement process is stayed pending a final resolution of TakeCare's protest or appeal. In their motion, TakeCare's request for documents include email communications with Aon. Aon is the actuary firm hired as DOA's consultant in the procurement of group health insurance. The information contained in some of the emails requested by TakeCare relate to the Government's objectives and strategy in acquiring quality health insurance coverage for GovGuam employees, retirees, their families and foster children; the disclosure of which could place DOA at a disadvantage with potential offerors if produced at this stage of the procurement process.

The objectives or strategy ideas contained in these emails could be used to determine the basis of an award. The Guam Procurement Law provides that documents used to determine and form the

basis of award can become available for public inspection at the conclusion of negotiations resulting in the award of the contract. *See 2 GAR, Div. 4 §3114(m)*. Therefore, DOA asks that these documents not be released at this time as the disclosure may prejudice DOA or other potential offerors at this stage of the procurement process.

Ultimately, the procurement record, not including information protected by law such as proprietary data or trade secrets and unsuccessful proposals, will become available for public disclosure upon the award of the contract. The documents will be available to TakeCare at that time and TakeCare will not be prejudiced or denied due process as the law allows 14 days from when they discover or should have discovered grounds to protest. *See 5 G.C.A. § 5425(a)*.

II. Public Record of Procurement Actions

Section 5251 of Title 5 of the Guam Code Annotated makes the procurement record a public record. The law provides: “The record required by § 5249 of this Chapter is a public record and, subject to rules promulgated by the Public Auditor, any person may inspect and copy any portion of the record.” *5 G.C.A. § 5251*.

Section 5249, as cited to in Section 5251, defines the public procurement record as follows:

Each procurement officer shall maintain a complete record of each procurement. The record shall include the following:

- (a) the date, time, subject matter and names of participants at any meeting including government employees that is in any way related to a particular procurement;
- (b) a log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which is in any way related to the procurement;
- (c) sound recordings of all pre-bid conferences; negotiations arising from a request for proposals and discussions with vendors concerning small purchase procurement;
- (d) brochures and submittals of potential vendors, manufacturers or contractors, and all drafts, signed and dated by the draftsman, and other papers or materials used in the development of specifications; and

(e) the requesting agency's determination of need.

The Guam Procurement Law clearly defines which portion of the procurement record is a public record. Email communications are not listed in Section 5249. Therefore, Aon's emails are not required to be disclosed at this stage of the procurement process.

III. Confidentiality and Non-Disclosure Affidavit

The Confidentiality and Non-Disclosure Affidavit signed by members of the Negotiating Team obligates the member to maintain all information received in regard to this procurement confidential and to not disclose the information to any person except as authorized. *See Tab 13 of the Procurement Record*, Bates Stamp # 1120-1165. "Confidential and privileged information" also pertains to the process undertaken in the development of the solicitation, or which pertains to legal advice or legal memoranda in any form (oral, hard copy or electronic) provided by the Office of the Attorney General, or which pertains to advice and information in any form (oral, hard copy or electronic) provided by the actuarial consultant to the Negotiating Team. *Id.*

The Negotiating Team member, delegate, consultant or attorney of the Negotiating Team affirmed they will not disclose, discuss or share with any unauthorized person or group, any confidential and privileged information, in any form, except to the extent that such disclosure, discussion or sharing is expressly authorized by law, or as required by a court of competent jurisdiction. *Id.* Furthermore, materials containing confidential and privileged information will not be distributed, duplicated, used, or disclosed except as absolutely necessary to fulfill the obligations as a member of the Negotiating Team. Any uncertainties will be resolved in favor of preserving the confidentiality of the information.

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IV. Aon Email

The emails between Aon and the undersigned counsel were filed sealed as attorney-client privileged communication. Section II. C. of Public Law 32-83 requires the Attorney General or her designee to serve as legal advisor during all phases of the procurement process for group health insurance benefits. The Attorney General designated the undersigned counsel as the legal advisor. Bates Stamp # 00928. Aon is the actuary authorized in 4 G.C.A. § 4302(c)(7) to also advise the Negotiating Team on the procurement of group health insurance. A consultant could be considered the functional equivalent of a client, for purposes of the functional equivalent doctrine extending the attorney-client privilege to communications between counsel and consultant. *See William Tell Services, LLC. V. Capital Financial Planning, LLC, 999 N.Y.S.2d 327 (2014).*¹

As actuary and consultant to the Negotiating Team to procure group health insurance, Aon plays a major role in the process and provides a unique function that neither the team nor DOA can perform. Communications between Aon and legal counsel is essential to properly advise DOA and the Negotiating Team. Therefore, communications between Aon and the legal advisor on the procurement of group health insurance benefits is privileged or confidential communication either as attorney-client communication, Guam Procurement Law or the Confidentiality and Non-Disclosure Affidavit signed by counsel, DOA and Aon. Bates Stamp # 1121-1124, 1129-1132, & 1153-63.

¹ “To determine whether a consultant should be considered the functional equivalent of an employee, courts look to whether the consultant had primary responsibility for a key corporate job [], whether there was a continuous and close working relationship between the consultant and the company's principals on matters critical to the company's position in litigation[], and whether the consultant is likely to possess information possessed by no one else at the company[]” (*id.*, at 113, citing *In re Bieter Co.*, 16 F.3d 929, 936–37 (8th Cir.1994); *In re Copper Market Antitrust Litigation*, 200 F.R.D. 213, 218–19 [S.D.N.Y.2001]; *Ross v. UKI Ltd.*, 2004 U.S. Dist. LEXIS 483, No. 02 Civ. 9297, 2004 WL 67221 [S.D.N.Y. Jan. 15, 2004]). The functional equivalent test has been applied to uphold application of the attorney client privilege where an outside consultant plays such a major role in the corporate decision-making process, that the consultant's communication with the corporate attorney is essential for the corporate attorney to properly advise the corporate client. *See e.g. McCaugherty v. Siffermann*, 132 F.R.D. 234, 238–239[N.D.Cal.1990].”

V. Communications

For the reasons stated above and the reasons for withholding cited below, DOA opposes to the production of certain documents because they are confidential or privileged.

Document Requested	Reasons for withholding
01/11/18 communication from Suzanne Kohlmann to Shannon Taitano (Bates Stamp 001253).	Confidential per 5 G.C.A. § 5001(b)(8) and 2 G.A.R., Div. 4, Chap. 1 §1102(7).
03/03/18 communication from Suzanne Kohlmann to Shannon Taitano and Leonora Candaso. (Bates Stamp 001272). The FY19 Communication Log of DOA indicates that there was a communication on 03/03/18 that specifically refers to “GRMC.” (Bates Stamp 000007).	Confidential per 5 G.C.A. § 5001(b)(8) and 2 G.A.R., Div. 4, Chap. 1 §1102(7). Communication contains information on the requirement of both hospitals in the RFP.
03/04/18 communication from Stephen Caulk to Suzanne Kohlmann and Shannon Taitano (Bates Stamp 001276).	Confidential per 5 G.C.A. § 5001(b)(8) and 2 G.A.R., Div. 4, Chap. 1 §1102(7). Communication contains information on the requirement of both hospitals in the RFP.
03/08/18 communication from Suzanne Kohlmann to Shannon Taitano and Leonora Candaso (Bates Stamp 001282).	Confidential per 5 G.C.A. § 5001(b)(8) and 2 G.A.R., Div. 4, Chap. 1 §1102(7). Communication contains information on the requirement of both hospitals in the RFP.
03/10/18 communication to or from Suzanne Kohlmann (Bates Stamp 001266).	Confidential per 5 G.C.A. § 5001(b)(8) and 2 G.A.R., Div. 4, Chap. 1 §1102(7). 1266 is a typo and should be 1286. 1266 is a 2/13 Attorney Client communication regarding general public member.
03/10/18 communication from Shannon Taitano to Suzanne Kohlmann (Bates Stamp 001286).	Confidential per 5 G.C.A. § 5001(b)(8) and 2 G.A.R., Div. 4, Chap. 1 §1102(7).
03/31/18 communication to AON from AON re FY19 RFP clarifications (DOA does not appear to have filed this document with the OPA and given it a specific Bates Stamp number, but it is referred to in the DOA FY19 Communication Log at Bates Stamp 000010).	Bates Stamp 1779 filed under seal as the communication contains meeting information.

04/18/18 communication from Shannon Taitano to Suzanne Kohlmann, Leonora Candaso, Trey Sarsfeld, and Stephen Caulk (Bates Stamp 001353).	Confidential per 5 G.C.A. § 5001(b)(8) and 2 G.A.R., Div. 4, Chap. 1 §1102(7); Attorney Client Privilege. Communication contains draft responses to potential offerors.
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All other documents requested by TakeCare are attached herein.

CONCLUSION

For the reasons discussed herein, DOA requests that certain communications requested by TakeCare and marked by DOA as confidential or privileged, not be disclosed to TakeCare at this stage of the procurement process.

Submitted this 19th day of October, 2018.

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

By: 

SHANNON TAITANO
Assistant Attorney General

Shannon Taitano

From: Suzanne Kohlmann <suzanne.kohlmann@aonhewitt.com>
Sent: Tuesday, January 30, 2018 2:23 AM
To: Leonora P. Candaso
Cc: Leah Acfalle; Suzanne Kohlmann; Judith D Gagan; Trey Sarsfield
Subject: GovGuam Plan Design Questions

Hi Leo,

As I moved the plan design tables in the RFP over to Excel format, I reviewed what was requested in last year's RFP against the 3 plan design summaries for FY17. I found a few discrepancies that I need you to help me clarify.

1. **Autism coverage:** From what Lindsay told me, all carriers agreed to the required autism coverage under the federal mandate. However, only NetCare added it to their benefit summary. Their terms state "Diagnosis, treatment & behavioral therapy is limited per Contract Period to \$50,000 up to age 8 years and \$25,000 from ages 9 to 21 years". Are these the same terms that you want to request from all 3 carriers for FY19? (I assume the answer is yes, but just want to double check that what NetCare has stated is what you expected before I duplicate it.)
2. **Speech Therapy:** Only NetCare has this benefit listed in the benefit summaries. I'm assuming that I should include it in the requested benefits for FY19 from all carriers, but want to confirm with you before I do so. (Speech Therapy: 20 visits per member per plan year (Pre-Certification Required))
3. **Dental plan:** Is the dental plan for RSP enrollees the same plan as for actives? I assume that it is, but want to confirm.
4. **Wellness & Gym Benefits:** Is it accurate that the same wellness and gym benefits should be offered to all members, whether they be active, retiree, dependent, or survivor?
5. **Wellness & Gym Benefits:** With regard to the gym benefit as discussed in last year's RFP, there are two items that the carriers must agree to, but they seem like the same question to me. Are these the same, or is something different intended by the 1st one? It looks like J and K.a. are asking for the same information, but I could be wrong.

J) Gym Utilization / Membership
K) Data to capture utilization information as follows:
a. Number of members per month utilizing the gym;
b. Frequency of use per member per month;
c. Census data by age, gender, and by active/retiree/dependents;
d. Same reporting frequency as medical claims data.

Thank you!
Suzanne

Suzanne Kohlmann | Senior Consultant
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Shannon Taitano

From: Leonora P. Candaso <Leonora.Candaso@doa.guam.gov>
Sent: Tuesday, January 30, 2018 9:29 AM
To: Suzanne Kohlmann
Cc: Leah Acfalle; Judith D Gagan; Trey Sarsfield
Subject: RE: GovGuam Plan Design Questions

Hi Suzanne,

Thank you for the information. Please see below.

From: Suzanne Kohlmann [mailto:suzanne.kohlmann@aonhewitt.com]
Sent: Tuesday, January 30, 2018 2:23 AM
To: Leonora P. Candaso
Cc: Leah Acfalle; Suzanne Kohlmann; Judith D Gagan; Trey Sarsfield
Subject: GovGuam Plan Design Questions

Hi Leo,

As I moved the plan design tables in the RFP over to Excel format, I reviewed what was requested in last year's RFP against the 3 plan design summaries for FY17. I found a few discrepancies that I need you to help me clarify.

1. **Autism coverage:** From what Lindsay told me, all carriers agreed to the required autism coverage under the federal mandate. However, only NetCare added it to their benefit summary. Their terms state "Diagnosis, treatment & behavioral therapy is limited per Contract Period to \$50,000 up to age 8 years and \$25,000 from ages 9 to 21 years". Are these the same terms that you want to request from all 3 carriers for FY19? (I assume the answer is yes, but just want to double check that what NetCare has stated is what you expected before I duplicate it.) Yes, we will need it to be consistent. All will have to cover.
2. **Speech Therapy:** Only NetCare has this benefit listed in the benefit summaries. I'm assuming that I should include it in the requested benefits for FY19 from all carriers, but want to confirm with you before I do so. (Speech Therapy: 20 visits per member per plan year (Pre-Certification Required)) I was reviewing FY18 RFP SOB to verify that it was required. Is this considered under outpatient specialist care? If this is currently provided/part of the FY18 SOB – then yes, we have to maintain and all carriers must cover.
3. **Dental plan:** Is the dental plan for RSP enrollees the same plan as for actives? I assume that it is, but want to confirm. Yes.
4. **Wellness & Gym Benefits:** Is it accurate that the same wellness and gym benefits should be offered to all members, whether they be active, retiree, dependent, or survivor? Yes.
5. **Wellness & Gym Benefits:** With regard to the gym benefit as discussed in last year's RFP, there are two items that the carriers must agree to, but they seem like the same question to me. Are these the same, or is something different intended by the 1st one? It looks like J and K.a. are asking for the same information, but I could be wrong. Seems like it. I will have to look into it but overall I believe so.

J) Gym Utilization / Membership

K) Data to capture utilization information as follows:

a. Number of members per month utilizing the gym;

b. Frequency of use per member per month;

c. Census data by age, gender, and by active/retiree/dependents;

d. Same reporting frequency as medical claims data.

**Thank you!
Suzanne**

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Suzanne.Kohlmann@aon.com
Aon.com | LinkedIn | Twitter | Facebook**

Shannon Taitano

From: Suzanne Kohlmann <suzanne.kohlmann@aonhewitt.com>
Sent: Friday, February 09, 2018 5:54 AM
To: Shannon Taitano
Cc: Leonora.Candaso@doa.guam.gov; Suzanne Kohlmann
Subject: RFP questions for Shannon
Attachments: FY19 RFP DRAFT as of 2018.02.08.docx

Hi Shannon,

I was just making more updates to the RFP (update to Edward, adding your BPT language). I have two specific questions for you that I'd love to clear up before we come on island. Will you please have a look at these two items and let me know your thoughts:

1. Comment SK8 on page 7
2. Comment SK11 on page 11

Thank you!!
Suzanne

My email address has changed! Please update your records to reflect Suzanne.Kohlmann@aon.com.

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TABLE OF CONTENTS

- I. GENERAL INFORMATION
 - A. Purpose and Background
 - B. General authority for procurement
 - C. All parties to act in good faith
 - D. Liability for costs to prepare proposal
 - E. Applicability of Guam Procurement Law
 - F. Licensing and other statutory requirements
 - G. Registration as interested party or offeror and fee for RFP
 - H. Restrictions against sex offenders
 - I. Duration of contract
 - J. Confidentiality and proprietary information
 - K. Time is of the essence
 - L. Authority of Negotiating Team's Consultant
 - M. Type of contract
 - N. Other information
 - O. Minimum Wage as Determined by U.S. Department of Labor
 - P. Patient Protection and Affordable Care Act Benefits to continue
 - Q. Experience Participation Ratio
- II. PROPOSAL CONTENTS, REQUIREMENTS AND INSTRUCTIONS
 - A. Proposal contents and requirements
 - B. Proposal Instructions
- III. GENERAL PROCEDURES
 - A. Receipt and registration of proposals
 - B. Opening of proposals
 - C. Proposal evaluation and negotiation procedure
 - D. Cancellation of RFP or Solicitation
 - E. Rejection of Individual Proposals
- Exhibits
 - Exhibit A, Evaluation Forms
 - Exhibit B, Questionnaire
 - Exhibit D, Medical and Dental Current Rates, Enrollment, and Claims Data
 - Exhibit G, Plan Designs
 - Exhibit I, Affidavits Form A, Form B, Form C, Form D, Form E, Form F, and US DOL Wage Determination List
 - Exhibit N, Administrative Procedures
 - Exhibit O, Marketing Guidelines
 - Exhibit U, Health Insurance Rules and Regulations and Negotiating Team Rules of Procedure
 - Exhibit V, Mandatory Contract Provisions
 - Exhibit Z, Proposed PPO and HSA Contracts and Certificates

Commented [517]: Outstanding question to Shannon. See pg 18.

Commented [518]: Shannon - I'm not sure that we need this in the RFP. Can we delete?

N. Other Information

- a. This solicitation may be cancelled as provided for in the Guam procurement law and regulations.
- b. Any proposal may be rejected in whole or in part when in the best interest of the Territory of Guam as provided for in Guam procurement law and regulations

O. Minimum Wages as Determined by U.S. Department of Labor

The offeror awarded a contract under this solicitation agrees to comply with Title 5, Sections 5801 and 5802. In the event that the offeror employs persons whose purpose, in whole or in part, is the direct delivery of service contracted by the Government, then the offeror awarded a contract under this solicitation shall pay such employees, at a minimum, in accordance with the U.S. Department of Labor Wage Determination for Guam and the Northern Marianas Islands in effect on the date of a contract. In the event that the contract is renewed by the Government, the offeror awarded a contract under this solicitation shall pay such employees in accordance with the Wage Determination for Guam and the Northern Marianas Islands promulgated on a date most recent to the renewal date.

The offeror awarded a contract under this solicitation agrees to provide employees whose purpose, in whole or in part, is the direct delivery of service contracted by the Government those mandated health and similar benefits having a minimal value as detailed in the U.S. Department of Labor Wage Determination for Guam and the Northern Marianas Islands, and guarantee such employees a minimum of ten (10) paid holidays per annum per employee.

The current U.S. Department of Labor Wage Determination for Guam and the Northern Marianas Islands is attached hereto as Exhibit L, Form E.

P. Patient Protection and Affordable Care Act Benefits To Continue

It is the intent of this RFP, and the contract to result from it, to enter into an agreement that provides for all of the benefits, rights and responsibilities afforded as a result of the Patient Protection and Affordable Care Act (Public Law 111-148), and the regulations promulgated under the authority of the Act.

Q. Experience Participation Ratio

Consistent with Guam law, for purposes of any contract entered into as a result of this RFP:

- Target Experience means the amount calculated by multiplying (1) the total premiums earned by the Health Insurance Provider for the full twelve (12) month Plan Year ending the last day of the fiscal year under the Participating Policies issued to the government of Guam with respect to such Plan Year, by (2) a percentage not lower than eighty-six percent (86%);
- Actual Experience means an amount calculated by subtracting from the Target Experience all claims incurred during such Plan Year and paid in the time period ending six months after the end of the Plan Year by the Health Insurance Provider under all the Participating Policies (PPO 1500, HSA 2000, FSP, and Dental);
 - o Claims are defined as: Payments to Medical, Dental, and Pharmacy Providers; Gym membership payments
 - o Excluded from Claims: Network access fees, Wellness Incentives other than gym memberships,
 - o Subtracted from Claims: Pharmacy Rebates
- Experience Refund means a positive Actual Experience. See Title 4 GCA §4302.3(a).

R. Tax and Withholding Liability

The Offeror assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, employee benefits, or any other payments required by the governments of the United States and Guam, if required. Consultant is responsible for paying when due any and all income taxes, gross receipts taxes, or any other taxes or assessments incurred as a result of the services performed by the Consultant and Consultant's employees or agents under this Agreement or the compensation paid to Consultant for services performed under this Agreement, unless Consultant is a non-resident person or entity without a valid Guam Business License, in which case a withholding fee equal to four percent (4%) of the total dollar value of this contract will be withheld for the payment of Guam's Business Privilege Tax in accordance with 11 GCA § 71114 (PL 33-186).

Consentated [BX10]: Waiting on Real Shannon response (pg. 18)

Consentated [BX11]: Shannon: Does this apply like the right page for this addition?

Shannon Taitano

From: Shannon Taitano
Sent: Tuesday, February 13, 2018 7:59 AM
To: 'Suzanne Kohlmann'
Cc: Leonora.Candaso@doa.guam.gov; Stephen Caulk; Trey Sarsfield
Subject: RE: Business Privilege Tax (BPT) in RFP

Hi Suzanne, it is true the law governing the group health insurance procurement requires the vendor to be licensed on Guam. I am fine with the strikethrough.

Leo, please keep track of these determinations in written memo format for the procurement record.

Thank you.

Shannon

From: Suzanne Kohlmann [mailto:suzanne.kohlmann@aon.com]
Sent: Tuesday, February 13, 2018 3:41 AM
To: Shannon Taitano <staitano@guamag.org>
Cc: Leonora.Candaso@doa.guam.gov; Stephen Caulk <stephen.caulk@aon.com>; Trey Sarsfield <trey.sarsfield@aon.com>; Suzanne Kohlmann <suzanne.kohlmann@aon.com>
Subject: RE: Business Privilege Tax (BPT) in RFP

Hi Shannon, I added this to the RFP, but Trey remembered that it is a requirement of the RFP that all offerors be licensed. (Page 13, Item #10)

So, I'm thinking I should remove this language with the strikethrough below. Do you agree? It feels like this would prevent confusion.

If we can't change the paragraph in the RFP, I think I will remove the footnote from the cost sheet in the RFP since this should never be applicable to calculating the costs for this RFP.

Thanks for all of your insights on these questions!
Suzanne

"Tax and Withholding Liability. The Consultant assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, employee benefits, or any other payments required by the governments of the United States and Guam, if required. Consultant is responsible for paying when due any and all income taxes, gross receipts taxes, or any other taxes or assessments incurred as a result of the services performed by the Consultant and Consultant's employees or agents under this Agreement or the compensation paid to Consultant for services performed under this Agreement, ~~unless Consultant is a non-resident person or entity without a valid Guam Business License, in which case a withholding fee equal to four percent (4%) of the total dollar value of this contract will be withheld for the payment of Guam's Business Privilege Tax in accordance with 11 GCA § 71114 (PL 33-166).~~"

From: Shannon Taitano [mailto:staitano@guamag.org]
Sent: Wednesday, February 07, 2018 10:16 PM
To: Suzanne Kohlmann

Cc: Leonora.Candaso@doa.guam.gov; Stephen Caulk; Trey Sarsfield
Subject: RE: Business Privilege Tax (BPT) in RFP

+The footnote may have preceded my involvement in the RFP process. I believe it may have been inserted in the RFP to make it an even-playing field for all potential offerors since price is scored. I imagine it may be for off island insurance companies that do not have the BPT abatement and maybe the current carriers with govguam have abatements and may not be an issue.

Note, the following is required to be inserted in the RFP:

"Tax and Withholding Liability. The Consultant assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, employee benefits, or any other payments required by the governments of the United States and Guam, if required. Consultant is responsible for paying when due any and all income taxes, gross receipts taxes, or any other taxes or assessments incurred as a result of the services performed by the Consultant and Consultant's employees or agents under this Agreement or the compensation paid to Consultant for services performed under this Agreement, unless Consultant is a non-resident person or entity without a valid Guam Business License, in which case a withholding fee equal to four percent (4%) of the total dollar value of this contract will be withheld for the payment of Guam's Business Privilege Tax in accordance with 11 GCA § 71114 (PL 33-166)."

From: Suzanne Kohlmann (<mailto:suzanne.kohlmann@aonhewitt.com>)
Sent: Thursday, February 08, 2018 10:38 AM
To: Shannon Taitano <staitano@guamag.org>
Cc: Leonora.Candaso@doa.guam.gov; Stephen Caulk <stephen.caulk@aonhewitt.com>; Trey Sarsfield <trey.sarsfield@aonhewitt.com>
Subject: Business Privilege Tax (BPT) in RFP

Hi Shannon,

We have another RFP question that seems like you might be able to help us with.

On the cost sheets from the prior RFP, there is a footnote that states: "Only for initial ranking: total premiums will be reduced by 4% Business Privilege Tax (BPT) for those organizations not benefiting from a BPT abatement".

My question is,

1. Is this a requirement? Does this really need to be done as part of the RFP? (It's not mentioned anywhere else in the RFP.)
2. If it is required, how would Aon know whether to do this reduction? It doesn't sound like it has come up in the past, even though it has been in the RFP. So, maybe we need to write it as a question and the offeror can tell us if they have this?
3. And out of curiosity, why is this in here? Who is it benefitting? (Guam or the carrier?)

Thank you for any insights you may have!
Suzanne

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Shannon Taitano

From: Shannon Taitano
Sent: Wednesday, February 14, 2018 8:09 AM
To: 'Suzanne Kohlmann'
Cc: Leonora.Candaso@doa.guam.gov; Trey Sarsfield
Subject: RE: Legal Questions for RFP Re-Write

Yes, I am still pursuing a review of the current requirement and will definitely update the group.

From: Suzanne Kohlmann [mailto:suzanne.kohlmann@aon.com]
Sent: Wednesday, February 14, 2018 4:32 AM
To: Shannon Taitano <staitano@guamag.org>
Cc: Leonora.Candaso@doa.guam.gov; Trey Sarsfield <trey.sarsfield@aon.com>
Subject: RE: Legal Questions for RFP Re-Write

Thank you, Shannon!
We will leave it as is. If there is the option to bring it up at another procurement meeting, we still have about 6 weeks before we have to post the RFP and could easily change it.
You are such a great help with these questions – we appreciate it!
Suzanne

From: Shannon Taitano [mailto:staitano@guamag.org]
Sent: Monday, February 12, 2018 2:52 PM
To: Suzanne Kohlmann
Cc: Leonora.Candaso@doa.guam.gov; Trey Sarsfield
Subject: RE: Legal Questions for RFP Re-Write

Hi Suzanne, 5 GCA 5211(b) has been interpreted by this office as requiring the list to be published in the RFP. AG review and clearance forms require it. Unfortunately, we weren't able to discuss it at the procurement meeting. Shannon

From: Suzanne Kohlmann [mailto:suzanne.kohlmann@aon.com]
Sent: Tuesday, February 13, 2018 4:37 AM
To: Shannon Taitano <staitano@guamag.org>
Cc: Leonora.Candaso@doa.guam.gov; Trey Sarsfield <trey.sarsfield@aon.com>; Suzanne Kohlmann <suzanne.kohlmann@aon.com>
Subject: RE: Legal Questions for RFP Re-Write

Hi Shannon,

We had planned to bring the DOL wage list question up when we are on-site next week, but since you mentioned it in your email yesterday, I thought I'd just take this item out of the group discussion and see if we can get it resolved separately from the more important RFP items.

In the note below, you had mentioned that you were going to a procurement meeting and would discuss whether the wage list needs to be included or if just the certification form is okay. Based upon our research, the law (5 GCA § 5801 and § 5802) seems to only require an affidavit that the carrier will be in compliance with the wage list that is current at the time that the contract is signed. It doesn't seem to say that the current list must be attached to that affidavit. If we don't have to include the list with the affidavit in the RFP and in the bidder responses, this could save a lot of trees, and we believe still be compliant with the law. Here is the language from that law that seemed applicable.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

I see in your note below and also in the note you sent last night on other items, that you feel that the law does require the list to be attached. We are probably overlooking wherever that is in the law. Maybe it is in a section not referenced by the RFP? (not 5801 or 5802) However, if the law doesn't require that piece, we'd love to remove it. The wage list is not used as part of the RFP process and the list could change before it is needed for the contracting phase.

So, I think our lingering questions are:

- whether this item was discussed in this detail at the procurement meeting? Were there any insights that came from that group?
- whether you can show us where it is in the law that the list is required so that we can quote that section alongside 5801 and 5802 in the RFP?

Again, thank you for all of your help. I know that we're asking you to look into a lot of obscure things!
Suzanne

From: Shannon Taitano [mailto:staitano@guamag.org]
Sent: Monday, January 15, 2018 4:30 PM
To: Suzanne Kohlmann
Cc: Leonora.Candaso@doa.guam.gov; Trey Sarsfield
Subject: RE: Legal Questions for RFP Re-Write

Hi Suzanne,

1. Yes to delete Ex. M
2. Please delete comment. I will review to see if it was addressed.
3. Although health benefits are not based on salary, the carriers that provide the service to the government of Guam may be required to comply with the law. Guam law requires government solicitations to include a recitation of the Wage Determination most recently issued by USDOL including a demonstration of compliance. AG's office has interpreted the statute to require the most applicable list to be included in RFPs and declarations including the health insurance RFP. Our forms require it. Our office is revisiting this interpretation but has not changed it at this time. I have a meeting this afternoon on procurement matters and will discuss this further. For now, I suggest it stay in.

Please let me know if you require further assistance.

Shannon

From: Suzanne Kohlmann [mailto:suzanne.kohlmann@aonhewitt.com]
Sent: Saturday, January 13, 2018 12:31 PM
To: Shannon Taitano <staitano@guamag.org>
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Hi Shannon,

Trey & I are doing a re-write of the RFP. There are legal sections that we know cannot change, so we're leaving those alone. However, there are a few items that we wanted to ask you about for our draft.

Note: We are trying to finalize the draft this month and send out around 2/1 to the committee, you, and Leo to look at before we arrive later in February.

Here are the 3 items. I've attached last year's final Word version and PDF/Posted versions of the RFP for you to reference.

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Thank you!
Suzanne

<p>Exhibit M</p>	<p>Currently, Exhibit M is Section 3114 quoted in its entirety.</p> <p>Section 1.B. states "Specifically, the procedure for this RFP is found at Title 2 GAR D subsections. Section 3114 is quoted in its entirety in Exhibit M."</p> <p>We request that we keep this statement from page 8, but strike out the Exhibit M itself. There are several other pieces of law referenced in 1.B. that are not in the RFP. Additionally, given that this information is available with a simple Google search, it seems necessary to provide the full quote and rather allow bidders to look up the details.</p> <p>Are we okay to make this change striking the Exhibit M language?</p>
<p>Page 43</p>	<p>On page 43 of the final Word document from last year, there is a comment that says "language for purchased GG plan and who are Medicare eligible."</p> <p>We don't see any corresponding change in the published PDF version of the RFP. What is this referencing?</p> <p>May we delete this comment? Or is there something that needs to be addressed?</p>
<p>US DOL Wage Determination (pg 15)</p>	<p>The current RFP requires discussion of the US DOL Wage Determination on page 15. Our questions on this are two-fold:</p> <ol style="list-style-type: none"> 1) Health benefits are not based upon salary (like life and disability benefits). Do all references to the wage determination in the RFP require this? 2) If not, may we delete the part that says the list will be attached to the RFP Form F? <p>The Section of Code/Law referenced (pasted below) does not require that the contractor agree to abide by the terms of the "most recent" list.</p> <p><i>The Wage Determination most recently issued by the U.S. Department of Labor awarded to a contractor by the government of Guam shall be used to determine the applicable wage rates for the contractor.</i></p>

Suzanne Kohlmann | Senior Consultant
Aon Risk Solutions | Public Sector | Health & Benefits

Shannon Taitano

From: Suzanne Kohlmann <suzanne.kohlmann@aon.com>
Sent: Wednesday, February 14, 2018 4:32 AM
To: Shannon Taitano
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001269

Shannon

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To: Shannon Taitano <staitano@guamag.org>
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Thank you!
Suzanne

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001269 C

<p>Page 43</p> <p>On page 43 of the final Word document from last year, there is a comment that says, "Legal to provide – language for purchased GG plan and who are Medicare eligible."</p> <p>We don't see any corresponding change in the published PDF version of the RFP and we aren't sure what this is referencing.</p> <p>May we delete this comment? Or is there something that needs to be addressed?</p>	<p>The current RFP requires discusses the US DOL Wage Determination on page 15. Form F is also required with the current wage list attached. Our questions on this are two-fold:</p> <ol style="list-style-type: none"> 1) Health benefits are not based upon salary (like life and disability benefits often are); Can we remove all references to the wage determination in the RFP? 2) If not, may we delete the part that says the list will be attached to the RFP and should be attached to Form F? <p>The Section of Code/Law referenced (pasted below) does not require that the list be attached and the Form requires that they agree to abide by the terms of the "most recent" list anyway.</p> <p><i>The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages</i></p>
<p>US DOL Wage Determination (pg 15)</p>	

Suzanne Kohlmann | Senior Consultant
Aon Risk Solutions | Public Sector | Health & Benefits
1900 Sixteenth Street | Suite 1000 | Denver, CO 80202
t.: +1.303.782.3349 | f.: +1.303.782.3307
Suzanne.Kohlmann@aon.com
Aon.com | LinkedIn | Twitter | Facebook

Shannon Taitano

From: Suzanne Kohlmann <suzanne.kohlmann@aon.com>
Sent: Saturday, March 03, 2018 6:03 AM
To: Shannon Taitano; Leonora.Candaso@doa.guam.gov
Cc: Leah Acfalle (Leiah.Acfalle@doa.guam.gov)
Subject: 4301 (g)

Hi ladies,

For some reason, I'm not able to find the wellness language in 4301 using the Compiler of Laws – Search feature, nor using Google.

Will you please attach this section of law so that I can make sure that once I take out the Gym benefit from the wellness request, that I am covering what is mandated by law?

Thank you,
Suzanne

My email address has changed! Please update your records to reflect Suzanne.Kohlmann@aon.com.

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Shannon Taitano

From: Suzanne Kohlmann <suzanne.kohlmann@aon.com>
Sent: Thursday, March 15, 2018 8:41 AM
To: Shannon Taitano
Cc: Leonora.Candaso@doa.guam.gov; Stephen Caulk; Trey Sarsfield
Subject: RE: PL 34-83 follow up question

Hi Shannon!

Yes, the part after the ";" "AND TO DIVESTING [the legislature] OF FINAL APPROVAL AUTHORITY OVER ANY CONTRACT ENTERED INTO BY [the Governor] FOR THE SAME"

Since it's divesting the legislature of authority, maybe nothing changes with regard to my questions below. I thought it was divesting the Governor of authority.
I look forward to your clarification though. Thanks!

Suzanne

From: Shannon Taitano [mailto:staitano@guamag.org]
Sent: Wednesday, March 14, 2018 4:29 PM
To: Suzanne Kohlmann
Cc: Leonora.Candaso@doa.guam.gov; Stephen Caulk; Trey Sarsfield
Subject: RE: PL 34-83 follow up question

Are you referring to the last line in the caption? it divests the legislature of final approval authority. I can explain more when I return next week and have access to my files.

From: Suzanne Kohlmann [suzanne.kohlmann@aon.com]
Sent: Thursday, March 15, 2018 4:43 AM
To: Shannon Taitano
Cc: Leonora.Candaso@doa.guam.gov; Stephen Caulk; Trey Sarsfield; Suzanne Kohlmann
Subject: PL 34-83 follow up question

Hi Shannon,

Will you please help with interpretation of this last phrase here:

This is to certify that Bill No. 3-34 (COR), "AN ACT TO AMEND §§ 4301(a) AND 4302(c)(2) OF ARTICLE 3, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THAT ONLY THE MOST ECONOMICAL AND BENEFICIAL HEALTHCARE INSURANCE PROPOSAL PLAN FOR GOVERNMENT OF GUAM EMPLOYEES, RETIREES, AND FOSTER CHILDREN IS FORWARDED BY THE GOVERNMENT OF GUAM HEALTH INSURANCE NEGOTIATING TEAM TO I MAGA'LAHEN GUAHAN FOR CONSIDERATION; AND TO DIVESTING I LIHESLATURAN GUAHAN OF FINAL APPROVAL AUTHORITY OVER ANY CONTRACT ENTERED INTO BY I MAGA'LAHEN GUAHAN FOR THE SAME," was on the 9th day of March 2017, duly and regularly passed.

The part about divesting the Governor of final approval authority over the contract.

- Does that mean that the Committee now has that authority by only sending a single option to the Governor?
- Also, does that mean we do not need to meet with the Governor for approval at the end of the negotiations process?

I hadn't really thought through the implications of that part of the new law and would appreciate your help in understanding the implications. I'll need to update this in the RFP language!

Thanks,
Suzanne

My email address has changed! Please update your records to reflect Suzanne.Kohlmann@aon.com.

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[Aon.com](#) | [LinkedIn](#) | [Twitter](#) | [Facebook](#)

Shannon Taitano

From: Shannon Taitano
Sent: Monday, March 19, 2018 3:32 PM
To: 'Suzanne Kohlmann'
Cc: Leonora.Candaso@doa.guam.gov; Stephen Caulk; Trey Sarsfield
Subject: RE: PL 34-83 follow up question

The amendment with respect to divesting the legislature of final approval authority is provided in 4 GCA 4302(c)(2) in which it replaced "final approval" with "its review". The law now provides that the team shall forward to the legislature for its review instead of the team shall forward to the legislature for final approval.

From: Suzanne Kohlmann <suzanne.kohlmann@aon.com>
Sent: Thursday, March 15, 2018 8:41 AM
To: Shannon Taitano <staitano@guamag.org>
Cc: Leonora.Candaso@doa.guam.gov; Stephen Caulk <stephen.caulk@aon.com>; Trey Sarsfield <trey.sarsfield@aon.com>
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Hi Shannon!

Yes, the part after the ";" "AND TO DIVESTING [the legislature] OF FINAL APPROVAL AUTHORITY OVER ANY CONTRACT ENTERED INTO BY [the Governor] FOR THE SAME"

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Hi Shannon,

Will you please help with interpretation of this last phrase here:

Shannon Taitano

From: Shannon Taitano
Sent: Friday, March 23, 2018 8:33 AM
To: 'Suzanne Kohlmann'; Leonora.Candaso@doa.guam.gov
Cc: Trey Sarsfield; Stephen Caulk
Subject: RE: Shannon - review?

Yes, the updated language on page 18 is okay.

From: Suzanne Kohlmann <suzanne.kohlmann@aon.com>
Sent: Friday, March 23, 2018 3:52 AM
To: Leonora.Candaso@doa.guam.gov; Shannon Taitano <staitano@guamag.org>
Cc: Trey Sarsfield <trey.sarsfield@aon.com>; Stephen Caulk <stephen.caulk@aon.com>; Suzanne Kohlmann <suzanne.kohlmann@aon.com>
Subject: Shannon - review?

Hi Shannon,

We got Leo's fantastic message about the vote on the RFP. Woohoo!

Specifically, I wanted to confirm with you that the updated language in the Word portion of the RFP is okay. (See comment on page 18.)

Thank you!
Suzanne

My email address has changed! Please update your records to reflect Suzanne.Kohlmann@aon.com.

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order of negotiations. Offerors shall be available for negotiations commencing in the month of June 2018. Otherwise, the evaluations, the assignment of points, and the ranking of offerors and their proposals is for the Negotiating Team's informational purposes only.

During the evaluations, the Negotiating Team and the Consultant may conduct discussions with any offeror, either in person or telephonically. Discussions are discretionary to the Negotiating Team and the Consultant. The purposes of such discussions shall be (a) to determine in greater detail the offeror's qualifications; or (b) to explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.

Discussions shall not disclose any information derived from proposals submitted by other offerors. If requested by the Negotiating Team or its Consultant the issues clarified during discussion should be put into writing by the offeror and submitted to the Negotiating Team within three business days of conclusion of discussions, and may be submitted electronically or via facsimile. The Negotiating Team will provide further instructions as may be necessary.

If the qualified offeror marked any portion or portions of its proposal as being confidential because the information is proprietary information, then those portions shall be reviewed by the Negotiating Team to determine whether they contain confidential or proprietary material. If the Negotiating Team agrees, then the parties shall move on to Phase III. If the Negotiating Team does not agree, then the Negotiating Team must issue a written determination regarding the matter explaining why. If the offeror is dissatisfied with the written determination, then it may withdraw its proposal or submit a protest according to the procedures set out in the Guam Procurement Law.

Upon resolution of confidentiality issues, if any, the Negotiating Team shall notify each registered offeror of the evaluation results to the extent permissible by law via facsimile or email. The Negotiating Team will provide further instructions as may be necessary.

3. **Phase III.** Phase III is the negotiation process. The Negotiating Team is not bound to seek parity in plan design or rates in negotiations for an exclusive contract. See Rule 200.2, Rule 200.3 and Rule 200.4 of the Group Health Insurance Rules and Regulation, April 1988, found at Exhibit J. The Negotiating Team will require parity in plan design and parity in premium rate per ratios in negotiations for a non-exclusive contract. Offerors selected to negotiate a non-exclusive contract with the Negotiating Team will be advised of the parity decisions of the Negotiating Team prior to commencement of negotiations for a non-exclusive contract.

Offerors, ranked based upon exclusive bid scoring, will be asked to negotiate both an exclusive and a non-exclusive contract with the Negotiating Team and Consultant.

4. **Phase IV.** Phase IV is the evaluation, final ranking of exclusive and non-exclusive contracts, and choice of the most economical and beneficial offer for later presentation to the Governor. The Negotiating Team, using those factors set out in this RFP, will evaluate, rank and select the best and final offer.
5. **Phase V.** Phase V is the contract choice stage. The governor of Guam decides whether to execute the recommendation of the Negotiating Team. Pursuant to Title 4 GCA §4301, this choice is exclusively up to the Governor. By law, the contract must also be reviewed and approved by the Department of Revenue & Taxation, Bureau of Budget and Management Research and the Attorney General before the Governor will provide his final approval by signing the contract. No contract is valid and binding until it is signed by the Governor. All bidders acknowledge that only the Governor may bind the Government to the contract and that the issuance of this Request for Proposal does not commit the Government of Guam to award a contract.

D. **Cancellation of RFP or solicitation**

The Negotiating Team may cancel this RFP or solicitation, in whole or in part, at any time, or may reject all proposals so long as the Negotiating Team makes a written determination that doing so is in the best interest of the Government and a contract has not yet been fully signed. In the event of cancellation or rejection of all proposals, proposals that have been unsealed shall remain the property of the Government and not returned to the respective offerors. A proposal that has not been unsealed (such as late proposals) will be returned to the offeror upon request of the offeror.

Commented [513]: Shannon W confirm that the new fee impact is correctly reflected.