

OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

**BEFORE THE PUBLIC AUDITOR  
PROCUREMENT APPEALS  
TERRITORY OF GUAM**

**IN THE APPEAL OF  
TOKIO MARINE PACIFIC  
INSURANCE LIMITED and  
CALVO'S INSURANCE  
UNDERWRITERS, INC.,**

**Docket OPA PA 12-013**

**SCHEDULING ORDER**

**Appellants.**

A pre-hearing conference for scheduling came before the Public Auditor on November 20, 2012, on notice duly given to all parties of record. Those present included Michael A. Pangelinan of Calvo Fisher & Jacob LLP for Tokio Marine Pacific Insurance Limited and Calvo's Insurance Underwriters (collectively Tokio-Calvo), dba SelectCare; Frank Campillo, an officer of Calvo's Insurance Underwriters, Inc.; Catrina M. Campana of Cabot Mantanona LLP for Island Home Insurance Co., Inc., dba Staywell; David A. Mair, who appeared telephonically, and Dana A. Gutierrez of Mair Mair Spade & Thompson, P.C., for TakeCare Insurance Company, Inc. (TakeCare); Benjamin M. Abrams of the Office of the Attorney General (OAG) for Guam's Department of Administration (DOA); and Public Auditor Doris Flores Brooks and staff support from the Office of Public Accountability. Peter C. Perez of Lujan Aguiqui & Perez LLP, sat as the designated hearing officer.

This appeal arises from a decision issued by DOA's Human Resources Division regarding a request for proposals (RFP) for health insurance. The RFP was numbered DOA/HRD RFP GHI 13-001 (RFP). TakeCare, SelectCare and Staywell each lodged a protest to the RFP with DOA.

1 DOA consolidated the protests and on September 7, 2012, issued a decision in which it confessed  
2 that the DOA negotiating team had failed to follow general procedures set out in the RFP and as a  
3 consequence the team was compelled to issue a Notice of Cancellation of the RFP to all bidders.

4 On September 19, 2012, SelectCare appealed the DOA decision to the Public Auditor.  
5 Thereafter the Attorney General and counsel for TakeCare and Staywell each entered an  
6 appearance. Counsel for SelectCare stated he was prepared to stipulate to certain facts but that  
7 he reserved the right to call witnesses, including experts.<sup>1</sup> Counsel for Staywell and TakeCare  
8 stated they would likely call witnesses. All counsel present stated it would likely take four to five  
9 days to complete the hearing of the appeal.

10 On the basis of the consultation with counsel for the parties and the Public Auditor, it is  
11 ORDERED:

- 12 1. No later than December 10, 2012, the parties shall submit a proposed schedule for the  
13 filing of motions, opposition to motions and reply to motions, except that motions in  
14 limine pertaining to proposed exhibits that are not a part of the procurement record may be  
15 filed no later than December 24, 2012..
- 16 2. All motions shall be decided on the basis of the papers filed by the parties and without  
17 oral argument.
- 18 3. No later than December 17, 2012, the parties shall file and serve their list of proposed  
19 witnesses, identifying with particularity are witness who is intended to be called as an  
20 expert.
- 21 4. No later than December 17, 2012, all counsel shall lodge and serve such exhibits as they  
22 may wish to offer that are not a part of the existing procurement record.
- 23 5. No later than December 10, 2012, the parties shall file and serve a joint statement of  
24 agreed facts and those facts that remain in dispute.

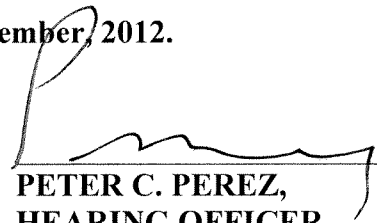
---

25  
26 <sup>1</sup> Counsel for Staywell filed a written request for a hearing October 15, 2012.

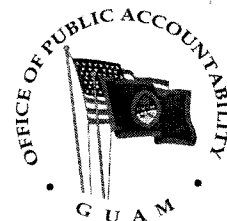
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

6. No later than January 14, 2013, each party shall submit a hearing memorandum that addresses in particular:
- a. Whether the Public Auditor has jurisdiction to hear an appeal of DOA's decision to cancel the RFP, given that none of the parties who were given notice of the DOA's decision to cancel the RFP protested that specific decision?
  - b. To what, if any, extent is the action of DOA cancelling the RFP permissible under 5 G.C.A. § 5225; 2 G.A.R., Div. 4, § 3115(a), (b) and (d); and the several advisories within the RFP relative to the government's not being required to award a contract and its reservation of its right to cancel the RFP (*See* the third paragraph on page 5 of the RFP; the first sentence on page 9 of the RFP; ¶ O, page 11 of the RFP; and ¶ D, page 19 of the RFP).
7. The hearing of this appeal shall commence at the Public Auditor's hearing room, Room 907, DNA Building, Hagatna, Guam, at 9:00 a.m., January 21, 2013, and may be continued, as necessary, at 9:00 a.m. on January 22-23, 2013, and at such further time as the Public Auditor may deem necessary and appropriate.

**IT IS SO ORDERED this 3rd day of December, 2012.**

  
\_\_\_\_\_  
**PETER C. PEREZ,  
HEARING OFFICER**

Suite 401 DNA Building  
 238 Archbishop Flores St.  
 Hagåtña, Guam 96910



# FAX

<b>To:</b>	<b>Mr. John Weisenberger, Esq.</b> Office of the Attorney General	<b>From:</b>	<b>Doris Flores Brooks</b> <b>Guam Public Auditor</b> Office of Public Accountability
<b>Phone:</b> <b>Fax:</b>	475-3324/ 646-9355 472-2493/ 646-9403	<b>Pages:</b>	4 (including cover page)
<b>CC:</b>	<b>Benita Manglona</b> Director Department of Administration  <b>Frank Campillo</b> Plan Administrator Calvo Insurance Underwriters, Inc.  <b>David A. Mair, Esq.</b> Mair, Mair, Spade & Thompson LLC. Attorneys for TakeCare Insurance Company, Inc.  <b>Catrina M. Campana, Esq.</b> Cabot Mantanona LLP Attorneys for Island Home Insurance Company	<b>Date:</b>	December 3, 2012
<b>Phone:</b> <b>Fax:</b>	479-7959/ 475-1101/ 472-2089/ 646-2001 477-4141/ 477-6788/ 477-5206/ 646-0777	<b>Phone:</b> <b>Fax:</b>	475-0390 x. 206 472-7951

**Re:** OPA-PA-12-013 –Scheduling Order

Urgent     For Review     Please Comment     Please Reply     Please Recycle

**Comments:**

See attached for reference. Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,  
 Rachel Field  
 Auditor  
[rfield@guamopa.org](mailto:rfield@guamopa.org)

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.