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 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

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FILE NO OPA-PA: 19-005

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

IN THE APPEAL OF:)	DOCKET NO. OPA-PA-19-005
)	
TAKECARE INSURANCE COMPANY, INC.,)	
)	
Appellant,)	MOTION TO DISMISS
)	
and)	
)	
DEPARTMENT OF ADMINISTRATION,)	
)	
Purchasing Agency.)	

I. INTRODUCTION

COMES NOW, Purchasing Agency, the Department of Administration (“DOA”), a line agency of the Government of Guam, through its counsel, and moves for an order dismissing Appellant TakeCare Insurance Company’s (“TakeCare”) appeal in its entirety and entering judgment in favor of DOA.

ORIGINAL

II. FACTUAL BACKGROUND

The Request for Proposal (“RFP”) was published on April 1, 2019, with the requirement that offers to provide group health insurance to the Government of Guam include all private and public hospitals operating on Guam in-network coverage, as mandated by Public Law 35-2. TakeCare filed its Protest of Guam Procurement No. DOA/HRD-RFP-GHI-20-001 with DOA on May 3, 2019. DOA denied TakeCare’s protest on May 21, 2019. TakeCare then filed an appeal with the Office of Public Accountability (“OPA”) on May 23, 2019.

The foregoing facts are not in dispute by either party.

III. DISCUSSION

A. Appeal should be dismissed because TakeCare is not an actual or prospective bidder, offeror, or contractor

The present appeal should be dismissed, because TakeCare is not an actual or prospective bidder, offeror, or contractor. Title 5 G.C.A. § 5425(a) provides:

Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto.

5 G.C.A. § 5425(a) (emphasis added).

Section 5425(a) limits protests to a “prospective bidder, offeror, or contractor.” *Id.* TakeCare, however, does not appear to qualify or fall within the categories found in Section 5425(a) and as defined by Section 5480(e). *See* 5 G.C.A. § 5480(e) (“[A] ‘prospective’ bidder, contractor or offeror is one who will actually submit a bid, contract or otherwise offer his services if . . . such person would prevail.”); *Cf. In the Appeal of Latte Treatment Center, Inc.*, OPA-PA-

08-008, p. 7, Decision dated Feb. 26, 2009 (Office of Public Accountability) (finding Appellant had standing to appeal, since there was no question that Appellant submitted a bid and was aggrieved by not being selected). By its own admission, TakeCare has not been able to secure an agreement with Guam Regional Medical Center (“GRMC”) that would qualify TakeCare as a prospective bidder, offeror, or contractor according to the terms of the RFP. *See* OPA Appeal, Protest by TakeCare Ins. Company, Inc., Exhibit B (May 25, 2019). Based on the facts, TakeCare should not be considered a prospective bidder, offeror, or contractor, and thus, lacks standing to protest.

B. Appeal should be dismissed because TakeCare is not aggrieved

Furthermore – while TakeCare claims this appeal stems from a Decision on Protest of Method, Solicitation, or Award – TakeCare never met the statutory requirements required to protest the underlying RFP. The reality is this appeal is improperly filed and is the result of failed negotiations between TakeCare and GRMC, as TakeCare was not able to successfully contract with GRMC. Review by the OPA is strictly triggered when an aggrieved party as articulated in 5 G.C.A. § 5425(a) protests the method of source selection, solicitation, or award of a contract. TakeCare’s appeal does not involve either of the foregoing; therefore, is not properly before the OPA or within the OPA’s jurisdiction.

C. Appeal should be dismissed because TakeCare brought its Protest beyond the proscribed statute of limitations

Finally, even if TakeCare qualified as a prospective bidder, offeror, or contractor, it remains undisputed that TakeCare filed its Protest on May 3, 2019, well beyond the 14-day statute of limitations. For purposes of calculating the 14-day requirement, DOA asserts that TakeCare knew or should have known of the facts giving rise to the Protest on April 1, 2019, the publication

date of the RFP. The RFP issued on April 1, 2019, was made available as published in a newspaper of general circulation, open and not of a confidential nature. *See In the Appeal of Morrico Equipment, LLC*, OPA-PA-13-015, Decision dated Jan. 24, 2014, (Office of Public Accountability) (finding protestor knew or should have known about the award based on purchasing agency issuing a press release.); *Cf. Guam Imaging, Consultants, Inc. v. Guam Mem. Hosp. Auth.*, 2004 Guam 15 ¶ 23 (“[A]ny protests filed after the fourteen-day period will not be considered.”).

IV. CONCLUSION

Based on the foregoing, the OPA does not have jurisdiction as TakeCare is not an aggrieved prospective offeror and the protest is untimely; thereby the OPA does not have jurisdiction over this matter. Therefore, DOA respectfully requests that the OPA grant its Motion to Dismiss by dismissing TakeCare’s appeal in its entirety, entering a decision in DOA’s favor, and vacating any other scheduled hearing dates.

Submitted this 14th day of June, 2019.

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