



Jerrick Hernandez <jhernandez@guamopa.com>

Department of Administration's Proposed Findings of Fact and Conclusions of Law

Darlow Graham Botha <Graham.Botha@gsadoa.guam.gov>
To: "jhernandez@guamopa.com" <jhernandez@guamopa.com>
Cc: "lyanza@jurisguam.com" <lyanza@jurisguam.com>

Mon, Feb 10, 2025 at 11:38 AM

Dear Jerrick:

Please find attached the Department of Administration's Proposed Findings of Fact and Conclusions of Law. If you have any questions, please contact me at the office.

Regards,
Graham

Graham Botha

General Services Agency (GSA)

Tel:(671) 475-1702

graham.botha@gsadoa.guam.gov

CONFIDENTIALITY NOTICE: This email message is for sole use of intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, distribution, or copying is prohibited. If you are not the intended recipient, please contact the sender by replying to this email and destroy/delete all copies of this email message.

2 attachments

DOA Proposed Findings of Fact and Conclusions of Law OPA-PA-24-003.pdf
261K



OPA - DOA Proposed Findings of Fact Conclusions of Law, OPA-PA-24-003.docx
25K

1 D. Graham Botha
2 Department of Administration
3 General Service Agency
4 590 S. Marine Corps Drive, Suite 230
5 Tamuning, Guam 96913
6 Tel: (671)475-1702
7 E-mail: graham.botha@gsa.doa.guam.gov

8

9 **Attorney for Purchasing Agency, Department of Administration**

10

11

**OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS**

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

| | | |
|-----------------------------------|---|---------------------------------------|
| IN THE APPEAL OF |) | DOCKET NO. OPA-PA-24-003 |
| |) | |
| TakeCare Insurance Company, Inc., |) | APPELLEE'S [PROPOSED] FINDINGS |
| |) | OF FACTS AND CONCLUSIONS |
| Appellant. |) | OF LAW |
| _____ |) | |

COMES NOW, the DEPARTMENT OF ADMINISTRATION, by and through its counsel of record, D. GRAHAM BOTHA, ESQ., and submits its Proposed Findings of Facts and Conclusions of Law, as follows.

[PROPOSED] FINDINGS OF FACTS

The Public Auditor makes the following finds of fact:

1. On May 23, 2024, the Department of Administration (“DOA”) issued Request for Proposal, DOA/HRD/EB-RFP-GHI-25-001, Government of Guam Group Health Insurance (DOA Exhibits, Ex A).
2. The RFP was acknowledged by 6 TPAs, but proposals were only received from 4 TPAs, NetCare, SelectCare, StayWell and TakeCare, which were screened under Phase 1, Initial Screening, and all four TPAs submitted proposals for medical, pharmacy, and dental benefits. (Ex C).

- 1 3. In Phase 2, the Negotiating Team evaluated all proposals and voted to invite all four
2 TPAs to advance to Phase 3 due to close scores. (Ex C).
- 3 4. During Phase 3 negotiations, the Team evaluated the medical, pharmacy, and
4 dental proposals, including the financial terms. (Ex C).
- 5 5. The Team scored the TPA proposals from the finalists that were invited to the Phase
6 3 negotiations during Phase 4, Final Ranking. (Ex C).
- 7 6. Milliman Inc., the government actuarial consultant, conducted a financial analysis of
8 the TPAs' pricing terms, which Team members were instructed to consider in the
9 final ranking of the pricing terms (Ex C).
- 10 7. The Milliman Team estimated claims costs for each bidder using the pricing terms
11 provided by the TPAs in their bid materials, and the estimated FY2025 claims costs
12 for SelectCare was \$159.41M and for TakeCare was \$161.20M, a difference of
13 \$1.79M between SelectCare and TakeCare. (Ex C, pgs. 1169-1187).
- 14 8. The negotiating team recommended that TakeCare be awarded the exclusive TPA
15 contract for medical, pharmacy benefits, and dental benefits, with the second option
16 to award SelectCare the exclusive TPA contract for medical and pharmacy benefits,
17 and NetCare the exclusive TPA contract for dental benefits, and this
18 recommendation in the form of the Health Insurance Team Recommendation was
19 provided to the Governor on August 9, 2024 (Ex C, pgs. 1169-1187).
- 20 9. The Governor made a selection on August 13, 2024 and selected SelectCare for
21 medical and pharmacy benefits, and NetCare for dental benefits. (Ex C, pgs. 1169-
22 1187).
- 23 10. TPA Notices regarding selection and non-selection were sent out on August 14,
24 2024 (Ex E, pgs. 1241-1266).

- 1 11. TakeCare filed a protest on August 27, 2024, and the protest was denied by DOA
2 on September 4, 2024 (Ex F & G).
- 3 12. TakeCare filed an appeal to the OPA on September 18, 2024 (Ex I, pgs. 1281-
4 1286).
- 5 13. DOA filed a Declaration of Substantial Interest approved by the Attorney General on
6 September 19, 2024, which determined that the award of the contract without delay
7 is necessary to protect substantial interests of the Territory in accordance with 5
8 GCA §5425(g) (Ex J, pgs. 1287-1288).
- 9 14. The formal evidentiary hearing was held on January 23, 2025, before the Public
10 Auditor.
- 11 15. Arvin Lojo of TakeCare stated that it was his first time to discover claims cost was a
12 criteria for the RFP, despite it being part of Phase II and Phase IV evaluation forms.
13 (Ex A, pgs. 289-303 and Evidentiary Hearing).
- 14 16. Barbara Dewey of Milliman Inc. testified that Milliman performed the actuarial
15 analysis provided to the Negotiating Team which reflect that the selection of the
16 combination of SelectCare for medical and pharmacy benefits and NetCare for
17 dental benefits was the most economical and beneficial healthcare insurance
18 proposal for government of Guam employees, retirees and foster children. (Ex C,
19 pgs. 1169-1187 and Evidentiary Hearing).
- 20 17. Barbara Dewey of Milliman Inc. testified that she performed the actuarial analysis
21 which resulted in a two (2) percent adjustment (weighted 25%) for FY2022 and a
22 one (1) percent adjustment (weighted 75%) for TakeCare, and further that this
23 analysis was done independently and without guidance or direction from DOA or any
24 member of the Negotiating Team. (Ex C, pgs. 1169-1187 and Evidentiary Hearing).

1 18. Barbara Dewey of Milliman Inc. testified that the actuarial analysis performed used
2 the historical claims data submitted to DOA as part of the RFP proposal from each
3 bidder, and that adjustments were made to the data analyzed. (Ex C, pgs. 1169-
4 1187 and Evidentiary Hearing).

5 19. Barbara Dewey of Milliman Inc. testified that the actuarial analysis considered both
6 the administrative TPA fees and the historical costs to estimate the annual funding
7 rates and claims costs for FY2025 to determine the most economical and beneficial
8 health plan for the government of Guam employees and retirees, and foster children.
9 (Ex C, pgs. 1169-1187 and Evidentiary Hearing).

10 **[PROPOSED] CONCLUSIONS OF LAW**

11 20. Pursuant to 5 GCA §5703, the Public Auditor reviews DOA's denial of TakeCare
12 Insurance Company, Inc.'s Protests *de novo*, and concludes that the Governor's
13 decision to award SelectCare as TPA for medical and pharmacy benefits and
14 NetCare as TPA for dental benefits was proper, and in accordance with 4 GCA
15 §4301(a).

16 21. Procurement law requires that DOA evaluate proposals only on the evaluation
17 factors stated in the RFP. The minimum factors are: (a) the plan for performing the
18 required services; (b) the ability to perform the services as reflected by technical
19 training and education, general experience, specific experience in providing the
20 require services, and the qualifications and abilities of personnel proposed to be
21 assigned to perform the services; (c) the personnel, equipment, and facilities to
22 perform the services currently available or demonstrated to be made available at the
23 time of contracting, and (d) a record of past performance of similar work. 2 GAR,
24 Div. 4, §3114(j). After conclusion of validation of qualifications, evaluation, and

1 discussions, the head of the purchasing agency or his or her designee shall select,
2 in the order of their respective qualification ranking, no fewer than three (3)
3 acceptable offerors (or such lesser number if less than three acceptable proposals
4 were received) deemed to be the best qualified to provide the required services. 2
5 GAR, Div. 4, §3114(j).

6 22. The selection of Group Health insurance is governed by 4 GCA §4301-4302. 4 GCA
7 §4301.1(e) states that “Exclusive proposal” means a proposal based upon the
8 assumption that the government will contract with only one (1) health insurance
9 provided that is selected by the negotiating team from up to three (3) different health
10 insurance providers that negotiate best and final offers with the negotiating team.

11 23. 4 GCA §4302(c)(2) directs that the “Negotiating Team shall examine the financial
12 information of the prepaid health insurance companies, health care providers or
13 other legal entities for the purpose of developing the most economical and beneficial
14 health plan for the government of Guam employees and retirees, and foster
15 children.”

16 24. 4 GCA §4302(c)(9) states that the “Negotiating Team upon selection and review of
17 the best available proposal by participating healthcare respondent(s)/provider(s),
18 which reflect the most economical and beneficial healthcare insurance proposal
19 plans for government of Guam employees and retirees, and foster children, shall
20 forward the three (3) highest ranking qualified proposals to /
21 *Maga’hagan/Maga’lahen Guahan* for consideration and selection of the most
22 economical and beneficial health insurance plan ...”

23 25. The criteria for evaluation are set forth in the Phase II Evaluation Form and the
24 Phase IV Evaluation Form (Ex A, pgs. 289-303). The Phase II evaluation form

1 provides 10 points for plan administration and plan design and 20 points out of 100
2 points for “funding rate development and claims cost management” (Ex A, pg. 289).
3 The Phase IV Evaluation form provides 30 points out of 100 points for the “final
4 estimated funding rates for benefit costs (based on consultant analysis using
5 reimbursement rate information provided in Exhibit B, Questionnaire).” (Ex A, Pg.
6 290).

7 26. Any claims by TakeCare that the criteria for evaluation were unclear or improper
8 should have been made upon TakeCare’s receipt of the RFP or at the latest upon its
9 submission of its proposal on June 17, 2024. The Guam Supreme Court decision in
10 *DFS Guam L.P. v. The A.B. Won Pat International Airport Authority*, 2020 Guam 20,
11 and decisions in OPA-24-002 and OPA-24-004, make it clear that “A protest filed
12 more than 14 days after the disappointed offeror or bidder had notice of the grounds
13 for the protest is barred as untimely. This is true “even if no contract has yet been
14 awarded, even if the protest was filed within 14 days of the agency’s selection of
15 bidders or offerors, and even if the protestant did not subjectively understand or
16 appreciate the ground of protest.” DFS par. 87. Any issues related to criteria for
17 evaluation are untimely and the OPA lacks jurisdiction to hear these issues.

18 27.4 GCA §4301, Group Insurance, (a) provides that “*I Maga’haga/Maga’lahi* is
19 authorized to enter contracts and reject proposals, with the written concurrence of
20 the Speaker of *I Liheslaturan Guahan* or the Chief Justice of the Supreme Court of
21 Guam whose consents may be withheld in their sole discretion, with insurance
22 companies, authorized to do business in Guam, for group insurance, including, but
23 not limited to hospitalization, medical care, life, and accident, for all employees or
24 separate groups of employees, and foster children, of the government of Guam....

1 Health benefits provided under this authority may be self-funded and administered
2 by a third party if it is determined to be cost-effective....”

3 28. DOA with the approval of the Attorney General properly determined that the award
4 of the contract without delay is necessary to protect substantial interests of the
5 Territory in accordance with 5 GCA §5425(g).

6 29. The Public Auditor has reviewed the procurement recorded submitted by DOA, and
7 after careful evaluation and consideration, the Public Auditor determines that the
8 procurement record is complete.

9 30. The Governor’s selection of SelectCare for medical and pharmacy benefits and
10 NetCare for dental benefits was properly awarded pursuant to 4 GCA §4301(a). The
11 Milliman analysis shows that this selection was the most economical and beneficial
12 health plan for the government of Guam employees, retirees, and foster children.

13 31. GCA § 5001. Purposes, Rules of Construction. (a) Interpretation, provides that the
14 underlying purposes and policies of this Chapter are: ... (3) to provide for increased
15 public confidence in the procedures followed in public procurement; (4) to ensure the
16 fair and equitable treatment of all persons who deal with the procurement system of
17 this Territory; (6) to foster effective broad-based competition within the free
18 enterprise system; (7) to provide safeguards for the maintenance of a procurement
19 system of quality and integrity; and (8) to require public access to all aspects of
20 procurement consistent with the sealed bid procedure and the integrity of the
21 procurement process.


22 CONCLUSION

23 GPA requests that the appeal of TakeCare Insurance Company, Inc. be
24 dismissed, the award of the FY2025 medical and pharmacy benefits to SelectCare and

1 the award of the FY2025 dental benefits to NetCare be confirmed, and that the Public
2 Auditor award all legal and equitable remedies that DOA may be entitled to as a result.

3 **RESPECTFULLY SUBMITTED** this 10th day of February, 2025, by:

4
5
6
7



D. GRAHAM BOTHA, ESQ.
GSA Procurement Counsel