



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.

These facts are undisputed by both DOA and TakeCare.

### **III. DISCUSSION**

#### **A. Protest is Untimely**

TakeCare submitted its protest after the 14-day deadline as prescribed by 5 G.C.A. § 5425. A protest is timely if submitted within 14 days after an aggrieved offeror knew or should have known of the facts giving rise to the protest of the method of source selection, solicitation or award of a contract. *Id.*

TakeCare's protest challenges Public Law 35-2 and the inclusion of its mandate in the RFP. TakeCare knew or should have known that the RFP requested offers to include all private and public hospitals on Guam in-network coverage on the date of issuance which was April 1, 2019. TakeCare argues that its protest was timely submitted on May 1, 2019, once it realized it would not be able to contract with Guam Regional Medical City ("GRMC"). Whether TakeCare was not able to contract with GRMC is irrelevant to the timeliness of a protest. TakeCare and any other potential protestors should have known of the requirements of the RFP on April 1, 2019. Thus, TakeCare's protest was well beyond the 14-day deadline.

#### **B. Protest is Beyond the Scope of Guam's Procurement Law**

TakeCare's comments to DOA's agency report are legal arguments that are beyond the scope of Guam's procurement law and stem from failed negotiations with GRMC. TakeCare was unable to contract with GRMC and now seeks to invalidate Public Law 35-2 through the

procurement process. The Government of Guam did not participate in these negotiations, and therefore, has no personal knowledge to refute or acknowledge the allegations contained in the protest. This “protest” is actually a dispute between two private parties and not within the jurisdiction of the OPA.

#### IV. CONCLUSION

Based on the foregoing, DOA maintains this protest is not timely and beyond the scope of the procurement process and therefore not within the OPA’s jurisdiction.

Respectfully submitted this 27<sup>th</sup> day of June, 2019.

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