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GDOE Opposition to Appellant Motion re OPA-PA-21-007

James L.G. Stake <jlgstake@gdoe.net>

Wed, Nov 3, 2021 at 4:55 PM

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Hi All,

Please see attached relevant to OPA-PA-21-007.

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Guam Department of Education

2 attachments **G4S E-mail to GDOE re Motion OPA-PA-21-007 102821.pdf**

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 **GDOE opposition to G4S motion OPA-PA-21-007 110321.pdf**

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1 **GUAM DEPARTMENT OF EDUCATION**

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8 **OFFICE OF THE PUBLIC AUDITOR**
9 **PROCUREMENT APPEALS**

10 In the Appeal of

11 APPEAL CASE NOS.: OPA-PA-21-007

12 G4S Security Systems (Guam) Inc.,

13 **OPPOSITION TO APPELLANT’S MOTION**
14 **FOR SUMMARY DECISION**

15 Appellant.

16 The Guam Department of Education (GDOE), by and through its undersigned counsel,
17 files its Opposition to Appellant’s Motion for Summary Decision, for Appeal of Case No. OPA-
18 PA-21-007.

19 **I. RELEVANT BACKGROUND**

20 On April 13, 2021, GDOE issued its Multi-Step IFB 026-2021 for Indoor and Outdoor
21 Wireless Local Area Network (“WLAN”) Infrastructure Installation Project (hereinafter referred
22 to as the “IFB”). On August 10, 2021, G4S Security Systems (Guam) Inc. (also “Appellant”)
23 protested the award to Technologies for Tomorrow Inc. (TFT) for the IFB. On September 3,
24 2021, GDOE denied Appellant’s protest, and Appellant filed its appeal with the Office of the
25 Public Auditor (OPA). On October 12, 2021, the OPA issued its Notice of Pre-Hearing
26 Conference and Motion Filing Deadline, and ordered the Motion filing Deadline to be 5:00 p.m.,
27 Wednesday, October 27, 2021. *See* Notice of Pre-Hearing Conference and Motion Filing
28 Deadline at 3. On October 25, 2021, Appellant and Purchasing Agency GDOE were both

1 virtually present via zoom for the Pre-Hearing Conference, and the Public Auditor repeated its
2 order that the deadline for all motions is Wednesday, October 27, 2021. *See* Guam OPA website,
3 Procurement Appeals, G4S Security Systems (Guam), Inc. vs. Department of Education Case No.
4 OPA-PA-21-007, Audio File of Pre-Hearing Conference – Oct. 25, 2021,
5 https://opaguam.org/sites/default/files/opa-pa-21-007_pre-
6 [hearing_conference_october_25_2021.m4a](https://opaguam.org/sites/default/files/opa-pa-21-007_pre-hearing_conference_october_25_2021.m4a). On October 28, 2021 at approximately 3:39pm,
7 GDOE received an email containing Appellant G4S’s Motion for Summary Decision. *See* G4S
8 E-mail to GDOE re Motion OPA-PA-21-007, attached herewith. The following is GDOE’s
9 Opposition to Appellant’s Motion for Summary Decision.

10 **II. APPELLANT’S MOTION VIOLATES THE OPA’S FILING DEADLINE**
11 **AND SHOULD BE EXCLUDED FROM CONSIDERATION.**

12 Guam Procurement law provides that the Public Auditor may rule on motions, and other
13 procedural items on matters pending before such office, and to **fix time limits for submission of**
14 **written documents in matters before such officer.** *See* 2 GAR Div. 4 §§12109(d) & (g).
15 Guam Procurement law states the Public Auditor also has the power to impose appropriate
16 sanctions against any party or person failing to obey an order under these procedures. *See* 2 GAR
17 Div. 4 §12109(h).

18 On October 12, 2021, the Public Auditor issued its order regarding the Motion Filing
19 Deadline, and on October 25, 2021, the Public Auditor reiterated its orders in the Pre-Hearing
20 Conference, specifically that the Motion Filing Deadline is **October 27, 2021**. *See* Notice of Pre-
21 Hearing Conference and Motion Filing Deadline at 3; *see also* Guam OPA website, Procurement
22 Appeals, G4S Security Systems (Guam), Inc. vs. Department of Education Case No. OPA-PA-21-
23 007, Audio File of Pre-Hearing Conference – Oct. 25, 2021,
24 https://opaguam.org/sites/default/files/opa-pa-21-007_pre-
25 [hearing_conference_october_25_2021.m4a](https://opaguam.org/sites/default/files/opa-pa-21-007_pre-hearing_conference_october_25_2021.m4a). On that same day, the OPA subsequently issued its

1 Scheduling Order that reiterates for filings regarding this Appeal that Parties shall file and serve
2 on the other parties. *See* OPA Scheduling Order at 3. **On October 28, 2021**, at approximately
3 3:39 p.m. GDOE, for the first time, learned of Appellant’s Motion via email. *See* G4S E-mail to
4 GDOE re Motion OPA-PA-21-007. Appellant failed to comply with the OPA’s time limits,
5 failed to serve to GDOE on October 27, 2021, and therefore should be subject to appropriate
6 sanctions. *See* 2 GAR Div. 4 §12109(h). Pursuant to the OPA’s orders and Guam Procurement
7 law, GDOE now respectfully requests that this motion be excluded from consideration. *See* 2
8 GAR Div. 4 §12109.

9 **III. APPELLANT’S MOTION IS MERITLESS AND CONTRADICTS GUAM**
10 **PROCUREMENT LAW AND SHOULD BE DENIED BECAUSE GDOE PROPERLY**
11 **EVALUATED AND AWARDED THE IFB.**

12 Guam law is clear, IFBs shall set forth the evaluation criteria to be used, that no criteria
13 may be used in bid evaluation that are not set forth in the IFB, and that the award shall be to the
14 lowest responsible bidder whose bid meets the requirements and criteria set forth in the IFB. *See*
15 5 GCA §§5211(e) and (g). Pursuant to Guam Procurement law and the terms and conditions of
16 the IFB, GDOE properly evaluated based on the requirements set forth in the IFB and awarded
17 accordingly. *Id.* Guam Procurement law states the IFB shall state the criteria to determine
18 bidders’ responsibility and responsiveness. *See* 5 GCA §§5201(f) & (g). Pursuant to Guam
19 Procurement law, GDOE’s IFB specifically states the criteria to determine bidders’ responsibility
20 and responsiveness. *See* Procurement Record at 1-252. Pursuant to Guam Procurement law,
21 GDOE evaluated the bids and determined responsibility and responsiveness consistent with the
22 terms and conditions of the IFB. *See* 5 GCA §5211; *see also* Procurement Record at 516-521.
23 Guam Procurement law mandates that the determining factor for the award of the IFB shall be the
24 lowest price. *See* 5 GCA §5211(g). Based on a review of the prices submitted, TFT’s price
25 (\$1,531,820.00) is lower than the Appellant’s (\$1,944,000.00) for the IFB. *See* Procurement
26

1 Record at 545. Therefore, pursuant to Guam Procurement law and consistent with the terms and
2 conditions of the IFBs, GDOE properly evaluated and awarded to TFT for the IFB.

3 To be clear, Appellant's motion and interpretation of the law is **wrong**. Appellant's
4 incorrect arguments are not set forth anywhere in the IFB, and therefore pursuant to Guam law
5 shall not be used in the bid evaluation and award of the IFB. *See* 5 GCA §5211. Appellant also
6 inappropriately challenges responsibility and responsiveness of the IFB. Appellant's
7 interpretation of the law here is also clearly wrong. Guam Procurement law states the IFB shall
8 state the criteria to determine bidders' responsibility and responsiveness. *See* 5 GCA §§5201(f)
9 & (g). Pursuant to Guam Procurement law, GDOE's IFB specifically states the criteria to
10 determine bidders' responsibility and responsiveness. *See* Procurement Record at 1-252.
11 Appellant's arguments are not located anywhere within the IFB. *Id.* Therefore, pursuant to
12 Guam Procurement law, GDOE properly evaluated and awarded the IFB, and the Appellant's
13 motion should be denied. *See* 5 GCA §§5201(f) & (g).

14 **IV. APPELLANT'S MOTION AND APPEAL REQUIRE THE OPA TO MAKE**
15 **A DETERMINATION WITH LAWS OUTSIDE ITS JURISDICTION.**

16 Guam law clearly states, and as the Appellant agrees, the IFB shall only be evaluated and
17 awarded pursuant to the terms and conditions included within the IFB, and that no criteria may be
18 used in bid evaluation that are not set forth in the IFB. *See* 5 GCA §§5211 and 5211(e); *see also*
19 Appellant's Motion for Summary Decision at 2. In addition, Appellant's allegations are not a method
20 of selection, solicitation or award of a contract, or entitlement to costs in accordance with the statutes,
21 regulations, and terms and conditions of the IFB, and therefore are not properly before the OPA and
22 should be denied. *See* 2 GAR Div. 4 §12112.

23
24 Instead, Appellant makes numerous citations to Title 21 GCA Chapter 70 throughout their
25 motion. *See* Appellant's Motion for Summary Decision at 2-5. Guam law states that **it is the**
26 **Guam Contractors License Board that shall enforce this Chapter (Chapter 70) and rules**

1 **and regulations adopted pursuant thereto.** See 21 GCA §70103(c). Therefore, because Guam
2 law bestows the Guam Contractors License Board with jurisdiction and authority over
3 Appellant’s allegations regarding TFT¹, and not the OPA, this motion should be denied. *Id.*; see
4 also 2 GAR Div. 4 §12112.

5 For these reasons, GDOE respectfully request that the OPA exclude this motion, or in the
6 alternative it be denied, and this appeal be dismissed in its entirety.

8 Respectfully submitted this 3rd day of November, 2021.

9 **GUAM DEPARTMENT OF EDUCATION**

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11 By: 
12 **JAMES L.G. STAKE**
13 *Legal Counsel*

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22 ¹ In regards to Appellant’s meritless arguments regarding the best interest of Guam, Guam Procurement
23 law and the IFB directly address this. See Appellant’s Motion for Summary Decision at 4 ¶ 3. As stated,
24 GDOE properly evaluated and awarded the IFB in accordance to Guam Procurement law and the
25 published terms and conditions of the IFB. See 5 GCA §5211. In addition, numerous other courts have
26 held that an IFB is properly evaluated and awarded in situations similar to this case. Compare with
27 *Kyorkin Construction, Inc.*, B-226238 (1987); *Hap Construction, Inc.*, B-278515 (1998); *Interstate*
28 *Industrial Incorporated*, B-241974 (1990); and *American Mutual Protective Bureau*, B-208067 (1982).
Lastly, Guam Procurement law and the IFB allow for subcontracting and licensing therein. See 5 GCA
§§5211 and 5211(e); see also Procurement Record at 133.



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Appeal Case No. OPA-PA-21-007 - Motion

1 message

Scott T. Kadiasang <scott.kadiasang@gu.g4s.com> Thu, Oct 28, 2021 at 3:39 PM
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Hafa Adai,

My apologies for the delayed copy, please see attached.

A confirmation receipt would be most appreciated.

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Thank you,

Scott T. Kadiasang
Quality Control / Designer & Project Manager

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