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OPA-PA-21-007 Agency Statement and Agency Report

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Hafa Adai All,

Please see attached GDOE Agency Report and Agency Statement for OPA-PA-21-007. Kindly confirm receipt. Thank you.

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Guam Department of Education

2 attachments**Agency Report IFB 026 OPA 21-007 100421.pdf**

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**Agency Statement IFB 026 OPA 21-007 100421.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 NO. OPA-PA-21-007

12 G4S Security Systems (Guam) Inc.

13 **AGENCY STATEMENT**

14 Appellant.

15 COMES NOW the Guam Department of Education (GDOE), by and through its Legal
16 Counsel, and files its Agency Statement pursuant to 2 GAR Div. 4 §12105(g), in response to the
17 appeal of G4S Security Systems (Guam) Inc. of GDOE Multi-Step Invitation for Bid (IFB) 026-
18 2021, for Indoor and Outdoor Wireless Local Area Network (“WLAN”) Infrastructure
19 Installation Project.

20 **I. RELEVANT BACKGROUND**

21 On April 13, 2021, GDOE issued its Multi-Step IFB 026-2021 for Indoor and Outdoor
22 Wireless Local Area Network (“WLAN”) Infrastructure Installation Project (hereinafter referred
23 to as the “IFB”). On May 28, 2021, GDOE received bids for the IFB from G4S Security Systems
24 (Guam) Inc. (hereafter referred to as “Appellant”) and Technologies for Tomorrow Inc. (hereafter
25 referred to as “TFT”). On July 13, 2021, GDOE awarded to TFT as the lowest, most responsible
26 and responsive bid for the IFB. On August 10, 2021, Appellant protested the award for TFT. On
27 September 3, 2021, GDOE issued its denial of Appellant’s protest. On September 20, 2021,

1 GDOE received the notice of receipt of appeal from the Office of Public Accountability (OPA).
2 The following is GDOE's agency statement in response to the above captioned appeal.

3 **II. GDOE PROPERLY EVALUATED AND AWARDED THE IFB IN ACCORDANCE**
4 **WITH GUAM PROCUREMENT LAW, RULES AND REGULATIONS, AND THE**
5 **TERMS AND CONDITIONS OF THE IFB.**

6 Guam Procurement law provides the exact requirements that shall be used for the
7 evaluation and award of Invitations for Bid. *See* 5 GCA §5211. Guam Procurement law states
8 that bids **shall** be evaluated based on the requirements set forth in the invitation for bids and that
9 no criteria may be used in bid evaluation that are not set forth in the Invitation for Bids. *See* 5
10 GCA §5211(e). The contract shall be awarded with reasonable promptness by written notice to
11 the lowest responsible bidder whose bid meets the requirements and criteria set forth in the
12 Invitation for Bids. *See* 5 GCA §5211(g). Guam Procurement Law defines a responsible bidder
13 as one with the capability in all respects to perform fully the contract requirements, and the
14 integrity and reliability which will assure good faith performance, and a responsive bidder is one
15 who has submitted a bid which conforms in all material respects to the Invitation for Bids. *See* 5
16 GCA §§ 5201(f), 5201(g). Pursuant to Guam Procurement law, GDOE's IFB specifically states
17 the criteria to determine bidders' responsibility and responsiveness. *See* Procurement Record at
18 1-252.

19 Pursuant to Guam Procurement law, GDOE evaluated the bids and determined
20 responsibility and responsiveness consistent with the terms and conditions of the IFB. *See* 5
21 GCA §5211; *see also* Procurement Record at 516-521. Guam Procurement law mandates that the
22 determining factor for the award of the IFB shall be the lowest price. *See* 5 GCA §5211(g).
23 Based on a review of the prices submitted, TFT's price (\$1,531,820.00) is lower than the
24 Appellant's (\$1,944,000.00) for the IFB. *See* Procurement Record at 545. Consequently, GDOE
25 made a proper award to TFT. Therefore, pursuant to Guam Procurement law and consistent with
26 the terms and conditions of the IFBs, GDOE properly evaluated and awarded to TFT for the IFB.
27

1 GDOE IFB 026-2021 did not require the submission of a Guam Contractor’s license.
2 Appellant concedes that an “IFB shall be evaluated based on the requirements set forth in the IFB and
3 that GDOE IFB 026-2021 in its published terms and conditions did not require the submission of a
4 Guam Contractor’s license...” See Appellant’s Notice of Appeal at 8. Appellant references alleged
5 compliance issues for TFT, also acknowledged by Appellant that their allegation is outside the
6 evaluation and award criteria for the IFB. *Id.* As stated above and as Appellant agrees, the IFB shall
7 only be evaluated and awarded pursuant to the terms and conditions included within the IFB, and that
8 no criteria may be used in bid evaluation that are not set forth in the IFB. See 5 GCA §§5211 and
9 5211(e). The Appellant has failed to state a claim here, and thus this appeal should be dismissed.

10 It is important to note that Appellant fails to provide legal authority to determine an IFB
11 by terms not published. The IFB does not waive any laws or requirements, however, the IFB and
12 Guam law mandate that the evaluation and award shall only consider the terms and conditions
13 published therein. *Id.* On May 28, 2021, TFT executed the bid form for the IFB that certifies that
14 TFT made an offer to comply with terms and conditions of the IFB described therein. See
15 Procurement Record at 496, 506, and 515. Therefore, GDOE properly evaluated and awarded
16 the IFB.

17 **III. THIS APPEAL IS NOT PROPERLY BEFORE THE OPA AND SHOULD BE**
18 **DISMISSED.**

19 The OPA does not have jurisdiction over matters that are within the legal authority of the
20 Guam Contractors License Board (also the “Board”). Here, Appellant concedes that their
21 allegations are based on TFT’s alleged noncompliance with the Guam Contractors License Board,
22 and not with the IFB nor with Guam Procurement law. See Appellant’s Notice of Appeal at 8.
23 Therefore, because Appellant’s allegations against TFT is not a method of selection, solicitation
24 or award of a contract, or entitlement to costs in accordance with the statutes, regulations, and the
25 terms and conditions of the IFB, this matter is not properly before the OPA and should be
26 dismissed. See 2 GAR Div. 4 §12112.
27

1 Appellant fails to provide any legal authority that provides the OPA with jurisdiction to
2 determine TFT's alleged compliance with the Guam Contractors License Board. This is because
3 the proper forum for the Appellant's allegation is with the Guam Contractors License Board. *See*
4 *Generally* 21 GCA Chapter 70. Guam law provides that the Board may investigate, classify and
5 qualify applicants for contractor's licenses, and investigate for compliance with the rules and
6 regulations of the Board and the provisions of this Chapter. *See* 21 GCA §70109. Not only does
7 the law provide the licensing board the jurisdiction, it goes further and designates an
8 "Investigator" as the specific position under the Guam Licensing board to handle Appellant's
9 allegation. *See* 21 GCA §70100(f) Investigator (an investigator means an employee with the
10 Contractors License Board who conducts thorough investigations of applicants applying for a
11 contractor's license and who inspects, regulates, and enforces the laws, rules and regulations of
12 the Licensing Board for Contractors). Guam law also states, the Contractors License Board **shall**
13 **enforce this Chapter and rules and regulations adopted pursuant thereto.** *See* 21 GCA
14 §70103(c). Appellant cites 21 GCA §70108 within the aforementioned Chapter, as the basis for
15 this appeal, and Guam law provides that the enforcement of §70108 **shall be the Board.** *Id.*
16 Therefore, Guam law states that the Board shall investigate and enforce compliance regarding
17 contractor's licenses, and not the OPA, and thus this appeal should be dismissed. *Id.*; *see also* 2
18 GAR Div. 4 §12112.

19 In addition, this case is analogous to *In the Appeal of JRN Air Conditioning &*
20 *Refrigeration, Inc.*, OPA-PA-10-008. *In the Appeal of JRN Air Conditioning & Refrigeration,*
21 *Inc.*, the Appellant JRN alleged that the bid award was defective because Appellee J&B failed to
22 be a responsive bidder by not complying with laws that were outside the jurisdiction of the OPA:
23 5 GCA § 5801 and § 5802. *Id.* at 8. In that case, the Public Auditor stated that to decide those
24 issues, they were required to determine whether J&B complied with 5 GCA §5801 and § 5802,
25 which was a determination held to be outside of the OPA's express authority and jurisdiction. *Id.*
26 at 8. Similarly, Appellant makes allegations based on laws outside the jurisdiction of the OPA.
27

1 See Appellant's Notice of Appeal at 8. It is clear that Appellant's protest and allegations against
2 TFT are analogous to *In the Appeal of JRN Air Conditioning & Refrigeration, Inc.*, and warrant
3 applying the reasoning and ruling in that case: the OPA does not have jurisdiction to make
4 determinations based on laws outside its authority.

5 In conclusion and based on the aforementioned reasons, GDOE hereby requests that the
6 OPA dismiss this appeal in its entirety.

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8 Dated: October 4, 2021

9 Respectfully submitted,

10 **GUAM DEPARTMENT OF EDUCATION**

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

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