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GDOE Motions in the appeal of G4S OPA-PA-21-007

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Hafa Adai All,

Please see attached for Appeal No. OPA-PA-21-007.

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Guam Department of Education

3 attachments **GDOE Motion to Dismiss Failure to State a Claim OPA-PA-21-007 102721.pdf**
338K **GDOE Motion to Dismiss Lack of SMJ OPA-PA-21-007 102721.pdf**
344K **GDOE Motion to Exclude OPA-PA-21-007 102721.pdf**
433K

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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 **MOTION TO DISMISS FOR FAILURE TO**
14 **STATE A VALID CLAIM**

15 Appellant.

16 The Guam Department of Education (GDOE), by and through its undersigned counsel,
17 moves to dismiss for failure to state a valid claim in the Appeal of Case Nos. OPA-PA-21-007.

18 **BACKGROUND**

19 On April 13, 2021, GDOE issued its Multi-Step IFB 026-2021 for Indoor and Outdoor
20 Wireless Local Area Network (“WLAN”) Infrastructure Installation Project (hereinafter referred
21 to as the “IFB”). On May 28, 2021, GDOE received bids for the IFB from G4S Security Systems
22 (Guam) Inc. (hereafter referred to as “Appellant”) and Technologies for Tomorrow Inc. (hereafter
23 referred to as “TFT”). On July 13, 2021, GDOE awarded to TFT as the lowest, most responsible
24 and responsive bid for the IFB. On August 10, 2021, Appellant protested the award for TFT
25 based on the grounds that TFT does not have a valid Guam Contractors License to perform
26 service, maintain and/or install structured cabling on Guam. *See* Appellant’s Notice of Appeal at
27 8. On September 3, 2021, GDOE issued its denial of Appellant’s protest. On September 20,
28 2021, GDOE received the notice of receipt of appeal from the Office of Public Auditor (OPA).

1 The following is GDOE’s argument to dismiss this appeal for Appellant’s failure to state a valid
2 claim for the OPA to decide.

3 **ARGUMENT**

4 The Public Auditor shall have the power to review and determine *de novo* any matter
5 properly submitted. *See* 5 GCA §5703; *see also* 2 GAR Div. 4 §12103(a). This includes the
6 power to rule on motions, and other procedural matters before the OPA. *See* 2 GAR Div. 4
7 §12109(d). The Public Auditor has the power to promote the integrity of the procurement
8 process and the purposes of Guam’s Procurement laws, and the Public Auditor’s jurisdiction shall
9 be utilized to promote the integrity of the procurement process and the purposes of 5 GCA
10 Chapter 5, Guam Procurement Law. *See* 5 GCA §5703. The Public Auditor shall determine
11 whether a decision on a protest of method of selection, solicitation or award of a contract, or
12 entitlement to costs is in accordance with the statutes, regulations, and the terms and conditions of
13 the solicitation. *See* 2 GAR Div. 4 §12112.

14 Here, the foundation of this protest and appeal is **not** a procurement issue. Appellant’s
15 allegations against TFT do not include a method of selection, solicitation or award of a contract,
16 or entitlement to costs in accordance with the statutes, regulations, and the terms and conditions
17 of the IFB, and therefore this appeal is not properly before the OPA and should be dismissed. *Id.*
18 The OPA does not have jurisdiction over matters that are within the legal authority of the Guam
19 Contractors License Board (also the “Board”). Appellant has failed to provide any legal authority
20 for the OPA to stand in the shoes of the Guam Contractors License Board and enforce the rules
21 and regulations of the Board. In addition, the allegation regarding a Guam Contractors License
22 by Appellant is investigated and enforced by the Guam Contractors Board, not the OPA. *See*
23 *Generally* 21 GCA Chapter 70. Therefore, Appellant fails to provide a valid claim on which the
24 OPA is able to provide a decision.

25
26 Appellant G4S concedes that Guam Procurement Law mandates that an IFB shall be
27 evaluated based on the requirements set forth in the IFB and that GDOE IFB 026-2021 in its

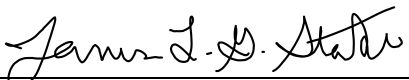
1 published terms and conditions did not require the submission of a Guam Contractor's license.
2 See Appellant's Notice of Appeal at 8. Therefore, the parties are all in agreement that the
3 procurement law prohibits the subsequent inclusion of a Guam Contractors License requirement
4 in the evaluation and award of the IFB. Consequently, this appeal fails to provide a valid claim
5 for the OPA to decide on, and over which the OPA has jurisdiction. Other courts have held that
6 in the event a protester has failed to state a valid basis for protest, such protest may be dismissed.
7 See *Ensign-Bickford Company*, B-274904 (1996); see also *Sun Environmental, Inc.-*
8 *Reconsideration*, B- 228491 (1987) (The Government Accountability Office (GAO) held that
9 when a protest, on its face, does not state a valid basis for protest, the GAO will summarily
10 dismiss the protest without requiring the submission of an agency report). The appeal before the
11 OPA is clearly not a valid basis for protest, and GDOE respectfully request that the OPA dismiss
12 this appeal in its entirety.

13 **CONCLUSION**

14 For these reasons, GDOE respectfully requests the OPA dismiss this appeal for failure to
15 state a valid claim.

16
17 Respectfully submitted this 27th day of October, 2021.
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19 **GUAM DEPARTMENT OF EDUCATION**

20
21 By: 
22 **JAMES L.G. STAKE**
23 *Legal Counsel*