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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

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**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

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 **MOTION TO DISMISS FOR LACK OF**  
14 **SUBJECT MATTER JURISDICTION**

15 Appellant.

16 The Guam Department of Education (GDOE), by and through its undersigned legal  
17 counsel, moves to dismiss for lack of subject matter jurisdiction in the Appeal of Case No. OPA-  
18 PA-21-007.

19 **BACKGROUND**

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

1 Accountability (OPA). For the reasons that a Guam Contractors License is investigated,  
2 enforced, and compliance is determined by the Guam Contractors License Board and not the  
3 OPA, GDOE now respectfully moves the Office of the Public Auditor (OPA) to dismiss this  
4 appeal for lack of subject matter jurisdiction.

### 5 ARGUMENT

6 The Public Auditor shall have the power to review and determine *de novo* any matter  
7 properly submitted. *See* 5 GCA §5703; *see also* 2 GAR Div. 4 §12103(a). This includes the  
8 power to rule on motions, and other procedural matters before the OPA. *See* 2 GAR Div. 4  
9 §12109(d). Any motion concerning the jurisdiction of the Public Auditor shall be promptly filed,  
10 and the Public Auditor shall have the right to raise the issue of jurisdiction *sua sponte* at any time.  
11 *See* 2 GAR Div. 4 §12104(c)(9). The issue here is that the OPA lacks subject matter jurisdiction  
12 for this appeal because the Guam Contractors License Board (also the “Board”) is the proper  
13 forum for the Appellant’s disputes against TFT and the OPA previously dismissed a similar  
14 appeal for lack of jurisdiction and should do so here.

15 The Public Auditor shall determine whether a decision on the protest of method of  
16 selection, solicitation or award of a contract, or entitlement to costs is in accordance with the  
17 statutes, regulations, and the terms and conditions of the solicitation. *See* 2 GAR Div. 4 §12112.  
18 The Public Auditor’s jurisdiction is to promote the integrity of the procurement process. *See* 5  
19 GCA §5703. Here, Appellant concedes that their allegation is based on TFT’s alleged  
20 noncompliance with a requirement enforced by the Guam Contractors License Board, and not  
21 with the IFB or with Guam Procurement law. *See* Appellant’s Notice of Appeal at 8. Therefore,  
22 because Appellant’s allegation against TFT is **not** a procurement issue and do not invoke a  
23 method of selection, solicitation or award of a contract, or entitlement to costs in accordance with  
24 the statutes, regulations, and the terms and conditions of the IFB, this matter is not properly  
25 before the OPA and should be dismissed. *See* 2 GAR Div. 4 §12112.  
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1 Appellant fails to provide legal authority for the OPA to stand in the shoes of the Guam  
2 Contractors Board. The OPA is not the proper forum to address this issue. The Guam  
3 Contractors License Board is the proper forum for the Appellant’s allegation in this appeal. *See*  
4 *Generally* 21 GCA Chapter 70. **Guam law is clear.** It is the Guam Contractors License Board  
5 that may investigate, classify and qualify applicants for contractor’s licenses, and investigate for  
6 compliance with the rules and regulations of the Board and the provisions of this Chapter. *See* 21  
7 GCA §70109. Guam law provides the licensing board the jurisdiction over this matter and even  
8 designates an “Investigator” as the specific individual under the Guam Licensing Board to handle  
9 Appellant’s allegation. *See* 21 GCA §70100(f) Investigator (an investigator means an employee  
10 with the Contractors License Board who conducts thorough investigations of applicants applying  
11 for a contractor’s license and who inspects, regulates, and enforces the laws, rules and regulations  
12 of the Licensing Board for Contractors). Guam law also states that the Contractors License Board  
13 **shall 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, because Guam law states that the Board shall investigate and enforce compliance  
17 regarding contractor’s licenses, and not the OPA, and thus this appeal should be dismissed. *Id.*;  
18 *see also* 2 GAR Div. 4 §12112.

19 In addition, this case is analogous to another OPA case: *In the Appeal of JRN Air*  
20 *Conditioning & Refrigeration, Inc.*, OPA-PA-10-008. In *In the Appeal of JRN Air Conditioning*  
21 *& Refrigeration, Inc.*, Appellant JRN alleged that the bid award was defective because Appellee  
22 J&B failed to be a responsive bidder by not complying with laws that were outside the  
23 jurisdiction of the OPA: 5 GCA § 5801 and § 5802. *Id.* at 8. In that case, the Public Auditor  
24 stated that to decide those issues, the Public Auditor would be required to determine whether J&B  
25 complied with 5 GCA §5801 and § 5802, which was a determination held to be outside of the  
26 OPA’s express authority and jurisdiction. *Id.* at 8. Similarly, Appellant makes an allegation  
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1 based on laws outside the jurisdiction of the OPA. *See* Appellant’s Notice of Appeal at 8. It is  
2 clear that Appellant’s protest and allegation against TFT are analogous to *In the Appeal of JRN*  
3 *Air Conditioning & Refrigeration, Inc.*, and warrant applying the reasoning and ruling in that  
4 case: the OPA does not have jurisdiction to make determinations based on laws outside its  
5 authority.

6 **CONCLUSION**

7 For these reasons, GDOE respectfully requests that the OPA dismiss Appeal Case Nos.  
8 OPA-PA-21-007 for lack of subject matter jurisdiction.

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13 Respectfully submitted this 27<sup>th</sup> day of October, 2021.

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15 **GUAM DEPARTMENT OF EDUCATION**

16  
17 By:   
18 **JAMES L.G. STAKE**  
19 *Legal Counsel*