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GDOE Hearing Brief re: Appeal Case No. OPA-PA-21-007

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Hafa Adai All,

Please see attached GDOE's Hearing Brief re: Appeal Case No. OPA-PA-21-007.

Kindly confirm receipt.

Thank you and stay safe.

Respectfully,

Abi T. Brennan

Office of the Superintendent, **Legal Div.**

Guam Department of Education

Guam Department of Education



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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 **GUAM DEPARTMENT OF EDUCATION’S**
14 **HEARING BRIEF**

15 Appellant.

16 COMES NOW, the Appellee in the above captioned appeal, the Guam Department of
17 Education (GDOE), by and through its legal counsel, and submits its Hearing Brief for the
18 December 20, 2021, hearing as follows.

19 **I. 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 May 28, 2021, GDOE received bids for the IFB from G4S Security Systems
23 (Guam) Inc. (hereafter referred to as “Appellant”) and Technologies for Tomorrow Inc. (hereafter
24 referred to as “TFT”). On July 13, 2021, GDOE awarded to TFT as the lowest, most responsible
25 and responsive bid for the IFB. On August 10, 2021, Appellant protested the award for TFT. On
26 September 3, 2021, GDOE issued its denial of Appellant’s protest. On September 20, 2021,
27 GDOE received the notice of receipt of appeal from the Office of Public Auditor (OPA). The
28 following is GDOE’s Hearing Brief for the formal hearing of this Appeal.

1 **II. APPELLANT MAKES CLAIMS THAT INVOLVE REQUIREMENTS AND**
2 **CRITERIA THAT ARE NOT PUBLISHED WITHIN THE IFB, WHICH UNPUBLISHED**
3 **REQUIREMENTS AND CRITERIA ARE PROHIBITED BY GUAM PROCUREMENT**
4 **LAW FROM BEING CONSIDERED IN EVALUATION AND AWARD.**

5
6 Guam Procurement Law states an IFB shall be evaluated based on the requirements set
7 forth in the IFB, that the IFB shall set forth the evaluation criteria to be used, and that no criteria
8 may be used in bid evaluation that are not set forth in the IFB. *See* 5 GCA §5211(e). In addition,
9 the contract shall be awarded to the lowest responsible bidder whose bid meets the criteria set
10 forth in the IFB. *See* 5 GCA §5211(g). Guam Procurement Law states that a responsible bidder
11 is a person who has the capability in all respects to perform fully the contract requirements, and
12 the integrity and reliability which will assure good faith performance; while a responsive bidder
13 means a person who has submitted a bid which conforms in all material respects to the IFB. *See*
14 5 GCA §§5201(f) & (g). Guam Procurement Law also states that the IFB shall set forth the
15 requirements and criteria which will be used to determine the lowest responsive bidder, and no
16 bid shall be evaluated for any requirement or criterion that is not disclosed in the IFB. *See* 2
17 GAR Div. 4 §3109(n)(1). Section 3.2 of the IFB states the requirements for responsibility and
18 responsiveness, and that they will be determined based on compliance with the requirements of
19 the IFB. *See* Procurement record at 20-21. GDOE evaluated and awarded the IFB based on the
20 requirements and criteria set forth in the IFB. Therefore, consistent with the terms and conditions
21 of the IFB and Guam Procurement law, GDOE properly determined responsibility and
22 responsiveness and correctly evaluated and awarded the IFB. *See* 5 GCA §5211; *see also*
23 Procurement record at 516-521.
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1 Appellant improperly challenges the IFB by making claims based on requirements and
2 criteria that are **clearly not published within the IFB**. See Procurement record at 1-252. Guam
3 Procurement Law does not allow this. See 5 GCA §5211. Specifically, Appellant's claim
4 regarding a Guam Contractor's License is clearly not within the terms and conditions of the IFB,
5 is not method of selection, solicitation or award of a contract, or entitlement to costs. See 2 GAR
6 Div. 4 §12112. Guam Procurement Law and the published terms and conditions of the IFB
7 directly dispute Appellant's claims, so this matter should be dismissed.
8

9 In addition, other courts have upheld evaluations and awards of IFBs that are similar to
10 this case, where protesters demand improper consideration of certain licenses that are not
11 requirements or criteria published within an IFB's terms and conditions. Compare with *Kyorkin*
12 *Construction, Inc.*, B-226238 (1987); *Hap Construction, Inc.*, B-278515 (1998); *Interstate*
13 *Industrial Incorporated*, B-241974 (1990); and *American Mutual Protective Bureau*, B-208067
14 (1982).
15

16 Furthermore, Guam Procurement Law and the IFB itself expressly permit subcontracting.
17 See 5 GCA §5211; see also Procurement Record at 133. Appellant fails to acknowledge this,
18 even though it directly addresses and resolves their claims.
19

20 For these reasons, GDOE respectfully requests that the OPA dismiss this Appeal in its
21 entirety.

22 Respectfully submitted this 3rd day of December 2021.
23

24 **GUAM DEPARTMENT OF EDUCATION**

25 By: 
26 **JAMES L.G. STAKE**
27 *Legal Counsel*
28