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**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

**PROCUREMENT APPEAL**

IN THE APPEAL OF

APPEAL NO. OPA-PA-13-013

G4S SECURITY SYSTEMS (GUAM)  
INC.,

**OPPOSITION TO MOTION TO DECLARE  
AUTOMATIC STAY IN EFFECT**

Appellant.

Comes now Guam Department of Education (“GDOE”) and files this Opposition to G4S Security Systems (Guam) Inc.’s (“G4S”) Motion to Declare Automatic Stay in Effect in OPA-PA-13-013.

**BACKGROUND**

On September 6, 2013, GDOE issued GDOE Invitation for Bid 032-2013 (“IFB”) for the Design Build Fire Alarm System Upgrade/Replacement and Fire Suppression/Sprinkler System Repair for Southern High School. GDOE Procurement Record, Exhibit 6, Bates Stamp No. GDOE0086-00197. The IFB was to upgrade/replace the fire alarm system and the repair and certification of the existing fire sprinkler system at Southern High School. On September 16, 2013, bids were accepted and a bid opening was conducted. G4S submitted a bid. GDOE Procurement Record, Exhibit 4, Bates Stamp No. GDOE009-0061. All bids collected were opened and logged onto an Abstract of Bids. GDOE Procurement Record, Exhibit 7, Bates Stamp No. GDOE00198-00200.

ORIGINAL

1 GDOE issued a Bid Status and Intent to Award on September 16, 2013, indicating that  
2 GDOE intended to enter into a contract with Orion Construction Corporation (Guam) Inc.  
3 (“Orion”). GDOE Procurement Record, Exhibit 8, Bates Stamp No. GDOE00201-00210. The Bid  
4 Status and Intent to Award indicated that G4S was considered non-responsive because G4S failed  
5 to include an Acknowledgement of Amendments to IFB with their bid documents as required by  
6 Section 2.8 of the IFB. *Id.* GDOE issued an Analysis and Recommendation which indicated that  
7 Orion was the lowest responsible bidder. GDOE Procurement Record, Exhibit 9, Bates Stamp No.  
8 GDOE00211-00212.

9 On September 16, 2013, G4S filed a protest with the GDOE. GDOE Agency Report,  
10 Exhibit 12, Bates Stamp No. GDOE00247. Upon receipt of the G4S’s protest, GDOE issued a  
11 Notice of Stay of Procurement on September 16, 2013. GDOE Agency Report, Exhibit 14, Bates  
12 Stamp No. GDOE00249.

13 On September 19, 2013, GDOE issued a written response denying G4S’s protest in its  
14 entirety on the basis that G4S failed to comply with the requirements of the IFB when it failed to  
15 submit an Acknowledgement of Amendments to IFB with their bid documents as required by  
16 Section 2.8 of the IFB. GDOE Agency Report, Exhibit 18, Bates Stamp No. GDOE00296-00313.  
17 Following its denial of G4S’s protest, GDOE issued a Notice to Lift the Stay of the Procurement  
18 on September 19, 2013. GDOE Exhibit 15, Bates Stamp No. GDOE00250. After the Notice to  
19 Lift the Stay was issued, GDOE forwarded the contract for Vendor’s signature, and on September  
20 30, 2013, Governor Edward Calvo executed the contract. GDOE Agency Report, Exhibit 16, Bates  
21 Stamp No. GDOE00251-00294.

## 22 DISCUSSION

23 Under Guam law, in the event a timely protest is made, the Territory shall not proceed  
24 further with the solicitation or with the award of the contract prior to final resolution of such protest.  
25 5 G.C.A. § 5425(g); 2 G.A.R. Div. 4 9101(e). The automatic stay provision is triggered when a  
26  
27

1 timely protest is made and that the protest was filed before an award was made. *Guam Imaging*  
2 *Consultants, Inc. GMHA*, 2004 Guam 15 ¶24. There is no disputing that an automatic stay of the  
3 IFB was triggered when G4S submitted its protest to the GDOE. What is GDOE continues to  
4 disputed is whether a stay was in place after GDOE issued its written response denying G4S'  
5 protest. GDOE's position continues to be that no stay was in place when the contract was fully  
6 executed, and G4S' appeal was filed after an award was made pursuant to the IFB. Therefore, the  
7 automatic stay provisions of 5 G.C.A. § 5425(g) and 2 G.A.R. Div. 4 § 9101(e) were not triggered.

8 G4S relies on the OPA's order in *In the Appeal of JMI Edison*, Appeal No. OPA-PA-13-  
9 010. In *JMI Edison*, the OPA decided in that case that the automatic stay provision in 5 G.C.A. §  
10 5425(g) did apply despite GDOE issuing a denial of the appellant's protest. In this order, the OPA  
11 relied on *In the Appeal of IBSS*, Appeal No. OPA-PA-08-012. The facts are vastly different in *IBSS*  
12 than in *JMI Edison*. In *IBSS*, on May 15, 2008, the General Services Agency ("GSA") issued six  
13 Requests for Proposals involving the procurement of copier machines. On May 20, 2008, Town  
14 House Department Store, Inc., dba Island Business Systems & Supplies ("IBSS") protested all six  
15 Requests for Proposals before an award was made. On September 9, 2008, GSA denied IBSS'  
16 protest. On September 12, 2008, IBSS filed an appeal to the OPA before an award had been made.

17 In *In the Appeal of Guam Publications, Inc.*, Appeal No. OPA-PA-08-00, the OPA  
18 determined that an award occurring between the denial of a protest and the filing of an appeal did  
19 not trigger the automatic stay provision contained in 5 G.C.A. § 5425(g) and 2 G.A.R. Div. 4 §  
20 9101(e). *Id.* at 18. In *Guam Publications*, the Pacific Daily News ("PDN") filed a timely protest  
21 in April 7, 2008. *Id.* On May 1, 2008, the General Supply Agency ("GSA") denied PDN's protest.  
22 After denying PDN's protest, GSA awarded the contract to Marianas Variety on May 9, 2008. *Id.*  
23 On May 14, 2008, PDN filed an appeal with the OPA. *Id.* The OPA determined that because GSA  
24 awarded the contract to Marianas Variety after the denial of PDN's protest, but before PDN's  
25 appeal, the automatic stay provisions of 5 G.C.A. § 5425(g) and 2 G.A.R. Div. 4 § 9101(e) were  
26 not triggered by PDN's filing of its appeal. *Id.*

1 The order in *JMI Edison* did not distinguish between the award made in this present case,  
2 which occurred before a timely appeal was filed, and the award made in *IBSS*, which was made  
3 after a timely appeal was filed. The OPA did not explain why the OPA's reasoning in *Guam*  
4 *Publications* was inapplicable in *JMI Edison*. The OPA has not expressly stated in the order in *JMI*  
5 *Edison*, if this award came after a denial of JMI's protest, but before JMI filed its timely appeal.

6 This issue has not been fully addressed by the OPA's order in *JMI Edison*. If the OPA had  
7 addressed the issues discussed above in this case, the OPA would need to use the well reasoned  
8 rule she set forth in *Guam Publications* – that an award occurring after the denial of a protest but  
9 before the filing of an appeal did not trigger the automatic stay provision contained in 5 G.C.A. §  
10 5425(g) and 2 G.A.R. Div. 4 § 9101(e). Therefore, the OPA must find that no automatic stay was  
11 in place at the time the award of this contract.

12 The scenario contemplated in *Guam Publications* is on point with what occurred in the  
13 award of the contract of the IFB. On September 16, 2013, G4S filed a protest of the IFB with  
14 GDOE. GDOE Agency Report, Exhibit 12, Bates Stamp No. GDOE00247. GDOE issued a denial  
15 of G4S' protest of the IFB on September 19, 2013. GDOE Agency Report, Exhibit 18, Bates Stamp  
16 No. GDOE00296-00312. On September 19, 2013, GDOE issued a Notice to Lift the Stay of the  
17 Procurement. GDOE Agency Report, Exhibit 15, Bates Stamp No. GDOE00250. Before this  
18 appeal was filed, GDOE and Orion executed a contract for the IFB. GDOE Agency Report, Exhibit  
19 16, Bates Stamp No. GDOE00251-00294. GDOE awarded the contract for the IFB to Orion before  
20 this appeal was filed, and therefore, the automatic provisions of 5 G.C.A. § 5425(g) and 2 G.A.R.  
21 Div. 4 § 9101(e) are not applicable in this case.

22 As discussed above, the rule in *Guam Publications* sets out that no stay was in place after  
23 GDOE issued its denial of G4S' protest. It might be further stated that by virtue of GDOE issuing  
24 its denial of G4S' protest, the stay was automatically lifted. *See Guam Publications*, Appeal No.  
25 OPA-PA-08-007 at 18. Therefore, since no stay was in place GDOE was allowed to move forward  
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1 with the award of the IFB to Orion. Furthermore, since an award of the IFB has been made to  
2 Orion, G4S is limited to the remedies contained in 5 G.C.A. § 5452.  
3

4 **CONCLUSION**

5 For the foregoing reasons, GDOE respectfully requests that the Office of Public  
6 Accountability deny G4S' Motion to Declare Automatic Stay in Effect.

7 Dated this 21<sup>th</sup> day of October, 2013.

8 Respectfully submitted,

9 **GUAM DEPARTMENT OF EDUCATION**

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11 By:   
12 **ANDREW T. PEREZ, ESQ.**  
13 *Legal Counsel*