



OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

**PROCUREMENT APPEALS**

IN THE APPEAL OF, ) APPEAL NO: OPA-PA-13-013  
G4S SECURITY SYSTEMS (GUAM), INC. ) **DECISION AND ORDER RE**  
Appellant ) **APPELLANT'S MOTION TO DECLARE**  
 ) **AUTOMATIC STAY IN EFFECT**

To: **Purchasing Agency:**  
Department of Education, Government of Guam  
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**Appellant:**  
G4S Security Systems (Guam), Inc.  
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**THIS MATTER**, came before the Hearing Officer on October 24, 2013 for a hearing on the Appellant's Motion to Declare the Automatic Stay in Effect. Director Ed Bitanga and Director of Finance Kathleen Brown were present on behalf of G4S Security Systems (Guam), Inc. (Appellant), and they were represented by the Appellant's counsel of record, Seth Forman, Esq. Marcus Y. Pido, Guam Department of Education's (DOE) Supply Management Administrator, was present on behalf of the Purchasing Agency, and he was represented by DOE's Counsel of Record, Andrew T. Perez, Esq. After hearing the arguments of the parties, the Hearing Officer makes the following findings and orders:

1           1. The Automatic Stay imposed by 5 G.C.A. §5425(g) and Chapter IX, Section 9.2.5.,  
2 DOE Procurement Regulations remains in effect. The main issue here is whether DOE's lifting  
3 of the automatic stay on September 19, 2013 complied with Guam's Procurement Laws and  
4 DOE's Procurement Regulations. Generally, in the event of a timely protest, the purchasing  
5 agency shall not proceed further with the solicitation or award of the contract prior to final  
6 resolution of such protest, and any such further action is void unless the head of the purchasing  
7 agency and the Attorney General of Guam, make written determinations that award of the  
8 contract without delay is necessary to protect substantial interests of the Government of Guam,  
9 and the protestant is given at least two (2) days prior notice. 5 G.C.A. §5425(g). Further, a  
10 protestant may appeal a decision denying a protest to the Office of Public Accountability within  
11 fifteen (15) days after receipt of a decision denying their protest. 5 G.C.A. §5425(e). DOE is  
12 governed by Article 9 of Guam's Procurement Law. *Town House Department Stores dba Island*  
13 *Business Systems and Supplies v. Guam Department of Education, et.al.*, 2012 Guam 25, ¶20  
14 (Supreme Court of Guam). Hence, 5 G.C.A. §5425(g), which is part of Article 9 of Guam's  
15 Procurement Law, applies to DOE. Further, despite conflicting language in DOE's Procurement  
16 Regulations, it has been conclusively determined that an appeal from a DOE decision denying a  
17 procurement protest shall proceed through the Office of Public Accountability pursuant to  
18 Articles 9 and 12 of Guam's Procurement Law. *Id.*, at ¶19. Thus, the fifteen (15) day period for  
19 a protestant to appeal a decision denying their protest to the Office of Public Accountability  
20 applies to DOE. DOE's Procurement Regulations closely tracks the statutory language of 5  
21 G.C.A. §5425(g), and states that when a protest has been filed within fourteen (14) working days  
22 and before an award is made, DOE's Superintendent shall make no award of the contract, until  
23 the protest is settled, unless the Superintendent makes a written determination that the award of  
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1 the contract without delay is necessary to protect substantial DOE interests and the protestant has  
2 been given at least two (2) working days of notice. Chapter IX, Section 9.2.5, DOE Procurement  
3 Regulations. Clearly, both 5 G.C.A. §5425(g) and Chapter IX, Section 9.2.5., DOE Procurement  
4 Regulations allow DOE to lift the automatic stay triggered by the Appellant's protest if certain  
5 requirements are met. The Hearing Officer must now look to the procurement record to  
6 determine if DOE complied with these requirements before lifting the automatic stay on  
7 September 19, 2013.  
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10 The procurement record shows that DOE failed to comply with 5 G.C.A. §5425(g) and  
11 Chapter IX, Section 9.2.5., DOE Procurement Regulations. The procurement record shows that  
12 on September 16, 2013, the Appellant filed their protest concerning DOE's rejection of the  
13 Appellant's Bid which was the same day the Appellant received notice of said rejection. Hence,  
14 the Hearing Officer finds that the Appellant's Protest was timely and that it triggered the  
15 automatic stay set forth in 5 G.C.A. §5425(g) and Chapter IX, Section 9.2.5., DOE Procurement  
16 Regulations. The procurement record also shows that on September 19, 2013, DOE denied the  
17 Appellant's protest, issued a Notice that the automatic stay was lifted, and awarded the contract  
18 to the remaining bidder. The procurement record shows that this contract was finalized and fully  
19 executed by September 30, 2013. The procurement record contains no evidence that DOE's  
20 Superintendent issued a Written Determination that lifting the automatic stay and awarding the  
21 contract without delay was necessary to protect substantial DOE interests as required by Chapter  
22 IX, Section 9.2.5., DOE Procurement Regulations. There is no evidence in the procurement  
23 record that DOE gave the Appellant the two (2) days prior notice that it was going to lift the  
24 automatic stay and award the contract which is required by Chapter IX, Section 9.2.5., DOE  
25 Procurement Regulations and 5 G.C.A. §5425(g). Finally, there is no evidence in the  
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1 procurement record that DOE obtained a written determination from the Attorney General of  
2 Guam that lifting the automatic stay to award the contract without delay was necessary to protect  
3 substantial Government of Guam interests as required by 5 G.C.A. §5425(g). Although, DOE's  
4 Procurement Regulations state that the only DOE's Superintendent is required to lift an  
5 automatic stay triggered by a timely protest, the written determination by the Attorney General  
6 of Guam is still required to comply with 5 G.C.A. §5425(g). *Guam Imaging Consultants, Inc.,*  
7 *and RADS, v. Guam Memorial Hospital Authority, et.al.*, 2004 Guam 15, ¶41 (Supreme Court of  
8 Guam). DOE now argues necessity by pointing out that the funds for the contract being solicited  
9 came from the Adequate Education Act Trust Account, created by Public Law 31-234, which  
10 were set to expire if not obligated by September 30, 2013. Albeit the concern on funding was  
11 noted in the Supply Management Administrator's September 4, 2013 memorandum justifying a  
12 shorter bid time and that this reason would be a valid justification to lift the automatic stay, it  
13 being posed as an argument to oppose a motion well after DOE lifted the automatic stay is not in  
14 the proper form of a written determination nor is it timely. The Hearing Officer finds that DOE  
15 violated Chapter IX, Section 9.2.5., DOE Procurement Regulations, and 5 G.C.A. §5425(g) by  
16 lifting the automatic stay without written determinations from DOE's Superintendent and  
17 Guam's Attorney General, and by failing to give the Appellant two (2) days prior notice.

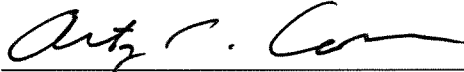
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22 2. The Decision in *In the Appeal of Guam Publications, Inc.*, OPA-PA-08-007 (Office  
23 of Public Accountability) is distinguishable from this matter. DOE argues that the Decision in  
24 OPA-PA-08-007 should be applied here because it found that a purchasing agency did not  
25 violate the automatic stay by awarding a contract after it had denied a protest but before the  
26 protestant's appeal to the Office of Public Accountability. However, in OPA-PA-08-007 this  
27 finding was made as part of the Office of Public Accountability's denial of a request for attorney  
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1 fees made by that case's appellant which is different from the issue here. Further, that finding in  
2 OPA-PA-08-007 relied in part on the Office of Public Accountability's analysis of 2 G.A.R.,  
3 Div. 4, Chap. 9, §9101(e) which is a procurement regulation that does not apply to DOE. DOE  
4 is really arguing that its decision denying the Appellant's protest had sufficient finality to  
5 terminate the automatic stay. DOE's procurement regulations state that after the automatic stay  
6 is triggered by a timely protest, it remains in effect until the protest is settled. Chapter IX,  
7 Section 9.2.5., DOE Procurement Regulations. Hence, it could be argued that DOE's denial of  
8 the Appellant's protest settled it to the extent that DOE could unilaterally lift the automatic stay  
9 and proceed with the award of the contract. However, as stated above, Article 9 of Guam's  
10 Procurement Law, which includes 5 G.C.A. §5425(g), is also applicable to DOE. *Town House*  
11 *Department Stores dba Island Business Systems and Supplies v. Guam Department of Education,*  
12 *et.al.*, 2012 Guam 25, at ¶20. That statute specifically states that once the automatic stay is  
13 triggered by a timely protest it remains in effect until the final resolution of the protest. 5 G.C.A.  
14 §5425(g). Hence, to comply with 5 G.C.A. §5425(g), DOE's decision denying the Appellant's  
15 protest would not become final until the fifteen (15) days the Appellant had to appeal to the  
16 Office of Public Accountability had expired, and only if the Appellant did not file an appeal  
17 during that timeframe. Thus, the Hearing Officer finds that DOE violated the 5 G.C.A. §5425(g)  
18 by lifting the automatic stay before its denial of the Appellant's protest became a final resolution  
19 of the Appellant's protest.

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24 3. DOE's award of the contract is void. As stated above, DOE violated 5 G.C.A.  
25 §5425(g) and Chapter IX, Section 9.2.5., DOE Procurement Regulations by lifting the automatic  
26 stay on September 19, 2013. Hence, pursuant to said statute and procurement regulation, the  
27 Hearing Officer finds that DOE's subsequent award of the contract is void.  
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1 **SO ORDERED** this 12<sup>th</sup> day of November, 2013 by:

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ANTHONY R. CAMACHO, ESQ.  
Hearing Officer