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Attorneys for the Government of Guam

RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

DATE: 5/8/15
 TIME: 1515 AM PM BY: SS
 FILE NO OPA-PA: 15-004

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of)	Docket No. OPA-PA-15-004
)	
G4S Secure Solutions (Guam) Inc.)	GSA'S SUPPLEMENTAL
)	AGENCY REPORT
_____ Appellant.)	

Pursuant to the May 1, 2015 Stipulation and Order the General Service Agency (“GSA”) herein supplements its Agency Report.

GSA’s Bid Invitation No; GSA -012-15 Issued January 14, 2015 For: Security Guard Services/DPHSS Northern, Central & Southern Regions, Destination: Department of Public Health & Social Services, Required Delivery Date: For a Period of One (1) Year with the Option to Renew for Two (2) Additional Years Upon Availability of Funding (“IFB”) is a competitive sealed bid for services and the Wage Determination most recently issued by the U.S. Department of Labor¹ is applicable. (See Tab 5 of the Agency Report for copy of the IFB). Under Guam law for competitive sealed bids award can only be made to the “lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation and whose bid amount is sufficient to comply with Article 13 of this Chapter”, 5 G.C.A. § 5211 (g). GSA in keeping with

ORIGINAL

5 G.C.A. § 5805 required potential bidders to submit firm bid proposals in amount compliant with the U.S. Department of Labor Wage Determination. In response to the requirements of the IFB G4S submitted the following (*See* Tab 4 of the Agency Report):

1. GS4's Form E. Declaration Re Compliance with U.S. D.O.L. Wage Determination Procurement No. GSA012-15 Security Services/DPHSS Northern, Central & Southern Region signed by G4S Country Managing Director-Marianas, Chris Garde, dated January 21, 2015 at Agency Report Tab 4 pages 64-73.

2. G4S's Signed Bid Sheet as to firm price bid, for Bid Invitation No; GSA -012-15 Issued January 14, 2015 For: Security Guard Services/DPHSS Northern, Central & Southern Regions, Destination: Department of Public Health & Social Services, Required Delivery Date: For a Period of One (1) Year with the Option to Renew for Two (2) Additional Years Upon Availability of Funding at Agency Report Tab 4 page 59.

3. G4S Bid Section I Pricing Schedule at Agency Report Tab 4 pages 3 -4, which states in part:

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>QTY/UOM</u>	<u>Unit Price</u>	<u>Extended Amount</u>
1.1	To provide Security Guard Services to Government of Guam, Department of Public Health and Social Services	12 Months	<u>\$8,165.99</u>	<u>\$97,991.90</u>

Bidding On:

Project: To Provide Security Guard Services to the Government of Guam, Department of Public Health and Social Services for the following three (3) facilities:

1. Northern Region: 520 West Santa Monica Ave, Dededo
2. Central Regions: 123 Chalan Kareta Route 10, Mangilao
3. Southern Region: 162 Apman Drive, Inarajan

Although GSA issued the March 13, 2015 "Revised" Notice of Intent to make an award to G4S on its total bid price of \$97,991.90 (*See* Tab 5 of the Agency Report) after further analysis GSA would like to clarify that it would not be able to proceed forward with the award as stated in that notice because of insufficiency of the total bid price of \$97,991.90 to meet the requirements of the U.S. Wage Determination applicable to this procurement and the non-compliance of G4S with the requirements and criteria of the IFB with regard to it submitting a total bid price in keeping with its signed Form E Declaration of Compliance with the U.S. DOL Wage Determination.

The Memorandum to File by Robert H. Kono, and the Affidavit of Anita Cruz (incorporated herein as if fully rewritten).

GSA's calculation in Robert H. Kono's memo to file indicates a bid amount of \$204,609.96 is required. G4S's total bid price \$97,991.90 is insufficient. G4S's admits that the \$97,991.90 is insufficient in its Counsel's March 24, 2015 Letter to GSA, third paragraph, third sentence which reads as follows: "if the \$97,991.90 annual figure were used for all three locations and not just the location unit, that amount be far too low for compliance with the applicable United States Department of Labor Wage Determination", Agency Report Tab 2 pages 4 &5. The IFB, the Form E Wage Declaration Form, and the Bid Price Form all make it expressly clear throughout that GSA is procuring for all three locations. The face of G4S's bid proposal documents also makes it clear that G4S is submitting its firm bid price for all three locations, and it's Form E Declaration of Compliance with U.S. DOL Wage Determination for all three locations.

The Pacific Island Security's total bid price in the amount of \$298,583.28 is for all three locations. A copy of the Pacific Island Security's total bid price for Item 1.1 (*See* Tab 12 page 67 of the Agency Report Tab 12) and in part reads follows:

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>QTY/UOM</u>	<u>Unit Price</u>	<u>Extended Amount</u>
1.1	To provide Security Guard Services to Government of Guam, Department of Public Health and Social Services	12 Months	<u>\$24,881.94</u>	<u>\$298,583.28</u>

Bidding On:

Project: To Provide Security Guard Services to the Government of Guam, Department of Public Health and Social Services for the following three (3) facilities:

1. Northern Region: 520 West Santa Monica Ave, Dededo
2. Central Regions: 123 Chalan Kareta Route 10, Mangilao
3. Southern Region: 162 Apman Drive, Inarajan

The upward adjustment request by G4S is to an amended bid price of \$293,583.85 is just \$4,607.44 less than the original total bid price of \$298,583.28 by Pacific Island Security.

GSA herein supplement its Agency Report as stated above, in that G4S total bid non-compliant with the requirements and criteria of the IFB, and the total bid price amount of \$97,991.90 is non-compliant with the U.S. DOL Wage Determination wages applicable to this procurement.


Additionally GSA continues to state all of its previous factual and legal positions in response to G4S's protest and appeal, including but not limited to its response to G4S's January 29, 2015 request to amend its bid as set forth in April 18th Acknowledged March 13, 2015 Letter to G4S (attached for easy reference), GSA's March 26, 2015 Letter to Counsel for G4S with a copy of OPA Decision and Order In the Appeal of J&B Modern Tech OPA PA 11-018 (April 13, 2012), GSA's March 30, 2015 Letter to Counsel for G4S. This document with its attachments and the above listed documents are hereby added to as if expressly stated and fully re-written and

incorporated in, as a Supplement to the Agency Record and the April 13, 2015 Agency Statement Answering Allegations of the Appeal.

Dated this 8th day of May, 2015.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General

By:



LAURA J. MOONEY
Assistant Attorney General

ⁱ There is not a change in benefits or wages as to the labor positions in this procurement between the two revisions, and therefore, so all the statements and arguments as to non-compliance remain. This endnote is included for purpose of clarifying the record as to the applicable current U.S. DOL Wage Determination. The applicable current U.S. DOL Wage Determination is U.S. DOL Wage Determination No.: 2005-2147 Revision No: 17, Date of Revision: 12/22/2014. The IFB and the Bid Proposal Form E Declaration of Compliance of with the U.S. DOL Wage Determination all have the prior U.S. DOL Wage Determination No.: 2005-2147 Revision No.:16, Date of Revision 07/25/2014. There is a delay in time from the date of the revision date to the date the Wage Determination is first available online. The U.S. DOL Wage Determination at the time of award and at the time of any renewal would apply to any award in the procurement. In the event there is a change in benefits or wages due to the then current applicable U.S. DOL Wage Determination a change order process is permitted as to any increased amount. The U.S. DOL Wage Determination applicable to Guam can be accessed through the Guam Department of Labor Wage and Hour Division or through the U.S. DOL Wage Determination URL at <http://www.wdol.gov/>.

Memo to File

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

Ray Tenorio
Lieutenant Governor

Anthony C. Blaz
Acting Director

Alfred F. Duenas
Deputy Director

MEMO TO FILE

On April 24, 2015, we reviewed the bid submittal of G4S and wish to incorporate the following:

Upon review of the bid submittal of G4S, we have reviewed the bid price offered for the three (3) units.

Security coverage for all three (3) units would be Monday through Friday 6 pm to 7 am, a total of thirteen (13) hours a day.

Total coverage hours from Saturday to Sunday (twenty-four (24) hours) times 2 is 48 hours a week.

Total for a month estimated average of thirty (30) days assumes an additional one (1) weekend and one (1) week day equates 113 weekday hours times four (4) plus 48 weekend hours plus thirteen (13) equals 452 plus 48 plus 14 equals 489 hours a month.

489 hours a month times (seven dollars and thirty seven cents (7.37) hourly plus four dollars and two cents (4.02)) equals five thousand five hundred sixty nine and seventy one cents (\$5569/71)

The government has ten (10) holidays a year. That means ten (10) times twenty-four (24) hours times point five (.5) equals an additional one hundred and twenty hours (120) times eleven dollars and two cents (\$11.02) equals one thousand three hundred sixty six hollers and eighty cents (\$1366.80) yearly to be added to the total.

So one month of \$5569.71 times twelve months (12) equals \$66836.52 plus \$1366.81 equals a total of \$68203.32 a year for one (1) unit.

\$68203.32 times (3) units equals \$204,609.96 in direct labor costs for all three (3) units.

ROBERT H. KONO

Affidavit

AFFIDAVIT

GSA-012-15
SECURITY GUARD SERVICES –
DPHSS NORTHERN; CENTRAL; AND SOUTHERN REGION

- 3/10/15 - "**Notice of Intent of Possible Award**" was faxed to G4S Secure Solution notifying them of the possible award in the amount of \$293,975.64 which was acknowledge receipt by G4S Secure Solution by Mr. Christopher Garde, dated 3/10/15
- 3/10/15 - "Bid Status" faxed to Pacific Island Security notifying them that they were rejected due to "High Price" and that Bid recommended for award to G4S Security in the amount of \$293,975.64.
- 3/13/15 - Ms. Baby Kallingal from Pacific Island Security called Anita Cruz, Buyer Supervisor in regards to the "Bid Status" received on 3/10/15.
- 3/13/15 - Bid file GSA-012-15 was forwarded to Buyer Supervisor for review. Buyer Supervisor reviewed the bid file and notified the CPO that the award made to G4S Secure Solution was in error.
- 3/13/15 - Letter was sent to G4S Secure Solution responding to their letter dated 1/29/15 informing G4S Secure Solution that the "Unit Price" governs and that the arithmetical error can only be correct on the "Extended Price".
- 3/13/15 - A "Revised Bid Status" was sent to Pacific Island Security and a "Revised Notice of Intent of Possible Award" was sent to G4S Secure Solution.
- 3/18/15 - Met with Teresa K. Sakazaki from G4S Secure Solution and Christine Tedtaotao, Buyer I at 1.25pm to discuss the "Revised Notice of Intent of Award".

I explained to Ms. Sakazaki that after the review of the bid file it was determined that the "Notice of Possible Award" in the amount of \$293.975.64 was sent in error and that the revised "Notice of Possible Award" was correct per G4S Secure Solution offered bid submittal the total amount of \$97,991.90 for the three (3) locations.

I explained to Ms. Sakazaki that the bid was clear and that it stated "To Provide Security Guard Service to the Government of Guam, Department of Public Health and Social Services for the following three (3) facilities and that if G4S Secure Solution had a problem with the specification and how it was written then G4S had time to write to GSA with their questions and concerns prior to bid opening.

I explained to Ms. Sakazaki that if G4S Secure Solution cannot provide the services for the three (3) locations with the "Unit Price" offered then she could write and request to withdraw their bid.

3/24/15 - Letter received from Dooley Roberts & Fowler LLP Attorneys at Law, Mr. Seth Forman in regards to GSA-012-15

3/26/15 - Response letter sent to Mr. Foreman from the Procurement Advisor, Mr. Robert Kono

3/26/15 - G4S Secure Solution filed a "Protest" in regards to GSA-012-15

3/30/15 - Response to "Protest" by the Procurement Advisor, Mr. Robert Kono

4/03/15 - Appeal was filed with the Office of Public Accountability (OPA)

The issue of meeting the minimum wage determination was first raised in Dooley, Roberts & Fowler LLP letter of 3/24/14. We indicated on 3/26/15 that if this was correct, then your bid is non-responsive and would be rejected. We indicated that we treated this memo as a protest.

On 3/26/15, Dooley Roberts & Fowler LLP filed memo entitled protest. Since all matters we stayed upon a filing of protest, we had not had an opportunity to revise the bid status.



ANITA T. CRUZ
BUYER SUPERVISOR, GSA

March 18, 2015

GSA Letter to

G4S

Transmission Report

Time
ID 1
Local ID 2

03-13-2015
6714751727
6714751716

17:07:32

Transmit Header Text
Local Name 1 GSA
Local Name 2 GSA

This document : Confirmed
(reduced sample and details below)
Document size : 8.5"x14"

Eddie Baza Calvo
Governor



Anthony C. Blaz
Director, Dept. of Admin.

GENERAL SERVICES AGENCY
Government of Guam
148 Route 1 Marine Drive Corp
Piti, Guam 96915

Ray Tenorio
Lt. Governor

Alfred F. Duenas
Deputy Director

March 13, 2015

G45 SECURE SOLUTION SECURITY (GUAM) INC.
1851 Army Drive
Tamuning, Guam 96913
Tel: (671) 646-2807 / Fax: (671) 649-7245

Re: GSA-012-15 (DPHSS Security Guard Services-DPHSS Northern, Central, & Southern Region)

Dear Mr. Cruz,

This is to acknowledge receipt of your letter dated January 29, 2015 in regards to the above bid number GSA-012-15, for DPHSS Security Guard Services – Northern, Central, & Southern Region.

Your letter was to clarify your bid price which was stated in your bid offer as 12 months at \$8,165.99 (Unit Price) with an extended price of \$97,991.90. The unit price as per your letter was \$8,165.99 x 3 locations = \$24,497.97 (Unit Price) with the extended price of \$293,975.64. You made reference to the "General Terms and Conditions" item# 22 that the government has the right to waive any minor irregularity in bid received.

Reference: 2 GAR Div. 2 3109(4)(B) – Minor Informalities. Minor informalities are matters of form, rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible.

Reference: 2 GAR Div. 2 3109(4)(C) – Mistakes where intended correct bid is evident. If the mistake and the intended correct bid is clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may be not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transportation errors, and arithmetical errors.

Reference: Sealed Bid Solicitation Instructions page 26, Item 2(c) "Unit Price" for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the amount of column of the Schedule for each item offered. In case of discrepancies between a unit price and extended price, the unit price will be presumed to be correct.

Based on our analysis we did not find any discrepancy on the face of your bid price. Therefore, GSA will award to G45 the amount offered of \$8,165.99 per month for all three (3) regions with the extended price of \$97,991.88

The "Notice of Intent of Possible Award" will be revised to reflect the corrected amount offered in your bid submittal. (Attached Revised "Notice of Intent of Possible Award")

If you require further information please contact Ms. Anita Cruz at 475-1713.

Sincerely,

Claudia S. Acfalle
CLAUDIA S. ACFALLE
Chief Procurement Officer

Please Print

ACKNOWLEDGEMENT COPY (Re-fax to GSA)

Received By: _____

Date: _____

Vendor Name: _____

Fax #: 472-4217

Rec'd.

ACKNOWLEDGEMENT COPY

DATE: _____

RECEIVED BY: MARCH 18, 2014

DATE: _____

name: T. Sakazaki

Total Pages Scanned : 1

Total Pages Confirmed : 1

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
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Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	CP: Completed	TS: Terminated by system
HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TU: Terminated by user	EC: Error Correct

Eddie Baza Calvo
Governor

GENERAL SERVICES AGENCY
Government of Guam
148 Route 1 Marine Drive Corp
Piti, Guam 96915

Ray Tenorio
Lt. Governor



Anthony C. Blaz
Director, Dept. of Admin.

Alfred F. Duenas
Deputy Director

March 13, 2015

G4S SECURE SOLUTION SECURITY (GUAM) INC.
1851 Army Drive
Tamuning, Guam 96913
Tel: (671) 646-2307 / Fax: (671) 649-7245

Re: GSA-012-15 (DPHSS Security Guard Services-DPHSS Northern; Central; & Southern Region)

Dear Mr. Cruz,

This is to acknowledge receipt of your letter dated January 29, 2015 in regards to the above bid number GSA-012-15, for DPHSS Security Guard Services – Northern; Central; & Southern Region.

Your letter was to clarify your bid price which was stated in your bid offer as 12 months at \$8,165.99 (Unit Price) with an extended price of \$97,991.90. The unit price as per your letter was \$8,165.99 x 3 locations = \$24, 497.97 (Unit Price) with the extended price of \$293,975.64. You made reference to the "General Terms and Conditions" item# 22 that the government has the right to waive any minor irregularity in bid received.

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Based on our analysis we did not find any discrepancy on the face of your bid price. Therefore, GSA will award to G4S the amount offered of \$8,165.99 per month for all three (3) regions with the extended price of \$97,991.88

The "Notice of Intent of Possible Award" will be revised to reflect the corrected amount offered in your bid submittal. (Attached Revised "Notice of Intent of Possible Award")

If you require further information please contact Ms. Anita Cruz at 475-1713.

Sincerely,


CLAUDIA S. ACFALLE,
Chief Procurement Officer