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PROCUREMENT APPEALS

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Attorneys for Appellant
G4S Security Systems, (Guam) Inc.

THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Procurement Appeal of)
)
G4S SECURITY SYSTEMS,)
(GUAM) INC.,)
)
Appellant.)
_____)

Docket No. OPA-PA-14- 004

NOTICE OF APPEAL

Appellant Information:

G4S Security Systems, (Guam) Inc. ("G4S")
1851 Army Drive
Tamuning, Guam 96913-1254

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Appeal Information:

- A) Department of Public Works, government of Guam ("DPW").
- B) Invitation for Bid, Project No. 480-5-1052-DMHSA FMT-TAM; Upgrading of Telecommunication Building Infrastructure & Cabling System for DMHSA Main Building in Tamuning.
- C) Decision being appealed is the DPW's May 2, 2014, Notice of Termination of Contract Agreement.
- D) Appeal is made from a decision on a contract controversy.
- E) Names of competing bidders: N/A.

Form and Filing:

1. On or about September 7, 2012, the DPW let an invitation for bid for the Upgrading of Telecommunication Building Infrastructure & Cabling System for DMHSA Main Building in Tamuning, Guam. *See, Exhibit A.*

After bid opening and on or about October 30, 2012, the DPW wrote to G4S to advise that it had accepted G4S' bid for the subject project and directed G4S to execute a contract enclosed with that notification letter. *See, Exhibit B.* G4S signed and returned the contract to DPW. *See, Exhibit C.* The contract provided that the project should be completed within 150 days from DPW's written Notice to Proceed.

On April 16, 2013, G4S wrote to DPW to advise that it was still waiting for DPW to issue a Notice to Proceed. *See, Exhibit D.* While the DPW's Project Manager, Liberty Perez, had advised G4S in a Pre-Construction Conference that a November 14, 2012, Purchase Order constituted the Notice to Proceed, that Purchase Order expressly stated, under a heading "Time For Delivery", that the time for project completion was "150 calendar days after Notice to Proceed (NTP) is issued." Therefore, G4S was hesitant to start contract performance without the required written Notice to Proceed.

On April 30, 2013, DPW responded to G4S and advised that "This is to formally inform you that your contract for the above subject project expires today, April 30, 2013; and the Government of Guam will be imposing the liquidated damages of one-fourth of one percent (.0025%) of the contract value per calendar day, which is in the amount of \$389.71 per calendar day as stated in the contract document." *See, Exhibit E.* G4S wrote to DPW on May 2, 2013, to again advise that it had not received a written Notice to Proceed. *See, Exhibit F.*

On May 17, 2013, the DPW finally issued a Notice to Proceed, which required that G4S "commence the architectural, structural, electrical and telecommunication engineering design work on the above contract." This letter also provided a design submittal schedule and stated that "[a] separate Notice to Proceed will be issued for construction; upon securing, payment and issuance of Building Permit." *See, Exhibit G.*

G4S completed all of the design work and tasks required by the May 17, 2013, Notice to Proceed and submitted the design work for approval. *See, Exhibit H.* By the end of September, 2013, G4S had obtained approval from the Department of Land Management, the Contractor's Licensing Board, the Guam Power Authority, the Fire Prevention Bureau, and the Peals Board. However, the DPW never approved the issuance of a Building Permit. *See, Exhibit I.*

Although G4S had been ready and willing to proceed with construction since the submittal of final project designs as of September, 2013, it could not go forward until DPW issued a Building Permit and until DPW issued the second Notice to Proceed as expressly required by DPW's initial May 17, 2013, Notice to Proceed.

Because of this delay, G4S wrote to DPW on January 21, 2014, requesting for a status update and advising that it wanted to move forward on the project. *See, Exhibit J.* Rather than approving the Building Permit and issuing the required separate Notice to Proceed, DPW sent G4S an April 14, 2014, Notice of Default “for failure to prosecute the work within the time specified in the contract for the above referenced project.” *See, Exhibit K.* G4S wrote to DPW on April 21, 2014, outlining the above facts and advising that it remained ready, willing and able to complete the project as soon as DPW issued the Building Permit and the second Notice to Proceed. *See, Exhibit L.*

Rather than approve the Building Permit and issuing the required second Notice to Proceed for construction work, the DPW delivered a May 2, 2014, “Notice of Termination of Contract Agreement” to G4S in which it stated that “we are terminating your contract in whole for the above reference project, for you are in breach of our contract agreement.” *See, Exhibit M.* G4S did not receive the DPW’s May 2, 2014, termination letter until Friday May 16, 2014.

2. G4S requests that the Office of Public Auditor (“OPA”) rule that the DPW’s termination of the subject contract is unreasonable and an abuse of discretion, and further order that the DPW proceed with its required performance under the contract to approve issuance of the Building Permit and the issuance of the required second Notice to Proceed.

3. Supporting documents are attached hereto as exhibits.

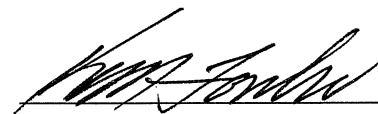
Declaration regarding court action:

G4S confirms that an action in court has not been commenced.

Dated this 20 day of May, 2014.

DOOLEY ROBERTS & FOWLER LLP

By:



KEVIN J. FOWLER

Attorneys for Appellant
G4S Security Systems, (Guam) Inc.

of Appeal and that it is true and correct of my own knowledge, except as to those matters alleged upon information and belief and as to those matters, I believe them to be true.

Dated this 20th day of May, 2014.



EDUARDO BITANGA