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OPA-PA-21-007: Opposition to Motions

Scott T. Kadiasang <scott.kadiasang@gu.g4s.com> Wed, Nov 3, 2021 at 4:54 PM
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Hafa Adai,

Please see the attached.

A confirmation of receipt would be most appreciated.

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Thank you,

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6 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

7 In the Appeal of
8 G4S Security Systems (Guam) Inc.

10 Appellant.

APPEAL CASE NO. OPA-PA-21-007

9 OMNIBUS OPPOSITION TO

11 1) MOTION TO DISMISS FOR FAILURE TO
12 STATE A VALID CLAIM

13 2) MOTION TO DISMISS FOR LACK OF
14 SUBJECT MATTER JURISDICTION

15 COMES NOW G4S Security Systems (Guam) Inc. (hereinafter referred to as “G4S”) files this
16 Opposition to GDOE’s motions to dismiss for failure to state a valid claim and lack of subject matter
17 jurisdiction in the Appeal Case No. OPA-PA-21-007.

18 I. **BACKGROUND**

19 On April 13, 2021, Guam Department of Education (hereafter referred to as “GDOE”) issued its
20 Multi-Step IFB 026-2021 for Indoor and Outdoor Wireless Local Area Network (“WLAN”) Infrastructure
21 Installation Project (hereafter referred to as the “IFB”). On May 28, 2021, GDOE received bids for the
22 IFB from G4S Security Systems (Guam) Inc. (hereinafter referred to as “G4S”) and Technologies for
23 Tomorrow Inc. (hereafter referred to as “TFT”). On July 13, 2021, GDOE awarded to TFT as the lowest,
24 most responsible and responsive bid for the IFB. On August 10, 2021, G4S protested the award for TFT
25 based on the grounds that TFT does not have a Guam Contractors License to perform the service for the
26 IFB. On September 3, 2021, GDOE issued its denial of G4S’s protest on the grounds that the IFB, its
27

1 published terms and conditions and its amendments did not require the submission of a Guam Contractors
2 License in the bid submission. On September 17, 2021, G4S filed an appeal with the Office of Public
3 Accountability (OPA). On October 4, 2021, GDOE filed its Agency Statement and G4S filed Comments
4 on Agency Statement on October 14, 2021. G4S then filed Motion for Summary Decision on October 27,
5 2021 and GDOE filed motions to dismiss for failure to state a valid claim and lack of subject matter
6 jurisdiction on the same day. G4S opposes GDOE's motions with the following arguments.

7
8 **II. G4S STATED A VALID CLAIM AND OPA HAS AN APPROPRIATE SUBJECT**
9 **MATTER JURISDICTION FOR THIS APPEAL**

10 G4S has proven that a valid claim was stated in its Motion for Summary Decision filed on
11 October 27, 2021. The foundation of this protest and appeal is a procurement issue because the issue is
12 whether TFT is a responsive and responsible bidder. GDOE simply misinterpreted the issue to be lack of
13 a Guam Contractor license so that it does not fall into OPA's jurisdiction. However, GDOE's
14 interpretation was wrong because the lack of a Guam Contractor license by TFT is a fact and this fact
15 caused TFT to be disqualified as a responsive and responsible bidder as defined under 5 GCA §§ 5201(f),
16 5201(g). G4S's claim is that GDOE should not award the contract to the party who is not a responsive
17 and responsible bidder. G4S concedes that Guam Procurement Law mandates that an IFB shall be
18 evaluated based on the requirements set forth in the IFB. Although GDOE IFB 026-2021 in its published
19 terms and conditions did not require the submission of a Guam Contractor's license, it explicitly requires
20 the bidder to be the lowest, most responsive and responsible priced bid to be awarded with the contract.
21 See IFB 026- 2021, §3.1.3.2. Therefore G4S has stated a valid claim under Guam Procurement Law.

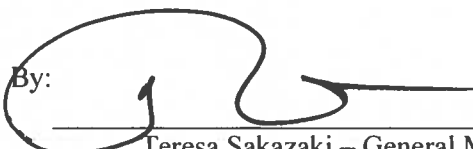
22
23 G4S has also proven that OPA has the appropriate jurisdiction on this protest and appeal in its
24 Motion for Summary Decision filed on October 27, 2021. The Public Auditor shall have the power to
25 review and determine *de novo* any matter properly submitted. See 5 GCA §5703; see also 2 GAR Div. 4
26 §12103(a). This includes the power to rule on motions, and other procedural matters before the OPA. See
27

1 2 GAR Div. 4 §12109(d). The Public Auditor has the power to promote the integrity of the procurement
2 process and the purposes of Guam's Procurement laws, and the Public Auditor's jurisdiction shall be
3 utilized to promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5, Guam
4 Procurement Law. *See* 5 GCA §5703. The Public Auditor shall determine whether a decision on a protest
5 of method of selection, solicitation or award of a contract, or entitlement to costs is in accordance with the
6 statutes, regulations, and the terms and conditions of the solicitation. *See* 2 GAR Div. 4 §12112. Since
7 G4S's stated claim has been approved to be an issue under Guam Procurement Law in both the Motion
8 for Summary Decision and also above paragraph, this protest and appeal shall fall within the OPA's
9 jurisdiction because GDOE violated Guam Procurement Law and did not evaluate the bid in accordance
10 to its published requirements and wrongfully awarded the contract to TFT, who is not a responsive and
11 responsible bidder. Therefore OPA's jurisdiction to decide on this appeal and promote the integrity of the
12 procurement process and the purposes of 5 GCA Chapter 5, Guam Procurement Law is appropriate.

14 III. CONCLUSION

15 BASED ON THE FOREGOING, G4S respectfully requests that the Public Auditor to support
16 G4S's protest and appeal to GDOE's wrongful award to TFT. Furthermore, G4S respectfully requests that
17 GDOE to re-award the contract in accordance to its IFB's criteria to the lowest, most responsive and
18 responsible priced bid, which is G4S.

21 RESPECTFULLY SUBMITTED ON 3rd of November, 2021.

24 By: 
25 _____
26 Teresa Sakazaki – General Manager