



G4S did not include any evidence that G4S possessed the required contractor's License at the time of the bid in order to meet this requirement of the Bid Terms and Conditions. For this reason, the G4S bid cannot be considered for award and should be rejected as non-responsive.

*PDS Protest Letter* dated Sept. 17, 2015. See, PDS's Procurement Appeal, Ex. 1, pp. 1, 2. Pacific Data Systems therefore was on notice that it might have an argument that G4S did not submit a contractor's license with its bid package at least on July 28, 2015 when GSA responded to PDS's FOIA Request with a copy of G4S's bid submission.

Fourteen days from July 28, 2015 when G4S was provided a copy of G4S's bid package to PDS would have been August 11, 2014, which GSA the purchasing agency submits would have been the last date PDS could have submitted its protest. PDS's protest was not submitted until September 17, 2015, over seven weeks or 50 days past the date PDS admits it was first on notice of facts necessary to state a basis for objecting to the award to G4S. PDS's protest was therefore untimely and due to be dismissed.

Nothing in the Invitation for Bid required that proof of licensure had to have been submitted contemporaneously with the bid. Rather, the General Terms and Conditions Statement of the IFB stated at ¶ 4 was. "LICENSING: Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation." G4S did, in fact, have a contractor's license at all times material to the procurement, namely, Certificate # C-0615-0592, issued June 23, 2015, expiring June 30, 2016.

## DISCUSSION

### A. PDS's Protest to the Purchasing Agency Was Untimely. It's Procurement Appeal Must Therefore Be Dismissed for Want of Jurisdiction.

Guam law provides:

**Right to Protest.** Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency. **The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto.**

5 GCA § 5425(a)(emphasis added). "Protests filed after the 14 day period shall not be considered." 2 GAR § 9101(c). Pacific Data Systems' failure to submit its protest to the head of the purchasing agency in writing within 14 days after it knew or should have known of facts giving rise to its claim is fatal to its right to proceed.

Fourteen days from July 28, 2015 when G4S was provided a copy of G4S's bid would have been August 11, 2014, the last date PDS could have submitted its protest. But PDS's protest was not submitted until September 17, 2015, over seven weeks or 50 days past the date PDS admits it was on notice of facts necessary to state a basis for objecting to the award to G4S.

PDS's argument for not submitting its objection to G4S's submission as non-responsive within 14 days of being placed on notice that there may be an issue with respect to G4S having a proper contractor's license was that it was not until the award was made that the 14 days began to run. PDS asserts that it was not contesting G4S's responsiveness to the bid, but *GSA's award* of the bid to a non-responsive bidder. PDS's clever wordplay is an invitation to mischief because it encourages would-be protesting bidders to lie in wait beyond the time that it was too late to correct inadvertent errors by other bidders that a protesting bidder believes is non-responsive. Further, it is a waste of government time and resources not to deal with such issues at the earliest

practical opportunity. Finally, if the Legislature had intended all protests to have a 14 appeal period after the award despite knowledge on the part of a protestant of grounds that another bid was not responsive and should not be considered at all, the Legislature could have easily said so. Instead, the Legislature employed the phrase “protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto.” 5 GCA § 5425(a). For that reason, PDS’s argument that its protest was timely filed is without merit.

**B. The IFB Did Not Require that Proof of a Contractor’s License Had to Be Submitted Contemporaneously with the Bid. In Any Event, G4S was Properly Licensed at all Times Material to the Procurement.**

As noted in the statement of undisputed facts, nothing in the Invitation for Bid required that proof of licensure had to have been submitted contemporaneously with the bid. Rather, the General Terms and Conditions Statement of the IFB stated at ¶ 4 was. “LICENSING: Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.” Therefore, if there was any doubt on the question of whether a bidder was properly licensed, then GSA was at liberty to inquire prior to making its final determination. Nevertheless, G4S did, in fact, have a contractor’s license at all times material to the procurement, namely, Certificate # C-0615-0592, issued June 23, 2015, expiring June 30, 2016. Accordingly, PDS’s argument that G4S was not properly licensed and did not hold a proper contractor’s license is without merit.

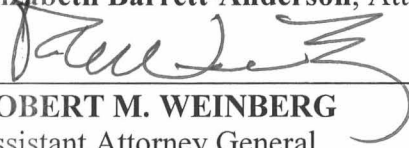
**C. PDS's Argument that G4S did not have the Requisite 10 Years' Experience Misreads the IFB as well as G4S's bid and Interjects Subjective Criteria that are Not Part of the IFB.**

PDS appears to argue that G4S did not have the requisite 10 years' experience necessary to perform the work requested in the IFB. In doing so, PDS is interjecting its own subjective terms and qualifications that are not part of the IFB itself. A careful reading of the IFB and of the two bid packages demonstrate to the ordinary purchasing agent that both PDS and G4S had comparable experience, but that they each articulated it somewhat differently. What is important is that G4S satisfied the experience requirement according to the purchasing agency and awarding authority, not according to the subjective interpretation of its competitor. There is no error.

**WHEREFORE**, the government of Guam, General Services Agency, respectfully submits that the above-styled appeal must be dismissed for want of jurisdiction. In the alternative, the appeal is due to be denied on the merits.

Respectfully submitted,

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

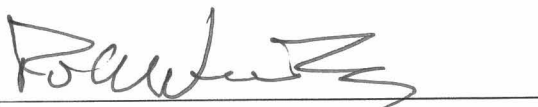
  
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**ROBERT M. WEINBERG**  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the forgoing upon opposing counsel by hand delivery addressed to:

John Day  
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this 23<sup>th</sup> day of November, 2015.



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**ROBERT M. WEINBERG**  
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