



Jerrick Hernandez <jhernandez@guamopa.com>

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## In the Appeal of G4S Security Systems (Guam) Inc.; OPA-PA-21-007

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**Claire Pollard** <cpollard@rwtguam.com>  
To: Jerrick Hernandez <jhernandez@guamopa.com>  
Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>

Tue, Jan 18, 2022 at 4:32 PM

Dear Mr. Hernandez:

Please see the attached document below in regards to the above-referenced matter. Should you have any questions or concerns, please feel free to contact our office. Thank you.

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Regards,  
*Claire Pollard*

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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Appeal of

G4S Security Systems (Guam) Inc.,

Appellant.

**APPEAL NO: OPA-PA-21-007**

**[PROPOSED]  
FINDINGS OF FACTS AND  
CONCLUSIONS OF LAW**

**I. INTRODUCTION**

1. This matter came before the Office of Public Accountability (“OPA”), through the Public Auditor, on an appeal filed by Appellant G4S Security Systems (Guam) Inc. (“G4S” or “Appellant”) regarding GDOE Multi Step Invitation for Bid (“IFB”) 026-2021 for Indoor and Outdoor Wireless Local Area Network (“WLAN”) Infrastructure Installation Project issued on April 13, 2021.

2. The OPA conducted an evidentiary hearing on December 20, 2021. The hearing was conducted with restrictions on the amount of individuals that could be physically present because of the COVID-19 pandemic. In addition to counsel for the parties, an institutional representative was physically present at the hearing for G4S. Institutional representatives from the procuring agency and the interested parties were present via the Zoom platform.

3. The OPA has considered the evidence, including the testimony of witnesses and exhibits admitted into evidence, the procurement record maintained by DOE and the submissions placed into the record by the parties. The OPA has further considered the written arguments and proposed Findings of Fact and Conclusions of Law submitted by counsel for the parties.

4. The decision of the Public Auditor under appeal is authorized by 5 G.C.A. § 5703. The determination of an issue, the findings of fact, and the decision of the Public Auditor are as stated in 5 G.C.A. § 5704.

5. The OPA hereby enters the following Findings of Fact and Conclusions of Law. To the extent that Findings of Fact, as stated, may be considered Conclusions of Law, they shall be deemed Conclusions of Law. Similarly, to the extent that matters expressed as Conclusions of Law may be considered Findings of Fact, they shall also be deemed Findings of Fact.

## **II. FINDINGS OF FACT**

6. The Guam Department of Education ("GDOE") issued its Invitation for Bids seeking Indoor and Outdoor Wireless Local Area Network ("WLAN") Infrastructure Installation on April 13, 2021.

7. Four bidders, Technologies for Tomorrow Inc. ("TFT"), California Pacific Technical Services LLC, Pacific Data Systems, Inc. ("PDS") and G4S Security Systems (Guam) Inc. ("G4S") submitted bids in response to the GDOE Bid invitation.

8. On July 13, 2021, GDOE sent a Bid Status Notification recommending an award to TFT. A contemporaneous Notice of Award was issued

that explained how the award was conditional, and provided no rights to TFT until a final contract was executed.

9. Because TFT was selected for award despite being non-responsive to the bid by failing to have a valid contractor's license, G4S submitted an agency level protest on July 29, 2021, of the award notice designating GTA for award.

10. On September 3, 2021, the Agency denied the protest. G4S's appeal to the OPA followed. GDOE provided no notice of the G4S protest or appeal to PDS.

11. On G4S provided the Findings and Decisions of the Guam Contractors Licensing Board ("CLB") to the OPA and parties.

12. The CLB conclusions confirmed that TFT does not hold a contractor's license on Guam, and that TFT is in violation of Guam law by not obtaining a C-68 License for the performance of the work contemplated under the IFB.

**A. TFT LACKS A VALID CONTRACTOR'S LICENSE AND THE SCOPE OF WORK CONTEMPLATED BY THE IFB REQUIRES A CONTRACTOR'S LICENSE.**

13. GDOE describes the work it is procuring as "infrastructure installation." Procurement Record, 284.

14. On Guam, a "contractor" needing a contractor's license is defined as "any person who undertakes to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project development or improvement or do any part thereof, including the erection of scaffolding or other structure of works in connection therewith for another person for a fee." 21 G.C.A. § 70100(b).

15. Contractors working on Guam may not do so, or even present themselves as being able to do so, "without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Contractor's License Board (CLB)." 21 G.C.A. § 70108(a). A Responsible Bidder "means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance." 5 GCA § 5201(f). Since TFT does not have "the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance," TFT is a non-responsible offeror. 5 GCA § 5201 (f).

16. G4S Engineer Eric Roberto testified that, in his experience and based upon his knowledge of telecommunication installation, that this project required a C-15 license.

17. G4S Engineer Eric Roberto testified that other Government of Guam agencies, including the Guam Community College, require similar CLB licensing for similar projects.

18. CLB Investigator Supervisor Nida Baily confirmed that CLB licensing was required of a contractor who sought to perform the work under this IFB, and that TFT lacked such a license.

19. CLB Investigator Supervisor Nida Baily confirmed that CLB licensing was required of a contractor who sought to perform electrical work, and that the IFB involved electrical work.

20. CLB Investigator Supervisor Nida Baily confirmed that CLB followed its standard operating procedures in informing TFT of its failures to obtain appropriate CLB licensing.

21. All parties agree that TFT does not have a valid contractor's license.

22. The terms and conditions of the IFB require responsive offerors to be knowledgeable and observe "federal and local laws, codes, ordinances, and regulations, which, in any manner, affect those engaged or employed in the work, or the material or equipment, used in or upon the site, or in any way affect the conduct of the work." Procurement Record, 024, IFB Terms and Conditions, § 4.2.

23. The IFB also requires that offerors must be appropriately licensed. Procurement Record, 024, IFB Terms and Conditions, § 4.4.

24. DOE Procurement Supervisor Carmen Charfauros testified, without being able to cite authority for such a position, that her responsibility determinations are made from offerors submit, and that she does no independent responsibility determination beyond the bid packages.

25. Potential offerors had asked during the question period of the IFB whether or not CLB licensing was required. DOE Procurement Supervisor Carmen Charfauros testified that her office did not provide a clear answer.

26. Vince Dela Cruz, Data Processing Manager for DOE, testified that no one at DOE reviewed whether or not CLB licensing was required for responsible legal performance of the IFB.

27. Mr. Cruz testified that he did investigate whether or not such a license was required after Interested Party PDS raised the issue during the question period of the bid, but that he did not obtain an answer and failed to

provide a clear answer. He confirmed that no log of these communications trying to seek an answer to the question existed.

28. DOE Manager Vince Dela Cruz testified that now, based upon his review of CLB correspondence regarding TFT and this IFB, that a C-68 license is required for performance.

29. TFT institutional representative Daniel Coco testified that he relies upon subcontractors to obtain appropriate licenses, and that he had no particular knowledge about then licensing requirements, despite guaranteeing his workmanship.

30. TFT institutional representative Daniel Coco testified that he did not know he needed a service license for performance, or any licensing.

31. TFT institutional representative Daniel Coco testified that he agreed that a C-15 license was needed for this contract, but averred that some unnamed subcontractor would obtain it.

### **III. CONCLUSIONS OF LAW**

32. Once the proposals of the offerors were received, and at least after G4S's protest was lodged, GDOE should have substantively engaged in a review of the bids in order to make its own determination that all offerors were responsible, and responsive to the specifications of the bid. *See* 5 G.C.A. 5201(g) ("Responsive Bidder means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.").

33. However, the procurement record contains no record that DOE engaged in a responsibility determination or review.

34. More, DOE incorrectly explains that the law prohibits it from making such an examination, since 5 GCA § 5211(e) mandates that "No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids." GDOE Agency Statement, 3, *citing* 5 GCA § 5211(e).

35. GDOE, in merely confining itself to the contents of the bid envelope, has ignored its obligation to determine if TFFT, by submitting a bid for contracting work despite not having a contractor's license, is in fact a non-responsive and non-responsible offeror.

36. The CLB has confirmed, through the testimony of its lead investigator, that this was the case.

37. Guam law makes it plain that GDOE's contracting officer is required to make a responsibility determination based on standards that are not specifically in the bid envelope. *See*, 5 GCA § 5230; 2 GAR § 3116. (setting factors to consider such as "appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them" as well as "a satisfactory record of integrity").

38. GDOE has also ignored the mandate to make sure that "Before awarding a contract, the Procurement Officer must be satisfied that the prospective contractor is responsible." 2 GAR § 3116 (b)(4).

39. Guam law mandates that "The Chief Procurement Officer ... shall give notice of the Appeal to the contractor if award has been made or, if no award has been made, to all Interested Parties; shall instruct said parties to communicate directly with the Public Auditor regarding the status of the Appeal, and directly with the procurement officer as allowed by law regarding the



protested procurement action; and shall communicate to the Public Auditor the identities and addresses of said parties." 2 GAR § 12104(c)(2) (emphasis added).

40. Here, GDOE intentionally omitted providing notice to any party other than TFT regarding the appeal. *See*, GDOE Notice of Interested Parties, September 27, 2021.

41. This was in violation of law.

42. GDOE also violated the law by failing to provide clear answers to direct questions posed by bidders, such as whether or not CLB licensing was required. Agencies must provide clear answers to bidder questions, and if answers are unknown, the agencies should be clear about that as well.

43. GDOE issued an IFB that was designated for award to a bidder offering to do contractor work without a valid contractor's license.

44. The Procurement Record confirms that the intended awardee does not comply with these requirements, and the CLB itself has reconfirmed this fact.

45. The IFB does not allow a contractor to simply rely upon an unnamed subcontractor for appropriate licensing. Responsibility and responsiveness determinations are limited to a review of the offeror as held up against the specifications of a procurement.

46. The award to TFT should be cancelled, as TFT does hold the licenses that DOE and TFT itself agrees are needed for performance under the IFB.

47. The Procurement Record also appears to be Materially Incomplete since the Public Auditor cannot determine what criteria or standards that DOE used to establish the licensing requirements for responsive responsible bidder

under this procurement. The record lacks any reference to conscious reflections over what licenses would be required.

48. The procurement record lacks a log of communications regarding efforts DOE may have made to determine whether or not CLB licensing was required once PDS raised the issue with GDOE.

49. Guam law mandates that “each procurement officer shall maintain a complete record of each procurement.” 5 GCA § 5249; *Teleguam Holdings LLC v. Territory of Guam* 5, ¶ 22.

50. The law does not provide an exhaustive list of what a complete record contains, but instead provides a non-exhaustive list of items “the record shall include.” 5 GCA § 5249.

51. The Public Auditor determines that the procurement record must contain, as a material item, records of DOE’s determination of what licensing makes up a responsive bid from a responsible offeror, and records of DOE’s efforts to clarify the question. This information is missing from the procurement record.

52. Therefore, the public auditor finds the procurement record to be materially incomplete.

#### **IV. CONCLUSION**

Based on the foregoing, the Public Auditor makes the following determinations:

1. GDOE Multi Step Invitation for Bid (“IFB”) 026-2021 for Indoor and Outdoor Wireless Local Area Network (“WLAN”) Infrastructure Installation Project issued on April 13, 2021, (the “IFB”) specifies a scope of work that requires

performance by a contractor properly licensed by the Guam Contractors Licensing Board;

2. The IFB, in specifying that an offeror comply with all applicable Guam licensing laws, required that an award can only be made to an offeror with a suitable Guam Contractor's license;

3. The Department of Education violated Guam procurement law by not keeping a procurement record that addressed the requirement that an offeror have a Guam Contractor's license;

4. The Department of Education needed to consciously make a determination on what licenses would be required for performance of the IFB, and include those determinations in the record of this procurement.

5. The Department of Education further violated Guam procurement law by not providing notice to PDS, and thus violating the requirement of "fair and equitable treatment of all persons who deal with the procurement system of this Territory." 5 G.C.A. § 5001(b)(4);

6. Such behavior is also an affront to good practice under the federal procurement regime, which recognizes that unsuccessful offerors should be informed of that status and be provided debriefings so that they obtain the benefit of the stay provision. *See, e.g., Gtt Indus., Inc., B-220824, United States Government Accountability Office* (Nov. 5, 1985); *see also Strategica, Inc., B-227921 United States Government Accountability Office* (Oct. 27, 1987) (noting the failure of a contracting officer to give unsuccessful offerors in small business set-aside procurements pre-award notice of the name and location of the apparent successful offeror);

7. This conduct is part of a pattern of Government procurement behavior undertaken in an attempt to limit the protesting period and avoid the automatic stay. *See, In the Appeal of TLK Marketing Co.. Ltd.*, OPA-PA-16-003, (Decision and Order, June 15, 2016, Page 3);

8. DOE should not provide notices to some offerors and withhold information from others;

9. Technologies for Tomorrow Inc. ("TFT") does not have a valid and suitable Guam Contractor's License for this procurement, and DOE needed to address this fact in the procurement record of how the bid specifications were developed;

10. TFT was not a responsive offeror under the IFB, to the extent that it needed to be properly licensed at the time of bid submission;

11. TFT was not a responsible offeror under the IFB, to the extent that it needed to be properly licensed at the time of bid submission;

12. The Procurement Record is materially incomplete and prevents the Public Auditor from reviewing what justifications, if any, existed to not require offerors to be properly licensed by the CLB at the time of bid submission; and

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13. The award to TFT shall be canceled and DOE shall issue a new bid and properly maintain a complete procurement record, and make appropriate specifications, regarding what specific licenses are to be held by responsible offerors to this procurement, and when those licenses should be obtained or otherwise held.

*Respectfully submitted* this 18<sup>th</sup> day of January, 2022.

**RAZZANO WALSH & TORRES, P.C.**

By:   
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**JOSHUA D. WALSH**  
*Attorneys for Interested Party*  
*Pacific Data Systems, Inc.*