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Appeal Case No. OPA-PA-21-007 - Motion for Summary Judgement

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Wed, Oct 27, 2021 at 4:50 PM

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Hafa Adai Jerrick,

Please see attached.

Confirmation of receipt would be most appreciated.

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Thank you,

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 **G4S Motion for Summary Decision revision 1.pdf**
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6 **OFFICE OF THE PUBLIC AUDITOR**

7 **PROCUREMENT APPEALS**

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

APPEAL CASE NO. OPA-PA-21-007

MOTION FOR SUMMARY DECISION

10 Appellant

11
12
13 COMES NOW G4S Security Systems (Guam) Inc. (hereinafter referred to as “G4S”) files this Motion after
14 pre-hearing conference on October 25, 2021 to request for Summary Decision in favor of G4S in the appeal of G4S
15 Security Systems (Guam) Inc., of GDOE Multi-Step Invitation for Bid (IFB) 026-2021, for Indoor and Outdoor
16 Wireless Local Area Network (WLAN) Infrastructure Installation Project.

17
18 **I. BACKGROUND AND ISSUE SUMMARY**

19 On April 13, 2021, Guam Department of Education (hereafter referred to as “GDOE”) issued its Multi-Step
20 IFB 026-2021 for Indoor and Outdoor Wireless Local Area Network (“WLAN”) Infrastructure Installation Project
21 (hereafter referred to as the “IFB”). On May 28, 2021, GDOE received bids for the IFB from G4S Security Systems
22 (Guam) Inc. (hereinafter referred to as “G4S”) and Technologies for Tomorrow Inc. (hereafter referred to as “TFT”).
23 On July 13, 2021, GDOE announced its award to TFT as the lowest, most responsive and responsible bidder for the
24 IFB. On August 10, 2021, G4S protested the award for TFT based on the grounds that TFT does not have a Guam
25 Contractors License to perform the service for the IFB. On September 3, 2021, GDOE issued its denial of G4S’s
26 protest on the grounds that the IFB, its published terms and conditions and its amendments did not require the
27 submission of a Guam Contractors License in the bid submission. On September 17, 2021, G4S filed an appeal with

1 the Office of Public Accountability (OPA). On October 4, 2021, GDOE filed its Agency Statement and G4S filed
2 Comments on Agency Statement on October 14, 2021.

3 The key issues here are:

- 4 1. Whether TFT is a responsible and responsive bidder as defined in Guam Procurement Law.
- 5 2. Whether awarding the contract to TFT constitutes a violation of Guam Procurement Law.
- 6 3. Whether awarding the contract to TFT protects the best interest of the government and the public.
- 7 4. Whether the OPA has jurisdiction over this appeal.

8 9 **II. TFT IS NEITHER A RESPONSIBLE NOR A RESPONSIVE BIDDER**

10 GDOE intends to award the project to the bidder submitting the lowest, most responsive and responsible
11 priced bid. See IFB 026- 2021, §3.1.3.2. Guam Procurement Law defines a **responsible bidder** as one with the
12 **capability in all respects to perform fully** the contract requirements, and the **integrity and reliability** which will
13 **assure good faith performance**, and a **responsive bidder** is one who has submitted a bid which **conforms in all**
14 **material respects** to the Invitation for Bids. See 5 GCA §§ 5201(f), 5201(g).

15 However, TFT is not a responsible bidder because it does not have the capability in all respective to
16 perform fully the contract requirements and it also lacks the integrity and reliability which will assure good faith
17 performance. GDOE is seeking a vendor that is capable in expanding the Wireless Local Area Network (WLAN)
18 infrastructure at twenty-six (26) elementary schools, eight (8) middle schools and six (6) high schools. See IFB 026-
19 2021, § 2 (2.2). IFB section 2.3 Project Description, the technical specification and scope of services had specific
20 scope(s) of work that makes construction and cabling a requirement and criteria because it is laden with project
21 requirements, statements and descriptions which state that the installation of equipment, conduit and or structured
22 communications cabling and other work are parts of the scope of work. All such activities shall only be undertaken
23 by a contractor who has a valid C-68 Telecommunications Guam Contractors License and a Responsible
24 Management Employee (RME). Although the C-68 Telecommunications Guam Contractors License and qualified
25 RME are not listed in the IFB as a requirement, the IFB section 2.3 Project Description, its technical specification
26 and scope of works are required by Guam laws, i.e. 21 GCA Real Property CH. 70, to have a license for a specialty
27 contractor. The law provides that “*Contractor means any person who undertakes to construct, alter, repair, add to,*
28 *subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other*

1 structure, project development or improvement or do any part thereof, including the erection of scaffolding or other
2 structure of works in connection therewith for another person for a fee. See 21 GCA, Div. 2, CH 70 § 70100 (b)”
3 and “No person within the purview of 21 GCA Real Property CH. 70 shall act, or assume to act, or advertise, as
4 general engineering contractor, general building contractor, or specialty contractor without a license previously
5 obtained under and in compliance with this 21 GCA Real Property CH. 70 and the rules and regulations of the
6 Contractors License Board.” On September 15, 2021, G4S spoke with Guam Contractor License Board and inquired
7 of TFT’s Guam contractor’s license and RME (C-68 Specialty Contractor License), and was informed by the CLB
8 representative that TFT does not have a contractor’s license and RME. G4S searched the Guam Contractors License
9 Board’s website and did not find any license information of TFT. (See Appendix 1 - 2022 License Information as of
10 September 16, 2021). Therefore, TFT is not capable to perform the work in Guam as required by the GDOE bid and
11 in accordance with Guam law as doing so is a violation of the local statute (21 GCA Real Property CH. 70).

12 Therefore, TFT is not the lowest, most responsive and responsible bidder as defined in the Guam Procurement Law.

13 TFT is also not a responsive bidder because it does not conform in all material respects to the IFB. The IFB
14 026- 2021, §3.2.2 provides that “*Bidders should be prepared to promptly provide to GDOE information relating to*
15 *the bidder’s responsibility. Such information may include but is not limited to documentation of financial, personnel,*
16 *and other resources; expertise; or records of performance”*. The information pertaining to expertise that TFT does
17 not have a valid C-68 Telecommunications Guam Contractors License and a Responsible Management Employee
18 (RME) shall be provided to GDOE promptly and such information is very critical in GDOE’s evaluation and
19 decision making. Should GDOE know such license requirement for the scope of works and TFT’s lack of such
20 license, GDOE probably would not choose a vendor without the mandated license. Other than this IFB §3.2.2
21 nonconforming, TFT also does not conform to IFB §3.2.5, 4.1, 4.3 and 4.4, all of which require that the bidder shall
22 procure all permits, certificates and licenses required by law and shall be familiar with and comply with all US and
23 Guam laws which are applicable to this IFB. Furthermore, IFB § 4.4 provides that *preferential selection of a bidder*
24 *licensed to do business on Guam and that maintains an office or other facility on Guam for an award pursuant to*
25 *this IFB*. The technical specifications and scope of services as specified in IFB §2.3 are
26 communications/telecommunications related works, which requires a C-68 specialty license under page 18 of Guam
27 Contractors License Board Rules and Regulations. TFT is not licensed to do such
28 communications/telecommunications business in Guam and should not be a preferred bidder as required in IFB §

1 4.4. Thus based on all aforementioned, TFT is not a responsive bidder because it does not conform in all material
2 respects to the IFB.

3 GDOE contends that Guam Procurement Law states that bids shall be evaluated based on the requirements
4 set forth in the invitation for bids and that no criteria may be used in bid evaluation that are not set forth in the
5 Invitation for Bids. GDOE believes its award of the contract to TFT has nothing wrong because its IFB did not
6 require the submission of a Guam Contractor's license. However, GDOE's IFB has very clear requirement that the
7 contract would be awarded to the lowest, most responsive and responsible priced bid. TFT's bid only meets the
8 lowest price requirement but TFT is neither a responsible nor a responsive bidder as proven above. GDOE
9 overlooked the criteria it made in the IFB and improperly evaluated and awarded the contract based on the single
10 criteria which is the lowest price.

11
12 **III. GDOE VIOLATES 5 GCA §§ 5211(e) BID EVALUATION and 5211(g) AWARD**

13 Bids shall be evaluated based on the requirements set forth in the Invitation for Bids. The Invitation for
14 Bids shall set forth the evaluation criteria to be used. See 5 GCA §5211(e). The contract shall be awarded with
15 reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and
16 criteria set forth in the Invitation for Bids. See 5 GCA §5211(g). GDOE did not use its own criteria set forth in the
17 IFB to evaluate the bids by overlooking the fact that TFT is not a responsible and responsive bidder, which is proven
18 in Part II of this Motion. Therefore, TFT should be disqualified from the bidding process. GDOE violated 5 GCA
19 §5211(g) by not awarding the contract to G4S who submitted the lowest, most responsive and responsible priced
20 bid.

21
22 **IV. AWARDING THE CONTRACT TO TFT DOES NOT PROTECT THE BEST INTEREST**
23 **OF THE GOVERNMENT AND THE PUBLIC**

24 5 GCA §5001 (b) provides that the purposes of Guam Procurement Law are to provide for increased public
25 confidence in the procedures followed in public procurement; to ensure fair and equitable treatment of all persons
26 who deal with the procurement system of this Territory; to provide safeguards for the maintenance of a procurement
27 system of quality and integrity. Assuming TFT ultimately signs contract with GDOE, how can an unlicensed vendor
28 perform a quality job to complete the services and who can ensure the public school teachers, students and visitors

1 enjoying a safe and efficient WLAN infrastructure? If this contract is ultimately awarded to a non-responsible and
2 non-responsive bidder, other bidders will feel unfair treatment. If there were any incident caused by an unlicensed
3 vendor, public confidence in government procurement will be stricken and the quality and integrity our procurement
4 system will be damaged. The Public Auditor shall decide in the best interest of the government. See 5 GCA
5 §5705(c)

6
7 **V. OPA HAS JURISDICTION OVER THIS APPEAL**

8 GDOE contended that G4S failed to provide any legal authority that provides the OPA with jurisdiction to
9 determine TFT's alleged compliance with the Guam Contractors License Board. See GDOE's Agency Statement
10 page 4 line 1. GDOE's such contention was wrong and misinterpreted G4S's allegation. What G4S alleged are TFT
11 is not a responsible and responsive bidder under the definition of Guam Procurement Law and GDOE's award to
12 TFT broke the integrity of the government procurement process and did not protect the best interest of the
13 government and the public. 5 GCA §5703 (a) and (f) provides that the Public Auditor shall have the power to review
14 any matter properly submitted to her or him and the Public Auditor's jurisdiction shall be utilized to promote the
15 integrity of the procurement process and the purposes of 5 GCA Chapter 5. Therefore G4S's appeal definitely falls
16 into the OPA's jurisdiction.

17
18 **VI. CONCLUSION**

19 BASED ON THE FOREGOING, G4S respectfully requests the Public Auditor to render summary decision
20 to cancel the Notice of Award to TFT in accordance with the provisions of the Guam Procurement Law and any
21 other applicable laws and regulations and to advance the position that in the interest of the Government of Guam,
22 the award should be made to G4S as the lowest, most responsive and responsible bidder.

23
24 RESPECTFULLY SUBMITTED ON 27th of October, 2021.

25
26 By: 
27 _____
28 Teresa Sakazaki – General Manager