



Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

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**GDOE Replies to Oppositions re: Appeal Case No. OPA-PA-21-007**

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**Abmer T. Brennan** <atbrennan@gdoe.net>

Wed, Nov 10, 2021 at 4:37 PM

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Cc: Legal Admin <legal-admin@gdoe.net>

Hafa Adai All,

Please see GDOE's Replies to Oppositions re: OPA-PA-21-007. Respectfully requesting for confirmation of receipt and to include [legal-admin@gdoe.net](mailto:legal-admin@gdoe.net) for future correspondence regarding this appeal.

Si Yu'os Ma'ase.

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**3 attachments**

**GDOE Reply to Op Motion to Exclude OPA-PA-21-007 111021.pdf**  
346K



**GDOE Reply to Op Motion to Dismiss Lack of SMJ OPA-PA-21-007 111021.pdf**  
448K



**GDOE Rep to Op re Valid Claim OPA-PA-21-007 111021.pdf**  
282K

1 **GUAM DEPARTMENT OF EDUCATION**

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8 **OFFICE OF THE PUBLIC AUDITOR**  
9 **PROCUREMENT APPEALS**

10 In the Appeal of

11 APPEAL CASE NOS.: OPA-PA-21-007

12 G4S Security Systems (Guam) Inc.,

13 **REPLY TO OPPOSITION TO MOTION TO**  
14 **DISMISS FOR FAILURE TO STATE A**  
15 **VALID CLAIM**

16 Appellant.

17 **I. INTRODUCTION**

18 On April 13, 2021, GDOE issued its Multi-Step IFB 026-2021 for Indoor and Outdoor  
19 Wireless Local Area Network (“WLAN”) Infrastructure Installation Project (hereinafter referred  
20 to as the “IFB”). On May 28, 2021, GDOE received bids for the IFB from G4S Security Systems  
21 (Guam) Inc. (hereafter referred to as “Appellant”) and Technologies for Tomorrow Inc. (hereafter  
22 referred to as “TFT”). On July 13, 2021, GDOE awarded the IFB to TFT as having the lowest,  
23 most responsible and responsive bid for the IFB. On August 10, 2021, Appellant protested the  
24 award made to TFT based on their claim that TFT supposedly does not have a valid Guam  
25 Contractors License to perform service, maintain and/or install structured cabling on Guam. On  
26 September 3, 2021, GDOE issued its denial of Appellant’s protest. On September 20, 2021,  
27 GDOE received the notice of receipt of appeal from the Office of Public Auditor (OPA). The  
28 following is GDOE’s reply to the opposition to GDOE’s motion to dismiss for failure to state a  
valid claim for the OPA to decide.

1           **I. THIS APPEAL FAILS TO STATE A VALID CLAIM BECAUSE GDOE**  
2 **PROPERLY EVALUATED AND AWARDED THE IFB AND GUAM PROCUREMENT**  
3 **LAW DIRECTLY ADDRESSES THE ISSUE BEFORE THE OPA.**

4                   **1. Evaluation and Award**

5           Guam Procurement law states an IFB shall be evaluated based on the requirements set  
6 forth in the IFB, that the IFB shall set forth the evaluation criteria to be used, and that no criteria  
7 may be used in bid evaluation that are not set forth in the IFB. *See* 5 GCA §5211(e). In addition,  
8 Guam Procurement Law further states that the contract shall be awarded to the lowest responsible  
9 bidder whose bid meets the criteria set forth in the IFB. *See* 5 GCA §5211(g). Here, GDOE  
10 evaluated and awarded the IFB pursuant to the terms and conditions published within the IFB in  
11 accordance with Guam Procurement Law. *See* 5 GCA §5211; *see also* Procurement record at  
12 516-521.

13           Appellant and Third Place Bidder Pacific Data Systems, Inc. (PDS) oppose the evaluation  
14 and award because they apparently want the evaluation and award to be made pursuant to extra  
15 terms not published within the IFB (a Guam Contractors License). Guam law does not allow this.  
16 *Id.* As stated above, the evaluation and award shall be made based on the criteria set forth in the  
17 IFB. Review of the Procurement Record clearly shows that Appellant's allegation is not a criteria  
18 set forth in the IFB. *See* Procurement record at 1-252. Therefore based on the above, GDOE  
19 properly evaluated and awarded the IFB because it considered only the criteria set forth in the  
20 IFB, and this matter should be dismissed.

21                   **2. Responsibility and Responsiveness**

22           Guam Procurement Law defines a responsible bidder as a person who has the capability in  
23 all respects to perform fully the contract requirements, and the integrity and reliability which will  
24 assure good faith performance; and a responsive bidder as a person who has submitted a bid  
25 which conforms in all material respects to the IFB. *See* 5 GCA §§5201(f) & (g). Guam  
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1 Procurement Law also states that the IFB shall set forth the requirements and criteria which will  
2 be used to determine the lowest responsive bidder, and no bid shall be evaluated for any  
3 requirement or criterion that is not disclosed in the IFB. *See* 2 GAR Div. 4 §3109(n)(1). Section  
4 3.2 of the IFB states the exact requirements for responsibility and responsiveness, and that the  
5 two will be determined by compliance with the requirements of this IFB. *See* Procurement  
6 Record at 20-21. Pursuant to Guam Procurement law and the terms and conditions of the IFB,  
7 GDOE properly determined bidders' responsibility and responsiveness. *See* 5 GCA §5201; *see*  
8 *also* Procurement record at 516-521.

10 Appellant and PDS are misguided in challenging responsibility and responsiveness by  
11 improperly asserting that GDOE should make a determination based on something **not published**  
12 within the IFB. *See* Procurement Record at 1-252. Appellant's and PDS's claims are clearly not  
13 supported by Guam law. In contrast, Guam law is clear: responsibility and responsiveness are  
14 determined by the terms and conditions of the IFB. *See* 2 GAR Div. 4 §3109(n)(1). Therefore,  
15 pursuant to Guam Procurement Law and the IFB, GDOE properly determined responsibility and  
16 responsiveness, and therefore this Appeal fails to provide a valid claim for the OPA to decide on.<sup>1</sup>  
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**II. CONCLUSION**

For these reasons, GDOE respectfully requests that the OPA dismiss this appeal for failure to state a valid claim.

Respectfully submitted this 10<sup>th</sup> day of November, 2021.

**GUAM DEPARTMENT OF EDUCATION**

By:   
**JAMES L.G. STAKE**  
*Legal Counsel*

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(Footnote continued from previous page)

<sup>1</sup> Guam Procurement Law and the IFB permit for subcontracting and subsequently licenses therein. *See* 5 GCA §5211; *see also* Procurement record at 133. Appellant and PDS fail to acknowledge this, which is fatal to their unsupported claims.