



Jerrick Hernandez <jhernandez@guamopa.com>

Docket No. OPA-PA-21-007

Merlyna W. Smith <mwsmith@bsjmlaw.com>

Fri, Dec 3, 2021 at 4:51 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

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Dear Mr. Hernandez:

Please see attached **Hearing Brief of Technologies for Tomorrow, Inc. and Exhibits A and B** for e-filing in the above-referenced matter. Kindly confirm receipt via return e-mail.

Thank you. Should you have any questions or concerns, please let us know.

Regards,

Merlyna Weilbacher Smith

Secretary to R. Marsil Johnson, Esq.



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13K**HEARING BRIEF - EXHIBITS A AND B.pdf**

861K

**HEARING BRIEF OF TECHNOLOGIES FOR THE FUTURE RE APPEAL OF G4S SECURITY SYSTEMS (GUAM), INC., DOCKET NO. OPA-PA-21-007.pdf**

194K

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9 *Attorneys for Party in Interest*
10 *Technologies for Tomorrow, Inc.*

11
12 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
13 **PROCUREMENT APPEAL**
14

15 In the Appeal of)	Docket No. OPA-PA-21-007
)	
16 G4S Security Systems (Guam), Inc.,)	HEARING BRIEF OF
)	TECHNOLOGIES FOR
17 Appellant.)	TOMORROW, INC.
)	
)	
)	

18 Interested Party **TECHNOLOGIES FOR TOMORROW, INC.** (“TFT”), hereby submits its Trial
19 Brief in the above-captioned Office of Public Accountability Procurement Appeal concerning
20 Guam Department of Education (“GDOE”) Invitation for Bid No. IFB 026-2021 (the “IFB”).

21 **ARGUMENT**

22 **A. THE PROTEST MADE BY G4S IS UNTIMELY AND SO MUST BE DISMISSED**

23 Section 5 G.C.A. § 5425(a) provides that a “protest shall be submitted in writing within
24 fourteen (14) days after such aggrieved person knows or should know of the facts giving rise
25 thereto.” While G4S has couched its protest and appeal as being based in TFT’s alleged lack of
26 responsibility due to its lack of a Contractor’s Licensing Board license, it is more accurately
27 protesting the fact that the IFB did not include such a requirement.

28 TFT first knew or should have known of the facts giving rise to this protest when GDOE
responded to the Pacific Data Systems (PDS) question about whether a C-68 Specialty Contractor

1 license was required by stating that “the project activities does [sic] not include any structural
2 fabrication/construction or structural alteration or repair.” See IFB Amendment No. 4, page 2 of
3 3. Since Amendment 4 was issued on May 18, 2021, G4S had 14 days from that date (June 1,
4 2021) to file a protest on the basis that such a license should be required by law. It did not. Instead,
5 G4S waited until it lost to TFT and then filed its protest on July 29, 2021, nearly a month later.
6

7 It was unnecessary for G4S to wait until it had lost the award to TFT to file its protest. As
8 noted by the Supreme Court of Guam, “[c]ourts have consistently rejected [the] argument that a
9 party becomes ‘aggrieved’ for purposes of a procurement protest ‘only when it loses the potential
10 business, that is, when a bidder learns that it was not awarded a contract.’” *DFS Guam L.P. v.*
11 *A.B. Won Pat Int’l Airport Auth.*, 2020 Guam 20 at ¶ 85 (citing *In re Acme Am. Refrigeration, Inc.*
12 *v. N.Y.C. Dep’t of Educ.*, 933 N.Y.S.2d 509, 513 (Sup. Ct. 2011); see also *Legal Aid Soc’y v. City*
13 *of New York*, 662 N.Y.S.2d 303, 306 (App. Div. 1997); *Gateway Health Plan, Inc. v. Dep’t of*
14 *Human Servs.*, 172 A.3d 700, 705 (Pa. Commw. Ct. 2017) (collecting cases).
15

16 It was incumbent upon G4S to file a timely protest within 14 days of the date it learned that
17 GDOE did not believe the licensing requirement applied to the IFB. Since G4S waited until well
18 after 14 days had passed, its protest is untimely and should be dismissed by the OPA.

19 **B. THE CONTRACT DOES NOT REQUIRE A SPECIALTY CONTRACTOR LICENSE BECAUSE**
20 **THE SCOPE OF WORK DOES NOT INCLUDE CONSTRUCTION WORK**

21 Guam’s contractors law defines a “Specialty Contractor” as “a contractor whose operations
22 as such are the performance of construction work requiring special skill **and** whose principal
23 contracting business involves the use of specialized building trades or crafts.” 21 G.C.A. §
24 70106(d) (emphasis added). This is a “conjunctive” rule, because the requirements for a “Specialty
25 Contractor” are joined with an “and.” This means that to be a Specialty Contractor, a contractor
26 must meet all qualifications included in 21 G.C.A. § 70106(d).
27
28

1 Thus, a company must perform **construction work** requiring special skill **and** its principal
2 contracting business must involve the use of specialized building trades and crafts for it to be a
3 Specialty Contractor under Guam law. If one of those factors is not met, then a company is not a
4 Specialty Contractor and it does not need to obtain a Specialty Contractor license from the
5 Contractors Licensing Board.

6
7 Oddly, the term “construction” is not defined in the Guam’s contractors law, but it is
8 defined in Guam’s procurement law. Construction is directly tied to work done to build, alter,
9 repair, improve, or demolish structures, buildings, real property, and improvements thereon:

10 (g) Construction means the process of building, altering, repairing, improving, or
11 demolishing any public structure or building, or other public improvements of any
12 kind to any public real property. It does not include the routine operation, routine
13 repair, or routine maintenance of existing structures, buildings, or real property.

14 5 G.C.A. § 5030(d).

15 Notably, the term “construction” only appears once in the IFB’s main document. It is used
16 with reference to the “material, construction, workmanship, manufacturing, or performance” of
17 goods that do not conform to the specification of the IFB, in section 3.2.10, titled “Inspection and
18 Acceptance of Goods.” It is never once used in the sense contemplated by 6 G.C.A. § 5030(d).
19 This is because the IFB is set to procure goods (in the form of routers) and services to install,
20 operate, and maintain those routers, which are goods, not structures or permanent improvements
21 to real property.

22 Furthermore, GDOE specifically addressed this issue when it answered Question 8, posed
23 by PDS, in Amendment No. 4 to the IFB. PDS asked if bidders were required to hold a CLB C-
24 68 Specialty Contractor license. Operating, with the understanding that performance of
25 construction work is a requirement to obtain a Specialty Contractor CLB license, which would
26 involve the performance of tasks such as structural alteration or repair work (as provided in the
27 definition of construction quoted above), GDOE responded that:
28

1 The project includes the furnishing and installation of network equipment to expand
2 the wireless internet coverage in the public schools. ... The project activities **does**
not include any structural fabrication/construction or structural alteration or repair.

3 *See IFB Amendment No. 4, page 2 of 3 (emphasis added).*

4 It is also important to note that PDS's question suggested that "similar projects" at GDOE
5 schools had required bidders to possess a C-15 Specialty Contractor license. The "similar project"
6 example provided by PDS was GDOE IFB 006-2021 (Bell and Intercom Installation for Finegayan
7 Elementary School and Upi Elementary School), which was a construction project managed by
8 GDOE for the Army Corps of Engineers and which involved specifications drafted by Engineering
9 Partners Inc., a Hawaii engineering firm. The Electrical Work Specification Sheet¹ alone specified
10 "demolition work" in its description of work section. Given that demolition is included in the
11 definition of "construction" found in 5 G.C.A. § 5030(d), GDOE IFB 006-2021 is clearly a
12 construction project, whereas the IFB at issue here is not.

13
14
15 A responsible bidder is defined as "a person who has the capability in all respects to
16 perform fully the contract requirements, and the integrity and reliability which will assure good
17 faith performance." 5 G.C.A. § 5201(f). Since the IFB does not involve any construction work,
18 the winning bidder does not need a Specialty Contractor license and TFT was properly deemed
19 responsible even though it does not have a Specialty Contractor license.

20 **C. TFT HAS A CURRENT GUAM BUSINESS LICENSE**

21 TFT provided a copy of its Guam business license with its bid package on May 28, 2021.
22 The copy showed that the license had expired on April 30, 2021. However, TFT provided an
23 explanation that a renewal application was sent in but the renewal license had not yet been received
24 from Guam due to COVID delays and that a current license could be provided upon award of
25 contract.
26

27
28 ¹ The Electrical Work Specification Sheet is available at this link: <https://bit.ly/IFB-006-2021-Exhibits>,
which was included in the GDOE IFB 006-2021 project description.

1 TFT's explanation should be sufficient because the IFB did not require that each bidder
2 provide proof of a current Guam business license at the time of bid submittal. The IFB only stated
3 that "The Bidder shall, at its own expense, procure all permits, certificates, and licenses and give
4 all notices and necessary reports required by law for this IFB. Failure to maintain required licenses
5 or permits shall be grounds for immediate termination of the contract." See IFB, page 21 of 32
6 (Section 3.2.5). No specified time was included for when such licenses would need to be obtained.
7
8 It would also be improper to require that a bidder have an existing Guam business license a
9 condition to bid, because the successful bidder would not need to perform under the contract until
10 after it is awarded, negotiated and executed.

11 More importantly, requiring that bidders be licensed at the time of bid submission acts as
12 an unreasonable limitation on competition and violates the principals and policies of Guam's
13 procurement law. The OPA has previously held that an IFB's requirement that bidders submit
14 with their bids insurance policies naming GPA has an additional insured and providing waivers of
15 subrogation to GPA violates 5 G.C.A. § 5001(b)(6) and 2 G.A.R. Div. 5, Chap. 1. § 1102(5)²
16 because it does not foster broad-based competition; it favors bidders with existing contracts and
17 prejudices those who do not yet have them. See *In re Appeal of IP&E Holdings, L.L.C.*, OPA-PA-
18 15-006 (Sept. 18, 2015) (Decision). The same reasoning applies to requiring a bidder to provide
19 proof of license at the time of bid submission or opening. To do so would mean that parties who
20 have never done business in Guam and who may have never contemplated doing business in Guam
21 but for the invitation for bid would need to meet all the requirements to obtain a Guam business
22 license simply to bid, as opposed to perform, on a government of Guam contract. Such a
23
24

25
26 ² Pursuant to 5 G.C.A. § 5001(a) and (b)(6), "(a) This Chapter shall be construed and applied to promote its
27 underlying purposes and policies. (b) Purposes and Policies. The underlying purposes and policies of this Chapter
28 are: ... (6) to foster effective broad-based competition within the free enterprise system". Pursuant to 2 G.A.R. Div.
5, Chap. 1. § 1102(5), "It is the policy of this territory to promote economy, efficiency, and effectiveness in the
procurement of supplies, services and construction by: ... (5) fostering effective broad-based competition within the
free enterprise system".

1 requirement is a needless administrative hurdle that could only serve to stifle competition on
2 government of Guam contracts, depriving the government of Guam of the benefits of that broad-
3 based competition.

4 In any case, TFT has a current Guam business license. *See* Exhibit “A”.

5 **D. TFT EMPLOYS A SUBCONTRACTOR WHO HOLDS A C-15 SPECIALTY CONTRACTORS**
6 **LICENSE**

7 Even if Specialty Contractor work were required to be performed, which TFT does not
8 conceded, the subcontractor TFT works with on Guam (L.P. Ganacias Enterprises Inc. dba
9 RadioCom) holds a C-15 Specialty Contractor license and so does its two Responsible
10 Management Employees. The two Responsible Management Employees are Danilo M. Ganacias
11 and Leon P. Ganacias. The CLB licenses for Danilo, Leon, and RadioCom all expire on June 30,
12 2022. *See* Exhibit “A”.

14 Again, TFT is not conceding that the IFB scope of work involves any Specialty Contractor
15 work because no construction work is required, the work involved (if construction work were
16 required) would most closely relate to the work described in a C-15 license because the contract
17 involves the use of electronic equipment and controls related to inter communication in that
18 WLAN equipment is to connect school computers. *See* 25 G.A.R. § 12106(a)(4)(C-15).

20 To this end, nothing in the Guam procurement law prohibits the use of separately licensed
21 specialty subcontractors nor requires that the winning bidder hold all the licenses that each of its
22 specialty subcontractors holds. Furthermore, Section XIII of the draft contract provided with the
23 IFB includes a section on “Assignment/Subcontractors”, which describes the limitations on using
24 subcontractors. *See* IFB Draft Agreement (page 7 of 14). Those limitations only require that the
25 prior, express written consent of GDOE be obtained and that any subcontractors will be subject to
26 all provisions of the contract. That would include Section XIX, which the contractor represents
27

1 and warrants that it is fully licensed to do business in Guam and render the services required by
2 the contract. *See* IFB Draft Agreement (page 8 of 14).

3 **CONCLUSION**

4 Based on the foregoing, TFT respectfully requests that the Public Auditor dismiss the
5 Procurement Appeal filed by G4S because it is untimely and because no construction work is
6 contemplated by the IFB, negating the need for a CLB Specialty Contractor license. TFT further
7 asks that the Public Auditor uphold GDOE's determination that TFT is the lowest responsible
8 bidder whose bid meets the requirements and criteria set forth in the IFB.
9

10 **DATED** this 3rd day of December, 2021.

11 **BLAIR STERLING JOHNSON & MARTINEZ**
12 A PROFESSIONAL CORPORATION

13 BY: 

14 **R. MARSIL JOHNSON**
15 *Attorneys for Party in Interest*
Technologies for Tomorrow, Inc.

16 U68V76760-01
17 G:\PLD\RMJ\273-HEARING BRIEF RE TFT APPEAL OF G4S,
18 OPA-PA-21-007.DOCX

Exhibit “A”



Display Business License

[E-Home](#)

Print Clearance Sheet

License Number	30201200556001
Category Code	30 Retail
Type of License	SALE OF COMPUTER HARDWARE & SOFTWARE (ONLY ON SPECIAL ORDERS/NO STORAGE)
GRT Account	201200556
B/L Serial Number	2207504
Name Issued To	TECHNOLOGIES FOR TOMORROW, INC.
DBA Name	TECHNOLOGIES FOR TOMORROW, INC.
EIN	593263930
SSN	
B/L Expiration Date	Apr 30, 2022
Firm Type	4Foreign corporation
Business Location	LOT 10064-5-5 #166 CHALAN FANDANGO DEDEDO GUAM
Address Line 1	1106 N. 9TH AVENUE
Address Line 2	
Address Line 3	PENSACOLA
Zip Code	32501
Home Phone	3938313
Business Phone	4785222

New/Renewal Clearances	Cleared	Cleared By	Clearance Date
A/R			
GRT			
SWICA			
Income Tax	Y	TAPB85	Jun 02, 2021
W-1			
ISB			
B/L Branch			
B/L Annual Report			

Done

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[Travel.state.gov](#)

2022

CONTRACTORS LICENSE

LOU LEON GUERRERO
Governor of Guam

JOSH TENORIO
Lt. Governor of Guam

Pursuant to the provisions of Chapter VII Title XI of the Government of Guam and the Rules and Regulations of the Contractors License Board, the Executive Director of Contractors hereby issues this license to:

Danilo M. Ganacias

RME For: L.P. Ganacias Enterprises Inc. dba: RadioCom

To engage in the business or act in the capacity of a contractor in the following classifications

C15

This license is the property of the Executive Director of Contractors, not transferable, and shall be returned to the Executive Director upon demand when suspended, revoked, or invalidated for any reason. It becomes void if not renewed on or before the expiration date.

Signature of RME
RME # 7580

Signature of LICENSEE
License #

GRT #

Issued: June 30, 2021

Certificate # R-0621-0972

Expires: June 30, 2022

JAMES M. CASALLO
CLB BOARD CHAIRMAN



CECIL "BUDDY" L. ORSINI
EXECUTIVE DIRECTOR



2022

CONTRACTORS' LICENSE

LOU LEON GUERRERO
Governor of Guam

JOSH TENORIO
Lt. Governor of Guam

Pursuant to the provisions of Chapter VII Title XI of the Government of Guam and the Rules and Regulations of the Contractors License Board, the Executive Director of Contractors hereby issues this license to:

Leon P. Ganacias

RME For: L.P. Ganacias Enterprises Inc. dba: RadioCom

To engage in the business or act in the capacity of a contractor in the following classifications

C15

This license is the property of the Executive Director of Contractors, not transferable, and shall be returned to the Executive Director upon demand when suspended, revoked, or invalidated for any reason. It becomes void if not renewed on or before the expiration date.

Signature of RME
RME # 7582

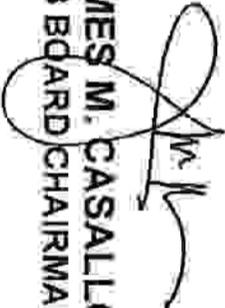
Signature of LICENSEE
License #

GRT #

Certificate # R-0621-0973

Issued: June 30, 2021

Expires: June 30, 2022


JAMES M. CASALLO
CLB BOARD CHAIRMAN




CECIL "BUDDY" L. ORSINI
EXECUTIVE DIRECTOR



2022

CONTRACTORS LICENSE

LOU LEON GUERRERO
Governor of Guam

JOSH TENORIO
Lt. Governor of Guam

Pursuant to the provisions of Chapter VII Title XI of the Government of Guam and the Rules and Regulations of the Contractors License Board, the Executive Director of Contractors hereby issues this license to:

L.P. Ganacias Enterprises Inc.
dba: RadioCom

To engage in the business or act in the capacity of a contractor in the following classifications

C15

This license is the property of the Executive Director of Contractors, not transferable, and shall be returned to the Executive Director upon demand when suspended, revoked, or invalidated for any reason. It becomes void if not renewed on or before the expiration date.

Signature of RIME
RIME #

Signature of LICENSEE
License # 7580

GRT # 901800

Certificate # C-0621-0971

Issued: June 30, 2021

Expires: June 30, 2022

JAMES M. CASALLO
CLB BOARD CHAIRMAN



CECIL "BUDDY" L. ORSINI
EXECUTIVE DIRECTOR

