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**In the Appeal of G4S Security Systems (Guam), Inc.; Appeal No. OPA-PA-21-007**

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Tammy Reyes &lt;treyes@calvofisher.com&gt;

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Dear Mr. Hernandez,

Please see attached submission of ***Appellant G4S Security Systems (Guam), Inc.'s Hearing Brief*** to be filed in the above-referenced action. Thank you.

Regards,

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**Appellant G4S's Hearing Brief.pdf**

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10 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**  
11 **PROCUREMENT APPEALS**

12 In the Appeal of

13 G4S Security Systems (Guam), Inc.,

14 Appellant.

15 **Appeal No. OPA-PA-21-007**

16 **APPELLANT G4S SECURITY SYSTEMS**  
17 **(GUAM), INC.'S HEARING BRIEF**

1           **G4S SECURITY SYSTEMS (GUAM), INC.** (“Appellant” or “G4S”), submits this  
2 Hearing Brief summarizing its arguments on contested issues.

3 **I. BACKGROUND**

4           On April 13, 2021, Guam Department of Education (“GDOE”) issued its Multi-Step IFB  
5 026-2021 for Indoor and Outdoor Wireless Local Area Network (“WLAN”) Infrastructure  
6 Installation Project (the “IFB”). On May 28, 2021, GDOE received bids for the IFB from G4S  
7 and Technologies for Tomorrow Inc. (“TFT”), as well as interested party Pacific Data Systems,  
8 Inc. (“PDS”). On July 13, 2021, GDOE announced its award to TFT as the lowest, and  
9 purportedly, most responsive and responsible bidder for the IFB. G4S was the second lowest,  
10 responsive and responsible bidder. (*See* Appellant G4S Security Systems (Guam), Inc.’s Exhibit  
11 List (“Appellant Ex.”), filed November 24, 2021, Ex. 1 at Tab 5 at G545-548.) The Procurement  
12 Record for the IFB has been identified as Appellant’s Exhibit 1.

13           G4S submitted a Sunshine Act Request to GDOE on July 20, 2021 requesting copies of  
14 “all award notice(s), award(s), contract(s), purchase order(s), Responsible Management Employee  
15 (RME), a copy of Technologies of Tomorrow Contractors License and bid packet submittal  
16 pertaining to Guam Department of Education Multi-Step Invitation For Bid No. 026-21.”  
17 (Appellant Ex. 2.) GDOE responded to G4S’s Sunshine Act Request on July 27, 2021 and  
18 provided copies of a Memo to File regarding Proprietary Data, the Technical Award to TFT,  
19 TFT’s Price Bid and TFT’s Unpriced Technical Offer on July 28, 2021. (*Id.*, Ex. 3.) G4S’s  
20 Sunshine Act request and GDOE’s written response have been identified as Appellant’s Exhibits  
21 2 and 3. The documents provided by GDOE indicated that TFT did not provide proof of a valid  
22 Contractors License or a valid C-68 Specialty License from the Guam Contractors License Board  
23 (“GCLB”) in responding to the IFB.

24           G4S timely protested the award to TFT on July 29, 2021 on the basis that TFT does not  
25 possess and has not submitted evidence of a valid Guam Contractors License and a valid C68  
26 Specialty License to perform the work dictated by the IFB. (*Id.*, Ex. 1, Tab 7 at G554.) GDOE  
27 denied G4S’s protest on September 3, 2021 on the basis that, *inter alia*, “the IFB and its published  
28 terms and conditions did not require the submission of a Guam Contractors License in the bid

1 submission.” (Appellant Ex. 1, Tab 8 at G555.) G4S appealed GDOE’s denial to the Office of  
2 Public Accountability on September 17, 2021. (*Id.*, Ex. 5.)

3 On September 17, 2021, G4S submitted a Consumer Complaint to the GCLB on that  
4 ground that GDOE provided notice of intent to award TFT the work under the IFB even though  
5 neither TFT nor any of its listed partners appear to hold a valid Contractors License from the  
6 GCLB. (*Id.*, Ex. 6.) On November 1, 2021, the GCLB issued its Findings and Decisions on G4S’s  
7 Consumer Complaint. The GCLB found that TFT does not hold a Contractors License on Guam  
8 and verified with Guam Revenue and Taxation office that TFT only holds a business license for  
9 the retail sale of computer hardware and software. (*Id.*, Ex. 7.) The GCLB also stated that it will  
10 find TFT in violation of 21 GCA § 70108(a) providing, “No person within the purview of this  
11 Chapter shall act, or assume to act, or advertise, as a general engineering contractor, a general  
12 building contractor or a specialty contractor without a license previously obtained under and in  
13 compliance with this Chapter and the rules and regulations of the Contractors License Board  
14 (CLB).” (*Id.* at p. 2.) G4S’s Consumer Complaint to the GCLB and GCLB’s Findings and  
15 Decisions in response thereto have been identified as Appellant’s Exhibits 6 and 7.

## 16 **II. DISPUTED ISSUES**

17 As set forth in G4S’s List of Issues, the issues that require evidence or argument to be  
18 presented at hearing include:

- 19 1. Whether it is necessary to obtain a Contractors License and C68 Specialty License from  
20 the Guam Contractors License Board (“GCLB”) to perform the work required under  
21 Guam Department of Education (“GDOE”) Invitation for Bid 026-2021 – Indoor and  
Outdoor Wireless Local Area (“WLAN”) Infrastructure Installation Project (the “IFB”).
- 22 2. Whether the terms of the IFB, explicitly or implicitly, required bidders to hold a valid  
23 Contractors License and C68 Specialty License, or any other specialty licenses, from the  
GCLB.
- 24 3. Whether GDOE properly considered Technologies for Tomorrow Inc. (“TFT”) a  
25 responsible and responsive bidder on the IFB despite TFT not holding certain licenses  
26 necessary to perform the work under the IFB, including but not limited to, a valid  
27 Contractors License or C68 Specialty License from the GCLB or a valid business license  
28 from the Department of Revenue and Taxation.

1 At hearing, G4S will conclusively demonstrate through argument and evidence that a  
2 contractor's license and C-68 Specialty License from the GCLB is required to perform the work  
3 called for under the IFB and that the terms and conditions of the IFB required bidders to hold a  
4 valid Contractors License and C-68 Specialty License from the GCLB. Based on this showing,  
5 G4S will also demonstrate that GDOE improperly denied G4S's protest and found that TFT was a  
6 responsible bidder and TFT cannot now be considered a responsible bidder after the fact by  
7 applying for the necessary licenses. As summarized below, these issues are primarily legal issues  
8 involving the interpretation and application of Guam laws as well as interpretation of the IFB. As  
9 such, only limited, if any, factual testimony is necessary.

### 10 **III. SUMMARY OF ARGUMENTS**

#### 11 **a. A Contractors License and C-68 Specialty License from the GCLB is required** 12 **to Perform the Work called for under the IFB**

13 Under Title 21, Chapter 70 of the Guam Code Annotated (the "Guam Contractors Code"),  
14 which governs the licensing and operation of contractors on Guam, "Contractor" is defined as  
15 "any person who undertakes to construct, alter, repair, add to, subtract from, improve, move,  
16 wreck *or* demolish any building, highway, road, railroad, excavation *or* other structure, project  
17 development or improvement or do any part thereof, including the erection of scaffolding *or* other  
18 structure of works in connection therewith for another person for a fee." 21 GCA § 70100(b).

19 **Classifications.** The Guam Contractors Code and GCLB's Rules and Regulations provide  
20 for three broad classifications of licenses, each with their own sub-classifications – General  
21 Engineering Contractor ("A" License); General Building Contractor ("B" License) and; Specialty  
22 Contractor ("C" License). (Appellant Ex. 8 [GCLB Rules and Reg. § 6.1].) GCLB's Rules and  
23 Regulations have been identified as Appellant's Exhibit 8. "A *General Building Contractor* is a  
24 contractor whose principal contracting business is in connection with any structure built, being  
25 built *or* to be built, for the support, shelter and enclosure of persons, animals, chattels *or* movable  
26 property of any kind, requiring in its construction the use of more than two (2) unrelated building  
27 trades *or* crafts, *or* to do *or* superintend the whole *or* any part thereof." 21 GCA § 70106(c). "A  
28 *Specialty Contractor* is a contractor whose operations as such are the performance of construction

1 work requiring special skill and whose principal contracting business involves the use of  
2 specialized building trades or crafts.” 21 GCA § 70106(d).

3 In turn, the Specialty Contractor, “C” License classification has several sub-classifications  
4 including C-68 which covers Communications/Telecommunications Contractors. (Appellant  
5 Ex. 8 [GCLB Rules and Reg. § 6.1(D)].) As defined in the Rules and Regulations, “A  
6 Communications/ Telecommunications Contractor installs, services, repairs and maintains all  
7 types of communication. These systems include, but are not limited to telephone systems, sound  
8 systems, cable television systems, closed-circuit video systems, satellite dish antennas, computer  
9 repair, computer networking and data systems. Including the associated cabling, wiring, or fiber  
10 optics.” *Id.*

11 In addition to holding a valid license to perform specific contracting work, a licensee must  
12 also employ a Responsible Management Employee (“RME”) who is “the individual responsible  
13 for the direct management of the contracting business of the licensee.” 21 GCA § 70100(g). An  
14 RME “must be licensed [and t]he Corporation, Partnership or Joint Venture which employs him  
15 must be also licensed as a contractor.” (Appellant Ex. 8 [GCLB Rules and Reg. § 3.1].)  
16 Additionally, among other requirements, the RME must be a “bona fide employee principally  
17 employed by the licensee” and “[i]n residence in the Territory of Guam during the period in  
18 which the license is in effect or during the period a project is under construction.” (*Id.* § 2.2(A),  
19 (E)); *see also* 21 GCA §70106(e).

20 ***Scope of Work under the IFB.*** Here, the evidence that is already before the OPA and that  
21 G4S will present at the hearing will demonstrate that the work called for under the IFB requires  
22 that the party performing the work have a valid Contractors License and C-68 Specialty License  
23 to perform the work called for under the IFB.

24 In setting forth the purpose of the work at issue, the IFB states:

25 [GDOE] is seeking a vendor that is capable in expanding the Wireless Local  
26 Area Network (WLAN) infrastructure at twenty-six (26) elementary schools,  
27 eight (8) middle schools and six (6) high schools.  
28

1 The WLAN installation to expand WLAN infrastructure at forty (40) GDOE's  
2 public school [sic] will primarily consist of: a) **furnish and install** Indoor and  
3 **furnish and install** required data cables, patch cable and conduit; c) test and  
4 validate WAPs; and d) furnish all supplies, materials and labor required to  
complete the installation for a turn-key solution.

5 (Appellant Ex. 1 at Tab 1 [IFB § 2.2] at G004) (emphasis added). The IFB then provides  
6 descriptions of the technical specifications and scope of services for each component of the work  
7 which includes the installation of numerous cables and conduits including in walls and ceilings,  
8 configuration of wireless networks, and mounting of numerous wireless access points. (*See*  
9 *generally, Id.* [IFB § 2.3].)

10 Accordingly, because the work called for under the IFB involves the installation of  
11 computer networking system and the use of trades on a built structure, G4S will demonstrate that  
12 a C-68 Specialty License and Contractors License is required to perform the work. At the hearing,  
13 G4S Operations Manager and RME Eric Roberto and G4S Sales Director Greg Duenas will be  
14 prepared to testify as to these requirements if necessary.

15 **b. The Terms and Conditions of the IFB Required Bidders to Hold a Valid**  
16 **Contractors License and C-68 Specialty License from the GCLB**

17 GDOE denied G4S's protest on the basis that, *inter alia*, "the IFB and its published terms  
18 and conditions did not require the submission of a Guam Contractors License in the bid  
19 submission." (*Id.*, Tab 8 at G555.) However, the evidence and arguments that are already before  
20 the OPA and that G4S will present at the hearing demonstrate that even if the IFB's terms and  
21 conditions do not explicitly call for submission of specific licenses, they clearly required bidders  
22 to have the licenses necessary to perform the work and be awarded the bid:

- 23 • Section 3.2.5. Special Permits and Licenses - "The Bidder shall, at its own  
24 expense, procure all permits, certificates, and licenses and give all notices and  
25 necessary reports required by law for this IFB. Failure to maintain required  
licenses shall be grounds for immediate termination of the contract." (Appellant  
26 Ex. 1, Tab 1 at G021.)
- 27 • Section 4.3. Laws to be Observed - "The Bidder should be familiar with federal  
28 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. No misunderstanding

1 or ignorance on the part of the Bidder will, in any way, serve to modify the  
2 provision of the contract.” (Appellant Ex. 1, Tab 1 at G024.)

- 3 • Section 4.4. License to Conduct Business on Guam; Policy of Local Procurement -  
4 “Bidders providing supplies or services pursuant to this IFB are subject to  
licensure requirements in accordance with 5 GCA § 5008.” (*Id.*)

5 Likewise, the Sample Contract attached to the IFB, is unequivocal that the bidder awarded  
6 the contract must be licensed to perform the work required and must disclose anything affecting  
7 its ability to perform the work to GDOE:

- 8 • Section XIX. Compliance with Laws. A. In General - “The Contractor shall  
9 comply with all U.S. and Guam laws, statutes, regulations and ordinances  
10 applicable to this Agreement. The Contractor represents and warrants that it is  
fully licensed to do business in Guam to render the services to be provided herein.”  
11 (*Id.*, Tab 9 at G563.)
- 12 • Section XXV. Disclosure - “The Contractor hereby represents that it has disclosed  
13 to GDOE all matters regarding Contractor which if not disclosed to GDOE would  
materially affect GDOE’s decision to enter into this Agreement with Contractor.”  
14 (*Id.*, Tab 9 at G567.)

15 Finally, in responding to questions from PDS incorporated into Amendment 4 to the IFB,  
16 GDOE took the position that a C-68 Specialty License was required:

17 8. Given the scope of work to be performed by the Bidder at each of the  
18 GDOE school sites, GDOE Bidder requirements for similar projects  
19 (example: GDOE IFB-006-2021), and applicable Guam law related to  
20 Contractor’s Licensing, please confirm the requirement for the Bidder to  
21 have a Guam Contractor’s license with a telecommunications specialty (C-  
68) and for evidence of this license to be provided with the bidder’s  
22 submission.

23 ***GDOE Response: The project includes the furnishing and installation of***  
24 ***network equipment to expand the wireless internet coverage in the***  
25 ***public schools. This project is very similar to previous awarded wireless***  
***expansion projects in the public schools. The project activities does [sic]***  
***not include any structural fabrication/construction or structural***  
***alteration or repair.***

26 ***Bidders are responsible to be informed and knowledgeable of any***  
27 ***regulatory requirements for this project. Bidders should be guided by***  
28 ***any regulatory requirements issued from the federal and/or local***  
***governing entity.***

1 (Appellant Ex. 1, Tab 1 at G245) (emphasis added). None of this can be disputed by GDOE.  
2 Accordingly, based on these provisions, GDOE's grounds for denying G4S's protest are meritless  
3 and disingenuous. While the IFB does not explicitly state that the submission of a physical copy  
4 of licenses is required, the IFB makes clear that a Contractors License from the GCLB is  
5 necessary to bid on and perform the work that GDOE was to contract for. At the hearing, G4S  
6 anticipates that GDOE Data Processing Manager and Evaluator Vincente Dela Cruz and GDOE  
7 Supply Management Administrator Carmen T. Charfauros will be able to testify to these  
8 provisions of the IFB if necessary.

9 **c. GDOE Improperly Determined that TFT was a Responsible Bidder**

10 Again, GDOE's primary basis for denying G4S's protest, as explained in its agency  
11 statement, is its assertion that that the IFB did not require the submission of a Guam Contractor's  
12 license by its published terms and that no criteria may be used in bid evaluation that are not set  
13 forth in the IFB. Therefore, GDOE has asserted and likely will assert at the hearing that it  
14 properly awarded the award to TFT despite TFT not having the necessary licenses to perform the  
15 work. As set forth above, while not explicitly calling for submission of specific licenses, G4S has  
16 already presented and will present evidence and arguments at the hearing that the terms of the IFB  
17 clearly required bidders to have the licenses necessary to perform the work. However, even if  
18 GDOE's reasoning were accurate, it entirely misses the point of G4S's protest – that TFT was not  
19 a *responsible* bidder under the terms of the IFB and Guam's Procurement Law.

20 **Responsibility vs. Responsiveness.** Specifically, GDOE fails to appreciate that there is a  
21 difference, indeed a legal distinction, between whether a *bidder is responsible* and whether a *bid*  
22 *is responsive*. Responsibility goes to the personal quality of the bidder while responsiveness goes  
23 to the elements of a bid in comparison to the published terms of the solicitation. *See Great W.*  
24 *Contractors, Inc. v. Irvine Unified Sch. Dist.*, 187 Cal. App. 4th 1425, 1450-57, *as modified* (Sept.  
25 30, 2010), *opinion supplemented on denial of reh'g*, No. G041688, 2010 WL 3789323 (Cal. Ct.  
26 App. Sept. 30, 2010) (examining the difference between responsibility and responsiveness). This  
27 distinction is set forth in both the IFB and the Procurement Law.  
28

1 Guam's Procurement Law defines a "Responsible Bidder" as "a person who has the  
2 capability in all respects to perform fully the contract requirements, and the integrity and  
3 reliability which will assure good faith performance." 5 GCA § 5201(f). In contrast, "Responsive  
4 Bidder" is defined as "a person who has submitted a bid which conforms in all material respects  
5 to the Invitation for Bids." 5 GCA § 5201(g). This distinction between responsibility and  
6 responsiveness is also drawn in the award provision of the Procurement Law which states, "The  
7 contract shall be awarded with reasonable promptness by written notice to the lowest *responsible*  
8 *bidder* whose bid *meets the requirements and criteria set forth in the Invitation for Bids ...*"  
9 5 GCA § 5211(g) (emphasis added).

10 In accord with the Procurement Law, the IFB provides that "Responsibility of a bidder  
11 will be determined in accordance with 2 GAR Div. 4 §3116. Bidders should be prepared to  
12 promptly provide GDOE information relating to bidder's responsibility." (Appellant Ex. 1, Tab 1  
13 [IFB § 3.2.2] at G021.) 2 GAR Div. 4 §3116 in turn provides factors to be considered in  
14 determining whether the standard has been met including whether a bidder has:

- 15 (i) available the appropriate financial, material, equipment, facility, and personnel  
16 resources and expertise, or the ability to obtain them, necessary to indicate its  
17 capability to meet all contractual requirements;
- 18 (ii) a satisfactory record of performance;
- 19 (iii) a satisfactory record of integrity;
- 20 (iv) *qualified legally to contract with the territory*; and
- 21 (v) *supplied all necessary information in connection with the inquiry*  
22 *concerning responsibility.*

23 2 GAR Div. 4 §3116(b)(2)(A) (emphasis added). As such, the IFB recognizes that the  
24 determination of responsibility goes beyond the terms of the IFB to examine a bidder's character,  
25 quality and capability. In contrast, the IFB provides, "Pursuant to 5 GCA §5201(g),  
26 responsiveness of a bidder will be determined by compliance with the requirements of this IFB."  
27 (Appellant Ex. 1, Tab 1 [IFB § 3.2.2] at G021.) Accordingly, contrary to GDOE's assertions,  
28 determination of a bidder's responsibility is not tied to the published terms of the solicitation.

1           ***TFT should not have been considered a Responsible Bidder.*** Under the Guam  
2 Contractors Code, no person “shall act, or assume to act, or advertise, as a general engineering  
3 contractor, a general building contractor or a specialty contractor ***without a license previously***  
4 ***obtained*** under and in compliance with this Chapter and the rules and regulations of the  
5 Contractors License Board (CLB).” 21 GCA § 70108(a) (emphasis added). Similarly, Guam’s  
6 Consumer Protection Act prohibits false, misleading, or deceptive acts or practices including  
7 “[k]nowingly selling or ***offering to sell*** goods or services which the seller thereof ***is not licensed***  
8 ***to sell*** or offer for sale.” 5 GCA § 32201(b)(22) (emphasis added).

9           Here, as set forth above, the evidence that has been presented and will be presented  
10 demonstrates that GCLB found that as of November 1, 2021, TFT did not hold a contractors  
11 license on Guam and verified with the Guam Revenue and Taxation office that TFT is only  
12 licensed as a retail operator for the sale of computer hardware and software. Additionally, there is  
13 no evidence that TFT employs a necessary licensed RME. As such, TFT was not “qualified  
14 legally to contract with the territory” when it bid on the IFB or was awarded the contract and  
15 likely violated provisions of the Guam Contractors Code and Consumer Protection Act by even  
16 bidding on the IFB and offering its services in the first instance.<sup>1</sup>

17           Accordingly, GDOE should have considered TFT non-responsible and rejected its bid.  
18 Awarding a government contract to such a non-responsible bidder, undermines the integrity that  
19 the procedures of Guam’s Procurement Law were meant to serve, particularly for the type of  
20 work at issue here which affects our island’s schools and children. *See* 5 GCA § 5625 (“Public  
21 employees must discharge their duties impartially so as to assure fair competitive access to  
22

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23 <sup>1</sup> Furthermore, in its bid, TFT applied for the local procurement preference under the Procurement  
24 Law 5 GCA § 5008, certifying that it is a “business licensed to do business on Guam” and that  
25 does “a substantial portion of its business on Guam.” (Appellant Ex. 1, Tab 2 at G461.) Notably,  
26 TFT is registered with the Department of Revenue and Taxation as a foreign corporation based  
27 out of Pensacola, Florida. Therefore, the veracity of this certification also should have been  
28 examined by GDOE as part of its responsibility determination and alone should call into question  
TFT’s entire bid submission. TFT’s 2021 Guam Annual Report and its Business License Master  
Record from the Guam Department of Revenue and Taxation have been identified as Appellant’s  
Exhibits 9 and 10.

1 governmental procurement by responsible contractors. Moreover, they should conduct themselves  
2 in such a manner as to foster public confidence in the integrity of the territorial procurement  
3 organization.”)

4 G4S’s Consumer Complaint to the GCLB and GCLB’s Findings and Decisions in  
5 response thereto have been identified as Appellant’s Exhibits 6 and 7. At hearing, G4S anticipates  
6 that GCLB Investigator Andrew Mesa, GCLB Investigation Supervisor Nida Bailey and GCLB  
7 Executive Director Cecil Orsini will be able to testify as to TFT’s lack of a Contractors License if  
8 necessary.

9 **d. TFT cannot be Considered a Responsible Bidder after the Fact by Applying**  
10 **for the Necessary Licenses**

11 During pre-hearing proceedings, GDOE represented that TFT was either in the process of  
12 obtaining the licenses and/or contracting with parties who have the licenses necessary to perform  
13 the work under the IFB which would purportedly moot this appeal. In its Rebuttal to Comments  
14 on Agency Report by the Third Place Bidder (PDS), filed October 21, 2021, GDOE cites to four  
15 cases from the federal Government Accountability Office to assert that where a solicitation  
16 contains a general licensing requirement, but does not require that a successful bidder possess any  
17 specific license, the contracting officer is free to make an award without considering whether the  
18 bidder is licensed under state law – *Kyorkin Construction, Inc.*, B-226238 (1987); *Hap*  
19 *Construction, Inc.*, B-278515 (1998); *Interstate Industrial Incorporated*, B-241974 (1990);  
20 *American Mutual Protective Bureau*, B-208067 (1982). All of these cases are plainly  
21 distinguishable in that they deal with *federal* procurements before the Government Accountability  
22 Office (“GAO”) and deal with laws, regulations, and policy considerations specific to *federal*  
23 procurements.

24 For example, in *Kyorkin Construction, Inc.*, the GAO found that a state contractor’s  
25 license was not required prior to award because “contracting officers generally are not competent  
26 to pass upon the question of whether a particular state license is legally required *for the*  
27 *performance of federal work.*” (emphasis added). Similarly, in *Interstate Industrial Incorporated*,  
28 the GAO found that “[a] contractor’s compliance with state requirements is a matter for resolution

1 by the contractor and the state authorities, *not federal officials, since federal procurement*  
2 *officials are generally not in a position to know what is required by state and local licensing*  
3 *requirements.*” (emphasis added).

4 Those same policy considerations are not present here where the IFB was issued by a  
5 Government of *Guam* agency familiar with *Guam’s* laws, was issued pursuant to *Guam’s* laws,  
6 including the Procurement Law and Contractors Code, and was bidding out work to be performed  
7 on *Guam* schools. In contrast to federal agencies, GDOE is presumably familiar with Guam law  
8 and has every interest to ensure not just that it is receiving the lowest price but that its prospective  
9 contractors are duly licensed and capable of performing the work required in conformance with  
10 Guam law. State courts addressing this issue in the context of local procurements have upheld  
11 determinations that bidders are ineligible to bid or receive contracts or non-responsible where the  
12 bidder does not have the state license necessary to perform the work. *See, e.g., McKay Const. Co.*  
13 *v. Ada Cty. Bd. of Cty. Comm’rs*, 99 Idaho 235, 239 (1978); *Lemoine/Brasfield & Gorrie Joint*  
14 *Venture, LLC v. Orleans Parish Criminal Sheriff’s Office*, 63 So. 3d 1068, 1073-74 (La. Ct. App.  
15 4th Cir. 2011), *writ denied*, 63 So. 3d 1041 (La. 2011); *M & B Const. v. Yuba Cty. Water Agency*,  
16 68 Cal. App. 4th 1353, 1362-63 (1999). Some states, including California, have gone so far as  
17 statutorily prohibiting unlicensed persons from being awarded public contracts subject to citations  
18 and fines for the public entity. *See* Cal. Bus. & Prof. Code § 7028.7.

19 Additionally, at the hearing on the parties’ pre-hearing motions, a previous, unrelated  
20 procurement appeal involving G4S was raised, *In the Appeal of Pacific Data Systems, Inc.*, OPA-  
21 PA-15-012, in which an award to G4S was protested on grounds that, *inter alia*, G4S failed to  
22 submit proof of licensure contemporaneously with its bid. *See In the Appeal of Pacific Data*  
23 *Systems, Inc.*, OPA-PA-15-012, Decision dated January 13, 2016 at p. 7. The protest appeal was  
24 denied as G4S was able to present evidence that it was properly licensed to perform the work  
25 called for in the contract. *Id.* G4S had the necessary licenses *at the time* of the award and *at the*  
26 *time* it submitted its bid and was therefore, both responsive and responsible. *Id.* The obvious  
27 difference with the case at hand, as G4S has already demonstrated (which is not disputed) and  
28 will demonstrate at hearing, is that TFT was not properly licensed at the time it submitted its bid

1 nor at the time of the award and may still be unlicensed as of the filing of the brief – which as set  
2 forth above is a violation of Guam law.

3 As such, any assertion at the hearing that TFT may retroactively cure its non-  
4 responsibility is meritless and should be disregarded, particularly as the Guam Contractors Code  
5 specifically provides that a Contractors License from the GCLB should be obtained *prior to* a  
6 person acting or assuming to act as a contractor as set forth above. 21 GCA § 70108(a).

7 **IV. CONCLUSION**

8 Based on the foregoing, G4S will show at the Hearing on December 20, 2021 that GDOE  
9 should have considered TFT a non-responsible bidder based on its lack of the licenses necessary  
10 to perform the work under the IFB and therefore, GDOE improperly denied G4S’s protest. G4S  
11 will also show that as the next lowest, responsible and responsive bidder, the contract should be  
12 awarded to G4S as provided for under the Procurement Law.

13  
14 Respectfully submitted this 3rd day of December, 2021.

15  
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19 By:   
20 **GENEVIEVE P. RAPADAS**