

OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

October 4, 2013

Marcus Y. Pido
Supply Management Administrator
Guam Department of Education
P.O. Box DE
Hagatna, Guam 96932
VIA FACSIMILE: (671) 472-5001

Re: Notice of Receipt of Appeal – OPA-PA-13-013

Dear Mr. Pido,

Please be advised that G4S Security Systems (Guam) Inc. filed an appeal with the Office of Public Accountability (OPA) on October 3, 2013 regarding the Guam Department of Education (GDOE) procurement actions related to GDOE IFB 032-2013 for Design Build Fire Alarm System Upgrade/Replacement and Fire Suppression/Sprinkler System Repair for Southern High School. OPA has assigned this appeal case number OPA-PA-13-013.

Immediate action is required of GDOE pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at www.guamopa.org. The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Friday, October 11, 2013**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Friday, October 18, 2013**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to G4S Security Systems (Guam) Inc. OPA respectfully asks that

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GDOE provide one original and two copies of the procurement record as the Guam Procurement Law and Regulations require only one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Michele Brillante at 475-0390 ext. 207, or mbrillante@guamopa.org, should you have any questions regarding this notice.

Sincerely,



Rodalyn Gerardo
Audit Supervisor

Enclosure: Notice of Appeal – OPA-PA-13-013

Cc: David W. Dooley and Seth Forman, Attorneys for G4S Security Systems (Guam) Inc.

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Seth Forman
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Attorneys for Appellant
G4S Security Systems (Guam) Inc.

OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

In the Appeal of)
G4S Security Systems (Guam) Inc.,)
Appellant.)
_____)

NOTICE OF APPEAL

Docket No. OPA-PA 13-013

Appellant Information:

G4S Security Systems (Guam) Inc.
1851 Army Drive
Harmon, Guam 969313

Telephone No. (671) 646-2307
Facsimile No. (671) 649-7245

Appeal Information:

- A) Purchasing Agency: Guam Department of Education ("GDOE")
- B) Invitation for Bid No.: GDOE IFB 032-2013, Design Build Fire Alarm System Upgrade/Replacement and Fire Suppression/Sprinkler System Repair for Southern High School

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C) The denial of protest being appealed was made on September 19, 2013 by the Supply Management Administrator of GDOE.

D) Appeal is made from a denial of a protest. This appeal is brought pursuant to 5 GCA §5425(e).

E) Names of competing bidders: The only competing bidder that G4S knows of is Orion Construction Corporation (Guam).

Form and Filing:

1. G4S Security Systems (Guam) Inc. ("G4S") is appealing the denial of a protest it made regarding GDOE IFB 032-2013.

The bid opening for GDOE IFB 032-2013 took place on September 16, 2013. G4S submitted a bid, a copy of which is attached hereto as "Exhibit 1". On information and belief, there was only one competing bidder, Orion Construction Corporation (Guam) ("Orion"). A copy of Orion's Bid Form is attached hereto as "Exhibit 2". G4S was the lowest bidder, at \$477,693.65 to Orion's \$499,980.00.

Later in the day on September 16, 2013, GDOE transmitted a document entitled "Bid Status" to G4S, stating that the G4S bid was rejected due to failure to submit "Clarification No. 2 and Amendment No. 2" within its bid documents. A copy of this Bid Status is attached hereto as "Exhibit 3". Copies of "Clarification No. 2", dated September 12, 2013 and "Amendment No. 2", dated September 11, 2013 are attached hereto as "Exhibit 4" and "Exhibit 5", respectively.

Four representatives from G4S attended the pre-bid conference for this procurement. They were Quin Santos, Jeremy Tereas, Randy Martin and Silas Kadiasang. Both Mr. Martin and Mr. Kadiasang provided their e-mail address to GDOE on a Sign In sheet. For some reason, GDOE e-mailed Clarification No. 2 and Amendment No. 2 to Mr. Martin only, and not to the other G4S

representatives. Mr. Martin happened to be out sick when the e-mail was sent, and did not check his e-mail before the bid submission. GDOE therefore did not receive any acknowledgment of receipt of the e-mail.

On September 16, 2013, G4S served a protest in connection with GDOE IFB 032-2013 on GDOE. A copy of this protest is attached hereto as "Exhibit 6". Further clarifications by G4S, in two letters dated September 30, 2013, are attached hereto as "Exhibit 7" and "Exhibit 8". Both of these letters are dated within the 14-day period for G4S to protest the rejection of its bid on September 16, 2013. *See* 5 GCA §5425(a).

On September 19, 2013, the Supply Management Administrator of GDOE denied the protests. The letter denying the protests is attached hereto as "Exhibit 9". Also on September 19, 2013, GDOE issued a "Notice to Lift Stay of Procurement" in which GDOE stated, "GDOE has responded to the protest and no appeal has been filed." A copy of this Notice is attached hereto as "Exhibit 10". Of course, the automatic stay under 5 GCA §5415(g) remain in effect from the timely filing of a procurement protest through the timely filing of a notice of appeal to the OPA until a final resolution. In re Appeal of JMI Edison, OPA-PA-13-010, Order Granting Motion re Automatic Stay (Sept. 20, 2013). Thus in this case, as in JMI Edison, the stay could not be lifted on the same day the protest was denied. G4S had 15 days to file an appeal of the denial of its protest, and it has done so.

The rejection of G4S's bid was erroneous. There appears to be no question that G4S submitted the lowest bid with all the information required for GDOE to confirm that the goods and services offered by GDOE fully complied with all bid specifications. The only omission from the GDOE bid was the inadvertent omission of a photocopy of a bid amendment and a clarification. The omission had no practical effect on the responsiveness of GDOE's bid. A bid that is responsive

“in all material respects” should not be rejected. See In re Appeal of JMI Edison, OPA-PA-13-010, Decision at p. 4 (Sept. 25, 2013). The Guam Procurement Regulations provide that a procurement official should waive, or allow a bidder to correct, minor informalities (1) that are matters of form, rather than substance, or are insignificant mistakes, and (2) can be waived or corrected without prejudice to other bidders because there is no effect on price, quantity, quality, delivery, or contractual conditions. 2 GAR §3109(m)(4)(B). The omission of a last-minute clarification and amendment from G4S’s bid was plainly such a minor informality that could have been waived or easily corrected without prejudice to other bidders.

The OPA may review this matter *de novo*. 2 GAR §12103(a). When so reviewed, it is clear that the purchasing agency erred when it rejected G4S’s bid due to a minor informality.

2. G4S requests that the Office of Public Accountability overrule GDOE’s denial of G4S’s protests, rule that the statutory automatic stay has remained in effect, rule that G4S’s bid for GDOE IFB 032-2013 must be considered, and rule that the .

3. Supporting documents are attached hereto as exhibits.

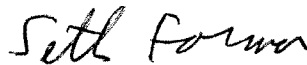
Declaration regarding court action:

G4S confirms that an action in court has not been commenced.

Dated this 3 day of October, 2013.

DOOLEY ROBERTS & FOWLER LLP

By:



DAVID W. DOOLEY
SETH FORMAN
Attorneys for Appellant G4S Security
Systems (Guam) Inc.

VERIFICATION

Tamuning, Guam) ss:

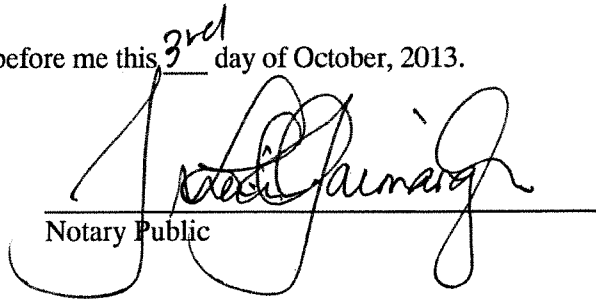
I, Kathleen Brown, being first duly sworn, do hereby depose and state that I am the Treasurer for Appellant G4S Security Systems (Guam) Inc. and that I have read the foregoing Notice of Appeal and it is true of my own knowledge except as to those matters alleged upon information and belief and as to those matters, I believe them to be true.

Dated this 3rd day of October, 2013.


KATHLEEN BROWN

SUBSCRIBED AND SWORN to before me this 3rd day of October, 2013.




Notary Public

TRICIA LYNN Q. TAIMANGLO
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: Feb. 10, 2014
P.O. Box 27023 Barrigada, Guam 96921

Broadcast Report

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Suite 401 DNA Building
238 Archbishop Flores St.
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FAX

To:	Marcus Y. Pido Supply Management Administrator Guam Department of Education	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 475-0438 (671) 472-5001	Pages:	8 (including cover page)
CC:	David W. Dooley & Seth Forman Attorneys for G4S Security Systems Dooley Roberts & Fowler LLP	Date:	October 4, 2013
Phone: Fax:	(671) 646-1222 (671) 646-1223	Phone: Fax:	475-0390 x. 207 472-7951

Re: OPA-PA-13-013 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
Michele Brillante
Auditor I
mbrillante@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

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002	220	6714725001	08:18:21 a.m. 09-30-2013	00:01:59	8/8	1	EC	HS	CP21600

Abbreviations:

HS: Host send
HR: Host receive
WS: Waiting send

PL: Polled local
PR: Polled remote
MS: Mailbox save

MP: Mailbox print
CP: Completed
FA: Fail

TU: Terminated by user
TS: Terminated by system
RP: Report

G3: Group 3
EC: Error Correct