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PROCUREMENT APPEALS  
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FILE NO OPA-PA: 13-013

Attorneys for Appellant  
G4S Security Systems (Guam) Inc.

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEAL**

In the Appeal of )  
 )  
G4S SECURITY SYSTEMS (GUAM) INC. )  
 )  
Appellant. )  
\_\_\_\_\_ )

Docket No. OPA-PA-13-013  
**COMMENTS ON AGENCY  
STATEMENT**

**I. INTRODUCTION**

Appellant G4S Security Systems (Guam) Inc. (“G4S”) hereby submits its comments on the Agency Statement filed by the Appellee, Guam Department of Education (“GDOE”).

**II. DISCUSSION**

**A. G4S was not given proper notice of Amendment 2.**

GDOE deemed the G4S bid nonresponsive solely due to the fact that “Clarification No. 2” and “Amendment No. 2” were not attached to its bid. G4S should not have been penalized in this manner because GDOE was largely responsible for this omission.

Four persons from G4S attended the pre-bid conference for this project, GDOE IFB 032-2013. See Submission of Agency Report, filed Oct. 21, 2013 (“SAR”) at GDOE 00299. When the

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persons from G4S signed in, the lead company representative gave his official company e-mail address while another person from G4S gave only his personal gmail address. Thus Silas Kadiusang gave his e-mail address as sil.kadiusan@gu.g4s.com, obviously a G4S business address. Randy Martin gave his e-mail address as randyvmartin@gmail.com, a personal e-mail address.

When GDOE e-mailed Clarification No. 2 and Amendment No. 2 to prospective bidders, it did not send these e-mails to everyone from G4S who signed in at the pre-bid conference. Instead, the information was sent to only one person. Most importantly, in selecting a single recipient from G4S for this information to, GDOE did not send it to someone who provided a company “gu.g4s.com” e-mail address. Instead, as GDOE admits, it was sent only to the personal “gmail.com” address of one individual, Randy Martin. SAR at GDOE 00296.

Amendment No. 2 was dated September 11, 2013 and Clarification No. 2 was dated September 12, 2013. The bid opening was on September 16, 2013. As (bad) luck would have it, Randy Martin was ill and did not check his personal gmail account or go to the office during the few days between when the e-mails were sent and the bid opening.. GDOE therefore did not receive any confirmation that G4S had received these e-mails, even though G4S had acknowledged previous amendments and clarifications. *See* Submission of Procurement Record, filed Oct. 11, 2013 (“SPR”) at GDOE 0059 (Amendment Acknowledgment Form). GDOE did not follow up on the lack of such confirmation for the later e-mails.

In addition, as GDOE has acknowledged, its e-mail conveying “Amendment 2” mislabeled the attachment as “Amendment 1”. SAR at GDOE 00314. Thus even if someone from G4S had

seen the relevant e-mail on time, he or she would not have known that the attachment included a new second amendment, so he or she might not have opened the attachment.

In short, GDOE's acts and omissions were a substantial reason why the missing amendment and clarification were not received in time at the G4S office and thus were not included in the G4S bid. GDOE should therefore be estopped from asserting this omission as grounds for deeming the G4S bid nonresponsive. *Cf. Jessup v. Cattle Center., Inc.*, 259 Cal. App. 2d 434, 439 (1968) (doctrine of estoppel rests on principle that "when one of two innocent persons must suffer a loss, the loss must be borne by the one whose conduct, acts or omissions brought about the injury").

**B. The G4S bid should not have been rejected due to a minor informality.**

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). *Accord* GDOE Procurement Regulation 3.9.13.4. This waiver should apply here. The omission of a last-minute clarification and waiver from G4S's bid was plainly just such a minor informality that could have been waived or easily corrected without prejudice to other bidders.

In an Amended Submission of Procurement Record ("ASPR") filed October 21, 2013, GDOE submitted a letter dated October 10, 2013 from competing bidder Orion Construction Corporation ("Orion"), paginated as GDOE 00246. In the letter, Orion contended that G4S was able to submit a lower bid than Orion solely because G4S did not have and did not consider

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Clarification No. 2 and Amendment No. 2. Orion offers no explanation why this would be the case. In fact, the opposite is true. Lacking the information in Clarification No. 2 and Amendment No. 2, G4S had to build an extra margin of error into its bid to cover any unknown risks or uncertainties that might have been addressed by those documents.

GDOE asserts that Amendment No. 2 was material because it allegedly responded, *inter alia*, to the following question from G4S:

Given the short time table for this bid, as built Drawings or Floor plans, on the entire campus layout, is essential in producing accurate estimates and designs. Can we have these drawing right away?

SAR at GDOE 00316; ASPR at GDOE 00319. The answer to this question may have been “essential” and material to the bid submissions if the question had in fact been answered. Instead, the actual GDOE response to this question in Amendment No. 2 was in pertinent part as follows:

Floor plans and some electrical drawings are being provided, however, the accuracy of the drawings provided is unknown. It is the Bidder’s responsibility to verify all existing conditions and prepare their bids accordingly.

SPR at GDOE 00164. In other words, both Orion, which received Amendment 2, and G4S, which did not, were left to assume the same risk of “unknown” conditions when preparing their respective bids.

The omission of Clarification No. 2 and Amendment No. 2 from G4S’s bid is an “insignificant mistake”, which resulted in large part from GDOE’s decision to send this mislabeled information only to the personal e-mail account of just one of the four G4S representatives present at the pre-bid conference. The omission “can be waived or corrected without prejudice to other

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bidders because there is no effect on price, quantity, quality, delivery, or contractual conditions” since the only effect on G4S’s bid was for G4S to build an extra margin into its bid price to cover this lack of information, and G4S does not dispute that it would be bound by Clarification No. 2, Amendment No. 2, and the price given in its bid. Pursuant to 2 GAR §3109(m)(4)(B) and/or GDOE Procurement Regulation 3.9.13.4, GDOE should have waived, or permitted G4S to correct, this minor informality in the G4S bid on GDOE IFB 032-2013.

**C. This appeal has not been mooted by a funding deadline.**

On October 21, 2013, the GDOE submitted a “Notice of Funding Source”. In this Notice, GDOE implied that the deadline to obligate funds for this procurement had passed. If correct, this might in effect render this appeal moot. As noted in G4S’s response to the Notice, filed October 28, 2013, the GDOE Superintendent of Education, Jon Fernandez informed the public on the Ray Gibson radio show on station K-57 on October 8, 2013 that the extreme time pressure involved in another ARRA project, the air conditioning procurement (*In re JMI Edison*, OPA-PA-13-010), was not present in the current procurement dispute because GDOE had obtained an extension and a new deadline of January 31, 2014.<sup>1</sup> Based on the Superintendent’s remarks to the Guam public, there is time remaining for resolution of this matter and a decision in favor of G4S would not be mooted by an already-expired deadline.

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<sup>1</sup> A transcript of relevant portions of the conversation between Director Fernandez and Mr. Gibson is attached as “Exhibit A”. A recording of the conversation available at the following URL: [http://www.pacificnewscenter.com/index.php?option=com\\_content&view=article&id=38447:jon-fernandez-with-ray-gibson&catid=52:k57-interviews&Itemid=151](http://www.pacificnewscenter.com/index.php?option=com_content&view=article&id=38447:jon-fernandez-with-ray-gibson&catid=52:k57-interviews&Itemid=151)

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### III. CONCLUSION

For the foregoing reasons, the Office of Public Accountability should overrule GDOE's denial of G4S's protest and rule that G4S's bid for GDOE IFB 032-2013 must be considered.

Dated this 28 day of October, 2013.

Respectfully submitted,

DOOLEY ROBERTS & FOWLER LLP

By: Seth Forman  
**SETH FORMAN**  
Attorneys for Appellant G4S Security  
Systems (Guam) Inc.

Partial transcript of:

[http://www.pacificnewscenter.com/index.php?option=com\\_content&view=article&id=38447:jon-fernandez-with-ray-gibson&catid=52:k57-interviews&Itemid=151](http://www.pacificnewscenter.com/index.php?option=com_content&view=article&id=38447:jon-fernandez-with-ray-gibson&catid=52:k57-interviews&Itemid=151)

October 8, 2013, Radio Station K-57, Ray Gibson (“RG”) interview of Jon Fernandez (“JF”), Superintendent, Guam Department of Education

RG: I’ve got Superintendent Jon Fernandez on this topic here. Good Morning Superintendant

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JF: Hafa Adai Ray

RG: Hafa Adai - nice to hear from you these days, I understand how busy you are so I will keep it down to just this one topic on the procurement. What’s it going to take to get the out of fire watch and installing, finally, that fire safety gear down at Southern?

JF Well yeah, Southern is actually the last school that we need to do the fire alarm system in as far as the new investment in the auditorium and the gym. So it is frustrating that there’s not a procurement issue here.

We are lucky enough that we got the extension on the ARRA funds in case that becomes an issue until January. But, you know, of course, we just want to get it done and get this resolved as quickly as possible.

RG Hope there is some Ina’fa Maolek going on with that and maybe get the two sides together and see if there is something that they can do that is going to bring it... some people look at it and say... well, it’s not like air conditioning, it’s not going to bring relief.... but, it is a safety issue, and as I said, it’s one of the longer standing safety issues at that school.

JF That’s right. I think with the new facilities in place, we want to make sure we’ve got the entire project addressed. With regard to the parties talking, I think this is a slightly different from the air conditioning issue we had a much more time pressure working in favor of getting to a resolution more quickly. So, not really sure how this will proceed. It’s in the OPA’s hands. I do want to say that if there is an issue with the funding in terms of being de-obligated it is a ARRA funding issue. So I don’t want anyone to be unaware that those funds do expire under the new deadline of January 31, 2014.... So, having said that we do want to find a way to expedite the resolution.