

Seth Forman
 DOOLEY ROBERTS & FOWLER LLP
 Suite 201, Orlean Pacific Plaza
 865 South Marine Corps Drive
 Tamuning, Guam 96913
 Telephone No. (671) 646-1222
 Facsimile No. (671) 646-1223
 E-mail: Forman@guamlawoffice.com

Attorneys for Appellant
 G4S Secure Solutions (Guam) Inc.

**BEFORE THE PUBLIC AUDITOR
 PROCUREMENT APPEALS
 TERRITORY OF GUAM**

In the Matter of)	Docket No. OPA-PA-15-004
)	
G4S Secure Solutions (Guam) Inc.,)	APPELLANT'S COMMENTS
)	ON AGENCY REPORT
Appellant.)	RECEIVED
)	OFFICE OF PUBLIC ACCOUNT
and)	PROCUREMENT APPEALS
)	DATE: <u>4/16/15</u>
General Services Agency,)	TIME: <u>1130</u> <input type="checkbox"/> AM <input type="checkbox"/> PM BY <u>ef</u>
)	FILE NO OPA-PA: <u>15-004</u>
Purchasing Agency.)	
_____)	

Pursuant to 2 GAR §12104(c)(4), appellant G4S Secure Solutions (Guam) Inc. (“G4S”) submits its comments on the Agency Report from the General Services Agency (“GSA”).

The two-sentence “statement answering the Allegations of the Appeal” contained in the Agency Report does not meet the requirements of 21 GAR §12105(g). Section 12105(g) requires a statement “fully responsive to the allegations of the Appeal”. The statement has to set forth “findings, actions, and recommendations in the matter”. Notwithstanding the deficiency of the Agency Report, G4S responds as follows.

ORIGINAL

In the Matter of G4S and GSA
OPA-PA-15-004
Appellant's Comments on Agency Report

G4S pleaded in the alternative in its appeal. G4S contends that either (a) its interpretation of the term "unit price" was correct, but the term was misinterpreted and misapplied by GSA; or (b) G4S's interpretation of term was mistaken, in which case a correction should be permitted; or (c) G4S made an error in extending the unit price which can be corrected. A party may plead claims in the alternative. *See Donovan v. Royal Logging Co.*, 645 F.2d 822, 828-29 (9th Cir. 1981) (pleading in the alternative did not render complaint in administrative complaint insufficiently particular); *Quichocho v. Macy's Department Stores, Inc.*, 2008 Guam 9, ¶155 (pleading in the alternative allowed under Guam R. Civ. Pro.). Each alternative leads to the same result, G4S being awarded the procurement at the correct price.

With apologies for repeating much of the material in G4S's initial appeal, this procurement was for security guard services for three locations. The bid form asked bidders to provide a "Unit Price". The only way to break this procurement into "units" was to treat each of the three locations as a "unit". G4S provided a monthly "Unit Price" of \$8,165.99 for each of the three locations, with an "Extended Amount" of \$97,991.90 per "unit" or location for a full year. This amount was so low that it was obvious that the amounts were per location, and not totals for all three locations.

At the bid opening, G4S realized for the first time that there might be some misunderstanding concerning the term "unit price". That same day, G4S had a letter delivered to GSA stating that its bid was for "\$8,165.99 x 3 locations x 12 months = \$293,975.64".

In the Matter of G4S and GSA
OPA-PA-15-004
Appellant's Comments on Agency Report

GSA understood that G4S had set forth a price per unit for a single "unit" or location in its bid, and that G4S was offering to provide security guard services to all three units for a total price of \$293,975.64. In a Notice of Intent to Award dated March 3, 2015, GSA stated, "As a result of our analysis on the above referenced Invitation for Bid, your offer in the amount of \$293,975.64." However, on March 12, 2015, GSA issued a "Revised" Notice of Intent to Award stating that GSA intends to award the contract for GSA-012-015 to G4S for the amount of \$97,991.90.

G4S believed that the request for a "unit price" in the bid was unambiguous as the three locations were the only "units" into which the IFB could be divided. If the bid form is nonetheless deemed to be ambiguous, then GSA should still have considered the correct amount of the G4S bid and awarded the contract to G4S accordingly.

Subsection (f) of 5 GCA §5211 provides that correction of inadvertently erroneous bids after award shall be permitted in accordance with regulations. If GSA interpreted "unit price" in a manner different from G4S's interpretation, then G4S's bid was, under GSA's interpretation of "unit price", "inadvertently erroneous". Subsection (f) further provides that no changes in prices shall be permitted if prejudicial to the interest of Guam or fair competition. The correct price of the G4S bid, \$293,975.64, was still the low bid. A correction to state this correct bid price would not be prejudicial to the government or to fair competition.

The relevant regulation, 2 GAR §3109(m)(4)(c), provides, "If the mistake and the intended correct bid is clearly evident on the face of the bid document, the bid shall be corrected to the

In the Matter of G4S and GSA
OPA-PA-15-004
Appellant's Comments on Agency Report

intended bid and may not be withdrawn". If G4S's interpretation of the term "unit price" was mistaken, the intended correct bid was nonetheless clearly evident from the face of its bid document.

If G4S's interpretation of "unit price" was correct, but G4S erred by multiplying that unit price only by 12 months and not also multiplying it by 3 locations, then G4S's error was an "error in extending unit prices". Such errors are expressly covered by 2 GAR §3109(m)(4)(c). If the "unit price" is assumed to be correct in the case of discrepancies, as provided in the bid solicitation instructions, then the unit price of \$8,165.99 per month per location in the G4S bid controls over any error in extending that price. The "unit price" must be multiplied by 36 (12 months at 3 locations) to arrive at the correct total for the G4S bid.

Thus whether G4S's interpretation of the term "unit price" was correct, or its interpretation of "unit price" or its extension thereof was a mistake that can be corrected to the clearly evident proper amount, G4S should be awarded the contract at a total price of \$293,975.64.

GSA has responded to the positions discussed above with the bald contention that G4S's "'mistake' was not a mistake under the definition of the rules." GSA offers no further explanation and does not choose to identify the "definition" or "rules" upon which it relies. GSA does not address G4S's first contention, that the mistake in interpretation and application of unit price was made by GSA, not G4S. To the extent that GSA's Agency Report could be construed as responding to G4S's second and third alternatives, that either G4S's interpretation of "unit price" or its

In the Matter of G4S and GSA
OPA-PA-15-004
Appellant's Comments on Agency Report

extension of the unit price were "mistakes", GSA makes no attempt to explain why these would not be "mistakes" under 2 GAR §3109(m)(4)(c).

In conclusion, the "Agency Report" almost amounts to a concession. Given GSA's inability to support its position, G4S respectfully requests that the Office of Public Accountability (a) overrule GSA's denial of G4S's protest, (b) rule that G4S is not required to perform the services required under GSA-012-015 for the sum set forth in the "Revised" Notice of Intent of Possible Award dated March 13, 2015, and (c) rule that G4S shall be awarded this procurement in the amount of \$293,975.64 as set forth in the March 3, 2015 Notice of Intent of Possible Award.

Respectfully submitted,

DOOLEY ROBERTS & FOWLER LLP

Date: April 15, 2015

By: Seth Forman
SETH FORMAN
Attorneys for Appellant G4S Secure
Solutions (Guam) Inc.