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RECEIVED
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 PROCUREMENT APPEALS
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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
**APPELLANT’S ADMISSIONS OF
 FACT**

Appellant G4S Security Systems (Guam) Inc. (“G4S”) admits the following facts. For purposes of these admissions, G4S will attempt to set forth the facts without drawing inferences or asserting legal opinions or conclusions. Such inferences, opinions and conclusions will be reserved for G4S’s hearing brief or for G4S’s presentation at the hearing. Facts below are divided to those pertaining to issues raised by G4S’s protest and notice of appeal; and those involving the funding for this procurement.

FACTS PERTAINING TO G4S’S PROTEST AND NOTICE OF APPEAL

1. The Guam Department of Education (“GDOE”) issued Invitation for Bid 032-2013, Design Build Fire Alarm System Upgrade/Replacement and Fire Suppression/Sprinkler System

ORIGINAL

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Repair for Southern High School ("IFB 032-2013") on September 6, 2013. Submission of Procurement Record, filed Oct. 11, 2013 ("SPR") at 86.

2. Janet Daikichy, a "runner" for G4S, picked up a copy of IFB 032-2013 on September 6, 2013. SPR 242.

3. When Ms. Daikichy picked up a copy of IFB 032- 2013, she signed the GDOE Bid Register using the G4S business e-mail address of Silas ("Sil") Kadiusang, the official at G4S who would be project manager if G4S were to be awarded the bid. SPR 242.

4. On September 9, 2013, a pre-bid conference was held for IFB 032-2013. SPR 1.

5. Four representatives from G4S attended the pre-bid conference for this procurement and signed in on the sign-in sheet: Quin Santos; Jeremy Tereas; Randy Martin; and Silas Kadiusang. SPR 2.

6. On the sign-in sheet for the pre-bid conference, Mr. Kadiusang provided the same G4S business e-mail address that Ms. Daikichy had previously provided on the Bid Register. SPR 2.

7. On the sign-in sheet for the pre-bid conference, Mr. Martin provided his personal gmail address, rather than a G4S business e-mail address. SPR 2.

8. On September 10, 2013, G4S submitted questions pertaining to IFB 032-2013 to GDOE. Amended Submission of Procurement Record filed Oct. 21, 2013 ("ASPR") at 319-20.

9. On September 11, 2013, GDOE issued Amendment No. 2 to IFB 032-2013. SPR 164-65.

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10. On September 11, 2013, GDOE attempted to send Amendment No. 2 by e-mail to all companies who obtained copies of IFB 032-2013. Submission of Agency Report filed Oct. 21, 2013 ("SAR") at 302.

11. The subject line of the GDOE e-mail transmitting Amendment No. 2 referred to "Amendment No. 1". SAR 302.

12. Amendment No. 2 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?

ASPR 319.

13. The GDOE response to the above 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 164.

14. The September 11, 2013 e-mail from GDOE to the companies who obtained copies of IFB 032-2013 was sent to Randy Martin at his personal e-mail address, but was not sent to any other representative of G4S at any other e-mail address. SAR 302.

15. On September 12, 2013, GDOE issued Clarification No. 2 to IFB 032-2013. SPR 167-68.

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16. On September 12, 2013, GDOE attempted to send Clarification No. 2 by e-mail to all companies who obtained copies of IFB 032-2013. SAR 304.

17. The September 12, 2013 e-mail from GDOE to the companies who obtained copies of IFB 032-2013 was sent to Randy Martin at his personal e-mail address, but was not sent to any other representative of G4S at any other e-mail address. SAR 304.

18. Randy Martin was out sick when the above-referenced September 11, 2013 and September 12, 2013 e-mails were sent, and did not check his personal e-mail account before the bid opening.

19. Nobody from G4S saw the above-referenced September 11, 2013 and September 12, 2013 e-mails before the bid opening, and GDOE did not receive any acknowledgement of receipt of these e-mails from G4S, even though G4S had acknowledged receipt of earlier communications concerning this procurement. *See* SPR 59 (Amendment Acknowledgment Form).

20. Lacking the information in Clarification No. 2 and Amendment No. 2, G4S built an extra margin of error into its bid to cover any unknown risks or uncertainties that might have been addressed by those documents.

21. The bid opening for GDOE IFB 032-2013 took place on September 16, 2013. *E.g.*, SPR 198.

22. G4S submitted a bid in the amount of \$477,693.65. SPR 35.

23. Amendment No. 2 and Clarification No. 2 were not attached to the G4S bid.

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24. There was one other bid submitted, by Orion Construction Corporation (Guam) ("Orion"), in the amount of \$499,980.00. SPR 67.

25. Amendment No. 2 and Clarification No. 2 were attached to the Orion bid.

26. Later on the day of the bid opening, September 16, 2013, GDOE transmitted a document to G4S 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. SPR 205.

27. On September 16, 2013, G4S served a protest in connection with GDOE IFB 032-2013 on GDOE. SAR 247.

28. On September 19, 2013, the Supply Management Administrator of GDOE denied the protests. SAR 296-297

29. 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." SAR 250.

30. On or about September 20, 2013, GDOE entered into an Agreement for Construction Services Between GDOE and Orion for Services Pursuant to GDOE IFB 032-2013. SAR 285.

31. On October 3, 2013, G4S filed a Notice of Appeal of the denial of its protest.

32. On November 12, 2013, the Office of Public Accountability issued a Decision and Order holding that the statutory procurement stay remained, and remains, in effect, and that GDOE's award of the contract to Orion is void.

FACTS PERTAINING TO FUNDING FOR THIS PROCUREMENT

33. IFB 032-2013 is funded with moneys from ARRA grants through the Adequate Education Act Trust.

34. Pursuant to both Public Law 31-234 and requirements of the United States Department of Education, the funds for this procurement were required to be obligated by September 30, 2013.

35. The United States Department of Education has issued an extension to GDOE until January 31, 2013 for the obligation of any funds remaining in the Trust after September 30, 2013.

36. There is a bill pending in the Guam Legislature, Bill No. 209-32, to amend Public Law 31-234 so that appropriations inclusive of the funds for this procurement would expire if not obligated by January 31, 2014, the same extended deadline set by USDOE.

Respectfully submitted,

DOOLEY ROBERTS & FOWLER LLP

Date: November 22, 2013

By: Seth Forman

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