



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor
**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF

Docket No. OPA-PA-15-004

G4S SECURE SOLUTIONS (GUAM) INC.,

DECISION

Appellant.

I. INTRODUCTION

This is the Decision of the Public Auditor for appeal number OPA-PA-15-004 regarding G4S SECURE SOLUTIONS (GUAM) INC.'s ("G4S") Appeal of the GENERAL SERVICE AGENCY's ("GSA") denial of procurement protest dated March 30, 2015, concerning Invitation for Bid No. GSA012-015 ("the IFB"), which solicits bids for DPHSS Security Guard Services for three locations—Northern, Central, and Southern Regions.

The parties did not request a Hearing and agreed to submit this matter on the record. In reaching this Decision, the Public Auditor has considered and incorporates herein the procurement record and all documents submitted by the parties. Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

II. FINDINGS OF FACT

1. On January 14, 2015, GSA issued the IFB which solicits bids for security guard services for DPHSS Northern, Central, and Southern Regions. (Procurement Record, Tab 4.)

2. On January 14, 2015, GSA issued Amendment No. 1 to the IFB, which changed the bid opening date to January 29, 2015, at 10:00 a.m. (Procurement Record, Tab 8.)

3. The IFB stated, in relevant part:

1 a. That bidders were required to submit a D.O.L. Wage Determination Affidavit
2 (Form E of the IFB: Declaration Re Compliance With U.S. D.O.L. Wage Determination), which
3 states in part that the bidder “is in full compliance with 5 GCA § 5801 [Wage Determination
4 Established] and §5802 [Benefits], as may be applicable to the procurement referenced herein[.]”
5 (Procurement Record, Tab 4 at 1, 7);
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7 b. At Item No. 1.1, that, to provide Security Guard Services to Government of Guam,
8 Department of Public Health and Social Services, for “QTY” of 12 and “UOM” of Months, bidders
9 indicate their proposed “Unit Price” and “Extended Amount,” (Procurement Record, Tab 4 at 28);
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11 c. Directly below Item No. 1.1, that the bidding was on a project to provide security
12 guard services to the Government of Guam, Department of Public Health and Social Services for
13 the three facilities in the Northern Region, Central Region, and Southern Region, (Procurement
14 Record, Tab 4 at 28).

15 4. G4S and Pacific Island Security Agency (“PISA”) submitted bids in response to the IFB.

16 5. On January 29, 2015, GSA conducted a bid opening.

17 6. G4S bid, at Item No. 1.1, a unit price of \$8,165.99 and extended amount of \$97,991.90,
18 (Procurement Record, Tab 3 at 28), and it provided the required signed Form E Declaration Re
19 Compliance With U.S. D.O.L. Wage Determination, (id., Tab 3).
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21 7. PISA bid a unit price of \$24,881.94 and extended amount of \$298,583.28. (Procurement
22 Record, Tab 11.)

23 8. On January 29, 2015, after bid opening but prior to any award, G4S sent GSA a letter
24 wherein G4S offered clarification of its bid amount at Item No. 1.1, stating “Qty/UOM: \$8,165.99
25 x 3 locations x 12 months = \$293,975.64 Extended Amount.” (Notice of Appeal Ex. D.)
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1 9. On March 10, 2015, G4S received a letter from GSA, dated March 3, 2015, which
2 indicated a Notice of Intent of Possible Award for GSA-012-15, based on G4S's "offer in the total
3 amount of \$\$293,975.64." (Procurement Record, Tab 6.)

4 10. On March 13, 2015, GSA issued a Revised Bid Status to PISA, advising that its bid was
5 rejected due to high price, and that the bid was recommended for award to G4S in the total amount
6 of \$97,991.88. (Procurement Record, Tab 7.)

7 11. On March 18, 2015, G4S received a letter from GSA, dated March 13, 2015, which
8 indicated a "Revised" Notice of Intent of Possible Award for GSA-012-15, based on G4S's "offer
9 in **the total amount of \$97,991.90.**" (Notice of Appeal Ex. F (emphasis in original).)

10 12. On March 24, 2015, G4S's counsel sent a letter to GSA wherein it requested that GSA
11 retract the March 13, 2015, "Revised" Notice of Intent of Possible Award and reissue a Notice of
12 Intent of Possible Award in the correct amount of \$293,975.64. (Procurement Record, Tab 1.)

13 13. On March 26, 2015, GSA issued a letter to G4S's counsel, wherein GSA stated it treats
14 G4S's March 24 letter as a protest and that said protest is denied. (Procurement Record, Tab 2.)

15 14. On March 27, 2015, G4S filed with GSA a Protest, dated March 26, 2015, in which G4S
16 protested the "Revised Notice of Intent of Possible Award" dated March 13, 2015, in which GSA
17 states it intends to award the contract for GSA-012-015 to G4S for the amount of \$97,991.90.
18 (Procurement Record, Tab 1.) G4S contended that it should be awarded the contract in the amount
19 of \$293,975.64¹. (Id.)

20 15. On March 30, 2015, GSA issued a Memorandum denying G4S's protest. (Procurement
21 Record, Tab 2.)

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27 ¹ This amount should be \$293,975.64 based on OPA's calculation.

1 16. On April 3, 2015, G4S filed an appeal to the OPA, with respect to GSA's March 30,
2 2015, denial of G4S's protest. G4S requests that the OPA overrule GSA's denial of G4S's protest,
3 rule that G4S is not required to perform the services required under GSA-012-015 for the sum set
4 forth in the "Revised" Notice of Intent of Possible Award dated March 13, 2015, and rule that G4S
5 shall be awarded the procurement in the amount of \$293,975.64 as set forth in the March 3, 2015,
6 Notice of Intent of Possible Award. (Notice of Appeal § 2.)
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8 17. No award has been made on the IFB. (Agency Report, Tab 1.)

9 III. ANALYSIS

10 In this appeal of GSA's March 30, 2015, denial of G4S's March 26, 2015, protest, G4S
11 requests that the OPA overrule GSA's denial of G4S's protest, rule that G4S is not required to
12 perform the services required under the IFB for the sum set forth in the "Revised" Notice of Intent
13 of Possible Award dated March 13, 2015, and rule that G4S shall be awarded the procurement in
14 the amount of \$293,975.64 as set forth in the March 3, 2015, Notice of Intent of Possible Award.
15 Pursuant to 5 GCA § 5703 and 2 GAR 4 § 12103, the Public Auditor shall review and determine
16 GSA's denial of G4S's protest de novo.
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18 In G4S's March 26, 2015, protest, G4S protested the "Revised" Notice of Intent of Possible
19 Award dated March 13, 2015, in which GSA states it intends to award the IFB contract to G4S for
20 the amount of \$97,991.90. G4S argued that it should instead be awarded the contract in the amount
21 of \$293,975.64. Although G4S's bid did not expressly provide an Extended Amount of
22 \$293,975.64, G4S argued that it understood the IFB term "Unit Price" to refer to the price for each
23 unit or location, and that this is the unambiguous interpretation of the term, as "[t]he only way to
24 break this procurement into 'units' was to treat each of the three locations as a 'unit.'" (Procurement Record, Tab 1.) Based on that understanding, G4S provided a monthly "Unit Price"
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1 of \$8,165.99 for each of the three locations, with an “Extended Amount” of \$97,991.90 per unit or
2 location for a full year. G4S argued it was obvious that the Unit Price and Extended Amount it
3 provided were per location and not totals for all three locations. G4S explained that the \$97,991.90
4 extended amount, if used for all three locations per year, would be far too low to comply with the
5 applicable United States Department of Labor Wage Determination. G4S further argued that, if
6 the IFB is deemed ambiguous, then GSA may properly consider the correct amount of G4S’s bid
7 and award the contract to G4S accordingly. In support, G4S cited 5 G.C.A. § 5211(f) as authorizing
8 correction of inadvertently erroneous bids after award, and 2 GAR 4 § 3109(m)(4)(C) as requiring
9 correction, and not withdrawal, of a bid to the intended bid if the mistake and the intended correct
10 bid are clearly evident on the face of the bid document. G4S concluded that, whether G4S’s
11 interpretation of the term “Unit Price” is correct, or its interpretation of “Unit Price” or its extension
12 thereof was a mistake that can be corrected to the clearly evident proper amount, G4S should be
13 awarded the contract at a total price of \$293,975.64, GSA’s “Revised” Notice should be retracted,
14 and G4S should reissue a Notice of Intent of Possible Award with the correct amount of
15 \$293,975.64.

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18 In response, GSA denied G4S’s protest on March 30, 2015, referring to its March 26, 2015,
19 response to G4S’s March 24, 2015, memorandum which GSA treated as a protest, and stating that
20 no issues were presented in G4S’s March 26, 2015, protest that would change GSA’s opinion. In
21 GSA’s March 26, 2015, response, GSA rejected G4S’s March 24, 2015, request to correct its
22 submitted bid price. Citing 2 GAR 4 § 3109(4)(C), GSA explained that there was no evidence in
23 G4S’s bid that a mistake occurred. GSA further stated that a failure to meet the minimum wage
24 requirement would make G4S’s bid nonresponsive and would be rejected.
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1 The Public Auditor disagrees with G4S that its interpretation of the IFB’s term “Unit Price”
2 is correct. At Item No. 1.1 of the IFB, just to the left of “Unit Price,” it clearly provides a “QTY,”
3 or quantity, of “12” and a “UOM,” or unit of measure, of “Months.” Thus, the unit is a month, and
4 not one of three locations, and “Unit Price” refers to the price to provide the requested services (i.e.,
5 security guard services at the three locations) per month. This is bolstered by the IFB’s provision,
6 directly below the spaces to provide “Unit Price” and “Extended Amount,” that the bidding is on a
7 project to provide security guard services to the Government of Guam, Department of Public Health
8 and Social Services for the three facilities in the Northern Region, Central Region, and Southern
9 Region.
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11 Regarding G4S’s request to correct its bid amount, G4S argues that correction is authorized
12 by 5 GCA § 5211(f) and 2 GAR 4 § 3109(m)(4)(C). 5 GCA § 5211(f) provides:
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14 (f) Correction or Withdrawal of Bids; Cancellation of Awards. Correction
15 or withdrawal of inadvertently erroneous bids before or after award, or cancellation
16 of awards or contracts based on such bid mistakes, shall be permitted in accordance
17 with regulations promulgated by the Policy Office. After bid opening, no changes
18 in bid prices or other provisions of bids prejudicial to the interest of the Territory or
19 fair competition shall be permitted. Except as otherwise provided by regulation, all
20 decisions to permit the correction or withdrawal of bids, or to cancel awards or
21 contracts based on bid mistakes, shall be supported by a written determination made
22 by the Chief Procurement Officer, the Director of Public Works or head of a
23 purchasing agency.

24 5 GCA § 5211(f). 2 GAR 4 § 3109(m)(4)(C), a regulation which requires correction of bids,
25 provides:
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27 (m) Mistakes in Bids

28 ...
29 (4) Mistakes Discovered After Opening but Before Award.

30 ...
31 (C) Mistakes where intended correct bid is evident. If the mistake
32 and the intended correct bid is clearly evident on the face of the bid
33 document, the bid shall be corrected to the intended correct bid and may
34 not be withdrawn. Examples of mistakes that may be clearly evident on

1 the face of the bid document are typographical errors, errors in extending
2 unit prices, transportation errors, and arithmetical errors.

3 2 GAR 4 § 3109(m)(4)(C).

4 The Public Auditor finds that G4S's intended correct bid of a Unit Price of \$8,165.99 x 3
5 locations and Extended Amount of \$293,975.64 is not evident on the face of G4S's bid document.
6 There is no indication in G4S's bid that it intended its unit price and extended amount to be
7 multiplied by three locations to reach the total contract amount. Consequently, G4S is not entitled
8 to correction of its bid under 2 GAR 4 § 3109(m)(4)(C), and G4S's request that it be awarded the
9 procurement in the amount of \$293,975.64 is denied.
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11 While G4S cannot correct its bid, it may withdraw its bid under 2 GAR 4 § 3109(m)(4)(D),
12 which states:

13 (m) Mistakes in Bids

14 ...
15 (4) Mistakes Discovered After Opening but Before Award.

16 ...
17 (D) Mistakes where intended correct bid is not evident. A bidder
18 may be permitted to withdraw a low bid if:

- 19 (1) A mistake is clearly evident on the face of the bid
20 document, but the intended correct bid is not similarly evident; or
21 (2) the bidder submits proof of evidentiary value which
22 clearly and convincingly demonstrates that a mistake was made.

23 2 GAR 4 § 3109(m)(4)(D). G4S's bid does contain a mistake, being that the unit price and extended
24 amount are inconsistent with G4S's Form E Declaration Re Compliance With U.S. D.O.L. Wage
25 Determination. GSA agrees that G4S's bid does not comply with the federal wage requirement.
26 As G4S's bid contains a mistake, and the intended correct bid is not evident, G4S may withdraw
27 its low bid pursuant to 2 GAR 4 § 3109(m)(4)(D).

28 Even if G4S does not withdraw its bid, it cannot be awarded the contract since its bid of
\$97,991.90 is nonresponsive for not meeting the minimum wage requirement, as acknowledged by

1 the parties. See 5 GCA § 5211(g) (requiring award to the lowest responsible bidder whose bid
2 meets the requirements and criteria set forth in the IFB). As a result, the Public Auditor agrees that
3 G4S is not required to perform the services required under the IFB for \$97,991.90, the sum set forth
4 in the “Revised” Notice of Intent of Possible Award dated March 13, 2015.
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6 **IV. CONCLUSION**

7 Based on the foregoing, the Public Auditor hereby determines the following:

8 1. G4S cannot correct its bid amount under 5 GCA § 5211(f) or 2 GAR 4 § 3109(m)(4)(C),
9 and, as a result, G4S cannot be awarded the procurement in the amount of \$293,975.64.


10 2. G4S may withdraw its low bid pursuant to 2 GAR 4 § 3109(m)(4)(D).

11 3. G4S is not required to perform the services required under the IFB for \$97,991.90.

12 4. Accordingly, G4S’s procurement appeal is hereby GRANTED IN PART and DENIED
13 IN PART.
14

15 This is a Final Administrative Decision. The Parties are hereby informed of their right to
16 judicial review in the Superior Court of Guam of a Decision of the Public Auditor under 5 G.C.A.
17 Chapter 5, Article 9 (Legal and Contractual Remedies) of the Guam Procurement Law. In
18 accordance with 5 G.C.A. § 5481(a), such action shall be initiated within fourteen (14) days after
19 receipt of a Final Administrative Decision. A copy of this Decision shall be provided to the Parties
20 and their respective attorneys, in accordance with 5 G.C.A. § 5702, and shall be made available for
21 review on the OPA website at www.opaguam.org.
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23 SO ORDERED this 29th day of May, 2015.
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26 _____
27 DORIS FLORES BROOKS, CPA, CGFM
28 Public Auditor of Guam