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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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FILE NO OPA-PA: 13-013

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6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

7 IN THE APPEAL OF

APPEAL NO. OPA-PA-13-013

8
9 G4S SECURITY SYSTEMS (GUAM) INC.,

**GUAM DEPARTMENT OF
EDUCATION'S HEARING BRIEF**

10 Appellant.

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13 Comes now the Guam Department of Education ("GDOE") by and through its counsel
14 and submits its Hearing Brief pursuant to the Scheduling Order for Hearing Re Appellant's
15 Appeal dated November 13, 2013.

16 **ARGUMENT**

17 Under the Guam Procurement Law and Guam Procurement Regulations, a responsive
18 bidder is defined as a "person who submitted a bid which conforms in all material respects to the
19 Invitation for Bids." 5 G.C.A. § 5102(g); 2 GAR Div. 4 § 3109(n)(2). Additionally, the Guam
20 Procurement Regulations mandate that all Invitation for Bids shall require bidders to submit an
21 acknowledgement of the receipt of all amendments issued. 2 GAR Div. 4 § 3109(c)(6).
22 Additionally, Section 2.8 of GDOE Invitation for Bid 032-2013 Design Build Fire Alarm System
23 Upgrade/Replacement and Fire Suppression/Sprinkler System Repair for Southern High School
24 ("IFB") requires that bidders must acknowledge in writing the receipt of any amendments to the
25 IFB, and a failure to do so may result in a bid being deemed nonresponsive. GDOE Submission
26 of Procurement Record, Exhibit 6, Bates Stamp No. GDOE0092.

1 The Guam Procurement Regulations allow for a procurement official to waive or allow for
2 correction of minor informalities and insignificant mistakes discovered after the opening of a bid.
3 2 GAR Div. 4 § 3109(m)(4)(B). Yet, if the minor informality or insignificant mistake is allowed
4 to be corrected, there must be no prejudice to the other bidders. *Id.* The Guam Procurement
5 Regulations sets out that prejudice is present when the waiver or correction of a mistake would
6 have a non-negligible or material “effect on price, quantity, quality, delivery, or contractual
7 conditions.” *Id.*

8 G4S has argued that its failure to include an acknowledgement of Amendment 2 was a
9 minor informality and that GDOE should have waived the requirement or allow the bidder to
10 correct, and that a minor informality that is a matter of form, rather than substance, or are
11 insignificant mistakes, and can be waived or corrected without prejudice to the bidders because
12 there is no effect on price, quantity, quality, delivery, or contractual conditions. GDOE disagrees
13 with G4S’ assertion that its failure to acknowledge Amendment 2 was a minor informality.

14 G4S has previously stated that the information contained in Amendment 2 is material in
15 respect to the IFB. On September 10, 2013, G4S requested the floor plans for Southern High
16 School. In its request, G4S acknowledged that it required the floor plans for Southern High
17 School in order to produce “accurate estimates and designs” in response to the IFB. *See* GDOE
18 Submission of Procurement Record, Exhibit 6, Bates Stamp No. GDOE00164. Amendment 2
19 included the floor plans of Southern High School. *Id.* at Bates Stamp No. GDOE00163-00197.
20 Evidenced by its own question, G4S admitted that the floor plans were needed to produce an
21 accurate bid. *Id.* at Bates Stamp No. GDOE00164. Amendment 2 incorporated and answered
22 questions submitted by G4S which asked about the disposal of existing wiring; the possibility of
23 altering structures to meet the fire code; and the possibility of additional work outside of the
24 approved plans during inspection which would additional cost outside the original bid. *Id.*
25 GDOE’s answers to G4S’ questions would affect the bid price G4S submitted. Consequently,
26 G4S’ failure to include and acknowledgement of Amendment 2 was neither a minor informality
27

1 nor an insignificant mistake, and to allow for the correction of G4s' mistake would be prejudicial
2 to other bidders because Amendment 2 had a direct effect on price or quality. *Id.* Therefore,
3 GDOE was right in not considering G4S for the IFB.

4 The IFB is clear that any amendments to the IFB are to be acknowledged in writing. *Id.* at
5 Bates Stamp No. GDOE0092. G4S failed to acknowledge Amendment 2 in their bid as required
6 by the Regulations and Section 2.8 of the IFB. See GDOE Submission of Procurement Record,
7 Exhibit 5, Bates Stamp No. GDOE009-0061. There is no merit in G4S' appeal, and therefore,
8 GDOE asks the OPA uphold its denial of G4S' protest and to dismiss G4S' appeal in its entirety.

9 In addition, if the OPA's November 13, 2013, Decision and Order is taken at face value
10 that GDOE's award of the contract is void, the September 30, 2013, obligation requirement under
11 Public Law 31-234 was not met and the funds contained in the Adequate Education Act Trust
12 ("Trust") have since expired. It is true that that the United States Department of Education
13 granted an extension to obligate Trust funds by January 31, 2014. However, the Public Law 31-
14 234 must be amended to incorporate the new January 31, 2013 obligation date. Currently, Bill
15 209-32 would amend Public Law 31-234 to reflect the new obligation date, but there is no
16 indication that the Bill 209-32 has been signed into law. Therefore, at this time, the funding
17 source of the procurement is no longer available, and to move forward with this appeal would be
18 imprudent.

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20 Dated this 29th day of November, 2013.

21 Respectfully submitted,

22 **GUAM DEPARTMENT OF EDUCATION**

23
24 By: 
25 **ANDREW T. PEREZ, ESQ.**
26 *Legal Counsel*