

Suite 401 DNA Building
238 Archbishop Flores St.
Hagåtña, Guam 96910



FAX

To:	Claudia S. Acfalle Chief Procurement Officer General Services Agency	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 475-1707 (671) 475-1727 / 472-4217	Pages:	8 (including cover page)
CC:	Seth Forman Attorney G4S Secure Solutions (Guam) Inc.	Date:	April 6, 2015
Phone: Fax:	(671) 646-1222 (671) 646-1223	Phone: Fax:	475-0390 ext. 211 472-7951

Re: OPA-PA-15-004 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
Llewelyn Terlaje
Audit Supervisor
lterlaje@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

April 6, 2015

Claudia S. Acfalle
Chief Procurement Officer
General Services Agency
148 Route 1 Marine Corps Drive
Piti, Guam 96915
VIA FACSIMILE: (671) 475-1727 / 472-4217

Re: Notice of Receipt of Appeal – OPA-PA-15-004

Dear Ms. Acfalle,

Please be advised that G4S Secure Solutions (Guam) Inc. (G4S) filed an appeal with the Office of Public Accountability (OPA) on April 3, 2015 regarding the General Services Agency's (GSA) response to G4S' protest relative to Invitation for Bid No.: GSA-012-015, DPHSS Security Guard Services – DPHSS Northern, Central, and Southern Region. OPA has assigned this appeal case number OPA-PA-15-004.

Immediate action is required of GSA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA's office and on its website at www.opaguam.org. The notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), please submit one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated, to OPA by **Monday, April 13, 2015**, five work days following receipt of this notice of appeal; and one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Monday, April 20, 2015**, ten work days following receipt of this notice of appeal.

When filing all other required documents with our office, please provide one original and two copies to OPA, and serve a copy to G4S. OPA respectfully asks that GSA provide one original and two copies of the procurement record as the Guam Procurement Law and Regulations require only

one copy. The three procurement record copies requested by OPA are distributed as follows: Copy-1: Master File; Copy-2: Public Auditor; and Copy-3: Hearing Officer.

Thank you for your prompt attention to this matter. Please contact me at 475-0390 ext. 211, or lterlaje@guamopa.org, should you have any questions regarding this notice.

Sincerely,



Llewelyn Terlaje
Audit Supervisor

Enclosure: Notice of Appeal – OPA-PA-15-004

Cc: Seth Forman, Dooley Roberts & Fowler, Attorneys for G4S

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

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: 4/3/15
TIME: 1310 AM PM BY: CP
FILE NO OPA-PA: 15-004

Attorneys for Appellant
G4S Secure Solutions (Guam) Inc.

OFFICE OF PUBLIC ACCOUNTABILITY

PROCUREMENT APPEAL

In the Appeal of)	NOTICE OF APPEAL
)	
G4S Secure Solutions (Guam) Inc.,)	Docket No. OPA-PA _____
)	
Appellant.)	
_____)	

Appellant Information:

For purposes of this appeal, appellant can be contracted through counsel, whose contact information is set forth above. Appellant's address, telephone number, and facsimile number are as follows:

G4S Secure Solutions (Guam) Inc.
1851 Army Drive
Harmon, Guam 969313

Telephone No. (671) 646-2307
Facsimile No. (671) 649-7245

Appeal Information:

A) Purchasing Agency: General Services Agency ("GSA")

B) Invitation for Bid No.: GSA-012-015, DPHSS Security Guard Services—DPHSS Northern, Central and Southern Region

C) The denial of protest being appealed was made on March 30, 2015, by the Chief Procurement Officer of GSA.

D) Appeal is made from a denial of a protest. This appeal is brought pursuant to 5 GCA §5425(e).

E) Name of competing bidder known to appellant: Pacific Island Security Agency.

Form and Filing:

1. G4S Secure Solutions (Guam) Inc. (“G4S”) is appealing the denial of a protest it made regarding GSA-012-015.

This procurement, GSA-012-015, was for DPHSS Security Guard Services for three locations—Northern, Central, and Southern Regions. Bids were sought to provide security guard services at 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”. Therefore, 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. *See Exhibit A (excerpt from G4S bid).*

It was obvious that the amounts of \$8,165.99 per month and \$97,991.90 per year were per location, and not totals for all three locations. The annual extended amount shown in the G4S bid was less than one-third of the total bid of the only competing bidder. Exhibit B (Abstract of IFB). If the \$97,991.90 annual figure were used for all three locations and not just per location unit, that amount would be far too low for compliance with the applicable United States Department of Labor

Wage Determination. *See* Exhibit C (Form E, Declaration re Compliance with U.S. D.O.L. Wage Determination).

At the bid opening on January 29, 2015, G4S realized for the first time that there might be some misunderstanding concerning the term “unit price”. Therefore, 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”. Exhibit D (G4S letter to GSA, Jan. 29, 2015).

GSA clearly 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.” Exhibit E (Notice of Intent to Award). 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. Exhibit F (“Revised” Notice of Intent to Award).

G4S believes 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. However, if the bid form is deemed to be ambiguous, then GSA could have properly 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, “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. Thus 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 that “[i]f the mistake and the intended correct bid is clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn”. The list of examples which follows in this subsection is merely illustrative, and not conclusive. 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, if any, 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 by Sealed Bid Solicitation Instructions, page 26, item 2(c), then the unit price of \$8,165.99 per month per location in the G4S bid controls over any error in extending that price. *See* Exhibit G (excerpt from Sealed Bid Instructions). The “unit price” must be multiplied by 36 (12 months at 3 locations) to arrive at the correct total for the G4S bid.

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. The March 13, 2015 “Revised” Notice should be deemed to be of no effect, and G4S should be awarded this contract at the correct amount.

G4S filed a timely protest of the "Revised" Notice of Award on March 26, 2015. Exhibit H (Protest). GSA denied the protest on March 30, 2015. Exhibit I (Letter from GSA Chief Procurement Officer to G4S's counsel). Although the March 30, 2015 letter from GSA refers to prior correspondence between G4S's counsel and GSA on March 24 and 26, 2015, as a protest and denial, this is incorrect. The March 24, 2015 letter from G4S's counsel to GSA was not labeled "protest". That letter was intended as an effort to resolve this dispute short of a protest.

2. G4S 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.

3. Supporting documents are attached hereto as exhibits which correspond with the Exhibit letters A through I as set forth above.

Declaration regarding court action:

G4S does hereby confirm that to the best of its knowledge, and the undersigned counsel does hereby confirm that to the best of his knowledge, no case or action concerning the subject of this Appeal has been commenced in court.

Dated this 2 day of April, 2015.

DOOLEY ROBERTS & FOWLER LLP

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

TRANSACTION REPORT

APR/06/2015/MON 10:19 AM

BROADCAST

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	APR/06	10:15AM	4751727	0:01:34	8	MEMORY OK	SG3 2791
002		10:17AM	6461223	0:01:18	8	MEMORY OK	SG3 2791
TOTAL				0:02:52	16		

Suite 401 DNA Building
238 Archbishop Flores St.
Hagåtña, Guam 96910



FAX

To:	Claudia S. Acfalle Chief Procurement Officer General Services Agency	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 475-1707 (671) 475-1727 / 472-4217	Pages:	8 (including cover page)
CC:	Seth Forman Attorney G4S Secure Solutions (Guam) Inc.	Date:	April 6, 2015
Phone: Fax:	(671) 646-1222 (671) 646-1223	Phone: Fax:	475-0390 ext. 211 472-7951

Re: OPA-PA-15-004 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,

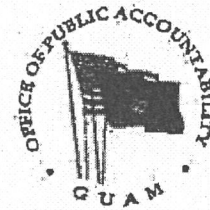
Llewelyn Terlaje

Audit Supervisor

lterlaje@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

Suite 401 DNA Building
238 Archbishop Flores St.
Hagåtña, Guam 96910



FAX

To:	Claudia S. Acfalle Chief Procurement Officer General Services Agency	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 475-1707 (671) 475-1727 / 472-4217	Pages:	8 (including cover page)
CC:	Seth Forman <i>SF</i> Attorney G4S Secure Solutions (Guam) Inc.	Date:	April 6, 2015
Phone: Fax:	(671) 646-1222 (671) 646-1223	Phone: Fax:	475-0390 ext. 211 472-7951

Re: OPA-PA-15-004 Notice of Receipt of Appeal

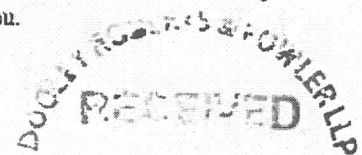
Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
Llewelyn Terlaje
Audit Supervisor
lterlaje@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.



APR 06 2015

SF



APR/08/2015/WED 08:40 AM OPA

FAX No. 671 4727951

P. 001/008

Suite 401 DNA Building
238 Archbishop Flores St.
Hagåtña, Guam 96910



FAX

To:	Claudia S. Acfalle Chief Procurement Officer General Services Agency	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 475-1707 (671) 475-1727 / 472-4217	Pages:	8 (including cover page)
CC:	Seth Forman Attorney G4S Secure Solutions (Guam) Inc.	Date:	April 6, 2015
Phone: Fax:	(671) 646-1222 (671) 646-1223	Phone: Fax:	475-0390 ext. 211 472-7951

Re: OPA-PA-15-004 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

Thank you,
Llewelyn Terlaje
Audit Supervisor
lterlaje@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

ACKNOWLEDGEMENT COPY
RECEIVED BY Richard Flores
04/08/15

Suite 401 DNA Building
238 Archbishop Flores St.
Hagåtña, Guam 96910



FAX

To:	Claudia S. Acfalle Chief Procurement Officer General Services Agency	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 475-1707 (671) 475-1727 / 472-4217	Pages:	8 (including cover page)
CC:	Seth Forman Attorney G4S Secure Solutions (Guam) Inc.	Date:	April 6, 2015
Phone: Fax:	(671) 646-1222 (671) 646-1223	Phone: Fax:	475-0390 ext. 211 472-7951

Re: OPA-PA-15-004 Notice of Receipt of Appeal

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

NO
4/8/2015

Thank you,
Llewelyn Terlaje
Audit Supervisor
lterlajc@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.