

1 **DEPARTMENT OF EDUCATION**

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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FILE NO. OPA-PA: 11-02

5 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
6 **PROCUREMENT APPEAL**

7 In the Appeal of)

APPEAL NO. OPA-PA 11-02

8 TOWN HOUSE DEPARTMENT STORES,)

9 INC., dba ISLAND BUSINESS SYSTEMS)

& SUPPLIES)

Appellant)

**REPLY IN SUPPORT OF
MOTION TO DISMISS**

11 XEROX CORPORATION

12 Party In Interest

13 Now comes, Department of Education "DOE", by and through undersigned counsel and for its
14 reply to the Appellant's Opposition to the Motion to Dismiss due to the pending Judicial
15 Proceeding in CV1536-10 concerning DOE's Procurement of Document Management Services
16 in GDOE IFB 022-2010 and the authority set forth in 5 GCA § 5703 and 2 GAR Div. 4 § 12013
17 (b) that make it clear the matter should be declined by the Public Auditor due to the Judicial
18 involvement, unless the Court requests the decision of the Public Auditor.

19 First, DOE restates that the pending Judicial Proceeding in CV 1536-10 concerns the
20 procurement that is the subject of the Appeal in this action.

21 The Agency Record filed by DOE as to IFB 022-2010 begins on March 19, 2010. That is
22 approximately the time DOE's Procurement returned to DOE as opposed to being
23 handled by GSA as GSA/DOE. The litigation involves the procurement at GSA and at
24 DOE and Appellant's argument that the litigation does not concern the procurement
25 should be held to not have any merit.

26 The Appeal in this action involves IFB 022-2010 and not IFB 006-2010. IFB 022-2010
27 involves DOE larger procurement of the lease of document management equipment and
28 directly and completely related to issues raised in IBSS' Judicial Proceeding in CV1536-
29 10 . With regard to IFB 006-2010 it is a separate matter involving a "created
30 procurement" for the outright purchase 94 small multi-function copiers and faxes while

1 the larger procurement IFB 022-2010 was being developed. The litigation involves the
2 emergency procurement process and the IFB process in IFB 022-2010.

3 Appellant's arguments that there is not a relationship "concerning the procurement" should be
4 found without merit.

5 Secondly DOE states the Motion to Decline the Appeal goes to the statutory and regulatory
6 jurisdiction of the OPA, and is properly before the OPA at this time since it goes to the OPA's
7 subject jurisdiction.

8 And finally, although Appellant raises many different arguments and uses concepts that are used
9 between different judicial venues, like "comity", it does not directly deal with the plain language
10 of the law, and the relationships between the OPA, and the Court. Under the Organic Act there
11 is a separation of powers between the Legislature and the Judiciary, and as a Governmental
12 Agency created by law, the OPA's jurisdiction is only that which is expressly provided by the
13 law. The law makes it clear that if there is a pending judicial action concerning the procurement,
14 the OPA should decline the matter and the Court if it chooses can make a request to the OPA to
15 proceed with a determination of the issues. Appellant's arguments to the contrary should be
16 found to be without merit.

17 The language in 2 GAR Div 4 § 12013 (b) is "the OPA shall not act on the Appeal"; not that the
18 OPA may choose whether or not to act on the Appeal as suggested by Appellant.

19 DOE respectfully requests the OPA to decline the Appeal due to Judicial involvement.

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**PURCHASING AGENT
DEPARTMENT OF EDUCATION**

By: LAURA J. MOONEY
Counsel for Department of Education

