

John Thos. Brown  
General Counsel for Petitioner  
545 Chalan Machaute (Route 8 @ Biang St), Maite, Guam 96910  
Mail to: P.O. Box 7, Hagåtña, Guam 96932  
Ph: 477-7293; Fax: 472-6153  
ingoz@ozemail.com.au

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
JAN 27 2011  
TIME: 5:15 PM BY: AC  
FILE NO. OPA-PA: 11-062

IN THE OFFICE OF PUBLIC ACCOUNTABILITY

PROCUREMENT PETITION

In the Petition of )  
)  
) NOTICE OF APPEAL  
) FROM DECISION ON PROTEST  
TOWN HOUSE DEPARTMENT STORES, )  
INC., dba )  
ISLAND BUSINESS SYSTEMS )  
& SUPPLIES, ) DOCKET NO. OPA-PA \_\_\_\_\_  
APPELLANT )  
\_\_\_\_\_ )

PETITIONER INFORMATION

Name: Town House Department Stores, Inc., dba Island Business Systems & Supplies ("IBSS")  
Mailing Address: P.O. Box 7, Hagåtña, Guam 96932  
Business Address: 545 Chalan Machaute (Route 8 @ Biang St), Maite, Guam 96910  
Daytime Contact No.: Roland R. Franquez, General Manager (671) 477-7454

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FURTHER PETITION INFORMATION

Purchasing Agency: Guam Department of Education ("DOE")

Number/Description of Procurement:

DOE IFB No: DOE 022-2010: Document Management Services

Protest and Appeal is made from Protest of method, solicitation or award, which Protest is of date December 16, 2010 (copy attached). As discussed below, the Protest particularly concerns the award.

The decision being appealed is a Decision denying IBSS' Protest (copy attached), which Decision is dated, and delivered, January 26, 2011.

Names of competing bidders, offerors, or contractors known to Appellant:

Xerox Corporation

CONTEXT OF APPEAL:

This Appeal arises in the context of a year of disputed copier acquisitions by DOE. To recap events and matters that have already been chronicled in OPA-PA-10-010 and OPA-PA-006-10, in the face of an emergency need for copiers at DOE, DOE issued, first, IFB 006 and subsequently IFB 022, the latter of which is the subject of this Appeal.

Submissions were opened for IFB 022 on October 26, 2010. It was reported that the Xerox prices were lower than IBSS prices; theirs were the only two responses. A copy of Appellant's bid is attached hereto.

On October 29, 2010, DOE sent a "Bid Status" report to IBSS. The report stated simply "Bid is recommended for award to: XEROX CORPORATION on the following line items: #1, #2, #3, #4, #6 & #7." A copy of the Bid Status report is attached to DOE's Denial of Protest Letter, mentioned below, a copy of which is attached hereto.

DOE's denial of Appellant's Protest, as more fully discussed below, is based entirely on the timing of, and the information conveyed by, the Bid Status report.

On the same date, October 29, 2010, DOE sent Xerox a "Letter of Intent". The letter simply

notified Xerox "your company has been determined to be the Lowest Most Responsive and Responsible Offeror [sic]." It further clarified, "this letter is only a notice of possible intent to award and should not be construed as an award...." A copy of the Letter of Intent is attached to DOE's Denial of Protest Letter, mentioned below, a copy of which is attached hereto.

Over two weeks later, on November 16, 2010, DOE issued a Purchase Order # 201100024 to Xerox Corporation with reference to IFB 022. A copy of the P/O is attached hereto. Of course, nobody notified Appellant at the time that the P/O had been issued. The only information it was provided was the Bid Status report, which revealed nothing about the actual award or the P/O.

Appellant obtained a copy of the Purchase Order together with the IFB in response to a request for information. These copies were delivered to Appellant on December 3, 2010. A copy of the Payment Receipt for the copies, dated 12.03.10 is attached hereto.

#### THE PROTEST:

On December 16, 2010, Appellant filed a formal procurement protest of the award for IFB 022. A copy of the protest is attached hereto. The substance of the protest arises entirely from information which was unknown to Appellant, and could not have been known to Appellant, until receipt of the documents on December 3, 2010, especially the Purchase Order dated November 16. The P/O revealed material and substantial changes between what the IFB sought and the Department bought.

Appellant protested that the purchase order issued varied significantly from the quantities of items specified in the IFB, and that express references in the purchase order to "Xerox Response and Services & Solutions Agreement No. 7099405" indicated the contract and Xerox' bid submission were non-responsive to the IFB because of the strong inference that the contract was a negotiated agreement and not the unconditional acceptance required of a proper bid.

On December 27, 2010, Xerox entered an appearance in the protest. On December 30, 2010, Xerox interjected formal comments in response to Appellant's Protest, to the effect that IBSS' protest was untimely, based on the Bid Status notice, and that changes to the configurations and quantities of equipment were minor and allowed under the IFB based on the general "changes" clause and more particularly on an "Incremental Additions" clause in the IFB which, it alleged, created an "indefinite quantity" contract. A copy of Xerox' response, of date December 30, 2010, is attached.

On January 3, 2011, Appellant replied to Xerox' interjections by letter, a copy of which is attached. Appellant disputed the timeliness of the protest, stating the Bid Status sheet only showed price and not the details of the changes and of the Xerox submission by which it believed it was aggrieved.

Appellant further disputed the significance and magnitude of the changes<sup>1</sup>, and refuted the notion that the changes and “Incremental Additions” clause allowed such changes, and more importantly, that any such interpretation would be contrary to law.

The changes clause argument was based on the standard clause 22 in the General Terms and Conditions, which allows increases or decreases in the quantity of the items for award and make additional awards of the same type at the bid price for a period of 30 days *after the original award*. In this case, the changes were made as part of the original award, not after it.

Xerox claims the changes clause and the “Incremental Additions” clause allowed an “open-ended” discretion. Appellant claims this does not allow an override of the bid quantities in any material way which would prejudice competitors, otherwise there would be no need to even specify a quantity of items in an IFB. It runs contrary to the policies implied in the provision of 2 GAR § 3115(d)(1)(B)(iii), which allows bids to be cancelled if amendments are required that are of a change “of such magnitude that a new solicitation is required”, and of 2 GAR § 6101(3)(a), which allows change orders only “within the general scope” of the contract.

The “Incremental Additions” clause relied upon by Xerox is a special provision, on page 23 of the IFB. It reads:

**“Incremental Additions:** GDOE will have at its discretion the ability to add additional equipment on the proposed plan as needed based on the quoted Incremental Additional cost per month per item. The ability to add additional equipment will be in effect for the first three years of the proposed plan.”

Xerox claims this provision formed the basis of an “indefinite quantity” contract that allowed the changes seen in the purchase order<sup>2</sup>.

This is wrong, first for the simple reason that there was nothing *incremental* in these changes. The changes were wholesale, not marginal, and took place right off the bat, not incrementally during the progress of the contract. Even if it were legal under procurement law, it would not qualify in this instance because the changes were not incremental.

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<sup>1</sup> Which Xerox tried to play down by ignoring the individual increases and decreases of quantities, and looking only at the net change. “Overall, ... there was only an increase of five machines”. (At p 2.) This also conveniently, and wrongly, overlooks the fact that the mere numbers do not tell the whole story; it is also pertinent to look at which kinds of machines increased or decreased.

<sup>2</sup> “The incremental additions are permitted by statute because the IFB is an indefinite quantity bid.” (At p 3.)

But more importantly, this clause cannot be an indefinite quantity contract under the law and regulations.

This clause purports to allow, but not require, the government to make purchases "as needed". This introduces uncertainty as to the essential quantity term of purchase contrary to the requirements of contract law. (See, 13 GCA [UCC Sales] § 2201(1), that a "contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.")

An "as needed" contract is only available in the circumstances described as a "requirements" contract. A requirements agreement is one "where the quantity of goods is left open" and "measured by the buyer's needs". (Commentary to 13 GCA § 2306.) There are very strict conditions that must be met for a requirements clause to be legally enforceable. In the procurement law context, these are described in 2 GAR § 3119(i).

A requirements contract is described specifically as *a form of indefinite quantity contract*. (§ 3119(i)(3).)

All indefinite quantity contracts require a review every 6 months to determine if they are still needed (§ 3119(i)(2)). Thus, an indefinite quantity contract must be for a term not exceeding 6 months or contain a clause allowing it to be terminated upon any such review. The P/O issued in this case does not meet that condition.

All requirements contracts include the unconditional *obligation* of the government to purchase its actual requirements. ("**A requirements contract is an indefinite quantity contract for supplies or services that obligates the territory to order all the actual requirements....**"; 2 GAR § 3119(i)(3).)

In this case, the Incremental Additions clause was very expressly *discretionary*: the clause lacks the *obligation* that makes a requirements condition enforceable. In substance, the Incremental Additions clause gives DOE an *option* to purchase, yet does not meet the requirements for an option contract because, first, the requirements of 2 GAR § 3119(k) are not met and, more to the point, an option cannot be granted to only one vendor unless the sole source method of source selection is complied with; an option is a *type* of contract, it is not an allowable *method* of source selection.

Without the obligatory condition of a requirements contract, the Increment Additions clause is nothing more than a sole source procurement arrangement, which would be highly improper.

Appellant argued that there was no legal basis for making the wholesale changes to the configuration of goods purchased from what was specified in the IFB.

#### PROTEST OF AWARD:

The procurement law allows a protest to be brought on an improper award. (5 GCA § 5425(a): “Any actual ... bidder ... who may be aggrieved in connection with the ... award of a contract, may protest ....”)

The authors of the go-to text on government contracting, Professors Cibinic and Nash, note that the distinction between award controversies and contract controversies are distinguishable.

“Contract award controversies must be distinguished from controversies arising during contract performance. As a general rule, performance controversies occur between parties to a contract, and third parties cannot challenge actions that occur during the performance of a contract....

“Where, however, the contract action is considered to clearly compromise the competition that led to the award, it will be considered a contract award controversy. [Citation omitted.] Thus, the contract award controversy process will be available where a contract modification alters the contract requirement to the extent that the modified contract is outside the scope of the original competition. [Citation omitted.] This is determined by analyzing the entire contract to determine whether the original competitors would have anticipated that the modification would be issued under the contract.” (Formation of Government Contracts, 3<sup>rd</sup> Edition, Cibinic and Nash, CCH/The George Washington University/Wolters Kluwer (1998), at pp 1483-84.)

In this case, the controversy arose from the making of the contract coincident with the award, so it precedes any contract performance. Indeed, the decision to make this contract on these improper terms preceded the execution of the Purchase Order. This case does not involve a *contract* modification, it involves the modification of the IFB’s terms subsequent to bid opening, prior to award. Appellant’s protest clearly meets the jurisdictional elements of a valid protest of the award.

#### THE DECISION DENYING THE PROTEST:

DOE’s denial of Appellant’s protest did not discuss or refute one substantive claim made by Appellant in its protest. It simply adopted the same rationale that Xerox invoked: that the protest was untimely because it was not brought within 14 days of the notice of Bid Status.

Due to the fact that the denial was based on a procedural basis and not a substantive one, Appellant incorporates and repeats by reference all the matters objected to in its Protest as grounds of Appeal.

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The denial on the basis of timing is simply quite wrong on the law that allows, indeed requires, that a protest be brought *only* within 14 days after the protestor knows or should know of the facts by which it may be aggrieved (5 GCA § 5425(a)). A bidder is aggrieved only if it is wronged, and it is not wronged simply by bidding a higher price.

**5 GCA § 5425(a) is clearly intended to limit the number of protests.** It is intended that bidders **not** protest *unless they believe they have been aggrieved*. DOE's position would require every bidder to file a protest, even before it had or should have knowledge of any facts by which it may be aggrieved.

If a protest was required to be brought within 14 days of issuance of the Bid Status, every bidder would be compelled to protest regardless whether the bidder was *aggrieved* or simply *lost* because it was not the low price. Such a protest, based on nothing more than knowledge of bid pricing, would surely be argued to be frivolous. Indeed, the law allows a bidder who has filed a frivolous protest (such as a protest filed without arguable grounds that the bidder had been aggrieved) to be debarred or suspended from further government contracting. (5 GCA § 5426(b)(7).) Does DOE require bidders to file frivolous protests?

The Bid Status report only mentioned a *recommendation* of award. The Letter of Intent to Xerox was on the same day as the Bid Status notice, October 29, and it very clearly said the letter was "*only* a notice of **possible** intent ... and should *not* be construed as an award".

The award, by issuance of the P/O, did not take place until November 16, more than 14 days after the Bid Status report. Was Appellant supposed to protest a bid award *that had not yet even been awarded*? And without knowledge of anything more than that its bid was higher than another bid? On sheer conjecture of the "possible intent" of DOE and a *recommendation*?

No, of course not. The law does not require such absurdities. It requires grounding in fact, not speculation.

Appellant did not know that it was wronged, that it might be aggrieved, until it had notice of the magnitude of changes made. The Bid Status provided no more information than Appellant already had at bid opening: that it was not the low bid. Knowing only this, Appellant could only conclude that, fair enough, Xerox won the bid as low bidder.

Appellant did not know that Xerox and DOE had re-jigged the bid before awarding the contract. This knowledge was withheld from Appellant until it was given the purchase order, in response to a formal request for information, on December 3. It timely filed its protest thereafter.

It might be added, that Appellant has still to see the Xerox bid submission for IFB 022. DOE has attempted to assure Appellant that the expressly referenced "Xerox Response and Services & Solutions Agreement No. 7099405" was not part of the Purchase Order, but indicated it may have

been part of the Xerox bid submission.

To Appellant, the apparent parallel between the proposal offer made in DOE IFB 006 and the instant IFB 022 was striking, a striking coincidence Appellant was unaware of until after December 10, 2010 when the Xerox 006 bid submission was revealed to Appellant in the Agency Report for OPA-PA-002-2010. If Xerox' 022 response contains the same substantive conditionality and material changes that its 006 response did, 022 should likewise be deemed a non-responsive proposal and not the unconditional acceptance required by 5 GCA § 5211(e).

#### RELIEF SOUGHT FROM APPEAL:

From the time IFB 022 was first visualized to the date of this Appeal, there has been a constant turn in DOE personnel having carriage of the IFB. Appellant was advised, soon after its protest was filed, that new eyes were looking into the issues raised by Appellant and other undisclosed matters picked up by "new eyes". In response to these matter, Appellant was advised DOE placed, and seems perhaps to have renewed, certain Stop Work orders on at least portions of the contract. DOE seems to have concerns of its own regarding the magnitude of changes made between the IFB and the Purchase Order, as well as other issues (undisclosed).

Given those concerns, Appellant is baffled that DOE chose to deny Appellant's protest without any discussion of the substantive issues. Has DOE conceded, then, the substantive reasons for the Protest? Based on substantive issues, changes occurred which were of such magnitude, and of such prejudice to competitors, that the contract should be terminated.

Appellant would argue that, on face value, DOE has conceded the substantive issues and is trying to salvage what it can from the solicitation. Appellant would consider that to be inappropriate and that the contract, if wrong on the substantive issues, is wrong altogether and must be terminated.

Termination is a viable option to consider because the contract has not been fully performed anyway, thanks to the stop work orders. It is also a viable option because DOE has shown itself throughout 2010 to be thoroughly adept at obtaining its copier needs by temporary emergency procurements.

But, given the apparent emergency conditions requiring the schools to have copiers, perhaps there is method to DOEs madness in its handling of the contract from the date of bid opening. Appellant is not, however, willing to concede the matter out of hand, and would ask the Public Auditor to examine closely and with full disclosure of all aspects of the IFB and P/O, and determine if the emergency conditions support a partial termination of the contract and ratification of the remaining parts.



Dated this 27<sup>th</sup> day of January, 2011, and

Respectfully submitted,



Roland R. Franquez  
General Manager, IBSS



John Thos. Brown  
General Counsel for Petitioner

#### SUPPORTING EXHIBITS, EVIDENCE, OR DOCUMENTS

With reference to all the matters submitted in the original Appeal as incorporated above, and reserving the right to provide further written material as it may be considered relevant or come to hand, there are attached hereto the following supporting materials:

Copies of:

1. Appellant's Protest Letter, December 16, 2010
2. DOE Decision denying Protest, January 26, 2011  
Includes: Bid Status report to Appellant, October 29, 2010  
DOE Letter of Intent to Xerox, October 29, 2010
3. Appellant's Bid in DOE IFB No. 022-2010
4. Purchase Order # 201100024 to Xerox, November 16, 2010
5. Payment Receipt for copies 12.3.10
6. Xerox response to Appellant's Protest, December 30, 2010
7. Appellant's response to Xerox' comments, January 3, 2011

DECLARATION RE COURT ACTION follows

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DECLARATION RE COURT ACTION


Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 27<sup>th</sup> day of Jan., 2011.

for Appellant Jones & Guerrero Co., Inc., dba Island Business Systems & Supplies

By: \_\_\_\_\_

  
Roland R. Franquez, General Manager-IBSS  
authorized representative for Appellant  
PO Box 7, Hagåtña, Guam 96932  
PH: (671)- 477-7454  
Fx: - 477-7660

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*OPA Notice of Appeal: IBSS vs DOE - copiers - DOE IFB 022 - 2010*

EXHIBIT

1. Appellant's Protest Letter, December 16, 2010

JOHN THOS. BROWN  
ATTORNEY AT LAW \*

GENERAL COUNSEL

Jones & Guerrero Co. Inc. (Guam, USA)  
Its divisions, subsidiaries and affiliates<sup>†</sup>

J&G Corporate Office  
545 Chalan Machaute, (Rte 8 @ Biang St.), Maite, Guam 96910

Telephone: +1-671-477-7293

Fax: +1-671-472-6153

email: jngo@ozemail.com.au

Mobile/Cell phone: +1-671-483-5960

POSTAL: GPO Box 7, Hagåtña, Guam 96932

December 16, 2010

Mrs. Nerissa Bretania Underwood, Ph.D.  
Superintendent, Guam Department of Education  
P.O. Box DE  
Hagåtña, Guam 96932

PROCUREMENT PROTEST: Copiers IFB # 022-2010

Dear Superintendent,

IBSS (Island Business Systems and Supplies), is a division of Town House Department Stores, Inc., a J&G affiliate, a locally owned and operated Guam corporation. IBSS provides document scanning management services and equipment and was a responsive and responsible bidder for the referenced solicitation. I am writing on behalf of IBSS, as its General Counsel.

IBSS protests the award of all items of IFB 022, other than item 5 which remains outstanding, evidently.

One ground of protest is that the award is for quantities of product that vary significantly beyond the quantities indicated in the IFB, and in amounts and timing that cannot be considered, in good faith, as "incremental".

The purchase orders issued in consequence of the award are materially different from the quantities of product specified in the IFB. The changed quantities were of such magnitude that it would have affected bid prices for the products.

It is believed that the changed quantities were the results of negotiated agreement between Xerox and DOE.

IBSS also has reason to believe that it may be aggrieved (5 GCA § 5425(a)) by the award because the award is non-responsive to the IFB.

\* Admitted to Practice: California, Guam and Commonwealth of Northern Mariana Islands, USA [Inactive in NSW, Australia]\*

† Micronesian Brokers, Inc. (Guam and CNMI)/Town House Department Stores, Inc. (Guam)/J&G Distributors/Aquarius Beach Towers, (Saipan, CNMI)/Livno Holdings PTY LTD (A.C.N. 003 585 331)/Townhouse, Inc. (Saipan, CNMI)/IBSS (Guam and Saipan)

BA 12/16/10

It appears, from information provided when IBSS requested a copy of Xerox' bid, that the contract actually awarded was according to the standard terms of a Xerox dictated contract. This contract was not provided to IBSS, but reference to "Xerox Response and Services & Solutions Agreement No. 7099405" is provided in the P/O Requisition, Number 99. It would contain provisions not authorized by the IFB, and even to the extent that it was negotiated by mutual agreement, it would run afoul of relevant procurement law. It may contain unilateral "clarifications" of its bid, in violations of the IFB's Sealed Bid Solicitation Instructions, #3: "Any explanation ... or interpretation ... must be submitted in writing ... before submission of their bids."

5 GCA § 5211(e) states,

**"Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Chapter. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids...."**

5 GCA § 5211(f) states,

**"After bid opening, no changes in bid prices or other provisions of bids *prejudicial to the interest of the Territory or fair competition* shall be permitted."**

Xerox' bid was intended to be awarded and evaluated solely upon the terms of the IFB (2 GAR § 3190(n)). The Xerox contract was not part of the IFB. Its terms were not even revealed until after bids were opened. It is prejudicial to fair competition to allow Xerox to dictate terms and conditions that were not made available to competing bidders.

IBSS does not base this belief on wild speculation. It takes as its guide the cover letter Xerox provided with its bid in DOE IFB 006, which was just recently revealed to IBSS in the Agency Response in OPA-PA-10-010. As with the instant bid, Xerox required, as a condition of its bid, that DOE negotiate beyond the terms of the IFB to accommodate its own contract form.

In that letter, Xerox says, "we have included a copy of our standard Purchase Agreement which further explains our offer". The letter continues, "Xerox agrees to negotiate a solution that is acceptable to both parties..." It concludes, "Xerox also agrees to negotiate a final Contract that incorporates the mutually agreed terms contained in the Departments' Bid, this document, Xerox's Purchase Agreement, and any other negotiated term."

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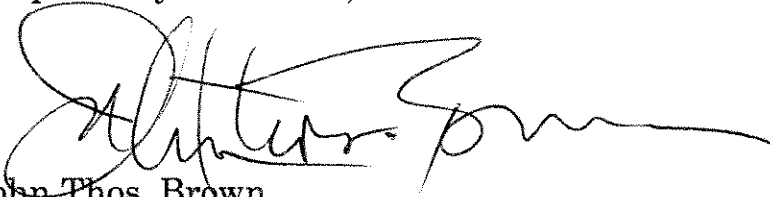
Significantly, in light of the significant variance in P/O quantities and IFB 022 quantities is the following statement in that letter:

“Our team is also prepared to discuss our Proposal in greater detail and adjust our proposed equipment, support services, terms and/or price offering based on the Department’s final requirements.”

This certainly raises the inference that discussions have taken place to negotiate the final P/O from IFB 022 that are only appropriate, if at all, in the context of an RFP, not an IFB.

I hope to have your considered, prompt and expeditious decision on this protest. Provision of these copiers has been of the Department’s “highest priority”, so resolution of this protest of the award must also reflect that priority.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Thos. Brown", written over a horizontal line.

John Thos. Brown

JOHN THOS. BROWN  
ATTORNEY AT LAW \*

GUAM DEPARTMENT OF EDUCATION  
Office of the Superintendent

Rec'd by: Emily

Date/Time: 12-20-10

Telephone: +1-671-477-7293

Fax: +1-671-472-6153

email: jngo2@ozemail.com.au

Mobile/Cell phone: +1-671-483-5960

POSTAL: GPO Box 7, Hagåtña, Guam 96932

GENERAL COUNSEL

Jones & Guerrero Co. Inc. (Guam, USA)

Its divisions, subsidiaries and affiliates<sup>†</sup>

J&G Corporate Office

545 Chalan Machaute, (Rte 8 @ Biang St.), Maite, Guam 96910

December 20, 2010

Mrs. Nerissa Bretania Underwood, Ph.D.  
Superintendent, Guam Department of Education  
P.O. Box DE  
Hagåtña, Guam 96932

AMENDMENT TO PROCUREMENT PROTEST: Copiers IFB # 022-2010

Dear Superintendent,

On December 16, 2010, IBSS protested the referenced IFB. This letter is intended to amend the protest by clarifying and expanding one of the implied grounds of protest stated therein.

In the original protest, the following comment from Xerox in respect of IFB 006-2010 was noted:

“Our team is also prepared to discuss our Proposal in greater detail **and adjust our proposed equipment**, support services, terms and/or price offering based on the Department’s final requirements.” (Emphasis added)

The protest explained,

“This certainly raises the inference that discussions have taken place to negotiate the final P/O from IFB 022 that are only appropriate, if at all, in the context of an RFP, not an IFB.”

Another ground of protest was “that the award is for quantities of product that vary significantly beyond the quantities indicated in the IFB”.

This amendment makes it clear that it is not just the significant variation in *quantities* of product that is protested, but also the *adjustments to the proposed equipment*.

\* Admitted to Practice: California, Guam and Commonwealth of Northern Mariana Islands, USA [Inactive in NSW, Australia]\*

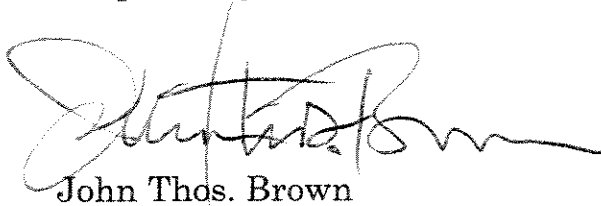
<sup>†</sup> Micronesia Brokers, Inc. (Guam and CNMI)/Town House Department Stores, Inc. (Guam)/J&G Distributors/Aquarius Beach Towers, (Saipan, CNMI)/Livno Holdings PTY LTD (A.C.N. 003 585 331)/Townhouse, Inc. (Saipan, CNMI)/ IBSS (Guam and Saipan)



IBSS' analysis of the Xerox bid which was provided (which, by the way, is incomplete inasmuch as it does not include referenced information and contract terms which were referenced in the documents provided), indicates that the Purchase Order issued to Xerox includes 19 pieces of equipment which were not even bid.

That is, of course, not lawful. Assuming DOE pays for it, that will constitute further grounds for a 5 GCA § 7103 action against everyone who participated in the decision to contract for the equipment.

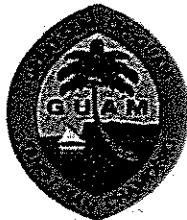
Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Thos. Brown", written in a cursive style.

John Thos. Brown

EXHIBIT

2. DOE Decision denying Protest, January 26, 2011  
Includes: Bid Status report to Appellant, October 29, 2010  
DOE Letter of Intent to Xerox, October 29, 2010



**OFFICE OF SUPPLY MANAGEMENT  
GUAM DEPARTMENT OF EDUCATION**

*Manuel F.L. Guerrero / Administration Building  
2nd. Floor, Suite B-202  
Hagåtña, Guam 96932  
Telephone: (671) 300-1581  
Fax: (671) 472-5001*



Nerissa Bretania Underwood, Ph. D.  
Superintendent of Education

Marcus Y. Pido  
Supply Management Administrator

January 26, 2011

John Thomas Brown  
General Counsel, Jones & Guerrero Co., Inc. dba IBSS  
545 Chalan Machaute, Route 8  
Maite, Guam 96910  
Tel: (671) 477-7293  
Fax: (671) 472-6153

Subject: IBSS Procurement Protest: Copiers DOE IFB 022-2010 dtd December 16, 2010

Dear Mr. Brown,

In reference to the Invitation for Bid 022-2010, the notice of intent to award was delivered October 29, 2010, and notifications of the bid status were also delivered on October 29, 2010. Please see the attached successful facsimile transmissions to IBSS on that same date.

It is at this time that unsuccessful bidders knew or should have known of any perceived irregularities in the procurement process. Bidders have fourteen (14) working days post notification of bid status to submit any protestations to the purchasing entity. Your Procurement Protest to IBF 022-2010 was received by GDOE Superintendent's office on December 16, 2010

Your procurement protest dated December 16, 2010 is past fourteen (14) working days after the delivery of the bid status date of October 29, 2010. It is based on these facts that we hereby deny your untimely protest.

Should you have any concerns regarding this matter, please do not hesitate to call our office at 300-1581

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Y. Pido'.

Marcus Y. Pido  
Supply Management Administrator

cc: Procurement File: GDOE IFB 022-2010  
Superintendent, GDOE  
GDOE Legal Office



**GUAM PUBLIC SCHOOL SYSTEM**  
**OFFICE OF SUPPLY MANAGEMENT**

*Manuel F.L. Guerrero / Administration Building*  
 2nd Floor, Suite B-202  
 Hagåtña, Guam 96932  
 Telephone: (671) 475-0436/0440  
 Fax: (671) 472-5001



**NERISSA BRETANIA-SHAFFER, Ph.D.**  
 Superintendent of Education

**ALBERT G. GARCIA**  
 Supply Management Administrator, Acting

**BID STATUS**

Island Business Systems & Supplies  
 545 Chalan Machaute, Route 8  
 Maite, Guam 96929  
 Tel: (671) 477-7454 or (671) 472-2200  
 Fax: (671) 477-7660

October 29, 2010

Bid no.: GDOE IFB-022-2010 OPENED: Tuesday October 26, 2010 @ 10:00 A.M.

Description: DOCUMENT MANAGEMENT SERVICES

The following is the evaluation results of subject bid: Refer to items checked below.

// Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds
- Change of specifications
- Insufficient number of bidders

// Rejected due to:

- Late submission of bid
- No bid deposit submitted, as required by Section 11 of the General Terms and Conditions
- Bid received after the hour established by the invitation as the time by which all bids must be received.
- Not meeting the delivery requirement as stated in the Invitation for Bid.
- Non-conformance with specifications
- Inability to provide future maintenance and services to the equipment
- High price
- Others:

// Bid is recommended for award to: **XEROX CORPORATION** on the following line items: #1, #2, #3, #4, #6 & #7

// Remarks:

Sincerely,

**ALBERT G. GARCIA**  
 Supply Management Administrator, Acting

**ACKNOWLEDGMENT RECEIPT**

\_\_\_\_\_  
 Signature

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Confirmation Report - Memory Send

Page : 001
Date & Time: Oct-29-2010 03:38pm
Line 1 : +671 472 5001
Machine ID : GDOE, Office of Supply Management

Job number : 574
Date : Oct-29 03:37pm
To : 4777660
Number of pages : 001
Start time : Oct-29 03:37pm
End time : Oct-29 03:38pm
Pages sent : 001
Status : OK

Job number : 574

\*\*\* SEND SUCCESSFUL \*\*\*

GUAM PUBLIC SCHOOL SYSTEM
OFFICE OF SUPPLY MANAGEMENT
Hawaii P.O. Guerrero / Administration Building
2nd Floor, Suite B-302
Hagåtña, Guam 96922
Telephones (671) 472-5036/4440
Fax: (671) 472-3001



ALBERT G. GARCIA
Supply Management Administrator, Acting

NERISSA BRETANIA-SEAFER, Ph.D.
Superintendent of Education

BID STATUS

October 29, 2010

Island Business Systems & Supplies
545 Chalan Machaute, Route 8
Maito, Guam 96922
Tel: (671) 477-7454 or (671) 472-2200
Fax: (671) 477-7860

Bid no.: GDOE IEB-022-2010 OPENED: Tuesday, October 26, 2010 @ 10:00 A.M.

Description: DOCUMENT MANAGEMENT SERVICES

The following is the evaluation results of subject bid: Refer to items checked below.

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( ) High price
( ) Others:

/ / Bid is recommended for award to: XEROX CORPORATION on the following line items: #1, #2, #3, #4, #6 & #7

/ / Remarks:

Sincerely,
ALBERT G. GARCIA
Supply Management Administrator, Acting

ACKNOWLEDGMENT RECEIPT

Signature
Date: Time:

Confirmation Report - Memory Send

Page : 001
Date & Time: Oct-29-2010 03:39pm
Line 1 : +671 472 5001
Machine ID : GDOE, Office of Supply Management

Job number : 575
Date : Oct-29 03:38pm
To : 64723844
Number of pages : 002
Start time : Oct-29 03:38pm
End time : Oct-29 03:39pm
Pages sent : 002
Status : OK

Job number : 575

\*\*\* SEND SUCCESSFUL \*\*\*



NERISSA BRITANIA-UNDERWOOD, Ph.D.
Superintendent of Education

GUAM DEPARTMENT OF EDUCATION
OFFICE OF SUPPLY MANAGEMENT
Manuel F.L. Guerrero / Administration Building
2nd Floor, Suite 8-330
Hagatna, Guam 96910
Telephone: (671) 300-1581
Fax: (671) 472-3001



Albert C. Garcia
Supply Management Administrator, Acting

LETTER OF INTENT

October 29, 2010

To: Xerox Corporation
137 Murray Blvd., Suite 101
Hagatna, Guam 96910
Tel: (671) 477-1907
Fax: (671) 472-3844

Attn: Mike Salas
Services & Solutions Executive

Reference: DOCUMENT MANAGEMENT SERVICES
Formal Bid: GDOE IFB 022-2010

Dear Mr. Salas,

As a result of the evaluation of the above reference Bid Invitation, your company has been determined to be the Lowest Most Responsive and Responsible Offeror. Therefore, the Department intends to award the Bid to your Company.

You are hereby advised that this letter is only a notice of possible intent to award and should not be construed as an award by the Guam Department of Education, Office of Supply Management.

If you have any questions regarding this matter, kindly contact our office at 300-1581. Please acknowledge receipt and return by facsimile to (671) 472-5001.

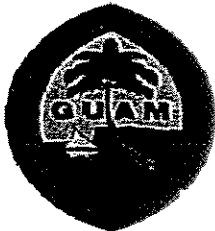
Sincerely,

[Handwritten signature]

ALBERT C. GARCIA
Supply Management Administrator, Acting

ACKNOWLEDGMENT RECEIPT

Signature
Date: Time:



**GUAM DEPARTMENT OF EDUCATION  
OFFICE OF SUPPLY MANAGEMENT**

*Manuel F.L. Guerrero / Administration Building  
2nd Floor, Suite B-220  
Hagåtña, Guam 96932  
Telephone: (671) 300-1581  
Fax: (671) 472-5001*



**NERISSA BRETANIA-UNDERWOOD, Ph.D.**  
Superintendent of Education

**Albert G. Garcia**  
Supply Management Administrator, Acting

**LETTER OF INTENT**

October 29, 2010

To: Xerox Corporation  
137 Murray Blvd., Suite 101  
Hagatna, Guam 96910  
Tel: (671) 477-1907  
Fax: (671) 472-3844

Attn: Mike Salas  
Services & Solutions Executive

Reference: DOCUMENT MANAGEMENT SERVICES  
Formal Bid: GDOE IFB 022-2010

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If you have any questions regarding this matter, kindly contact our office at 300-1581.

Please acknowledge receipt and return by facsimile to (671) 472-5001.

Sincerely,

**ALBERT G. GARCIA**  
Supply Management Administrator, Acting

**ACKNOWLEDGMENT RECEIPT**

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_ Time: \_\_\_\_\_



# GUAM PUBLIC SCHOOL SYSTEM

## OFFICE OF SUPPLY MANAGEMENT

Manuel F.L. Guerrero / Administration Building  
2nd Floor, Suite B-202  
Hagåtña, Guam 96932  
Telephone: (671) 475-0436/0440  
Fax: (671) 472-5001



NERISSA BRETANIA-SHAVER, Ph.D.  
Superintendent of Education

ALBERT G. GARCIA  
Supply Management Administrator, Acting

## BID STATUS

Island Business Systems & Supplies  
545 Chalan Machaute, Route 8  
Maite, Guam 96929  
Tel: (671) 477-7454 or (671) 472-2200  
Fax: (671) 477-7660

October 29, 2010

Bid no.: GDOE IFB-022-2010 OPENED: Tuesday October 26, 2010 @ 10:00 A.M.

Description: DOCUMENT MANAGEMENT SERVICES

The following is the evaluation results of subject bid: Refer to items checked below.

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- Bid received after the hour established by the Invitation as the time by which all bids must be received.
- Not meeting the delivery requirement as stated in the Invitation for Bid.
- Non-conformance with specifications
- Inability to provide future maintenance and services to the equipment
- High price
- Others:

/X/ Bid is recommended for award to: **XEROX CORPORATION** on the following line items: #1, #2, #3, #4, #6 & #7

// Remarks:

Sincerely,

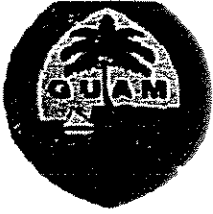
ALBERT G. GARCIA  
Supply Management Administrator, Acting

### ACKNOWLEDGMENT RECEIPT

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_ Time: \_\_\_\_\_





GUAM PUBLIC SCHOOL SYSTEM

## OFFICE OF SUPPLY MANAGEMENT

Manuel F.L. Guerrero / Administration Building  
2nd Floor, Suite B-202  
Hagåtña, Guam 96932  
Telephone: (671) 475-0436/0440  
Fax: (671) 472-5001



NERISSA BRETANIA-SHAFER, Ph.D.  
Superintendent of Education

ALBERT G. GARCIA  
Supply Management Administrator, Acting

## BID STATUS

Xerox Corporation  
137 Murray Blvd. Suite 101  
Hagatna, Guam 96910  
Tel: (671) 477-1907  
Fax: (671) 472-3844

October 29, 2010

Bid no.: GDOE IFB-022-2010 OPENED: Tuesday October 26, 2010 @ 10:00 A.M.

Description: DOCUMENT MANAGEMENT SERVICES

The following is the evaluation results of subject bid: Refer to items checked below.

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- High price
- Others:

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// Remarks:

Sincerely,

ALBERT G. GARCIA  
Supply Management Administrator, Acting

### ACKNOWLEDGMENT RECEIPT

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_ Time: \_\_\_\_\_



Nerissa Bretania Underwood, Ph.D.  
Superintendent of Education

**DEPARTMENT OF EDUCATION  
OFFICE OF SUPPLY MANAGEMENT**

[www.gdoe.net](http://www.gdoe.net)  
Manuel F.L. Guerrero / Administration Building  
2<sup>nd</sup> Floor, Suite B-202  
Hagatna, Guam 96932  
Telephone: (671) 300-1580 Fax: (671) 472-5001  
Email: [aggarcia@gdoe.net](mailto:aggarcia@gdoe.net)



Albert G. Garcia  
Supply Management Administrator  
Acting

October22, 2010

Memorandum

To: File  
Subject: IFB 022-2010  
Vendor: G4S

On September 20, 2010, in reference to IFB 022-2010 Document Management Services, vendor  
Will not be participating in said bid. Will withdraw from this bid.



**OFFICE OF SUPPLY MANAGEMENT  
GUAM DEPARTMENT OF EDUCATION**

*Manuel F.L. Guerrero / Administration Building  
2nd. Floor, Suite B-202  
Hagåtña, Guam 96932  
Telephone: (671) 300-1581  
Fax: (671) 472-5001*



Nerissa Bretania Underwood, Ph. D.  
Superintendent of Education

Marcus Y. Pido  
Supply Management Administrator

January 26, 2011

John Thomas Brown  
General Counsel, Jones & Guerrero Co., Inc. dba IBSS  
545 Chalan Machaute, Route 8  
Maite, Guam 96910  
Tel: (671) 477-7293  
Fax: (671) 472-6153

Subject: IBSS Procurement Protest: Copiers DOE IFB 022-2010 dtd December 16, 2010

Dear Mr. Brown,

In reference to the Invitation for Bid 022-2010, the notice of intent to award was delivered October 29, 2010, and notifications of the bid status were also delivered on October 29, 2010. Please see the attached successful facsimile transmissions to IBSS on that same date.

It is at this time that unsuccessful bidders knew or should have known of any perceived irregularities in the procurement process. Bidders have fourteen (14) working days post notification of bid status to submit any protestations to the purchasing entity. Your Procurement Protest to IBF 022-2010 was received by GDOE Superintendent's office on December 16, 2010

Your procurement protest dated December 16, 2010 is past fourteen (14) working days after the delivery of the bid status date of October 29, 2010. It is based on these facts that we hereby deny your untimely protest.

Should you have any concerns regarding this matter, please do not hesitate to call our office at 300-1581

Sincerely,

Marcus Y. Pido  
Supply Management Administrator

cc: Procurement File: GDOE IFB 022-2010  
Superintendent, GDOE  
GDOE Legal Office



**GUAM PUBLIC SCHOOL SYSTEM  
OFFICE OF SUPPLY MANAGEMENT**

*Manuel F.L. Guerrero / Administration Building  
2nd Floor, Suite B-202  
Hagåtña, Guam 96932  
Telephone: (671) 475-0436/0440  
Fax: (671) 472-5001*



NERISSA BRETANIA-SHAFER, Ph.D.  
Superintendent of Education

ALBERT G. GARCIA  
Supply Management Administrator, Acting

**BID STATUS**

Island Business Systems & Supplies  
545 Chalan Machaute, Route 8  
Maite, Guam 96929  
Tel: (671) 477-7454 or (671) 472-2200  
Fax: (671) 477-7660

October 29, 2010

Bid no.: GDOE IFB-022-2010 OPENED: Tuesday October 26, 2010 @ 10:00 A.M.

Description: DOCUMENT MANAGEMENT SERVICES

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- High price
- Others:

/X/ Bid is recommended for award to: **XEROX CORPORATION** on the following line items: #1, #2, #3, #4, #6 & #7

// Remarks:

Sincerely,

ALBERT G. GARCIA  
Supply Management Administrator, Acting

**ACKNOWLEDGMENT RECEIPT**

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Confirmation Report - Memory Send

Page : 001  
Date & Time: Oct-29-2010 03:38pm  
Line 1 : +671 472 5001  
Machine ID : GDOE, Office of Supply Management

Job number : 574  
Date : Oct-29 03:37pm  
To : 4777660  
Number of pages : 001  
Start time : Oct-29 03:37pm  
End time : Oct-29 03:38pm  
Pages sent : 001  
Status : OK

Job number : 574

\*\*\* SEND SUCCESSFUL \*\*\*



NERISSA BRETANIA-SHAFFER, Ph.D.  
Superintendent of Education

**GUAM PUBLIC SCHOOL SYSTEM**  
**OFFICE OF SUPPLY MANAGEMENT**  
*Manuel F.L. Guerrero / Administration Building*  
*2nd Floor, Suite B-202*  
*Hagåtña, Guam 96932*  
*Telephone: (671) 475-0430/0440*  
*Fax: (671) 472-3001*



ALBERT G. GARCIA  
Supply Management Administrator, Acting

**BID STATUS**

Island Business Systems & Supplies  
545 Chalan Machaute, Route 8  
Maite, Guam 96929  
Tel: (671) 477-7454 or (671) 472-2200  
Fax: (671) 477-7860

October 29, 2010

Bid no.: GDOE IFB-022-2010 OPENED: Tuesday October 26, 2010 @ 10:00 A.M.

Description: DOCUMENT MANAGEMENT SERVICES

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- Others:

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/ / Remarks:

Sincerely,  
  
ALBERT G. GARCIA  
Supply Management Administrator, Acting

**ACKNOWLEDGMENT RECEIPT**

Signature \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

Confirmation Report - Memory Send

Page : 001  
Date & Time: Oct-29-2010 03:39pm  
Line 1 : +671 472 5001  
Machine ID : GDOE, Office of Supply Management

Job number : 575  
Date : Oct-29 03:38pm  
To : 84723844  
Number of pages : 002  
Start time : Oct-29 03:38pm  
End time : Oct-29 03:39pm  
Pages sent : 002  
Status : OK

Job number : 575

\*\*\* SEND SUCCESSFUL \*\*\*



NERISSA BRITANIA-UNDERWOOD, Ph.D.  
Superintendent of Education

**GUAM DEPARTMENT OF EDUCATION  
OFFICE OF SUPPLY MANAGEMENT**

*Manuel F.L. Guerrero / Administration Building  
2nd Floor, Suite 8-220  
Hagåtña, Guam 96932  
Telephone: (671) 390-1581  
Fax: (671) 472-3001*



Albert C. Garcia  
Supply Management Administrator, Acting

**LETTER OF INTENT**

October 29, 2010

To: Kerox Corporation  
137 Murray Blvd., Suite 101  
Hagatna, Guam 96910  
Tel: (671) 477-1907  
Fax: (671) 472-3844

Attn: Mike Salas  
Services & Solutions Executive

Reference: DOCUMENT MANAGEMENT SERVICES  
Formal Bid: GDOE IFB 022-2010

Dear Mr. Salas,

As a result of the evaluation of the above reference Bid Invitation, your company has been determined to be the Lowest Most Responsive and Responsible Offeror. Therefore, the Department Intends to award the Bid to your Company.

You are hereby advised that this letter is only a notice of possible intent to award and should not be construed as an award by the Guam Department of Education, Office of Supply Management.

If you have any questions regarding this matter, kindly contact our office at 300-1581.

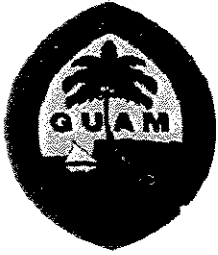
Please acknowledge receipt and return by facsimile to (671) 472-5001.

Sincerely,

ALBERT G. GARCIA  
Supply Management Administrator, Acting

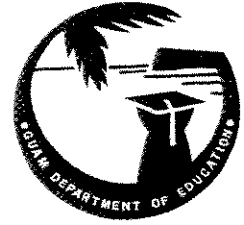
**ACKNOWLEDGMENT RECEIPT**

Signature \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_



**GUAM DEPARTMENT OF EDUCATION  
OFFICE OF SUPPLY MANAGEMENT**

*Manuel F.L. Guerrero / Administration Building  
2nd Floor, Suite B-220  
Hagåtña, Guam 96932  
Telephone: (671) 300-1581  
Fax: (671) 472-5001*



NERISSA BRETANIA-UNDERWOOD, Ph.D.  
Superintendent of Education

Albert G. Garcia  
Supply Management Administrator, Acting

**LETTER OF INTENT**

October 29, 2010

To: Xerox Corporation  
137 Murray Blvd., Suite 101  
Hagatna, Guam 96910  
Tel: (671) 477-1907  
Fax: (671) 472-3844

Attn: Mike Salas  
Services & Solutions Executive

Reference: DOCUMENT MANAGEMENT SERVICES  
**Formal Bid: GDOE IFB 022-2010**

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Please acknowledge receipt and return by facsimile to (671) 472-5001.

Sincerely,

ALBERT G. GARCIA  
Supply Management Administrator, Acting

**ACKNOWLEDGMENT RECEIPT**

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_ Time: \_\_\_\_\_



**GUAM PUBLIC SCHOOL SYSTEM**  
**OFFICE OF SUPPLY MANAGEMENT**

*Manuel F.L. Guerrero / Administration Building  
 2nd Floor, Suite B-202  
 Hagåtña, Guam 96932  
 Telephone: (671) 475-0436/0440  
 Fax: (671) 472-5001*



NERISSA BRETANIA-SHAFFER, Ph.D.  
 Superintendent of Education

ALBERT G. GARCIA  
 Supply Management Administrator, Acting

**BID STATUS**

Island Business Systems & Supplies  
 545 Chalan Machaute, Route 8  
 Maite, Guam 96929  
 Tel: (671) 477-7454 or (671) 472-2200  
 Fax: (671) 477-7660

October 29, 2010

Bid no.: GDOE IFB-022-2010 OPENED: Tuesday October 26, 2010 @ 10:00 A.M.

Description: DOCUMENT MANAGEMENT SERVICES

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- Insufficient number of bidders

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/ / Remarks:

Sincerely,

ALBERT G. GARCIA  
 Supply Management Administrator, Acting

ACKNOWLEDGMENT RECEIPT

\_\_\_\_\_  
 Signature





**GUAM PUBLIC SCHOOL SYSTEM  
OFFICE OF SUPPLY MANAGEMENT**

*Manuel F.L. Guerrero / Administration Building  
2nd Floor, Suite B-202  
Hagåtña, Guam 96932  
Telephone: (671) 475-0436/0440  
Fax: (671) 472-5001*



**NERISSA BRETANIA-SHAFFER, Ph.D.**  
Superintendent of Education

**ALBERT G. GARCIA**  
Supply Management Administrator, Acting

**BID STATUS**

Xerox Corporation  
137 Murray Blvd. Suite 101  
Hagatna, Guam 96910  
Tel: (671) 477-1907  
Fax: (671) 472-3844

October 29, 2010

Bid no.: GDOE IFB-022-2010 OPENED: Tuesday October 26, 2010 @ 10:00 A.M.

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/ / Remarks:

Sincerely,

**ALBERT G. GARCIA**  
Supply Management Administrator, Acting

**ACKNOWLEDGMENT RECEIPT**

\_\_\_\_\_  
Signature

Date:

Time:



Nerissa Bretania Underwood, Ph.D.  
Superintendent of Education

**DEPARTMENT OF EDUCATION  
OFFICE OF SUPPLY MANAGEMENT**

[www.gdoe.net](http://www.gdoe.net)

Manuel F.L. Guerrero / Administration Building  
2<sup>nd</sup> Floor, Suite B-202  
Hagatna, Guam 96932  
Telephone: (671) 300-1580 Fax: (671) 472-5001  
Email: [aggarcia@gdoe.net](mailto:aggarcia@gdoe.net)



Albert G. Garcia  
Supply Management Administrator  
Acting

October 22, 2010

Memorandum

To: File  
Subject: IFB 022-2010  
Vendor: G4S

On September 20, 2010, in reference to IFB 022-2010 Document Management Services, vendor  
Will not be participating in said bid. Will withdraw from this bid.