

1 **GUAM DEPARTMENT OF EDUCATION**
2 Rebecca M. Perez, Legal Counsel
3 P.O. Box DE
4 Hagåtña, Guam 96910
5 Telephone (671) 300-1537
6 Email: legal-admin@gdoe.net

7 *Attorney for Guam Department of Education*

OFFICE OF PUBLIC ACCOUNTABILITY
GOVERNMENT APPEALS

Aug 09 2012
TIME 9:29 am
FILE NO. OPA-PA-11-002

8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**
9 **PROCUREMENT APPEAL**

10 IN THE APPEAL OF

11 APPEAL NO. OPA-PA-11-002

12 TOWN HOUSE DEPARTMENT
13 STORES, INC. dba ISLAND BUSINESS
14 SYSTEMS & SUPPLIES,

15 **REQUEST FOR CLARIFICATION;
16 REQUEST FOR EXTENSION OF
17 TERMINATION**

18 Appellant.

19 Comes now the Guam Department of Education ("GDOE") and submits this Request for
20 Clarification and Request for Extension of Termination. Given the urgency of the circumstances
21 faced by GDOE as explained below, GDOE respectfully requests that the Public Auditor issue an
22 immediate response to these requests.

23 **REQUEST FOR CLARIFICATION**

24 After a hearing on the merits in this matter, a Final Administrative Decision was issued by
25 the Office of Public Accountability ("OPA") on August 8, 2012. The Decision contains the
26 following statements:

- 27 2. The quantities stated in Purchase Order No. 201100024 increased the
28 quantities stated in the IFB in violation of Paragraph 22 of the IFB's General
Terms and Conditions.

1 3. DOE Purchase Order No. 201100024's reference to XEROX Response
2 and Services & Solutions Agreement No. 7099405 was improper because DOE
3 had not executed said agreement.

4 4. DOE Purchase Order Nos. 201100024 and 201200367 are hereby
5 terminated and DOE shall compensate XEROX for the actual expenses XEROX
6 reasonably incurred under the contract, plus a reasonable profit, prior to
7 termination, pursuant to 5 G.C.A. §5452(a)(1)(ii) and Chapter IX, Section
8 9.7.1.1, DOE Procurement Regulations.¹

9 The Decision terminates the two purchase orders previously issued under GDOE IFB 022-2010
10 on the bases that the purchase orders included quantities that were increased over the quantities
11 contained in the IFB and improperly included a reference to XEROX's Service Agreement. The
12 Decision does not state that the IFB itself was improper, or that GDOE may not continue to issue
13 purchase orders pursuant to the IFB so long as such purchase orders do not contain quantities in
14 excess of the IFB or references to the XEROX Service Agreement. GDOE therefore requests the
15 following clarification of the Decision: May GDOE continue to issue purchase orders pursuant to
16 GDOE IFB022-2010 that do not contain quantities in excess of the IFB and that limit applicable
17 terms and conditions to those contained in the IFB?

18 **REQUEST FOR EXTENSION OF TERMINATION**

19 In the event the OPA determines that GDOE may not continue to issue any purchase
20 orders pursuant to GDOE IFB022-2010, GDOE then requests that the termination of the current
21 purchase order be extended to allow GDOE adequate time to procure document management
22 services. As quoted above, the Decision states that "DOE Purchase Order Nos. 201100024 and
23 201200367 are hereby terminated." Without further clarification, it is assumed the termination is
24 effective upon the issuance of the Decision, or August 8, 2012. Purchase Order 201200367 is the
25 order currently in effect, and it includes all large scale printers/copiers currently in use at GDOE's

26 ¹ Decision of August 8, 2012, Appeal No: OPA-PA-11-02, p. 18.

1 administrative offices and forty (40) schools. If Purchase Order 201200367 is terminated
2 effective August 8, 2012, GDOE is effectively left without the capability to print or copy the
3 documents necessary to conduct daily business. As the government entity charged with providing
4 education to Guam's public school students, the paralysis of GDOE's business functions
5 represents a serious threat to the public welfare. In order to avoid such a scenario, GDOE
6 requests the termination of Purchase Order 201200367 be extended to September 7, 2012 or later
7 to allow GDOE reasonable time to procure other printer/copier services.

8 In the event this request to extend the termination of the purchase order is denied, GDOE
9 may take any lawful action to acquire document management services necessary to continue to
10 provide education to Guam's public school students. Such action will need to be taken without
11 delay to ensure GDOE's ability to operate. Therefore, GDOE respectfully requests the OPA to
12 issue an immediate response to the Requests contained herein.

13
14 Dated this 9th day of August, 2012.

15 Respectfully submitted,

16 **GUAM DEPARTMENT OF EDUCATION**

17
18 By: 

19 **REBECCA M. PEREZ, ESQ.**

20 *Legal Counsel*