

John Thos. Brown
General Counsel
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 THE PUBLIC AUDITOR
PROCUREMENT APPEALS

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PROCUREMENT APPEAL

In the Appeal of)
)
)
TOWN HOUSE DEPARTMENT STORES,)
INC., dba)
ISLAND BUSINESS SYSTEMS)
& SUPPLIES,)
APPELLANT)
_____)

NOTICE OF APPEAL 

DOCKET NO. OPA-PA-08-003

APPELLANT 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.: Raul Del Valle, Acting General Manager (671) 477-7454

APPEAL INFORMATION

Purchasing Agency: Guam Public School System ("GPSS")
Number of Procurement: Not known

The decision being appealed is a decision not to decide or communicate and therefore has no

ORIGINAL

known date.

Appeal is made from failure to respond to protest of method, solicitation or award.

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

On information and belief, there is only one bidder/awardee, being the local branch office of an off-island company, Xerox Micronesia 137 Murray Blvd., Suite 101, Hagåtña, Guam; Appellant does not know if, in fact, Xerox entered a bid or secured an award, but it does appear to have been granted purchase orders for copier products

STATEMENT OF GROUNDS FOR APPEAL

A. FACTUAL CONTEXT and CHRONOLOGY:

IBSS is now and has been for many years prior to the events herein an authorized distributor and dealer in Canon brand imaging products and services on Guam.

GPSS is now and has been for many years purchasing copier equipment and related services and supplies without, apparently, any proper solicitation for the procurement. The costs for such services are believed to constitute a significant line item expenditure of public funds.

Neither the solicitation of nor award for such procurement have been publicized nor made public.¹

IBSS is informed and believes that GPSS is incurring copier expenses in an amount of at least \$130,000.00 per month, and that Xerox Corporation is the provider of the copier equipment and related services and supplies:

In December 2007, GPSS reported that it paid Xerox Corporation \$266,074.00 as a “prior year obligation” payment, one of its largest accounts.

Records indicate that the Guam Department of Education Accounts Payable Aged

¹ See, 5 GCA § 5001(b)(8): One specific purpose of the Procurement Act is “to require public access to all aspects of procurement consistent with the sealed bid procedure....” 5 GCA § 5211(c): “Adequate public notice of the Invitation for Bids shall be given...” 2 GAR § 3109(f) (1): “Invitations for Bids ... shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition....” and (f)(2): “Every procurement in excess of \$25,000 shall be publicized” and 3109(q): “Notice of award shall be made available to the public.”

Invoice Report as of 9/30/06 was indebted to Xerox Corporation in the amount of \$574,877.15.

In December 2004, GPSS is believed to have issued a Purchase Order to Xerox Corporation (PO# 200500350). This P/O was for two distinct requisitions:

- First, a three month purchase amount of \$401,049.00 “to cover the cost of **renewal** of XBS services Agreement 7002364 for the period of 10/01/04 thru 12/31/04....”
- Second, a nine month (presumably from 1/1/05 to 9/30/06) purchase amount of \$1,197,333.00 for “**renewal** of the Xerox document services number 7002364 establishing a renewal term of 60 months billed monthly at \$133,037.00 (reference DSA **renewal amendment**)...” This P/O contains the notation: “DOEPR 3.12.2(1) **Sole Source**”. Appellant has no knowledge of the underlying solicitation or award, if any, for any such P/O or if it was issued ad hoc.

Unaware at the time of the above P/O, in July 2005 IBSS began a series of informal discussions with GPSS regarding an anticipated procurement of copiers. IBSS records recall the following:

- 7/8/. 3 IBSS personnel met with Mr. Alcantara at GPSS to discuss the upcoming bid and were given the impression a bid and pre-bid conference would be scheduled in August.
- By letter dated 7/14 (copy attached), then IBSS General Manager Roland Franquez wrote to then Superintendent Juan P. Flores to formally introduce IBSS and express its interest in offering imaging and printing solutions to GPSS. In order to prepare for such a solicitation, Mr. Franquez sought information concerning GPSS’ needs.
- 7/21. Same IBSS delegation met with Superintendent Flores and discussed the upcoming bid and the possibility of conducting a workshop to familiarize GPSS with IBSS’ products, as mentioned in Mr. Franquez’ 7/14 letter.
- 7/29. A familiarization workshop for GPSS personnel was conducted at IBSS.
- 8/3. Same IBSS delegation again met with Mr. Alcantara to discuss the upcoming bid and they were advised the bid specifications were being prepared.
- 9/3. IBSS representative Frank Cruz met with Mr. Alcantara and was advised the bid was awaiting the decision of the Superintendent.
- 9/20. Mr. Franquez again wrote to Mr. Flores (copy attached) reminding Mr. Flores that he (Mr. Flores) had advised IBSS in July that bid specifications for

copier requirements would be issued before the end of FY2005. Mr. Franquez expressed concern that time was running out to allow IBSS to respond in a timely manner to meet the expected October 1, 2005 deadline.

- 9/21. Mr. Alcantara advised Mr. Cruz that the Superintendent decided not to proceed with the bid now; that they would extend the current contract with Xerox for a month or two.

Other inquiries were made, with IBSS repeatedly being told the bid was on hold awaiting the Superintendent's decision. GPSS never responded in writing to any inquiry nor otherwise put anything concerning the matter "on the record", as it were.

On November 18, 2005, Mr. Franquez again wrote to Superintendent Flores (copy attached). Mr. Franquez reminded Mr. Flores that they had encountered each other at a Rotary meeting and, in discussion, Mr. Flores mentioned the he had extended the expired contract with Xerox for a couple of months.

In that November 18 letter, Mr. Franquez again identified IBSS as "a prospective participant in the bidding process for the GPSS copier contract", asking "I would like to find out when you plan to issue the copier bid specifications to allow vendors like IBSS to respond in a timely manner."

No formal (or other direct) response was ever given to that letter, either.

By way of an undated Purchase Order (P/O# 200601065) believed to have been issued to Xerox Corporation, it was again given an order for a series of six successive monthly purchases in the amount of \$133,037.00 each, in the total amount of \$798,222.00, for the months of January through June 2006, "issued to encumber funds for contractual services to provide Xerox Document Services number 7002364. (Reference DSA **renewal** amendment)." This P/O bears the notation "DOEPR 3.11.2.3 **existing government contract**". Appellant has no knowledge of the underlying solicitation or award, if any, for such P/O, or if it was issued ad hoc.

In its August 1-31, 2006 internal Financial Management Improvement Plan ("FMIP"), GPSS noted the following deficiency:

"Restructure Procurement to provide Contracts Management – Contracts Management has been addressed and is currently pending a legal opinion on the matter. *There appears to be a conflict between our GPSS Procurement Regulation, GSA Procurement Regulations and Guam's Code Annotated* [italics added]. The Superintendent has directed Legal for an opinion. Legal Counsel had a new deadline of October 13, 2006."

The GPSS FMIP for December 2006 - January 2007 identified the following need:

“QH#43: Sole Source Procurement SPO (Dec 2006/D. Babauta) – Establish and implement a Sole Source Procurement SOP - Notwithstanding that recently, GPSS scheduled and conducted sole source procurement training, thereafter, additional findings followed that resulted in the FMIP requiring a SOP to clearly delineate roles and duties and responsibilities. The SOP is scheduled to be finalized and approved by the Superintendent on February 16, 2007.” [Emphasis added.]

By letter dated February 15, 2007 (copy attached), IBSS General Counsel John Thos. Brown wrote to Superintendent Luis S.N. Reyes to apprise him of the problems faced by IBSS with the former superintendent, Mr. Flores, in regards to procurement of copiers. In that letter, counsel asked,

“[d]o you know what the current status is, with respect to the supply of copier products and services, since that P/O [P/O# 200601065 mentioned above] ran out June 30, 2006?”

Further, counsel advised,

“we do question the propriety of the bid process; indeed, we are unable to determine if there ever was one [footnote omitted]. We ask that the existing arrangement be terminated.”

The new Superintendent continued the practice of his predecessor by not responding or offering to discuss it or otherwise act to acknowledge or resolve the dispute.

Again faced with an uncommunicative GPSS, Mr. Franquez and other IBSS representatives scheduled a meeting with Superintendent Reyes at his office on September 18, 2007. At the time appointed, Sup. Reyes was otherwise engaged, so the IBSS representatives were met instead by Mr. Ike Santos, Federal Programs Administrator, Acting GPSS Chief Financial Officer, Frances Danieli, and Acting GPSS Administrator, Supply Management, Roque Alcantara.

Mr. Franquez recounted the prior discussions and (one-way) correspondence with GPSS administrators and queried why there had as yet been no formal procurement solicitation even though GPSS apparently continued to purchase from Xerox Corporation.

Mr. Alcantara advised him that Mr. Flores had extended a prior agreement with Xerox in December 2004, and he had a copy of a purchase order (but no solicitation or award) with him. Mr. Santos advised that GPSS was riding on an agreement made between Guam GSA and Xerox which allowed GPSS to by-pass the bid process and directly contract with Xerox. Mr. Franquez was advised the current extension of the Xerox contract commits GPSS until September 30,

2009.

IBSS General Counsel wrote to GSA Chief Procurement Officer Claudia S. Acfalle on October 10, 2007 (copy attached) seeking to corroborate the statement that GPSS was riding on an agreement between Guam GSA and Xerox which allowed GPSS to by-pass the bid process and directly contract with Xerox. Counsel also asked the CPO,

“are you in a position to provide IBSS with a complete record [footnote omitted] of the copier procurement if it was, as Mr. Franquez was advised, arranged through Guam GSA?”

Counsel also advised,

“[i]f you are in such a position, please consider this a formal request for a copy of the procurement record or advise me where and when and under what conditions I can inspect and/or make copies of it myself” [footnotes omitted].

The Acting CPO “responded” October 15, 2007 (copy attached) by passing the ball back to GPSS Legal Counsel “for appropriate steps to be taken”.

On October 26, 2007, having heard nothing further on the subject, IBSS General Counsel wrote to GPSS Legal Counsel Fred Nishihira (copy attached), reminding him of the Acting CPO’s letter and her instructions regarding “appropriate steps”. IBSS General Counsel informed Mr. Nishiria

“we believe, but have not been able to substantiate, that the procurement of copier products by GPSS from Xerox, to the tune of well in excess of \$1.5 Million per year, is ‘improper’.”

Mr. Brown sought Mr. Nishihira’s engagement to resolve the matter:

“In the context of trying to work out a solution to this issue that falls short of guns at six paces, I would welcome a chance to sit and chat with you about this, with the object of bringing about an immediate change in the status quo. May I hear from you?”

In now familiar practice- cum- policy, GPSS legal counsel did not acknowledge, respond or otherwise offer to discuss the matter.

On December 4, 2007, IBSS formally filed a “Notice of Protest” with GPSS concerning the appearance of impropriety as to the method of its procurement of copiers (copy attached).

GPSS has not responded to nor acknowledged the Notice of Protest.

As discussed below, on January 8, 2008, IBSS served a “Request for Final Decision on Notice of Protest” on GPSS.

GPSS has not responded to nor acknowledged the Request.

GPSS’s decision on this protest is obvious: it has decided not to decide.

B. LAW and ARGUMENT:

The chronology of events above begins by reference to a Purchase Order believed to be issued to acquire copiers for a period of one fiscal school year, October 2004 through September 2005.

The date of the P/O was December 17, 2004. It stated that it was a “renewal” of an existing government contract², and referenced, as apparent authority, “DOEPR 3.12.2(1) Sole Source”.

As it happens, in December 2004, the Public Auditor completed and published a thorough Audit Report of the General Services Agency, specifically dealing with renewal of existing contracts and sole source procurement.³ In castigating GSA for “improperly” using existing contract renewals and sole source procurement⁴, the Public Auditor took particular exception to the improper procurement of copiers⁵:

² “Before exercising any option for renewal, extension or purchase, the Procurement Officer should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors A written record of the Procurement Officer’s findings and determination shall be made and maintained as part of the contract file.” (2 GAR § 3119(k).) Also note the admonition for use of “multi-term contracts”: “The objective ... is to promote economy and efficiency in procurement by ... increasing competitive participation in procurement....” (2 GAR § 3121) and in awarding any such contract “[c]are should be taken [that it] does not permit the successful bidder or offeror to ‘buy in’, that is, give such bidder or offeror an undue competitive advantage in subsequent procurement” (2 GAR § 3121(e)(2)).

³ “Competitive Sealed Bidding, Sole Source, and Emergency Procurement Functions Government of Guam, General Services Agency”, OPA Report No. 04-14, December 2004; <http://www.guamopa.org/docs/OPA0414.pdf> .

⁴ “Specifically, GSA (1) improperly used “existing territorial contracts” and authorized payments on expired bids, (2) did not perform independent verifications to warrant sole source justifications, and (3) ratified unauthorized procurements after the fact.” Report, page 2.

⁵ See also, Executive Summary OPA Report No. 04-05 dated March 2004, “General Services Agency Small Purchases Procurement Function October 1, 2001 through June 30, 2003”

“As a result, (1) \$6 million was improperly paid for existing territorial contracts, of which purchases worth \$2.5 million did not undergo the competitive sealed bidding process, (2) \$5.1 million in unauthorized payments was made on expired contracts for the lease of copier machines,....” (Report, page 2.)

The views of the Public Auditor regarding sole source procurement were further developed in the decision, *In The Appeal of RadioCom*, OPA-PA-06-003

(http://guamopa.com/docs/procurement_appeals/06-003_Decision.pdf) wherein the Public Auditor emphasized that sole source procurement is not proper without a “a survey of the local businesses, or inquiry with the using agency and other procuring entities as to any known interest in bidding for this or similar projects on Guam.”

The chronology indicates that IBSS was repeatedly misled as to the procurement intentions of GPSS and repeatedly rebuffed in its attempts to obtain any substantive information about copier purchases, always expecting some formal competitive process was just around the corner.⁶ Given the history of obstruction and obfuscation by GPSS, at no point could IBSS be said to possess the facts or any reason to know of the facts authorizing the procurement of copiers by GPSS.

The difficulty this poses for this appeal is that, having no knowledge of what legal basis GPSS is using to justify its procurement of copiers, or even if it may have *any* such basis, IBSS is left with conjecture and speculation as to which particular legal arguments to advance, although, in its Notice of Protest to GPSS as well in its letters to the Superintendent and GPSS Legal Counsel mentioned above and attached hereto, it has canvassed the obvious spectrum of issues.

IBSS should not be left in the lurch to try to argue, in this Appeal, every conceivable basis in the book simply because GPSS stubbornly and unlawfully⁷ conceals, by refusal to respond and reveal, the truth about its multi-million dollar purchase of copiers.

The unrelenting refusal of GPSS to formally respond to any attempt to engage it in any effort to open copier procurement to competitive bidding, including its recalcitrance in responding to

: “ copy machine equipment- only one vendor was issued POs worth \$1.5 million”.

⁶ See footnote 1, above.

⁷ “No procurement award shall be made unless the responsible procurement officer certifies in writing under penalty of perjury that he has maintained the record required by § 5249 of this Chapter and that it is complete and available for public inspection....” (5 GCA § 5250.) “The record required by § 5249 of this Chapter is a public record and, subject to rules [yet to be] promulgated by the Public Auditor, any person may inspect and copy any portion of the record.” (5 GCA § 5252.)

IBSS' Notice of Protest, raises an issue of the Public Auditor's jurisdiction to hear this appeal. But IBSS believes such jurisdiction is soundly based.

5 GCA § 5425 (a) gives IBSS, a "prospective bidder ... who may be aggrieved in connection with the method of source selections, solicitation or award of a contract", the right to protest to the CPO or head of the purchasing agency.

2 GAR § 9101(b) directs complainants to initially "seek resolution of their complaints" with the office that issued the solicitation. IBSS has clearly done so⁸.

5 GCA § 5425(b) gives the head of the purchasing agency the "*authority*" and *duty*⁹ to settle and resolve a protest. § 5425(c) requires that the decision "shall" be issued "promptly".

2 GAR § 9101(g)(1) requires ("shall") the head of the purchasing agency to issue a decision on a protest "as expeditiously as possible".

By analogy to 5 GCA § 5427(f), Appellant delivered to GPSS a formal "Request for Final Decision On Notice of Protest, on January 10, 2008 (copy attached). GPSS has not acknowledged or responded to the Request. The point of a Request for Final Decision in the context of a contract dispute (§ 5427(f)¹⁰) is to allow a contractor to bring closure to an ongoing dispute with an agency.

There is no such analogous provision in the context of a bid dispute; however, Appellant gave GPSS the benefit of one last chance to respond, in the spirit of trying to bring GPSS to the table, in exhaustion of its administrative procedures prior to bring this matter to Appeal.

Nearly four weeks have elapsed since service of the Request for Final Decision without hint of a response. While § 5427(f) provides for a 60 day period to render a final decision, given the unbroken record of sticking and keeping its head in the sand, and given no legal duty to even give

⁸ Note 2 GAR § 9103(a)(1), in the context of contract controversies: "It is the territory's policy, consistent with this Act, to try to resolve all controversies by mutual agreement without litigation. In appropriate circumstances, informal discussions between the parties can aid in the resolution of differences by mutual agreement and are encouraged."

⁹ "This authority *shall be exercised* in accordance with regulations"

¹⁰ 5 GCA § 5427, in the context of contract disputes between a contractor and a procuring agency, provides: "If the ... head of a purchasing agency ... does not issue the written decision required under Subsection (c) of this Section within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received."

such a Request, Appellant considers that GPSS has been given more than reasonable time and opportunity to promptly or expeditiously issue its decision or otherwise engage Appellant and has unequivocally evidenced its intent not to do so.

In the face of an intractable record of stonewalling it is pointless for Appellant to wait any further for GPSS to acknowledge and respond to this matter. IBSS is beyond exhaustion in trying to engage GPSS in any remedial action or dispute resolution.

The purchasing agency, in this case, has clearly determined not to exercise its authority to consider IBSS' protest, neither expeditiously nor otherwise and has failed of its legal duty to do so. The Notice of Protest was delivered to GPSS December 4, 2007 and a Request for Final Decision on January 10, 2008. IBSS has not had so much as a "how do you do?" in response. No "we'll get back to you". No "your message is important to us; please hold." Not even a "Dear John" explaining why IBSS' unrequited pursuit to participate in the copier procurement would be without merit.

This makes it difficult, both on a procedural timing basis as well as on a substantive basis for IBSS to bring this appeal. 5 GCA § 5425(a) requires the submission of a protest to an agency within 14 days "after such aggrieved person knows or should know fo the facts giving rise thereto.

IBSS has repeatedly sought information so that it *could* know what it *should* know as to what actually transpired behind the stonewall of the GPSS copier acquisition. If GPSS prevents Appellant from knowing what it otherwise could or should know, how could it be argued that it *should* have known anything at all?

Is IBSS presumed to have reason to believe (i.e., that "it should know") that GPSS was engaged in improper procurement practices simply because it failed and refused to respond to Appellant's repeated requests for information? What kind of public policy would that be if the public were expected to presume government impropriety simply because an agency fails to respond? What kind of public policy would require administrative action be taken immediately lest remedial action be forever barred, simply due to delayed government response? Such a policy would invite countless "false" actions and administrative gridlock. That would be the result if, here, Appellant was charged with the "should know" presumption that triggers the 14 day time limit for bringing a protest under 5 GCA § 5425.

5 GCA § 5425(e) gives the protestant the right to appeal to the Public Auditor within fifteen days "after receipt by the protestant of the notice of decision". Nevertheless, the failure of GPSS to promptly and expeditiously render any decision must be adequate grounds in and of itself to vest the Public Auditor with the jurisdiction to hear this matter, otherwise agencies could simply ignore protests and thwart all procedural due process in the procurement appeal mechanism.

Aggrieved prospective bidders who are given the right to protest "the method of source

selections, solicitation or award of a contract” must not be placed in the position where they are forced to bring mandamus or other court action to compel the decision that the procurement law contemplates for administrative appeals; that would only frustrate a process intended to be expeditious and informal for the benefit of both the buying government as well as the selling private sector.

IBSS would also be denied its substantive due process rights to appeal the improper method of source selection and solicitation and, possibly, award, if GPSS simply refused, as it does, to respond to any questions or protests or to render a decision.

Any such refusal to resolve procurement disputes would work an injustice on IBSS and violate the principals upon which the procurement laws and administrative processes are based, including the purpose to “ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory”, to “provide safeguards for the maintenance of a procurement system of quality and integrity”, and to “require public access to all aspects of procurement consistent with the sealed bid procedure and the integrity of the procurement process” (5 GCA § 5001(b)(4), (7) and (8)).

GPSS’ decision, implied or otherwise, not to decide must be an adequate jurisdictional “trigger” on which to base this appeal under the auspices of 5 GCA § 5425(e), notwithstanding that it will be difficult in such case to ascertain when the aggrieved prospective bidder knew or should have known of the facts giving rise to the dispute or when he has “receipted” any notice of decision.

In equity if not law, in such a case where the purchasing agency refuses to provide any information or otherwise respond in any manner to shed light on or otherwise resolve the dispute, when it has evidenced a complete and utter failure of any good faith effort to exercise its due process authority and responsibility to act to resolve protests as contemplated in § 5425 (b) and (c), it should not even be heard to complain of such matters.

STATEMENT SPECIFYING RULING REQUESTED

5 GCA § 5701 grants rather broad authority to the Public Auditor to adopt rules which “provide for the expeditious resolution of controversies....” Its jurisdiction extends to any “matter properly submitted...” and “[t]he Public Auditor’s jurisdiction shall be utilized to promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5”¹¹. (5 GCA § 5703.) “Any decision of the Public Auditor, including any determination regarding the *application or interpretation* of the procurement law or regulations, shall be entitled to great weight and the benefit of reasonable doubt....” (5 GCA § 5704.)

¹¹ See footnote 1, above.

Appellant requests that the Public Auditor facilitate the public examination of the procurement of copiers by GPSS to determine if or by what proper method GPSS is procuring copiers, or if it has been on an ad hoc purchase order or other improper basis, and whether an appropriate procurement record has been maintained, as required by 5 GCA § 5249, certified under penalty of perjury by the responsible procurement officer as required by 5 GCA § 5250.

5 GCA §§ 5451 and 5452 provide for remedies prior to an award and after an award. Appellant cannot determine if an award has been made, but in either case believes that it is not in the best interest of the Territory to allow GPSS to continue the very same apparent improper practices criticized in much detail by the Public Auditor four years ago, and therefore, if an award and contract has been made, that it be terminated.

If, as Appellant suspects, the procurement of copiers by GPSS is improper, Appellant requests the Public Auditor to correct the deficiencies (here incorporating the findings of OPA Report No. 04-14) by ordering GPSS to (1) immediately discontinue leasing and/or purchasing copiers under any expired contract(s), (2) immediately issue invitations for bid (IFBs) to solicit for the lease and/or purchase of copier machines in a public and competitive process which would enable Appellant to participate, and (3) discontinue the practice of utilizing "existing territorial contracts," determine the expiration dates of all procurement citing existing territorial contracts, and begin to plan and execute IFBs for all such procurements, (4) conduct independent verifications of any sole source purchases and adequately document the procurement process to illustrate that efforts were made to solicit competition, and (5) solicit certification letters from vendors to warrant that they are the sole provider of specific goods and/or services.

Appellant further requests the Public Auditor to promulgate Rules for Procurement Records as contemplated by 5 GCA §§ 5251 and 5252.

SUPPORTING EXHIBITS, EVIDENCE, OR DOCUMENTS

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. Letter dated 7/14/05 Franquez to Flores
2. Letter dated 9/20/05 Franquez to Flores
3. Letter dated 11/18/05 Franquez to Flores
4. Letter dated 2/15/07 Brown to Reyes

5. Letter dated 10/10/07 Brown to Acfalle
6. Letter dated 10/15/07 Acfalle to J&G
7. Letter dated 10/26/07 Brown to Nishihira
8. Notice of Protest dated 12/4/07
9. Request for Final Decision dated 1/10/08

/// continued...

VERIFICATION AND DECLARATION RE COURT ACTION

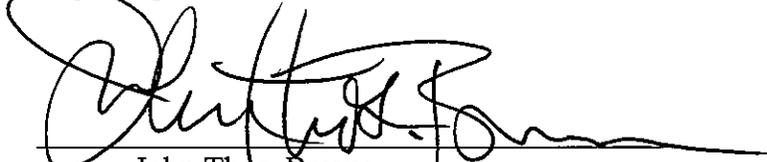
The undersigned party does hereby verify, to the best of information and belief, the facts stated and confirms that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. The undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 7th day of February, 2007.

APPELLANT, Town House Department Stores, Inc., dba Island Business Systems & Supplies

By: 
Raul Del Valle, Acting General Manager-IBSS
authorized representative for Appellant
PO Box 7, Hagåtña, Guam 96932
PH: (671)- 477-7454
Fx: - 477-7660
for Appellant

Legal Representative:


John Thos. Brown
General Counsel for Appellant
PO Box 7, Hagåtña, Guam 96932
PH: (671) - 477-7293
Fx: - 472-6153

ORIGINAL

OPA Notice of Procurement Appeal: IBSS vs GPSS - copiers

Attachment 1. Letter dated 7/14/05 Franquez to Flores



Island Business Systems & Supplies

Canon

Authorized Dealer

Guam Office:

P.O. Box 7 Hagåtña, Guam 96932

Tel (671) 477-7454, 472-2200 Fax: (671) 477-7660

email: support@ibssguam.com

Saipan Office:

P.O. Box 167 CK Saipan MP 96950

Tel (670) 234-8002, 234-5155 Fax: (670) 234-8050

email: support@ibssguam.com

July 14, 2005

Mr. Juan P. Flores
Superintendent of Education
Guam Public School System
P.O. Box DE
Hagatna, Guam 96932

Dear Mr. Flores:

Thank you for meeting with Frank Cruz, Tony Chaco and I to discuss Island Business Systems and Supplies and, Canon products. We appreciate you making the time to meet with us.

The purpose of our visit was for introduction and to express interest in offering Canon imaging and printing solutions to GPSS. Imaging and printing solutions include devices capable of copying, scanning, printing and faxing, as well as application software capable of managing the administration and distribution of documents generated by these devices.

We understand that there is a long-standing relationship with a competitive vendor and as the word 'competitive' implies, we would like the opportunity to compete for your business as well. To do this, we would need to understand as much about your current imaging and printing environment as possible. With your assistance, we would like to understand the following:

1. Most current copy/print volumes generated at each location currently serviced by a competitive copier. This would include schools and the central office areas. We would use this information to appropriately configure the solutions required to meet each location's needs.
2. The various applications supported by the imaging and printing devices. Examples of applications include copying of statistical reports, printing of attendance records, etc. Permission to visit some schools and the central office to conduct a quick survey would accomplish this. We would use this information to ensure that our solutions address the operational requirements of each location.

All information collected or received would be classified confidential. We would only require a contact name and phone number to make the necessary arrangements to conduct our inquiry and survey.



AFFILIATE OF JONES & GUERRERO COMPANY, INC.



Island Business Systems & Supplies

Canon

Authorized Dealer

Guam Office:

P.O. Box 7 Hagåtña, Guam 96932

-Tel (671) 477-7454, 472-2200 • Fax: (671) 477-7660 •

email: support@ibssguam.com

Saipan Office:

P.O. Box 167 CK Saipan MP 96950

-Tel (670) 234-8002, 234-5155 • Fax: (670) 234-8050 •

email: support@ibssguam.com

Mr. Juan P. Flores

July 14, 2005

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We understand that the time before the release of a possible Request for Proposal is short and our offerings may not be as easily recognized as our competitor(s). With this in mind, we would like to extend an invitation to you and a representative from each school and the central office areas to attend a one-hour workshop featuring Canon Technology. This workshop is planned for Wednesday, July 27 and Thursday, July 28, 2005. We plan to have two sessions per day or a total of four sessions to give everyone involved an opportunity to attend at his or her convenience. We would like to limit the headcount for each session to about fifteen (15) to allow each attendee to fully participate in the workshop. We will be following up with a specific agenda, to include time and venue for your information and distribution.

Besides Canon Technology, we plan to feature administrators from the CNMI Public School System, St. John's School and Harvest Christian Academy. They will share their experiences about their installed Canon products, as well as the service and support received from IBSS.

I will be calling your office to follow up on our request for information, surveying the schools and central office, and our proposed workshop. Should you need additional information on the items I covered, please contact me at 888-9479 or 472-2200, or email at rrfranquez@ibssguam.com.

Sincerely,

Roland R. Franquez
General Manager



AFFILIATE OF JONES & GUERRERO COMPANY, INC.

OPA Notice of Procurement Appeal: IBSS vs GPSS - copiers

Attachment 2. Letter dated 9/20/05 Franquez to Flores



Island Business Systems & Supplies

Canon

Authorized Dealer

Guam Office:

P.O. Box 7 Hagåtña, Guam 96932

• Tel (671) 477-7454, 472-2200 • Fax (671) 477-7680 •

email: support@ibssguam.com

Saipan Office:

P.O. Box 167 CK Saipan MP 96950

• Tel (670) 234-8002, 234-5155 • Fax: (670) 234-8050 •

email: support@ibssguam.com

September 20, 2005

Mr. Juan P. Flores
Superintendent of Education
Guam Public School System
P.O. Box DE
Hagatna, Guam 96932

Dear Mr. Flores:

This is to follow up on the status of the GPSS Copier Bid Specifications for FY2006.

When we met on July 12, 2005, you shared that GPSS would be issuing the bid specifications for its copier requirements before the end of FY2005 because of a mandate from the Guam Public Auditor's office.

We have not seen anything on this bid to date. Since the end of the fiscal year is close at hand, I would like to find out when you plan to issue the specifications to allow vendors like IBSS to respond in a timely manner to meet the October 1, 2005 deadline.

Please contact me at 888-9479 or 472-2200, or email at rrfranquez@ibssguam.com.

Sincerely,

Roland R. Franquez
General Manager



AFFILIATE OF JONES & GUERRERO COMPANY, INC.

OPA Notice of Procurement Appeal: IBSS vs GPSS - copiers

Attachment 3. Letter dated 11/18/05 Franquez to Flores



Island Business Systems & Supplies

Canon

Authorized Dealer

Guam Office:

P.O. Box 7 Hagåtña, Guam 96932

• Tel (671) 477-7454, 472-2200 • Fax: (671) 477-7660 •

email: support@ibssguam.com

Saipan Office:

P.O. Box 167 CK Saipan MP 96950

• Tel (670) 234-8002, 234-5155 • Fax: (670) 234-8050 •

email: support@ibssguam.com

November 18, 2005

Mr. Juan P. Flores
Superintendent of Education
Guam Public School System
P.O. Box DE
Hagatna, Guam 96932

Dear Mr. Flores:

This is to follow up on my letter of September 20, 2005 and the status of the GPSS Copier Bid Specifications for FY2006.

Although you did not respond to my letter, we briefly discussed my letter and your position at the Rotary Club of Tumon Bay meeting where you were the guest speaker. You mentioned that you extended the expired contract with Xerox Corp. for a couple of months to allow FY2006 funds to be transferred to GPSS. Since it is almost December, it would seem that your funding has been transferred.

As a prospective participant in the bidding process for the GPSS copier contract, every day that the copier contract is extended puts IBSS or any company desiring to participate in the bidding process in a disadvantaged position. We are disadvantaged because funding that should be allocated to a new contract continues to be paid to a competitor by default. And, if the competitor still has equipment installed in GPSS schools & offices, would it be safe to conclude that there are FY2006 funds being paid for the installed equipment base? How much money is GPSS actually losing because of non-competition?

As in my previous letter, I would like to find out when you plan to issue the copier bid specifications to allow vendors like IBSS to respond in a timely manner.

Should you wish to contact me directly, please contact me at 888-9479 or 472-2200.

Sincerely,

Roland R. Franquez
General Manager



AFFILIATE OF JONES & GUERRERO COMPANY, INC.

OPA Notice of Procurement Appeal: IBSS vs GPSS - copiers

Attachment 4. Letter dated 2/15/07 Brown to Reyes

JOHN THOS. BROWN
ATTORNEY AT LAW *

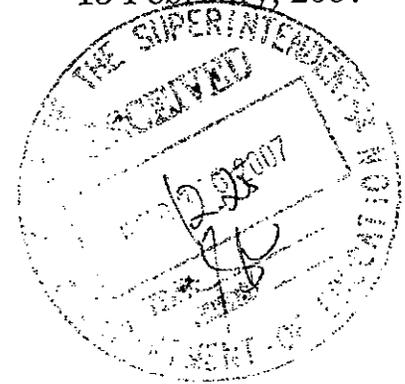
COPY

GENERAL COUNSEL
Jones & Guerrero Co. Inc. (Guam, USA)
Its divisions, subsidiaries and affiliates†
J&G Corporate Office
545 Chalan Machaute, Rte 8, 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

15 February, 2007

Mr. Luis S.N. Reyes
Superintendent of Education
Guam Public School System
PO Box DE
Hagåtña, Guam 96932



Re: Supply of copier products and services to GPSS

Dear Superintendent Reyes:

I am writing, at the request of Mr. Kenneth T. Jones, Jr., on behalf of IBSS, a division of Jones & Guerrero Co., Inc. IBSS is the authorized Canon imaging and printing products distributor on Guam; most people simply refer to it as the "copier business". IBSS provides copier and other imaging services, supplies and products for many of the local private schools, including St. John's and Harvest Christian Academy, as well as the public schools in the CNMI.

IBSS has had correspondence with your predecessor and others at GPSS for many years in an effort to service GPSS' copying needs. The correspondence turned formal way back in July 2005. Now that you have replaced your predecessor, we want to apprise you of the problems IBSS is having with GPSS procurement of copy services and equipment.

The nub of the situation is that GPSS is spending over \$133,000.00 per month on such services and machines, apparently without proper

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

† Micronesia Brokers, Inc. (Guam and CNMI)/Island Business & Supplies (Guam and CNMI)/Aquarius Beach Towers, (Saipan, /Livno Holdings PTY LTD (A.C.N. 003 585 331)/Domino Stud of Kentucky, Inc./Austpac Container Line PTY LTD (A.C.N. 003 485 489)/ Austpac Transportation Services Pty Ltd (A.C.N. 003 453 950)/Townhouse, Inc. (Saipan, CNMI)

procurement. GPSS has not, to our knowledge, and notwithstanding diligent efforts to find out, put the procurement out to competitive bid for many years, if ever. What we have determined is that it appears as though GPSS has a sweetheart deal with Xerox.

We know, for instance, that a purchase order was issued to Xerox, dated in December 2004 (P/O # 200500350), rolling over some kind of prior agreement for the supply of a specified quantity of color and black and white copies.

That P/O was for 2 time periods, a 3 month period from Oct 1 to Dec 31, 2004, followed by a 9 month period running until September 30, 2005, for a total amount of \$1,598,382.00, which is over \$133,000.00 per month. The actual amount could have been more as there is a provision for additional charges over the specified per copy per month.

The P/O said it was “issued to cover the cost of renewal of XBS services agreement 7002364.” Notwithstanding repeated requests, we have not been able to obtain a copy of that agreement, nor of the bid documents precedent to the agreement.

Curiously, there is reference on the P/O as follows: “DOEPR 3.12.2(3) **sole source** (emphasis added).”¹

This is copier equipment we’re talking about here, not a nuclear submarine. There are plenty of suppliers of copy equipment and services, and there should never be a sole source procurement for it. IBSS has proven itself to be a responsive bidder to Xerox offerings in competitive procurements for similar copying products and services by the Guam Judiciary and the Attorney General’s Office.

We also know that another purchase order was issued to Xerox for a period from January 1, 2006 through June 30, 2006, at a rate of \$133,037.00 per month. We do not know what procurement bid preceded the P/O (#

¹ In the Public Auditors report (04-14; <http://www.guamopa.org/docs/OPA0414.pdf>) concerning Competitive Sealed bidding, Sole Source, and Emergency Procurement at GSA, the OPA admonishes that, with limited exceptions, “all territorial contracts shall be awarded by competitive sealed bidding” (p. 2). One exception is for sole source, but “sole source is permissible only if the requirement is available from a single supplier, the CPO shall determine in writing that there is only one source, and in cases of reasonable doubt, competition should be solicited” (p. 6). Furthermore, “By simply relying on the sole source determination form, GSA has not effectively fostered broad-based and efficiency.... (p. 7).

200601065), but it says “this purchase order amount is issued ... to provide **Xerox Document Services** number 7002364 (reference DSA renewal amendment.” The total P/O amount of this P/O is \$798,222.00.

The curiosity with this P/O is its reference to “DOEPR 3.11.2.3 existing government contract”. We have not been able to obtain any copy of that contract.²

Do you know what the current status is, with respect to the supply of copier products and services, since that P/O ran out June 30, 2006?

Mr. Superintendent, substantial amounts of money are being spent for the supply of this copier service. We do not question justification for the need, but we do question the propriety of the bid process; indeed, we are unable to determine if there ever was one.³ We ask that the existing arrangement be terminated.

We also ask that the ongoing need for copier services be immediately put to an open and transparent bid process.

As mentioned, the Attorney General’s Office, the Judiciary and other Guam agencies are able to issue specifications for essentially the same products and services GPSS requires in an open bid process which has drawn competitive pricing from IBSS and suppliers other than Xerox.

GSA has recently pulled the procurement authority from the Port Authority to make sure its procurement of copying services and products is consistent with competitive open bidding. If your department requires any input from the industry as to appropriate standards and specifications, we believe a public request for such assistance would be welcomed by the many suppliers, including competitors of Xerox.

² In its Report No. 04-14 (footnote 1), the Public Auditor reported (p. 4) “the use of ‘existing territorial contract’ is only authorized for small purchases of \$15,000 and below.”

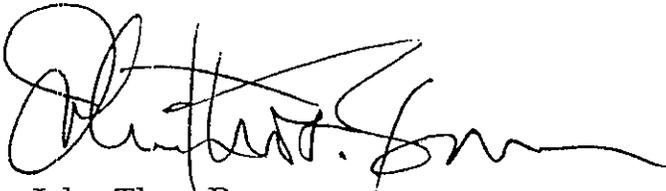
³ Note that the Public Auditor, in its annual report for calendar year 2004 (<http://www.guamopa.org/docs/2004AnnualReport.pdf> p. 5), cited GSA for “copy machine contracts that had expired in FY 1999”, and in its Report No. 04-14 (footnote 1), reported (p. 4), “from January 2000 through June 2003, GSA made unauthorized payments, estimated at \$5.1 million, on two expired existing territorial contracts to a local vendor to provide for lease/purchase of copier machines ‘government wide’ and continues to award Pos to this vendor despite the fact that the contracts for the two bids had expired in September 1999.”

Mr. Superintendent, can J&G receive your assurance of immediate personal attention to this matter, either to correct it or disclose the documents and explain to us how the purchase of the copy service and product from Xerox is satisfactory as is?

Jones & Guerrero Co., Inc., has a record of standing on principle, but using litigation only as a last option. While we are prepared to "go that route" if this issues continues to drag on, we would prefer a more pragmatic solution. Such controversy only serves to enrich the lawyers and divert needed management time, resources and effort from more pressing matters.

We look forward to your productive and constructive response.

Respectfully yours,

A handwritten signature in black ink, appearing to read "John Thos. Brown". The signature is fluid and cursive, with a large initial "J" and "T".

John Thos. Brown
General Counsel, Jones & Guerrero, Co., Inc.

cc: Mr. Kenneth T. Jones, Jr., President, J&G
Mr. Roland R. Franquez, GM, IBSS

OPA Notice of Procurement Appeal: IBSS vs GPSS - copiers

Attachment 5. Letter dated 10/10/07 Brown to Acfalle

JONES & GUERRERO CO. INC.

Head Office

545 Chalan Machaute, Rte 8 (at Biang St.), Maite, Guam 96910
POSTAL: GPO Box 7, Hagåtña, Guam 96932

Kenneth T. Jones, Jr.
PRESIDENT

John Thos. Brown
Vice President Australia and General Counsel

Telephone : +1-671-477-7293

Fax : +1-671-472-6153

email: jngo@ozemail.com.au

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

October 10, 2007

Ms. Claudia S. Acfalle
Chief Procurement Officer
General Services Administration
Department of Administration
Government of Guam
148 Route 1, Marine Corps Drive
Piti, Guam 96915

RE: Procurement of Copier Machines: Request for procurement record

Dear Ms. Acfalle,

I am writing to you to try to uncover the "mysterious" procurement of copier machines by GPSS, which, we are told, was organized under GSA's auspices, perhaps through the Federal GSA Supply Schedule. It is our understanding that GPSS is currently spending at least \$130,000.00 *per month* on the copier procurement.

J&G takes interest in this matter because its affiliate, IBSS (Island Business Systems and Supplies), a division of Town House Department Stores, Inc., is a locally owned and operated Canon imaging products representative, offering copier products and services competitive with Xerox, which seems to have locked up the GPSS copy business without competitive bid for many years. The local Xerox office is a branch office of and owned by its Hawaii based stateside network. Canon USA also is a designated supplier under the Federal GSA Supply Schedule but IBSS is not owned by Canon USA; it is an independent authorized representative of Canon products.

You will no doubt recall that the Public Auditor examined Guam GSA procurement practices and reported on its findings in OPA Report 04-14. In that report, the Public Auditor disparaged GSA's failure to use competitive bidding best practices, in violation of Guam procurement law and regulation.

Of particular concern to the Public Auditor was the practice of the government to use the prop of

AUSTRALIA OFFICE: GPO Box 3539, SYDNEY 2001; 189 Kent St., Lvl 2, Ste 4; Ph: +612-9241-1877

Associated with: Micronesian Brokers, Inc. (Guam & CNMI)/Aquarius Beach Towers, (Saipan, CNMI)/Livno Holdings Pty Ltd (A.C.N. 003 585 331)/Domino Stud of Kentucky, Inc./Austpac Container Line Pty Ltd (A.C.N. 003 485 489)/ Austpac Transportation Services Pty Ltd (A.C.N. 003 453 950)/Town House Dept. Stores, Inc./Townhouse, Inc. (Saipan, CNMI)/ IBSS (Guam & CNMI)

“existing contracts” to roll-over the continued, non-competitive procurement of copy machines. In the particular cases mentioned in her report, the Public Auditor noted:

“the bids were initially awarded for \$20,000 each in 1995. The contract terms were for an “indefinite quantity” for a period of one year with an option to renew for three additional years. We determined that the bids were vague and open-ended because they were extended beyond the maximum 90-day extension limit on an “indefinite quantity” contract, as established by 2 G.A.R. § 3102(b).9 We also determined that the files lacked pertinent supporting documentation of GSA’s option to renew for the additional three years or whether GSA had properly monitored and/or evaluated the various price increases and product substitutions submitted by the vendor (see Appendix 7).

“We concluded that because GSA did not properly monitor and/or perform an evaluation of these procurement contracts, GSA circumvented the preferred method of competitive sealed bidding by continuing to award these lucrative contracts to this particular vendor. We considered the payments made from January 2000 through June 2003 to this vendor, totaling [sic] \$5.1 million, improperly authorized.”

The Public Auditor was furthermore critical of the use of sole source procurement practices.

In reply to the Public Auditor’s report, you agreed with her that the use of existing contracts was “improper”. You advised her that GSA had implemented a new policy, effective November 17, 2003, whereby the roll-over of existing contracts by renewal (“Trade-in”) would be discontinued and that procedures would be implemented to optimize engagement of local vendors.

GPSS would, it appears, be acting contrary to that policy and, as found by the Public Auditor in her report detailing the copier procurements discussed there, “improperly”.

IBSS has been trying for years to obtain the commitment of GPSS to open its procurement of copy machines to competitive bidding procedures. By letter to Mr. Juan P. Flores, then Superintendent of Education, dated September 20, 2005, IBSS General Manager Roland R. Franquez wrote as follows:

“When we met on July 12, 2005, you shared that GPSS would be issuing the bid specifications for its copier requirements before the end of FY2005 because of a mandate from the Guam Public Auditor’s office.

“We have not seen anything on this bid to date....”

Mr. Franquez again wrote to Mr. Flores on November 18, 2005, as follows:

“Although you did not respond to my letter [at a Rotary Club meeting], [y]ou mentioned that you extended the expired contract with Xerox Corp. ... to allow FY2006 funds to be transferred to GPSS. Since it is almost December, it would seem that your funding has been transferred.

“As a prospective participant in the bidding process for the GPSS copier contract,

... [w]e are disadvantaged because funding that should be allocated to a new contract continues to be paid to a competitor by default....”

GPSS continued to stonewall IBSS.

By letter to the current Superintendent, Mr. Luis S.N. Reyes, dated February 15, 2007, I sought information as to by what authority is GPSS continuing to purchase copy machine products and services from Xerox.

In that letter, I noted that IBSS had information that a purchase order was issued to Xerox dated in December 2004 (P/O 200500350) evidently rolling over some kind of prior agreement for a period to end December 31, 2004, coupled with an extension for another 9 months through September 30, 2005. This P/O said it was “issued to cover the cost of renewal of XBS services agreement 7002364.” It also bears the cryptic reference to “DOEPR 3.12.2(3) sole source”.

It would appear, based on the comments to Mr. Franquez by Mr. Flores noted above, that GPSS informally extended the contract in September 2005. We believe there was then another P/O (# 200601065) issued to Xerox for the period January 1, 2006 to June 30, 2006, “to provide Xerox Document Services number 7002364 (reference DSA renewal amendment”, with another cryptic reference, this time to “DOEPR 3.11.2.3 existing government contract.”

We have no knowledge how GPSS continues to procure copier products and services from Xerox. I got no response whatsoever to my letter.

Last month, Mr. Franquez called Mr. Reyes’ office and scheduled a meeting with Mr. Reyes to discuss the copy machine procurement issue, to be held September 18, 2007. Mr. Reyes was a no-show, so Mr. Ike Santos, Federal Programs Administrator, attended in his absence, together with Acting GPSS Chief Financial Officer, Frances Danieli, and Acting GPSS Administrator, Supply Management, Roque Alcantara.

Mr. Franquez recounted the prior discussions and correspondence he and I had had with GPSS administrators and queried why there had as yet been no RFP even though Xerox continued to be the procurement source of copy machines.

Mr. Alcantara advised him that Mr. Flores had extended a prior agreement with Xerox in December 2004, and he had a copy of it with him. Mr. Santos advised that GPSS was riding on an agreement made between Guam GSA and Xerox which allowed GPSS to by-pass the bid process and directly contract with Xerox. Mr. Franquez was advised the current extension of the Xerox contract commits GPSS until September 30, 2009.

This raises the inference that GPSS rolled-over the 2004 contract for 5 years, which appears to have been itself a roll-over of a prior contract, all without any public, competitive bid process. This has kept a major, multi-million dollar GPSS expense item out of public sight and well contained in an administrative black hole for years.

Mr. Franquez was advised that GPSS would consider giving him a formal response to the questions he and I had previously posed, but, staying to form, there has been no such response.

Just so that we know the true lay of the land, can you explain any agreement that Guam GSA has that would allow GPSS to by-pass the procurement process, and your policies implemented in 2003?

Since GPSS has been entirely unforthcoming with any copy of any part of any record dealing with the procurement of copier products, are you in a position to provide IBSS with a complete record¹ of the copier procurement if it was, as Mr. Franquez was advised, arranged through Guam GSA?

If you are in such a position, please consider this a formal request for a copy of the procurement record² or advise me where and when and under what conditions I can inspect and/or make copies of it myself.³

I would be happy to discuss this matter with you if there is any amicable way we can shed light on this procurement issue and bring this apparently improper arrangement to a quick end.

Thank you for your studious and expeditious consideration and response.

Respectfully yours,



John Thos. Brown

- cc: Mr. Roland R. Franquez, GM, IBSS
- Mr. Luis S.N. Reyes, Superintendent, GPSS
- Mr. Ike Santos, Federal Programs Administrator, GPSS
- Ms. Frances Danieli, Acting GPSS Chief Financial Officer, GPSS
- Mr. Roque Alcantara, Acting GPSS Administrator, Supply Management, GPSS
- Mr. Peter Alexis D. Ada, Chair, GEPD

¹ 2 GAR § 3129

² 5 GCA § 5250: "No procurement award shall be made unless the responsible procurement officer certifies in writing under penalty of perjury that he has maintained the record required by § 5249 of this Chapter and that it is complete and available for public inspection. The certificate is itself a part of the record."

³ 2 GAR § 3031

OPA Notice of Procurement Appeal: IBSS vs GPSS - copiers

Attachment 6. Letter dated 10/15/07 Acfalle to J&G

Felix P Camacho
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration
Government of Guam

Michael W. Cruz,
Lt. Governor

Lourdes M. Perez
Director

Joseph C. Manibusan
Deputy Director

Department of Administration

Tel: (671)475-1707 thru 1729/Fax Nostr (671)472-4217/475-1716

Department of Administration

October 15, 2007

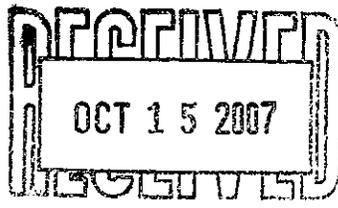
Kenneth T. Jones, Jr.
President
Jones & Guerrero Co., Inc.
545 Chalan Machaute, Rte 8
Maite, Guam 96910

Re: Procurement of Copier Machines, Memo date 10/10/07

Buenas yan Hafa Adai! General Services Agency is in receipt of your memo date October 10, 2007 and will forward your request to the Guam Public School Systems (GPSS) Legal Council for appropriate steps to be taken.

If further questions or concerns should arrive please contact Mr. Fred Nishihira at the Guam Public School System (GPSS).

Anita T. Cruz
Assistant Chief Procurement Officer



Handwritten signature
FAXED
DATE: 10/15/07

JONES & GUERRERO CO., INC.
P. O. Box 7
Hagatña, Guam 96932

COMMITTED TO EXCELLENCE

OPA Notice of Procurement Appeal: IBSS vs GPSS - copiers

Attachment 7. Letter dated 10/26/07 Brown to Nishihira

JOHN THOS. BROWN
ATTORNEY AT LAW *

GENERAL COUNSEL

Jones & Guerrero Co. Inc. (Guam, USA)
Its divisions, subsidiaries and affiliates[†]

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

October 26, 2007

Mr. Fred Nishihira, Esq.
Legal Counsel
Guam Public School System
PO Box DE
Hagåtña, Guam 96932

RE: Procurement of copier machines

Dear Mr. Nishihira,

I presume that you have, by now, received and considered a letter I previously wrote to GSA CPO Claudia Acfalle on October 10, 2007. J&G was informed by the Assistant CPO Anita T. Cruz by letter sent and dated October 15, 2007 that she was forwarding my letter on to you "for appropriate steps to be taken", whatever that means, and we were advised by her to direct further questions or concerns directly to you. Moreover, I sent copies of my letter to Superintendent Reyes and others within DOE, and I have to believe that you must have been sent a copy of the letter from at least one of them. If you are still in the dark, I would be happy to send you a copy myself.

J&G appreciates that GPSS has been struggling to get its procurement act together. Not only does J&G have its own experience with GPSS as a guide, there have been many other references to the poor state of affairs of the procurement practices within GPSS.

The internal GPSS Financial Management Improvement Plan in 2006 reflected that GPSS had issues with the "renewal" of contractual services, the need to "streamline" and restructure the procurement process, and admitted,

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

† Micronesian Brokers, Inc. (Guam and CNMI)/Aquarius Beach Towers, (Saipan, CNMI)/Livno Holdings PTY LTD (A.C.N. 003 585 331)/Domino Stud of Kentucky, Inc./Austpac Container Line PTY LTD (A.C.N. 003 485 489)/ Austpac Transportation Services Pty Ltd (A.C.N. 003 453 950)/Townhouse, Inc. (Saipan, CNMI)/ IBSS (Guam and Saipan)

“There appears to be a conflict between our GPSS procurement Regulation, GSA Procurement Regulations and Guam’s Code Annotated.”

The internal GPSS FMIP for 2007 reported that GPSS had incurred an *additional* charge from Xerox (over the \$130,000/month base charge) for \$134,000 attributed to “excess” copies for a nine month period , but no question was raised as to its procurement in the first place. The report indicated satisfaction with the pace of changes to the procurement processes.

GPSS’ own independent audit report on internal control, rendered in June 2006, noted significant deficiencies and noncompliance in several areas, including several issues regarding procurement. The GPSS CFO’s response was:

Concur with the finding. By June 30, 2006 the Supply Management Administrator in collaboration with the CFO will establish written procedures for maintaining adequate documentation in procurement files; assign responsibility for file maintenance to specific individuals in the procurement office and the financial affairs office; conduct in-house mandatory workshop for all procurement personnel to review GPSS Procurement Regulations with particular emphasis on documentation required for Emergency Procurement, Sole Source Selection, and Small Purchases. By July 15, 2006 the Supply Management Administrator will also review the need for additional procurement personnel and request additional personnel if necessary. The Supply Management Administrator will write and implement Standard Operating Procedures for the Procurement Office by July 31, 2006.

In her July 2007 report, the Guam Public Auditor noted,

“Procurement findings continue to plague GPSS audits. In FY 2006, in addition to federal questioned costs, local funds of \$303,000 were questioned for improper procurement. Procurement findings include lack of documentation, insufficient bidding time, improper emergency procurements, and continued payments on a non-compliant purchase order cited in the FY 2005 audit.”

In fairness to GPSS, it is not the only government agency to fall under the spell of the Xerox copier full-court press. GSA got hammered by OPA on this issue in a report made in 2004. In this report (OPA 04-14), OPA took significant issue with GSA over its use of sole source and emergency procurement and found “renewal” or roll-over of “existing contracts” to be improper where open, competitive sealed bids were not obtained.

In OPA 04-14, the Public Auditor noted,

“GSA personnel stated they were not aware that the competitive sealed bidding process is the preferred procurement method for purchases larger than the small purchase threshold. The current

CPO confirmed that it was a common practice in the past to use other procurement methods in lieu of competitive sealed bids

“2 G.A.R. § 3111(b)(3) requires that all supplies and services, which may be obtained under current territorial contracts, be procured under such agreements in accordance with the terms of such contracts... An existing territorial contract is a contract that has been entered into in a prior year and has been extended into the current fiscal year based on the provisions set forth in the contract. **However, the use of “existing territorial contract” is only authorized for small purchases of \$15,000 and below.**” [Bold emphasis added.]

In regard to copier contracts in particular, the Public Auditor said,

“We concluded that because GSA did not properly monitor and/or perform an evaluation of these procurement contracts, GSA circumvented the preferred method of competitive sealed bidding by continuing to award these lucrative contracts to this particular vendor.”

Continuing, she added,

“The current CPO acknowledges that the citation of existing territorial contracts has been a frequent practice used by her personnel and agreed to discontinue this practice by utilizing multi-term contracts [2 G.A.R. § 3121] instead. The use of multi-term contracts will ensure competition in the procurement process.

“To correct these deficiencies, we recommend GSA (1) immediately discontinue leasing and/or purchasing equipments under the two expired contracts and ..., (2) immediately issue invitations for bid (IFBs) to solicit for the government-wide lease and/or purchase of copier machines ..., and (3) discontinue the practice of utilizing “existing territorial contracts,” determine the expiration dates of all procurement citing existing territorial contracts, and begin to plan and execute IFBs for all such procurements.”

As to emergency procurement, the Public Auditor explained,

“Pursuant to 5 G.C.A. § 5215, at least three informal price quotations must be solicited for emergency purchases and emergency procurement must be awarded to the best offeror. Although the law does not require GSA maintain a qualified

bidder's list, utilizing such a tool will enhance competition and ensure that all interested vendors are notified when the government wishes to engage in trade [footnote omitted].”

The Public Auditor was scathing in her assessment of the poor state of GSA procurement documentation and records management, a sentiment also suggested in the internal memoranda mentioned above.

“Procurement documents are solicitations, offers, contracts, and amendments. The written documentation of all steps in the procurement cycle is one of the essential elements of procurement requirements found in state and local laws.

“During our review of procurement files, we found that GSA did not maintain complete procurement histories nor perform periodic assessments of their procurement performance.

“5 G.C.A. § 5249 requires each procurement officer to maintain a complete record of each procurement. Further, 5 G.C.A. § 5249(b) requires the written documentation of all internal and external communication within each procurement file. We tested 73 POs, totaling \$4.6 million, and found that *GSA consistently lacked pertinent procurement documentation, such as internal and external communications, analyses of vendor bids, and the rationales for determining and awarding the best offeror within the procurement files.* Additionally, the Government of Guam Single Audits from FY 1999 through FY 2003 have continually identified the lack of procurement history as a **significant deficiency**, yet there has been no considerable improvements made to correct this deficiency [footnote omitted].”¹

In respect of sole source procurement, the Public Auditor instructed,

“Pursuant to 2 G.A.R. § 3112, sole source is permissible only if the requirement is available from a single supplier, the CPO shall determine in writing that there is only one source, and in cases of reasonable doubt, competition should be solicited. Additionally, it

¹ It is arguable that the failure to properly document the procurement file is a condition which could render the award voidable. 5 GCA § 5250 provides, “No procurement award shall be made unless the responsible procurement officer certifies in writing under penalty of perjury that he has maintained the record required by § 5249 of this Chapter and that it is complete and available for public inspection. The certificate is itself a part of the record.”

is good business practice to include a certification from the vendor, on company letterhead, that the goods and services are available only through a single supplier [footnote omitted].”

The Public Auditor’s opinion on the use of sole source procurement has been elaborated in the RadioCom procurement appeal, OPA-PA-06-003. In her decision in that case (http://guamopa.com/docs/procurement_appeals/06-003_Decision.pdf), the Public Auditor said,

“Pursuant to 5 GCA §5214 and 2 GAR §3112, GSA must make an independent assessment [as a condition of sole source procurement] of the availability of potential suppliers based on appropriate methods, such as a survey of the local businesses, or inquiry with the using agency and other procuring entities as to any known interest in bidding for this or similar projects on Guam. It is unreasonable to rely on a single, unsupported statement by a vendor that it is the sole provider of equipment (that it does not manufacture) that will meet the needs of the government to the exclusion of all other businesses when that same vendor wrote the specifications, made the needs assessment, and is the sole bidder in an unsolicited procurement.

“This need for an independent assessment by GSA of an agency’s need for off-island providers is especially pronounced under the current circumstances. Here, the requesting agency was fully aware that there was a local company interested in bidding on an early warning system; the local company had installed a similar system in Rota recently; and the Navy is entertaining proposals or requesting sirens from this same company to meet the standard of equal to or better than and compatible with their existing Whelen sirens.”

IBSS, the J&G affiliate that sells and represents Canon copier products, is a locally owned company. The Xerox provider is the branch office of a Stateside owned company. IBSS has the copier business for private Guam education institutions as well as the public schools in the CNMI. It has competed against Xerox in bids from the Guam AG’s office, where it won, and in the Guam Judiciary, where it lost, but instigated a reduction in cost to the Judiciary as a result of the competitive bid process. IBSS has been knocking on GPSS’ door for literally years, but has only had deaf ears turned to it.

The whole point of J&G’s approach in this matter has been to try to bring about an opening up of the procurement of copier machines and products by

GPSS to a competitive bidding process. J&G does not desire to delve into and point fingers about what has transpired in the past; it is the present and future that concerns us.

Based on all of the above and my October 10 letter, we believe, but have not been able to yet substantiate, that the procurement of copier products by GPSS from Xerox, to the tune of well in excess of \$1.5 Million per year, is "improper". You may suspect that such an argument is as least colorable. In my experience, I have found many instances where the procurement "industry" on Guam, including both government buyers and private sector sellers, is more guided by procurement lore than procurement law.²

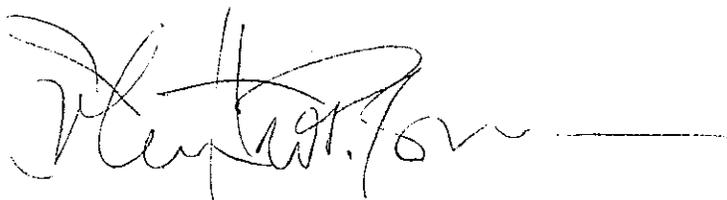
J&G has grown impatient with the stonewalling by GPSS over this issue, but does not want to instigate more diversion of GPSS' meagre resources in a formal legal tussle that would likely be front page news given the amount of money in issue and the furor that erupted over the GSA report.

I have not had response from you to my October 10 letter to the GSA CPO. In the context of trying to work out a solution to this issue that falls short of guns at six paces, I would welcome a chance to sit and chat with you about this, with the object of bringing about an immediate change in the status quo.

May I hear from you?

Si yu'us ma'ase.

Respectfully,

A handwritten signature in black ink, appearing to read "John Thos. Brown", with a horizontal line extending to the right.

John Thos. Brown

² It remains to be seen how far I can get with that observation. See http://www.guamopa.com/docs/procurement_appeals/07-005_Memo_of_Points_and_Authorities.pdf, at page 4.

OPA Notice of Procurement Appeal: IBSS vs GPSS - copiers

Attachment 8. Notice of Protest dated 12/4/07

JOHN THOS. BROWN
ATTORNEY AT LAW *

COPY

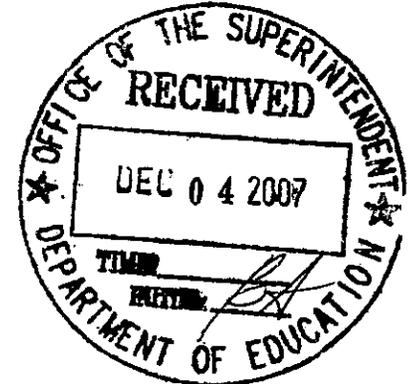
GENERAL COUNSEL
Jones & Guerrero Co. Inc. (Guam, USA)
Its divisions, subsidiaries and affiliates†
J&G Corporate Office
545 Chalan Machaute, (Rte 8 @ Biang St.), Maite, Guam 96910

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

4 December, 2007

Mr. Luis S.N. Reyes
Superintendent of Education
Guam Public School System
PO Box DE
Hagåtña, Guam 96932

NOTICE OF PROTEST
COPIER MACHINE PROCUREMENT



Dear Supt. Reyes,

Please consider this letter to be a formal protest of the apparently improper procurement of copier machine products and related services by GPSS. IBSS (Island Business Systems and Supplies), a division of Town House Department Stores, Inc., a J&G affiliate, is a locally owned and operated Canon imaging products representative, offering copier products and services. IBSS has for several years made known to GPSS its ability, willingness and desire to be considered as a prospective provider of copier supplies to GPSS.

It is obvious from public reports that GPSS is paying Xerox for copier supplies. It is also apparent that GPSS has not acquired the copier supplies by way of any public, competitive bidding process. I would guess that the amount paid Xerox exceeds \$130,000 per month, and is one of the largest recurring costs to GPSS outside of personnel costs and expenses.

What is not obvious is the actual method of source selection, nor of the time when the decision - or decisions - to acquire this supply from Xerox was made, nor has it been disclosed by GPSS what contract or other arrangement was entered into to acquire the copier supplies, notwithstanding repeated requests from IBSS and myself to ascertain these matters.

I wrote a letter to you in February this year, outlining the history of this issue from IBSS' perspective. I noted that there appeared to be an ongoing renewal of some kind of Xerox arrangement, but we could not determine when it started nor when it would expire nor the procurement method. I specifically asked you "[d]o you know what the current status is, with respect to the supply of copier products and services" I noted that we had information, but no confirmation from GPSS, that there appeared to be a P/O for copier supplies that was to expire in

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

† Micronesia Brokers, Inc. (Guam and CNMI)/Aquarius Beach Towers, (Saipan, CNMI)/Livno Holdings PTY LTD (A.C.N. 003 585 331)/Domino Stud of Kentucky, Inc./Austpac Container Line PTY LTD (A.C.N. 003 485 489)/ Austpac Transportation Services Pty Ltd (A.C.N. 003 453 950)/Townhouse, Inc. (Saipan, CNMI)/ IBSS (Guam and Saipan)

June 2006 and other information suggested the possibility that the procurement was by either sole source or existing contract renewal or both. I include a copy of that letter herewith.

Neither your office nor any representative from GPSS ever responded to my inquiry.

Having grown impatient waiting to hear from you, the General Manager of IBSS, Roland Franquez, scheduled a time with your office to meet with you to discuss the matter on September 18, 2007. You failed to attend, but several staff members did meet with him to hear his entreaties.

At the meeting Acting GPSS Administrator, Supply Management, Mr. Roque Alcantara, advised Mr. Franquez that the prior Superintendent, Mr. Flores, had extended a prior agreement made with Xerox in December 2004. Mr. Santos advised that GPSS was riding on an agreement made between Guam GSA and Xerox which allowed GPSS to by-pass the bid process.

Mr. Franquez requested that GPSS give him a written response detailing the nature of the contract and its status, and Mr. Santos advised he would consider it. Whether or not he considered it, he did not respond any further.

Subsequent to that, I wrote to the Chief Procurement Officer at GSA asking for information about the procurement by letter dated October 10, 2007. Copy of that letter is also included.

In that letter, bearing the reference "RE: Procurement of Copier Machines; Request for procurement record", I asked:

"Just so that we know the true lay of the land, can you explain any agreement that Guam GSA has that would allow GPSS to by-pass the procurement process, and your policies implemented in 2003?"

"Since GPSS has been entirely unforthcoming with any copy of any part of any record dealing with the procurement of copier products, are you in a position to provide IBSS with a complete record¹ of the copier procurement if it was, as Mr. Franquez was advised, arranged through Guam GSA?"

"If you are in such a position, please consider this a formal request for a copy of the procurement record² or advise me where and when and under what conditions I can inspect and/or make copies of it myself."³

¹ 2 GAR § 3129

² 5 GCA § 5250: "No procurement award shall be made unless the responsible procurement officer certifies in writing under penalty of perjury that he has maintained the record required by § 5249 of this Chapter and that it is complete and available for public inspection. The certificate is itself a part of the record."

³ 2 GAR § 3031

The response I got from that letter was a another dead end. Assistant Chief Procurement Officer Anita T. Cruz advised, by letter dated October 15, 2007, that she would forward my request to GPSS Legal Council (sic) "for appropriate steps to be taken." I was advised to direct any further questions or concerns to Mr. Fred Nishihira.

I awaited a response from Mr. Nishihira as to some indication that "appropriate steps" were being taken, but have heard nothing.

Having heard nothing from him, I directly wrote to him a letter of date October 26, 2007. In my letter, a copy of which is also included, I offered,

"In the context of trying to work out a solution to this issue that falls short of guns at six paces, I would welcome a chance to sit and chat with you about this, with the object of bringing about an immediate change in the status quo.

"May I hear from you?"

True to GPSS's form in dealing with this issue, I did not hear from him.

Competitive sealed bidding is the preferred method of procuring supplies. (5 GCA § 5210(a).) This method requires public notice of the bid, which helps to fulfil the public policy and purpose of the Procurement Act, "to foster effective broad-based competition within the free enterprise system", as well as "to ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory".

The Public Auditor has determined that the "renewal" of "existing territorial contracts" is only allowed when the procurement amount is less than \$15,000. (See, OPA Report 04-14.) In that 2004 Report, the Public Auditor advised that the GSA CPO had, in response to the Public Auditor's procurement audit, agreed to discontinue the renewal of existing contracts and to issue, where appropriate⁴, "multi-term contracts"⁵. These contracts also require public competition⁶.

⁴ "A multi-term contract is appropriate ... where the performance of such services involves high start-up costs, or where a changeover of service contractors involves high phase-in/phase-out costs during a transition period.." (2 GAR § 3121(a).) "Care should be taken when evaluating multi-term prices against prices for the first fiscal period that award on the basis of prices for the first period does not permit the successful bidder or offeror to 'buy in', that is, give such bidder of offeror an undue competitive advantage in subsequent procurement." (2 GAR § 3121(e)(2).)

⁵ 2 GAR § 3121

⁶ "The objective of the multi-term contract is to promote economy and efficiency in procurement ... by increasing competitive participation in procurement...." (2 GAR § 3121(b).) It should be noted that the description of a "multi-term contract" refers only to the type of contract, not to the method of solicitation. It should be used in conjunction with a competitive sealed bid method.

And multi-term contracts are not generally applicable for the lease of equipment⁷.

Bearing in mind the 2004 date on that Public Auditor Report, it is worth pointing out a letter that IBSS (then) General Manager Roland Franquez wrote to (then) Superintendent Juan Flores in November 2005 regarding the status of the GPSS Copier Bid Specifications for FY2006. In that letter, Mr. Franquez recalled an informal discussion with the Superintendent at a Rotary Meeting, wherein the Superintendent evidently informed Mr. Franquez that GPSS had extended an expired contract with Xerox rather than issue a new bid, but only for a couple of months to allow FY 2006 funds to be transferred. A copy of that letter is also enclosed.

The Public Auditor has also criticized procurement by sole source, particularly where there has been no attempt on the part of the agency to solicit multiple bidders. In the 2004 Report noted above, which was particularly critical of GSA procurement of copier machines, the Public Auditor said,

“Pursuant to 2 G.A.R. § 3112, sole source is permissible only if the requirement is available from a single supplier, the CPO shall determine in writing that there is only one source, and in cases of reasonable doubt, competition should be solicited.”

More recently, in the Radiocom Procurement Appeal OPA-PA-06-003 decision, the Public Auditor held,

“Pursuant to 5 GCA §5214 and 2 GAR §3112, GSA must make an independent assessment [as a condition of sole source procurement] of the availability of potential suppliers based on appropriate methods, such as a survey of the local businesses, or inquiry with the using agency and other procuring entities as to any known interest in bidding for this or similar projects on Guam.”

But all this discussion of the methods of procurement is simple conjecture, because GPSS steadfastly refuses, in spite of the requests detailed above and the procurement law requirements⁸, to provide any information about the acquisition of Xerox copier machines that it is paying millions of dollars for, nor to even discuss it on the record with a ready, willing and able prospective bidder. Such information as is given to IBSS is typically cryptic, inconsistent and obfuscating..

For instance, IBSS has seen copies of Purchase Orders issued to Xerox but has no way to determine the basis of or the method of procurement for the P/Os. One P/O, for a time frame ending September 2005, indicated it was based on a “sole source” bid method, but this was followed by another P/O for a time frame beginning January 2006, with indicated it was based on a “renewal” of an existing contract. By all appearances, the P/Os were simply issued ad hoc without any planned, formal method of procurement authorized.

⁷ 2 GAR § 3121(c).

⁸ See, 5 GCA §§ 5248, 5249, 5250, 5251, 5252.

5 GCA § 5425 gives “any ... prospective bidder ... who has been aggrieved in connection with the method of source selection, solicitation or award of a contract” the right to “protest to the head of a purchasing agency.” Due to the stonewall of silence put up by GPSS, IBSS is unable to determine when or how it has been aggrieved, but it has been aggrieved by the repeated failure of GPSS, for the last several years, to “properly” procure copier machine supplies and its failure to include IBSS, and any other potential supplier, in its procurement process. There has been no publicly noticed procurement “trigger”, only the carefully obscured lack of competitive procurement which has over time left IBSS with no option but to bring this protest.

It cannot be in the best interests of the Territory of Guam that GPSS continue to avail itself of the improper procurement of copier supplies by methods thoroughly canvassed and criticized by the Public Auditor years ago. It cannot be in the best interests of the Territory of Guam to pay millions of dollars for copier supplies without any competitive bid. Yet, IBSS protests that this is exactly what is happening.

IBSS adopts the recommendations of the Public Auditor in OPA Report 04-14 and requests that GPSS

“(1) immediately discontinue leasing and/or purchasing equipments under ... expired contracts and ..., (2) immediately issue invitations for bid (IFBs) to solicit for ... lease and/or purchase of copier machines ..., and (3) discontinue the practice of utilizing “existing territorial contracts,” determine the expiration dates of all procurement citing existing territorial contracts, and begin to plan and execute IFBs for all such procurements.”

IBSS has no way of knowing whether the acquisition of copier supplies is pursuant to bid, award or contract, or other arrangement, and therefore seeks whatever remedies might be appropriate under either 5 GCA § 5451 or 5452. If the acquisition of such supplies is pursuant to award, IBSS asks that the contract “be terminated” pursuant to 5 GCA § 5252(a)(1)(ii) or to “be declared null and void” pursuant to 5 GCA § 5252(a)(2)(i).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Thos. Brown", with a long horizontal flourish extending to the right.

John Thos. Brown
General Counsel
for IBSS

JOHN THOS. BROWN
ATTORNEY AT LAW *

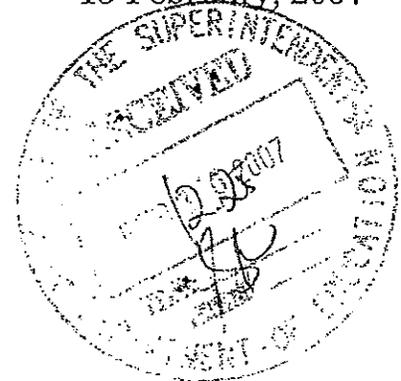
COPY

GENERAL COUNSEL
Jones & Guerrero Co. Inc. (Guam, USA)
Its divisions, subsidiaries and affiliates†
J&G Corporate Office
545 Chalan Machaute, Rte 8, 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

15 February, 2007

Mr. Luis S.N. Reyes
Superintendent of Education
Guam Public School System
PO Box DE
Hagåtña, Guam 96932



Re: Supply of copier products and services to GPSS

Dear Superintendent Reyes:

I am writing, at the request of Mr. Kenneth T. Jones, Jr., on behalf of IBSS, a division of Jones & Guerrero Co., Inc. IBSS is the authorized Canon imaging and printing products distributor on Guam; most people simply refer to it as the "copier business". IBSS provides copier and other imaging services, supplies and products for many of the local private schools, including St. John's and Harvest Christian Academy, as well as the public schools in the CNMI.

IBSS has had correspondence with your predecessor and others at GPSS for many years in an effort to service GPSS' copying needs. The correspondence turned formal way back in July 2005. Now that you have replaced your predecessor, we want to apprise you of the problems IBSS is having with GPSS procurement of copy services and equipment.

The nub of the situation is that GPSS is spending over \$133,000.00 per month on such services and machines, apparently without proper

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† Micronesian Brokers, Inc. (Guam and CNMI)/Island Business & Supplies (Guam and CNMI)/Aquarius Beach Towers, (Saipan, /Livno Holdings PTY LTD (A.C.N. 003 585 331)/Domino Stud of Kentucky, Inc./Austpac Container Line PTY LTD (A.C.N. 003 485 489)/ Austpac Transportation Services Pty Ltd (A.C.N. 003 453 950)/Townhouse, Inc. (Saipan, CNMI)

procurement. GPSS has not, to our knowledge, and notwithstanding diligent efforts to find out, put the procurement out to competitive bid for many years, if ever. What we have determined is that it appears as though GPSS has a sweetheart deal with Xerox.

We know, for instance, that a purchase order was issued to Xerox, dated in December 2004 (P/O # 200500350), rolling over some kind of prior agreement for the supply of a specified quantity of color and black and white copies.

That P/O was for 2 time periods, a 3 month period from Oct 1 to Dec 31, 2004, followed by a 9 month period running until September 30, 2005, for a total amount of \$1,598,382.00, which is over \$133,000.00 per month. The actual amount could have been more as there is a provision for additional charges over the specified per copy per month.

The P/O said it was "issued to cover the cost of renewal of XBS services agreement 7002364." Notwithstanding repeated requests, we have not been able to obtain a copy of that agreement, nor of the bid documents precedent to the agreement.

Curiously, there is reference on the P/O as follows: "DOEPR 3.12.2(3) **sole source** (emphasis added)." ¹

This is copier equipment we're talking about here, not a nuclear submarine. There are plenty of suppliers of copy equipment and services, and there should never be a sole source procurement for it. IBSS has proven itself to be a responsive bidder to Xerox offerings in competitive procurements for similar copying products and services by the Guam Judiciary and the Attorney General's Office.

We also know that another purchase order was issued to Xerox for a period from January 1, 2006 through June 30, 2006, at a rate of \$133,037.00 per month. We do not know what procurement bid preceded the P/O (#

¹ In the Public Auditors report (04-14; <http://www.guamopa.org/docs/OPA0414.pdf>) concerning Competitive Sealed bidding, Sole Source, and Emergency Procurement at GSA, the OPA admonishes that, with limited exceptions, "all territorial contracts shall be awarded by competitive sealed bidding" (p. 2). One exception is for sole source, but "sole source is permissible only if the requirement is available from a single supplier, the CPO shall determine in writing that there is only one source, and in cases of reasonable doubt, competition should be solicited" (p. 6). Furthermore, "By simply relying on the sole source determination form, GSA has not effectively fostered broad-based and efficiency.... (p. 7).

200601065), but it says "this purchase order amount is issued ... to provide **Xerox Document Services** number 7002364 (reference DSA renewal amendment)." The total P/O amount of this P/O is \$798,222.00.

The curiosity with this P/O is its reference to "DOEPR 3.11.2.3 existing government contract". We have not been able to obtain any copy of that contract.²

Do you know what the current status is, with respect to the supply of copier products and services, since that P/O ran out June 30, 2006?

Mr. Superintendent, substantial amounts of money are being spent for the supply of this copier service. We do not question justification for the need, but we do question the propriety of the bid process; indeed, we are unable to determine if there ever was one.³ We ask that the existing arrangement be terminated.

We also ask that the ongoing need for copier services be immediately put to an open and transparent bid process.

As mentioned, the Attorney General's Office, the Judiciary and other Guam agencies are able to issue specifications for essentially the same products and services GPSS requires in an open bid process which has drawn competitive pricing from IBSS and suppliers other than Xerox.

GSA has recently pulled the procurement authority from the Port Authority to make sure its procurement of copying services and products is consistent with competitive open bidding. If your department requires any input from the industry as to appropriate standards and specifications, we believe a public request for such assistance would be welcomed by the many suppliers, including competitors of Xerox.

² In its Report No. 04-14 (footnote 1), the Public Auditor reported (p. 4) "the use of 'existing territorial contract' is only authorized for small purchases of \$15,000 and below."

³ Note that the Public Auditor, in its annual report for calendar year 2004 (<http://www.guamopa.org/docs/2004AnnualReport.pdf> p. 5), cited GSA for "copy machine contracts that had expired in FY 1999", and in its Report No. 04-14 (footnote 1), reported (p. 4), "from January 2000 through June 2003, GSA made unauthorized payments, estimated at \$5.1 million, on two expired existing territorial contracts to a local vendor to provide for lease/purchase of copier machines 'government wide' and continues to award Pos to this vendor despite the fact that the contracts for the two bids had expired in September 1999."

Mr. Superintendent, can J&G receive your assurance of immediate personal attention to this matter, either to correct it or disclose the documents and explain to us how the purchase of the copy service and product from Xerox is satisfactory as is?

Jones & Guerrero Co., Inc., has a record of standing on principle, but using litigation only as a last option. While we are prepared to "go that route" if this issues continues to drag on, we would prefer a more pragmatic solution. Such controversy only serves to enrich the lawyers and divert needed management time, resources and effort from more pressing matters.

We look forward to your productive and constructive response.

Respectfully yours,

A handwritten signature in black ink, appearing to read "John Thos. Brown". The signature is fluid and cursive, with a large initial "J" and "T".

John Thos. Brown
General Counsel, Jones & Guerrero, Co., Inc.

cc: Mr. Kenneth T. Jones, Jr., President, J&G
Mr. Roland R. Franquez, GM, IBSS