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FILE No. OPA-PA 08-011

BEFORE THE OFFICE OF THE PUBLIC AUDITOR

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

DOCKET NO. OPA-PA 08-011
COMMENT ON AGENCY REPORT

Consistent with GPSS' Agency Report in the original Appeal in the matter (OPA-PA-08-003), GPSS' Agency Report in the instant second Appeal is again hardly responsive to the complaint raised by Appellant IBSS. Indeed, it is the exact same one-liner: "GPSS denies any allegation of improperly procuring copier services."

As mentioned in Appellant's second Notice of Appeal in the instant matter (at page 4 thereof), Appellant had thought that it had sensed a retreat from this bare denial of impropriety, based on GPSS' rejection of IBSS' Protest. Although again GPSS makes this bare denial, it has added nothing to the record to evidence that it has properly selected and implemented any authorized method of source selection for the copiers.

For all intents and purposes, this Appeal is right back to square one, where we started in the original Appeal. The produced Procurement Record is essentially the same as before, and GPSS' denial and claim of "too late" remain the same, unadorned and unelaborated.

The only difference of any kind, substantively and procedurally, between the original Appeal and this instant Appeal is that now the jurisdictional issue presented by the failure of GPSS to render a decision on IBSS' Protest is now resolved.

In its Notice of Appeal in this instant second Appeal, IBSS again and clearly argued that its

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Protest to GPSS was timely because the 14 day period for bring the Protest had not been triggered by the necessary condition that IBSS had, or should have had, any knowledge of the facts giving rise to its being an aggrieved person.

The mere fact that IBSS knew that some kind of purchase order had been given to Xerox can not give rise to any inference that IBSS knew or should have know that something was amiss to cause it to be aggrieved. IBSS came to *suspect* that something *might be* amiss because it was continually put off and ignored whenever it tried to engage GPSS is any actual solicitation effort, all as explained in the original Appeal.

IBSS could not have had any reason that it *should know* that something was amiss because, first, GPSS has consistently denied, up to this very action, that it had done anything improper, and second, because GPSS refused to discuss and did not disclose the procurement record until after the original Appeal was filed, which was, of course, also after the Protest had been filed with GPSS. It was only when the bare contract was produced in the original Appeal that IBSS came to actually know that there was no evidence of any kind in the record that the purchase order had been properly procured. But these arguments are not new and have been made before.

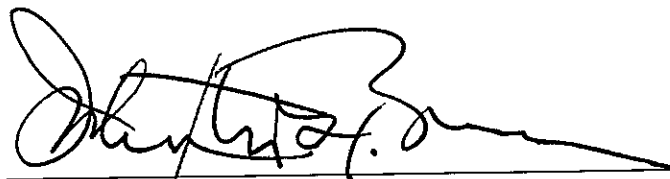
What is critical to focus on here is that, knowing all this and being fully advised of IBSS' denial that it had any relevant knowledge to trigger the 14 day protest period, in its Agency Report in this instant Appeal, GPSS has suggested nothing that in any way would impute to IBSS any knowledge of any kind which could even *arguably* trigger the relevant 14 day protest filing deadline. GPSS simply regurgitates the same pap that since there was already an existing contract with Xerox the Protest was too late *per se*.

There is no such *per se* rule of law. To raise the bar of the time deadline for an aggrieved person to file a protest, the agency should at least be able to raise the argument, by presenting some evidence or other *prima facie* showing, that the protestor knew or should have known the relevant facts. GPSS has not done so in the instant Appeal nor in the original Appeal, and so its bare "too late" argument must fail.

As it has neither raised any supporting evidence that it has properly procured the copiers, its entire defense of this Appeal must fail.

Respectfully submitted,

Dated: August 6, 2008



JOHN THOS. BROWN, for Appellant

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