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OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

DEC 4 2008
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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)
_____)

**RESPONSE TO REQUEST FOR
RECONSIDERATION OF DECISION**

DOCKET NO. OPA-PA 08-011

December 4, 2008

TO:
Mrs. Doris Flores Brooks, CPA, CGFM, Public Auditor
Suite 401 Pacific News Building
238 Archbishop Flores Street
Hagatna, Guam 96910
COPY VIA FAX: 671-472-7951

CC:
Mrs. Nerissa Bretania-Shafer, Ph.D., Superintendent of Education
Guam Public School System
P.O. Box DE
Hagåtña, Guam 96932
COPY VIA FAX: 671-472-5003

Dear Mrs. Brooks,

Being in receipt of the letter from Superintendent Bretania-Shafer, IBSS is appreciative of the dilemma they now find themselves in as a result of past failures to abide by relevant procurement



law and regulation. IBSS therefor responds to her request for reconsideration as follows:

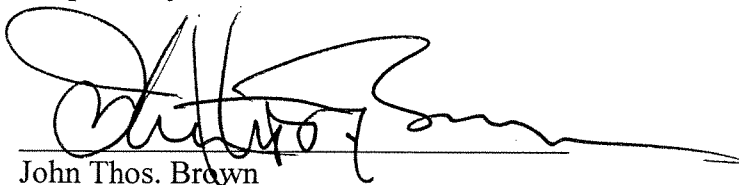
First, GPSS' intent to acquire copier supplies and related services by RFP is objectionable, and the GCC example is a poor precedent. GPSS telegraphed its intent to issue an RFP in its rejection of IBSS' Protest, and IBSS pointed out in its Notice of Appeal herein that any such procurement should proceed by the competitive sealed bid (IFB) method of source selection, not by RFP. (See, footnote 17 and discussion accompanying in the Notice of Appeal).

This observation was underlined by the decision of the Public Auditor in the recently decided Procurement Appeal, *In Re Oceania Collection Services* (OPA-PA-08-006, decided November 7, 2008). It was there determined that, unless a procurement involved the acquisition of professional services, the competitive sealed bid method of source selection *must* be utilized, not an RFP.

Second, given that the Superintendent is concerned only with the timing¹ and form² of a new procurement of copier supplies and services, and acquiesces in the balance of the Decision, IBSS is willing to engage in a formal or informal conference or hearing to craft an acceptable accommodation of GPSS' predicament. IBSS would be amenable to including Xerox in such a meeting, and, to the extent the agenda might include the specifics of the bid, any other potential bidder. IBSS makes itself available for such a discussion at the earliest reasonable time.

Provided such a conference of views is accommodated, IBSS would be amenable to amending the Decision to extend the effective date to a specified time in the future conditioned on a diligent effort to conduct a thorough needs assessment and specification development consistent with competitive procurement policy, law and regulation; such a process may involve the Public Auditor's continued jurisdiction and oversight to monitor such a process and, if necessary, extend the time for it to unfold.

Respectfully,



John Thos. Brown
General Counsel for Appellant, IBSS
December 4, 2008

¹ The Superintendent stated "I am requesting to reconsider your Decision, Conclusion #7, terminating the contract effective November 28, 2008."

² The Superintendent stated "GPSS is in the process of preparing a Request For Proposal in the same fashion that Guam Community College used."

