

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  
 PROCEEDINGS AND APPEALS  
 JAN 10 2009  
 TIME: 12:15 PM  
 BY: AC  
 FILE No. OPA-PA 08-012

BEFORE THE OFFICE OF THE PUBLIC AUDITOR

In the Appeal of	)	
	)	APPLICATION FOR ENFORCEMENT
	)	OF STAY OF SOLICITATION
TOWN HOUSE DEPARTMENT STORES,	)	
INC., dba	)	
ISLAND BUSINESS SYSTEMS	)	DOCKET NO. OPA-PA 08-012
& SUPPLIES,	)	
APPELLANT	)	
_____	)	

This Application is brought to enforce the automatic stay provisions of 5 GCA §5424(g):

“In the event of a timely protest under Subsection (a) of this Section ... the Territory shall not proceed further with the solicitation ... prior to final resolution of such protest, and any such further action is void ....”

Chronology of events:

This Appeal was originated based on a Protest timely filed May 20, 2008. Hearing was held January 7, 2009 and a Decision is pending, thus there is as yet no final resolution of the protest.

On December 19, 2008, GSA issued and published notice of an Invitation for Multi-step Bid (Respondent’s Hearing Materials, filed herein December 29, 2008, which the Hearing Officer made part of the record at the Hearing). That bid is referred to herein as “the multi-step bid”.

ORIGINAL

The multi-step bid was issued to acquire, by lease, certain copier machines. Appellant is in the business of distributing such machines and picked up a copy of the multi-step bid as a prospective bidder. On review of the multi-step bid, Appellant determined that it was an inappropriate method to solicit the copiers and began to prepare a protest of the multi-step bid.

At that time, Appellant did not realize the multi-step bid was in any way connected with the solicitation which is the subject of the Protest herein.

At the close of business on December 29, 2008, Appellant was served with GSA's Hearing Brief and Hearing Materials. About that same time, Appellant was putting the finishing touches to its Protest of the multi-step bid.

Appellant served the multi-step bid Protest on GSA the next day, December 30, 2008<sup>1</sup>. GSA has not issued any Decision or other response to the Protest.

On December 31<sup>st</sup>, the day following the filing of the Protest, GSA responded to questions from Xerox Corporation and issued Amendment No. 1 to the multi-step bid.<sup>2</sup>

Appellant learned from Respondent's Hearing Materials herein that the multi-step bid "replaces the Request for Quotations" which was the subject of the Protest and Appeal (at page 3). Thus, at least in part, the multi-step bid was issued with the intent to solicit the very same copiers as were the subject of the Protest and Appeal.<sup>3</sup>

As issued, the multi-step bid submissions were due for bid opening January 5<sup>th</sup>, two days before the scheduled Hearing herein.

On January 5, 2009, GSA issued Amendment No. 2 to the multi-step bid, changing the opening date from January 5 to January 20, 2009.<sup>4</sup>

In Appellant's Hearing Brief and Opening Statement and in testimony at the Hearing on January 7<sup>th</sup>, Appellant objected to actions undertaken by GSA to "proceed further with the solicitation". The CPO testified that she was hesitant to issue the multi-step bid, but the Assistant Attorney General advised the Hearing Officer she had done so on advice of counsel. The matter of the Protest of the multi-step bid was not raised at the Hearing, particularly in light of admonitions regarding relevance.

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<sup>1</sup> Copy attached hereto, Exhibit 1.

<sup>2</sup> Copy attached hereto, Exhibit 2.

<sup>3</sup> As confirmed by Counsel for GSA at the Hearing.

<sup>4</sup> Copy attached hereto, Exhibit 3.

On January 13, 2009, GSA issued Amendment Nos. 3<sup>5</sup> and 4<sup>6</sup> to the multi-step bid, as well as responding to further questions from Xerox Corporation<sup>7</sup>.

On January 14, 2009, Appellant wrote the GSA CPO objecting to the violations of the automatic stay, particularly as to the multi-step bid Protest, having already raised the matter herein, noting, also, it was awaiting a Decision on the Protest.<sup>8</sup> As of this filing, there has been no response from her or on her behalf.

### Jurisdiction

The Public Auditor has clearly taken jurisdiction of the original Protest, and the issue of a violation of the automatic stay by virtue of issuing the multi-step bid was raised at the Hearing.

The matter of the multi-step bid Protest, coincidentally filed, raises another jurisdictional question, given there has been no Decision on that Protest. In this regard, Appellant notes that the jurisdictional language of 5 GCA § 5425(e) regarding appeals from agency decisions is not exclusive; that is, it merely says “may be” taken and does not express any limitation to her jurisdiction.

The Public Auditor’s jurisdiction is broader, including “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 [the Procurement Act]”. (5 GCA §5703.) Appellant would argue that jurisdiction in aid of enforcing the automatic stay pending resolution of a Protest would certainly fall within this category.

The Public Auditor came to a similar conclusion in *The Appeal of Town House Department Stores, Inc.*, OPA-PA-08-003. In that case, the Public Auditor found that the failure of an agency to timely render a Decision in response to a Protest threatened the integrity of the procurement process, holding she had jurisdiction under §5703 to compel the rendition of a Decision.

If Appellant were restricted to seeking Superior Court action to enforce the stay, it would imperil the continued jurisdiction of the Public Auditor in this Appeal and the resources spent on getting this case to this point. Likewise, a ruling that a bidder could only enforce the stay by Superior Court action would undermine the intent of the Legislature that procurement matters be handled informally and expeditiously, with maximum public access.

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<sup>5</sup> Copy attached hereto, Exhibit 4.

<sup>6</sup> Copy attached hereto, Exhibit 5.

<sup>7</sup> Copy attached hereto, Exhibit 6.

<sup>8</sup> Copy attached, Exhibit 7.

Here, the actions of GSA to proceed with the solicitation of the subject copiers places Appellant at a distinct disadvantage. If Appellant takes part in the process, seeking clarifications, submitting a bid, it suffers the prejudice of being denied its Protest.<sup>9</sup> By continuing as it has done, GSA is creating a situation where it could open the bids and award a contract in a process that has excluded Appellant from the running.

### Relief Sought

Appellant seeks an Order from the Public Auditor demanding that GSA “not proceed further with the solicitation”.

Appellant seeks a Ruling from the Public Auditor that the issuance of the multi-step bid was a violation of the automatic stay in respect of the within Protest and Appeal, and in consequence, such “action is void”. To clarify, Appellant seeks a Ruling that the multi-step bid is void entirely.

Appellant seeks a Ruling from the Public Auditor that the issuance of the various Amendments Nos. 1 through 4, following the filing of the Protest of the multi-step bid was both a violation of the automatic stay in respect of the within Protest and Appeal as well as of the multi-step bid Protest, and in consequence, such “action is void.” To clarify, Appellant seeks a Ruling that, if the entire bid is not void as requested above, all further actions taken in respect of it, including amendments extending the times for opening, are void.

Appellant seeks a Ruling from the Public Auditor that engaging with bidders to clarify or answer questions is a violation of the automatic stay of the within Protest and Appeal and/or the multi-step Protest, and that such action is void.

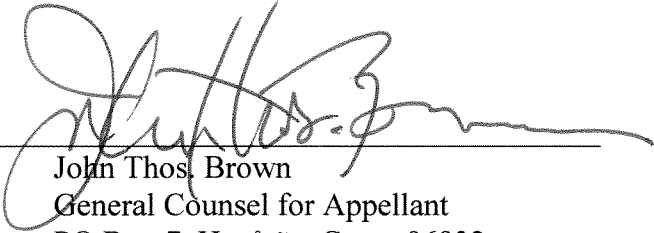
Appellant seeks such further relief as is appropriate or becomes appropriate.

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<sup>9</sup> The argument that a Protester who submits a bid forfeits the protest is based on notions of waiver, estoppel, admission of inconsistent facts, compromise and other incidents of taking facially inconsistent positions. The Attorney General, in the case *In the Appeal of Guam Publications, Inc.*, POA-PA-08-007, argued that point. See Agency Report at footnote 2, Agency Rebuttal at footnote 2, and GSA’s Hearing Brief at footnote 10. The Decision in that case did not directly consider the Attorney General’s argument, but did find, at page 8, no merit to a similar argument posed by Interested Party, Marianas Variety, based, rightfully, on a finding that the case cited by Marianas Variety in support of the argument was procedurally distinguishable. While dismissing Marianas Variety’s argument, the Decision made no ruling on the underlying merits of the proposition. Appellant believes the proposition has colorable merit and notes that one effect if not purpose of the automatic stay provisions is to avoid placing a Protester in such a position.

Respectfully submitted this 16<sup>th</sup> day of 2009.

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



---

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

APPLICATION FOR ENFORCEMENT OF STAY OF SOLICITATION

EXHIBIT 1

Multi-step bid Protest letter

APPLICATION FOR ENFORCEMENT OF STAY OF SOLICITATION

EXHIBIT 1

Multi-step bid Protest letter

JOHN THOS. BROWN  
ATTORNEY AT LAW \*

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

Telephone: +1-671-477-7293  
Fax: +1-671-472-6153  
email: jngo@ozemail.com.au  
Mobile/Cell phone: +1-671-483-5960  
POSTAL: GPO Box 7, Hagåtña, Guam 96932

Ms. Claudia S. Acfalle, Chief Procurement Officer  
Guam General Services Agency  
Department of Administration, Government of Guam  
148 Route 1 Marine Drive  
Piti, Guam 96925

30 December, 2008

RECEIVED  
Aida Acfalle  
C. Brown

2008 DEC 30 PM 1:30

GOVERNMENT OF GUAM

RE: PROCUREMENT PROTEST  
Multi-Step Bid No. GSA-010-09

**COPY**

Dear Ms. Acfalle,

IBSS (Island Business Systems and Supplies), is a division of Town House Department Stores, Inc., a J&G affiliate, a locally owned and operated Canon imaging products representative, offering multifunction copier products and services.

IBSS takes great joy in observing the move toward more standardized specifications for copiers that are included in the subject Bid. Perhaps this marks the end of the "brand name or equal" era of specifications for these products, which are, after all, standard commercial items commonly used throughout GovGuam; the specifications should, by the very nature of the product, be commercially standard and competitive. That said, some of the specifications still read somewhat arbitrary or proprietary rather than generic.

Nevertheless, IBSS takes exception to the multi-step method of source selection and the contract type, as well as other matters raised herein, and therefore brings this Protest.

Multi-step sealed bidding (2 GAR §3109(r)) is not interchangeable with

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

<sup>†</sup> 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)



competitive sealed bidding, which is the preferred method for the procurement of supplies (2 GAR §3109(b)).

The multi-step method is a hybrid<sup>1</sup> between competitive bidding, which is preferred, and competitive sealed proposals, which generally have no place in the Guam Procurement Law<sup>2</sup>, except when procuring professional services<sup>3</sup>.

The fact that the multi-step method includes a component of a method that the legislature has repealed implies it is not the preferred method spoken of in 2 GAR 3109(b). That would also imply that the condition placed on the use of the multi-step method ought to be strictly applied.

And there *is* a condition placed on the use of the multi-step method which precludes its use in this case. It can only be used “when it is not practical to prepare initially a definitive purchase description”. (2 GAR §3109(r)(2).)

“Purchase description”, simply defined (see 2 GAR §1106(26)), means “the words used in a solicitation to describe the supplies”. 2 GAR §4101(4) says, “[u]nless the context requires otherwise, the terms *specification* and *purchase description* are used interchangeably throughout these Regulations”.

In this case, the specifications have already been meticulously described, therefore, the condition that “it is not practical to prepare initially a definitive purchase description” is not met. Plain vanilla, straight forward, competitive sealed bidding, the preferred method, must be used, not the circumscribed multi-step method.

Remember, the Legislature repealed the competitive sealed proposal method. If GovGuam could simply turn any competitive sealed bid to a defacto sealed proposal bid by ignoring or stretching beyond significance the conditional limitation placed on the use of the multi-step bid method, it would, by Executive

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<sup>1</sup> 2 GAR §3109(r)(1): Multi-step sealed bidding “is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtained (sic) the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers”.

<sup>2</sup> Competitive sealed proposals were allowed under the original enactment of the Guam Procurement Act in PL 16-124, but the statutory authority for that method was repealed in 1985 by PL 18-8:8. See, Note to 5 GCA §5210.

<sup>3</sup> See, 5 GCA §5216.

action, simply undo what the Legislature has done by law, and that is not how law is meant to be applied or interpreted. The conditional exception in the multi-step bid method must not be so broadly expanded that it swallows the exception and re-instates the repealed competitive sealed proposal method.

This is simple enough an explanation to justify IBSS' objection to your use of a multi-step bid for these copiers, but it is useful to understand why the Regulations reach this result and to compare the anti-competitive consequences that follow from using the less preferred multi-step method compared to competitive sealed bids.

The result flows from the policy directive that the Procurement Law "shall be construed and applied to promote its underlying purposes and policies"<sup>4</sup>, one essential policy being, "to foster effective broad-based competition within the free enterprise system"<sup>5</sup>.

The multi-step method is less competitive than sealed bid because the evaluation process allows for more "rubbery" judgement than the competitive sealed bid method. A sealed bid item is strictly evaluated for whether it meets the bid specifications (2 GAR §3109(n)(3)). The multi-step method allows for discretionary calls, such as differentiating between an "acceptable", "potentially acceptable" or "unacceptable" technical offer (2 GAR §3109(t)(4)), and provides a mechanism that is subject to abuse by coaching the bidders, or not coaching them (§3109(t)(5)).

But there is an equally important goal: the procurement must first satisfy the territory's needs<sup>6</sup>, and the heavy lifting to meet that goal is done by the specifications. 2 GAR §4102(a)(1) explains the purpose of and policies governing specifications:

"The purpose of a specification is to *serve as a basis* for obtaining a supply ... item adequate and suitable for *the territory's needs* in a cost effective manner.... It is the policy of the territory that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the territory's requirements."

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<sup>4</sup> 5 GCA §5001(a).

<sup>5</sup> 5 GCA §5001(b)(6).

<sup>6</sup> 5 GCA §5249(e) requires that the "record of procurement" shall contain "the requesting agency's **determination of need.**"

Finding the *solution* to meeting the territory's needs follow that first step of identifying the territory's needs by establishing specifications which "serve as a basis" for obtaining a supply item which solves or meets the needs.

It is also important that *the territory* determine its needs, rather than be told what its needs are. Indeed, the *regulations insist* on that.

The regulations unambiguously place the responsibility for specification development on the CPO (2 GAR §4103), though she can delegate that to the agencies (§4103(a)(1)). As a general rule, there is no regulatory basis for allowing the vendors to provide that needs assessment.<sup>7</sup>

The one exception to that "in-house" obligation is that, where "there will be no substantial conflict of interest involved ... a contract to prepare specifications for territory use in procurement of supplies or services may be entered into provided such officer retains the authority to finally approve the specifications" (§4103(a)(2))<sup>8</sup>.

So now, returning to the matter of the multi-step method, and appreciating the obligation of the government to do its own needs assessment and specification development, there is no basis to use a method of source selection which is intended to solicit technical offers and engage vendors in discussions with the government to evaluate and determine the acceptability of the technical offers when the technical questions have already been determined by common, standard specifications. In this case, you don't even get to the conditional question whether it is practicable.

Why go through a process which invites the appearance, if not the facilitation, of undue influence between vendors and government evaluators in the development of specifications when a more competitive and transparent and

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<sup>7</sup> To underscore the significance here, Guam Procurement Law requires competitive sealed bids even when a vendor presents an unsolicited offer of a product. (5 GCA §5219.) This statute makes it clear that the government must independently evaluate the item and prepare its own purchase description which shall not require any proprietary characteristic which gives the soliciting offeror any competitive advantage.

<sup>8</sup> Note though, in relation to the development of specifications for common or general use items, the agency head preparing the specs "shall provide the using agencies, and a reasonable number of manufacturers and suppliers as such officer deems appropriate, an opportunity to comment on the draft specifications" (2 GAR 4103(b)(2)(a)(ii)).

*preferred* method is available? Thus, while multi-step is a condoned method, it is conditional, intended for difficult situations when the specifications are, by the nature of the thing being solicited, vague and difficult to describe abstractly and objectively.

Use of the multi-step method is made significantly less competitive than competitive sealed bidding when the evaluation process is implemented in the *improper* manner proposed by the instant bid.

IBSS objects to and protests that evaluation process if it is finally determined that multi-step bidding is not inappropriate for this solicitation.

As noted above, in phase One of the multi-step process, the government is meant only to classify a technical offer as “acceptable” or “unacceptable” (potentially acceptable offers must be made acceptable by the end of that phase or fall out as unacceptable).

GSA, however, does not stick to that mandated evaluation. It intends to implement a point system to *rank* the technical offers, based on criteria which solely go to the matter of bidder responsibility (ability, qualification, past performance, etc.). There is no place for such an evaluation in the bid process.<sup>9</sup>

In phase One of a proper multi-step evaluation, the only consideration is whether the *product* is acceptable or unacceptable (2 GAR §3109(t)(4)). Discussions can be had with bidders who offer potentially acceptable products, but they must be able to finally offer acceptable products to proceed to phase Two (§3109(t)(1)(c) and (t)(5)).

Product acceptability is an element of bid responsiveness and is determined as specified in §3109(n)(3). It is based only on the specifications and evaluation criteria specified in the IFB, and may require bid samples, descriptive literature, and technical data, not indicia of bidder responsibility. The specifications in the IFB “shall include only the essential physical characteristics and functions required to meet the government of Guam’s *minimum* needs (2 GAR §4109(a).”

Importantly, unlike the ranking evaluation you propose, and reiterating the notion that the specifications are met by a product which meets the minimum needs of the specifications rather than any conceptual ranking based on a product which might exceed the bid specifications, “[t]he acceptability evaluation is *not* conducted for the purpose of determining whether one bidder’s item is

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<sup>9</sup> See, *In the Appeal of J&G Construction*, OPA-PA-07-005, Decision.

*superior* to another, but only to determine that a bidder's offering is *acceptable* as set forth in the Invitation for Bids." (2 GAR §3109(n)(3).)

Finally, "[o]nly *objectively measurable* criteria which are set forth in the Invitation for Bids shall be applied in determining the lowest bidder." (§3190(n)(4).)

It is clear that once an evaluation is made as to which technical offers (that is product specifications) are *acceptable*, the evaluation goes to phase Two, and the only thing left to do then is, just like in normal competitive sealed bidding, open the bids and see which one is lowest (2 GAR §3109(v)). Then, a determination of responsibility is made of the prospective contractor (§3109(n)(2); see, also 2 GAR §3116(e)(3)(B)(I)).

Finally, IBSS requests that the Indefinite Quantity Bid contract form requirement be reviewed to determine if it might more satisfactorily meet the intent of the relevant regulation. By its terms, this solicitation is intended to be for the use and benefit of the "entirety" of the Government of Guam, yet the quantities indicated for each item are typically very low in number, in some cases being only one item. IBSS questions if this is a good faith estimate of the quantities the entirety of GovGuam might really require during the term.

IBSS also requests GSA to comment on the possibility of establishing a minimum and maximum purchase obligation, as contemplated by the relevant regulation, 2 GAR §3119(i)(2).

An indefinite quantity contract should generally state an approximate quantity in the solicitation. Obviously, the quantity of items expected to be sold affects pricing, so if the quantity estimated is understated, and one vendor has incumbent information not available to another vendor, that disadvantages the non-incumbent. IBSS seeks GSA's assurance that the estimate is made in good faith and according to its best knowledge, and asks if there is anything it might do, in the circumstances, in the spirit of promoting broad-based competition, to equalize the knowledge base that the incumbent vendor has regarding historic requirements for the agencies who are intended to benefit from this solicitation?

Related to this, IBSS seeks clarification of an ambiguity which may impact the numbers of items reasonably anticipated to be purchases under this solicitation. The solicitation is ambiguous as to whether this is, or is not, a "requirements" contract (2 GAR §3119(i)(3)). The language is unclear, but the inclusion of a provision for "multiple awards" can only be had for a requirements contract (2 GAR §3122(b)(1)). Other provisions applicable to such awards also appear, on the

face of it, inapt, and IBSS seeks GSA clarification of this ambiguity.

IBSS also requests notification of the review which GSA must conduct after 6 months to determine the continued need for such a contract.

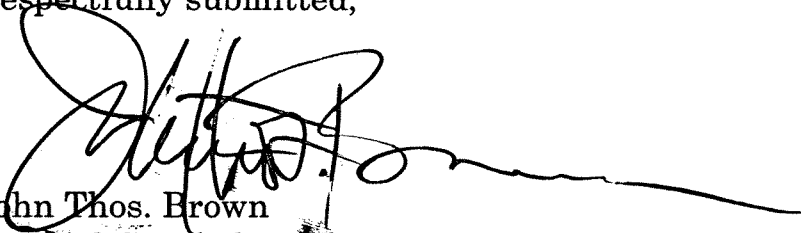
IBSS also requests copies of the following items pertinent to this solicitation:

1. The determination of the CPO indicating the rationale for using the indefinite quantity contract and the reasons why another contract form will not suffice, **as required by 2 GAR §3119(i)(2).**

2. The identity of the person(s) responsible for drafting the specifications and any persons, technical literature or manufacturer's brochures relied upon by the responsible person in drafting the specifications for this bid, **as required by 5 GCA §5267.**

IBSS and I will be happy to meet with you or your representatives to discuss any way this matter might be resolved, as contemplated in 5 GCA §5425(b).

Respectfully submitted,



John Thos. Brown  
General Counsel  
for IBSS

APPLICATION FOR ENFORCEMENT OF STAY OF SOLICITATION

EXHIBIT 2

Amendment No. 1 and Answers to Xerox

Felix P. Camacho

Governor

Lourdes M. Perez  
Director, Dept. of Administration



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)

Government of Guam

P.O. Box FG, Agana, Guam 96910

Michael W. Cruz

Lt. Governor

Joseph C. Manibusan  
Deputy Director

December 31, 2008

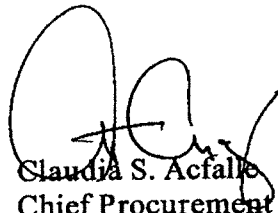
**Invitation to Bid GSA-010-09**

**60 Month Lease Agreement Inclusive of Equipments, Services,  
Related Consumables and Software Solutions for  
Digital Multifunctional System**

**Amendment# 1**

- 1. Amend Item No. 2.1 under Specifications "Speed of up to 28 B/W and 26 Color" to now read: "Machine rated speed of 28 B/W and 26 Color prints per minute"

All others remain unchanged.

  
 Claudia S. Acfalle  
 Chief Procurement Officer

Please acknowledge receipt and refax to: 475-1727

ACKNOWLEDGEMENT COPY

RECEIVED

PRINT NAME / SIGNATURE

COMPANY NAME: \_\_\_\_\_



Felix P. Camacho

Governor



Lourdes M. Perez  
Director, Dept. of Administration

GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)  
Government of Guam

P.O. Box FG, Agana, Guam 96910

Michael W. Cruz

Lt. Governor

Joseph C. Manibusan  
Deputy Director

December 31, 2008

**Invitation for Bid GSA-010-09**

**“60 Month Lease Agreement Inclusive of Equipments, Services,  
Related Consumables and Software Solutions for  
Digital Multifunctional System.**

**Question submitted by Xerox Corporation**

**Question 1:** Item 2.1 Specification calls for “Speed of up to 28 B/W and 26 Color”

**Do you mean the “rated speed” of the proposed machine must be a minimum of 28 B/W and 26 Color? If so, we’d like to request that the specification be amended to read: “Machine rated speed of 28 B/W and 26 Color prints per minute.**

**Answer:**

Yes, See attached

**Question 2:** Item 14.1, Note to Bidder section lists additional requirements that work to ensure that proposed equipment meets support requirements for the term of the lease.

**Do these requirements apply to all the items or only to item 14.1?**

**Answer:**

Apply’s to all items requested.

Claudia S. Acfalle  
Chief Procurement Officer

Please acknowledge receipt and refax to: 475-1727

**ACKNOWLEDGEMENT COPY**

**RECEIVE BY**

PRINT NAME / Signature

COMPANY NAME:

**DATE**

APPLICATION FOR ENFORCEMENT OF STAY OF SOLICITATION

EXHIBIT 3

Amendment No. 2

Felix P. Camacho

Governor



Lourdes M. Perez  
Director, Dept. of Administration

**GENERAL SERVICES AGENCY**

(Ahensian Setbision Hinirat)

Government of Guam

P.O. Box FG, Agana, Guam 96910

Michael W. Cruz

Lt. Governor

Joseph C. Manibusan

Deputy Director

January 05, 2009


**Invitation to Bid GSA-010-09**

**60 Month Lease Agreement Inclusive of Equipments, Services,  
Related Consumables and Software Solutions for  
Digital Multifunctional System**

**Amendment# 2**

- 1. Amend to change opening date from: January 05, 2009 at 10:00 am to now read:  
January 20, 2009 at 10:00 am.

All others remain unchanged.

*for*  
  
 Claudia S. Acfalle  
 Chief Procurement Officer

*Pls refax to 475.1727 (after acknowledgement of receipt)*  
**ACKNOWLEDGEMENT COPY**

**RECEIVE BY** \_\_\_\_\_ *and Company have* \_\_\_\_\_

**DATE** \_\_\_\_\_

APPLICATION FOR ENFORCEMENT OF STAY OF SOLICITATION

EXHIBIT 4

Amendment No. 3

Felix P. Camacho

Governor



Lourdes M. Perez  
Director, Dept. of Administration

GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)  
Government of Guam

P.O. Box FG, Agana, Guam 96910

Michael W. Cruz

Lt. Governor

Joseph C. Manibusan  
Deputy Director

January 13, 2009

**Invitation to Bid GSA-010-09**

**60 Month Lease Agreement Inclusive of Equipments, Services,  
Related Consumables and Software Solutions for  
Digital Multifunctional System**

**Amendment# 3**


1. Amend to include on the evaluation page the following statement:

- “70 or above – Acceptable”
- “60 – 69 - Potentially Acceptable”
- “Below – 69 – Unacceptable”

2. Amend to include the following:

GSA may award to the U.S. General Services Administration Contract or Schedule (GS-25F-0062L). If the price is 10% lower than the bid price offered by the lowest responsive and responsible bidder.

All others remain unchanged.

  
 Claudia S. Acfalle  
 Chief Procurement Officer  
 475.1727

*its refax acknowledgement to:*  
**ACKNOWLEDGEMENT COPY**

RECEIVE BY

Print/signature

+ Company Name \_\_\_\_\_

DATE \_\_\_\_\_

APPLICATION FOR ENFORCEMENT OF STAY OF SOLICITATION

EXHIBIT 5

Amendment No. 4

Felix P. Camacho

Governor



Lourdes M. Perez  
Director, Dept. of Administration

GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)  
Government of Guam

P.O. Box FG, Agana, Guam 96910

Michael W. Cruz

Lt. Governor

Joseph C. Manibusan  
Deputy Director

January 13, 2009

**Invitation to Bid GSA-010-09**

**60 Month Lease Agreement Inclusive of Equipments, Services,  
Related Consumables and Software Solutions for  
Digital Multifunctional System**

**Amendment# 4**

1. Amend to change opening date from: January 20, 2009 at 10:00 am to now  
Read: January 30, 2009 at 10:00 am

All others remain unchanged.

Claudia S. Acfalle  
Chief Procurement Officer

Re-fax acknowledgement to: 475-1727

**ACKNOWLEDGEMENT COPY**

RECEIVED BY

~~PRINT/SIGNATURE~~ AND COMPANY NAME: \_\_\_\_\_

DATE

~~DATE~~

APPLICATION FOR ENFORCEMENT OF STAY OF SOLICITATION

EXHIBIT 6

Further responses to Xerox



Felix P. Camacho

Governor

Lourdes M. Perez  
Director, Dept. of Administration



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)  
Government of Guam  
P.O. Box FG, Agana, Guam 96910

Michael W. Cruz

Lt. Governor

Joseph C. Manibusan  
Deputy Director

January 13, 2009

Invitation for Bid GSA-010-09

**"60 Month Lease Agreement Inclusive of Equipments, Services,  
Related Consumables and Software Solutions for  
Digital Multifunctional System.**

Question submitted by Xerox Corporation

Question 1:

Due to the extension could all required bid documents, (affidavits, etc), that have already been prepared be retained and resubmitted on January 20, 2009, 10:00 am?

Answer:

As long as the date is within 365 days from the submission date.

Claudia S. Acfalle  
Chief Procurement Officer

*Pls refax acknowledgement to: 475-1727*

**ACKNOWLEDGEMENT COPY**

**RECEIVE BY**

*print/signature* + *Company name*

**DATE**

APPLICATION FOR ENFORCEMENT OF STAY OF SOLICITATION

EXHIBIT 7

Letter to GSA CPO re violation of stay

**JOHN THOS. BROWN**  
ATTORNEY AT LAW \*

GOVT OF GUAM  
G.S.A.

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

Telephone: +1-671-477-7298  
Fax: +1-671-472-6153  
email: jngo@ozemail.com.au  
Mobile/Cell phone: +1-671-483-5960  
POSTAL: GPO Box 7, Hagåtña, Guam 96932

14 January, 2009

Ms. Claudia S. Acfalle, Chief Procurement Officer  
Guam General Services Agency  
Department of Administration, Government of Guam  
148 Route 1 Marine Drive  
Piti, Guam 96925

RE: PROCUREMENT PROTEST  
Multi-Step Bid No. GSA-010-09

RECEIVED  
2009 JAN 14 PM 3:38  
MC  
GOVT OF GUAM  
G.S.A.

Dear Ms. Acfalle,

Despite appearances, I really hate being continually at loggerheads, but I am genuinely confused about what you are doing in respect of the referenced IFB.

You will recall that IBSS has filed a formal Protest of the Bid. It was served on GSA on the date of the Protest, December 30, 2008. The Bid date was December 19<sup>th</sup>, so the Protest was timely filed, right?

Yet, IBSS continues to receive a steady course of amendments and answers to questions of other bidder(s), as though GSA is proceeding with the solicitation.

Isn't this a violation of the automatic stay (5 GCA §5425(g)? Are you simply proceeding to get the bid organized so that you can issue a denial of the protest

\* 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)

and award the bid before any appeal might be considered and/or prepared?

IBSS must take the position that all such amendments and answers and other actions taken to proceed with the solicitation since the time the Protest was filed are “void”: “... such further action is void....”, in the language of §5425(g).

Meanwhile, IBSS awaits your decision on the Protest or other actions taken to resolve the Protest.

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



## Island Business Systems & Supplies

A Division of Town House Department Stores, Inc.  
An Affiliate of Jones & Guerrero Co., Inc.

**Canon**  
Authorized Dealer

Guam Office:  
545 Chalan Machaute, Rt. 8 Maite, GU 96910  
• Tel (671) 477-7454, 472-2200 • Fax (671) 477-7660 •  
email: [support@ibssguam.com](mailto:support@ibssguam.com)  
Saipan Office:  
P.O. Bo x 167 CK Saipan MP 96950  
• Tel (670) 234-8002, 234-5155 • Fax (670) 234-8050 •  
email: [support@ibssguam.com](mailto:support@ibssguam.com)

Dr. Byung Soo Kim, MD  
P.O. Box 6398  
Tamuning, GU 96931

January 14, 2009

Dear Sir or Madam:

We are interested in our customers and are always trying to find new ways to improve our service. For these reasons, we are inquiring if there is a reason for your delay in paying your long overdue account.

Your account is now 122 days overdue.

The following items are overdue:

02-4768, 9/15/08, \$50.00, 122 days overdue

We would appreciate a word from you, as well as your check. Please contact me at 477-9724.

Sincerely,

*Jodi M. Rios*

Accounting Clerk

Island Business Systems & Supplies

545 Chalan Machuate, Rt. 8

Maite, GU 96910

tel (671) 477-9724

fax (671) 477-7920

email: [jrios@ibssguam.com](mailto:jrios@ibssguam.com)