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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 08-25-16

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FILE NO OPA-PA: 16-010

**GUAM DEPARTMENT OF EDUCATION**

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*Attorney for Guam Department of Education*

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

IN THE APPEAL OF

APPEAL NO.: OPA-PA-16-010

XEROX CORPORATION.

**SUBMISSION OF  
AGENCY REPORT**

Appellant.

The Guam Department of Education ("GDOE"), the purchasing agency in this matter, hereby submits the following exhibits as the Agency Report required by 2 GAR §12105:

a. A copy of the protest.

*A copy of the protest is included in the Procurement Record as Exhibit 19, Bates Stamp Nos. GDOE 0953-0957.*

b. A copy of the bid or offer submitted by the Appellant and a copy of the bid or offer that is being considered for award or whose bid or offer is being protested, if any had been submitted prior to the protest.

*A copy of the Appellant's bid is included in the Procurement Record as Exhibit 13, Bates Stamp Nos. GDOE 0274-0678.*

c. A copy of the solicitation, including the specifications or portions thereof relevant to the Appeal:

*A copy of GDOE IFB 004-2016 and all Amendments are included in the Procurement Record as Exhibit 7, Bates Stamp Nos. GDOE 0013-0079 and Exhibit 10, Bates Stamp Nos. 0082-0269.*

ORIGINAL

1 d. A copy of the abstract of bids or offers or relevant or portions thereof relevant to  
2 the protest.

3 *A copy of the Abstract of Bidders is included in the Procurement Record as*  
4 *Exhibit 15, Bates Stamp Nos. GDOE 0687-0688.*

5 e. Any other documents which are relevant to the protest; including the contract, if  
6 one has been awarded, pertinent amendments, and plans and drawings.

7 *Exhibit 18 Agreement Between GDOE and Xerox Corporation for Services*  
8 *Pursuant to GDOE IFB 004-2016, Bates Stamp Nos. GDOE 0698-0957.*

9 f. The decision from which the Appeal is taken, if different than the decision  
10 submitted by Appellant.

11 *A copy of the Response to Protest is included in the Procurement Record as*  
12 *Exhibit 19, Bates Stamp Nos. GDOE 0946-0952.*

13 g. A statement answering the allegation of the Appeal and setting forth findings,  
14 actions, and recommendations in the matter together with any additional evidence or information  
15 deemed necessary in determining the validity of the Appeal. The statement shall be fully  
16 responsive to the allegations of the Appeal.

17 *Exhibit 21 GDOE's Agency Statement*  
18 *Bates Stamp Nos. GDOE 1019-1021.*

19 h. If the award was made after receipt of the protest, the report will include the  
20 determination required under 2 GAR §9101(e).

21 *Not applicable.*

22 i. A statement in substantially the same format as Appendix B to this Chapter,  
23 indicating whether the matter is the subject of a court proceeding.

24 *Exhibit 22 Declaration Regarding Court Action*  
25 *Bates Stamp Nos. GDOE 1022.*

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Dated this 25<sup>th</sup> day of August, 2016.

Respectfully submitted,  
**GUAM DEPARTMENT OF EDUCATION**

By:   
**JAMES L.G. STAKE**  
*Legal Counsel*

# **Exhibit 21**

1 **GUAM DEPARTMENT OF EDUCATION**

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6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

7 IN THE APPEAL OF

APPEAL NO.: OPA-PA-16-010

8  
9 XEROX CORPORATION.

**AGENCY STATEMENT**

10 Appellant.

11  
12 Comes now the Guam Department of Education (“GDOE”), by and through GDOE Legal  
13 Counsel James L.G. Stake, and hereby files its Agency Statement pursuant to 2 Guam  
14 Administrative Rules and Regulations (“GAR”) § 12105(g) in response to the appeal of GDOE  
15 IFB 004-2016 filed by Xerox Corporation (“Xerox”).

16 **I. BACKGROUND**

17 This appeal involves GDOE IFB 004-2016, which is a solicitation for the lease of  
18 multifunction (copy, print, scan, and fax) devices. Relevant to this appeal, GDOE stated in the  
19 IFB that it would consider bids that offered federal GSA pricing and its terms and conditions.  
20 See Ex. 7 GDOE bate stamp p. 40.

21 On June 28, 2016, GDOE received an Agency Communication from Assistant Attorney  
22 General Laura Mooney (“AAG Mooney”) of the Office of the Attorney General of Guam (the  
23 “AG’s Office”). The AG’s Office is the approving entity for GDOE’s procurement. In the  
24 Agency Communication, AAG Mooney stated that there is no express legal authorization for  
25 GDOE to procure using GSA pricing, and GDOE is prohibited under the Guam Procurement Law  
26 and Regulations from doing so at this time. See Exhibit 19 GDOE bate stamp p. 949-950.

1 AAG Mooney's statements in her Agency Communication constituted a factor of  
2 significance to the territory that then necessitated GDOE to reject all bids and prepare to issue a  
3 new solicitation.

4 Consequently, on July 5, 2016, GDOE issued a notice of rejection of all bids to Xerox.  
5 On July 18, 2016, Xerox protested GDOE's decision to reject all bids. On August 4, 2016,  
6 GDOE denied Xerox's protest in its entirety.

## 7 II. GDOE Properly Rejected All Bids

8 As stated above, on June 28, 2016, the AG's Office issued an Agency Communication  
9 that basically prohibited IFB 004-2016 from moving forward because AAG Mooney stated that  
10 there is no legal authority for GDOE to procure under the Federal Schedule of Supplies in the  
11 alternative method of procurement as suggested in IFB 004-2016. See Exhibit 19 GDOE bate  
12 stamp p. 949-950; See also Ex. 7 GDOE bate stamp p. 40. Specifically, AAG Mooney cited the  
13 Decision and Order issued by the Office of Public Accountability ("OPA") *In the Appeal of Town*  
14 *House Department Stores, Inc. dba Island Business Systems & Supplies*, Case No. OPA-PA-08-  
15 012; and said that this OPA decision "merely authoriz[ed] GSA to purchase supplies, services, or  
16 equipment from the Federal Government and does not create an alternative method of source  
17 selection". See OPA decision at p. 7 (*Town House*). AAG Mooney said that, according to the  
18 *Town House* decision, GSA did not have authority to develop alternative methods of source  
19 selection that are contrary to the method of source selection authorized by Guam's Procurement  
20 Law and Regulations. See Exhibit 19 GDOE bate stamp p. 949-950. Furthermore, AAG  
21 Mooney concluded that, based on the *Town House* decision, there is no specific legal authority for  
22 GDOE to move forward with IFB 004-2016. See Exhibit 19 GDOE bate stamp p. 949-950.  
23 AAG Mooney said that, absent express legal authorization to procure in the method GDOE  
24 proposes to do so from Xerox, GDOE is prohibited under Guam Procurement Law and  
25 Regulations from doing so at this time. See Exhibit 19 GDOE bate stamp p. 949-950. Because  
26 GDOE needs the AG's Office's approval of IFB-004-2016 and based on the information in the  
27 Agency Communication, GDOE could not proceed with the IFB.

1 Title 2 GAR, Division 4, §3115(d)(2)(A)(iii) states that after opening, but prior to award,  
2 all bids or proposals may be rejected in whole or in part when the head of a Purchasing Agency  
3 determines in writing that such action is in the territory's best interest for reasons including, but  
4 not limited to, that the solicitation did not provide for consideration of all factors [of] significance  
5 to the territory. GDOE's inability to utilize GSA pricing, based on AAG Mooney's Agency  
6 Communication, appears to constitute a critical factor that is of significance to the territory,  
7 because the AG's Office will not approve IFB 004-2016 due to the inability identified. The  
8 original IFB 004-2016 allowed for GSA pricing, and the ability or inability of prospective  
9 offerors to use GSA pricing could have played a role in how those prospective offerors responded  
10 to the IFB; in other words, if the IFB excluded GSA pricing as suggested by AAG Mooney, then  
11 this exclusion may have affected the actions of other prospective offerors separate from Xerox.  
12 The information and suggestion from AAG Mooney was so significant to the territory that it  
13 required GDOE to reject all bids and prepare to cancel IFB 004-2016 and prepare a new  
14 solicitation. GDOE stands firm in its position that it acted in the best interest of the territory,  
15 because GDOE could no longer proceed with IFB 004-2016 based on AAG Mooney's Agency  
16 Communication. Therefore, pursuant to 2 GAR Div. 4 §3115(d)(2)(A)(iii), GDOE proceeded  
17 properly in rejecting all bids for IFB 004-2016 and the OPA should uphold GDOE's decision.

18 Dated this 25<sup>th</sup> day of August, 2016.

19 Respectfully submitted,

20 **GUAM DEPARTMENT OF EDUCATION**

21  
22 By:   
23 **JAMES L.G. STAKE**  
24 *Legal Counsel*

# **Exhibit 22**



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9 XEROX CORPORATION.

**DECLARATION REGARDING  
COURT ACTION**

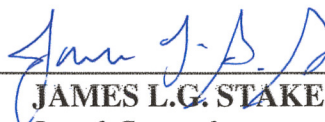
10 Appellant.

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12  
13 The undersigned party does hereby confirm that to the best of his knowledge, no case or  
14 other action concerning the subject of this Appeal has been commenced in any court of Guam.  
15 All parties are required to and the undersigned party agrees to notify the Office of the Public  
16 Auditor within twenty-four (24) hours of being informed of the commencement of a court action  
17 regarding this Appeal or the underlying procurement action.

18 Dated this 25<sup>th</sup> day of August, 2016.

19 Respectfully submitted,

20 **GUAM DEPARTMENT OF EDUCATION**

21 By:   
22 **JAMES L.G. STAKE**  
23 *Legal Counsel*