



OFFICE OF PUBLIC ACCOUNTABILITY

Doris Flores Brooks, CPA, CGFM

Public Auditor

PROCUREMENT APPEALS

IN THE APPEAL OF,

TOWN HOUSE DEPARTMENT STORES,
INC., dba ISLAND BUSINESS SYSTEMS &
SUPPLIES,

Appellant

APPEAL NO: OPA-PA-10-006

ORDER DISMISSING APPEAL AND
COMPELLING PRODUCTION OF
PROTEST DECISION

THIS MATTER came before the Public Auditor pursuant to an appeal filed on October 18, 2010, by TOWN HOUSE DEPARTMENT STORES, INC., dba ISLAND BUSINESS SYSTEMS & SUPPLIES, (Hereafter "IBSS") regarding the DEPARTMENT OF EDUCATION's, Government of Guam's (Hereafter "DOE") failure to issue a decision on IBSS' September 2, 2010 Protest concerning DOD IFB Number: DOE 006-2010 (Stand-Alone Multifunction Copiers). After reviewing the IBSS' Notice of Appeal, the Public Auditor hereby FINDS and ORDERS the following:

1. The Public Auditor finds that she does not have the jurisdiction to hear IBSS' appeal at this time because DOE has failed to produce a decision on IBSS' September 2, 2010 protest. The Public Auditor has the power to review and determine *de novo* any matter properly submitted to her. 5 G.C.A. §5703 and 2 G.A.R., Div. 4, Chap. 12, §12103(a). The Public Auditor has the jurisdiction to hear an appeal of a purchasing agency's written decision on a protest concerning the purchasing agency's method of source selection, solicitation, or award of a contract. 5 G.C.A. §5425(e), and 2 G.A.R., Div. 4, Chap. 12, §12201(a). Here, as stated above, IBSS's appeal is based on DOE's failure to issue a Decision on IBSS' September 2, 2010 protest. Thus, without a DOE decision on IBSS' September 2, 2010 protest, this matter is not properly before the Public Auditor and the Public Auditor does not have the jurisdiction to hear it. Further, a copy of the purchasing agency's protest decision is a required part of the Notice of Appeal and an appeal lacking the protest decision being appealed is subject to dismissal. 2

Order Dismissing Appeal- 1

1 G.A.R., Div. 4, Chap. 12, §12104(b)(6) and (8). Thus, as there is no decision on IBSS'
2 September 2, 2010 protest, pursuant to 2 G.A.R., Div. 4, Chap. 12, §12104(b)(8), this matter is
3 hereby dismissed without prejudice.

4 2. The Public Auditor finds that she has the authority to compel DOE to produce the
5 Decision on IBSS' September 2, 2010 Protest because DOE's delay in issuing the decision is an
6 act of bad faith and threatens the integrity of the procurement process. The Public Auditor shall
7 have the power to compel the production of documents by any employee of the Government of
8 Guam. 5 G.C.A. §5703 and 2 G.A.R., Div. 4, Chap. 12, §12103(a). Further, the Public Auditor
9 shall use this authority to promote the integrity of the procurement process and purposes of 5
10 G.C.A. Chapter 5. Id. Here, compelling DOE to produce the decision on IBSS' protest is
11 necessary to preserve the integrity of the procurement process because DOE's further delay in
12 rendering the decision will result in a violation of IBSS' substantive due process rights and
13 undermine the integrity of the procurement process. Further, DOE's decision on IBSS' protest is
14 required by Guam Procurement Law and Regulations. If a protest is not resolved by mutual
15 agreement, the head of a purchasing agency, or his or her designee shall **promptly** and
16 **expeditiously** (bold emphasis added) issue a decision in writing stating the reasons for the action
17 taken, informing the protestant of its right to administrative and judicial review, and a copy of
18 such decision shall be mailed or otherwise furnished immediately to the protestant, and any other
19 party intervening. 5 G.C.A. §5425(c) and (d) and 2 G.A.R., Div. 4, Chap. 9, §9101(g). Thus,
20 DOE is required to issue a decision on IBSS' protest promptly and expeditiously and DOE must
21 submit such decision immediately to IBSS. DOE's failure to produce the decision is an act of
22 bad faith and any more delay in issuing the decision would undermine the integrity of the
23 procurement process. Guam Procurement Law requires all parties involved in the negotiation,
24 performance, or administration of government contracts to act in good faith. 5 G.C.A. §5003.
25 Thus, DOE's failure to render a prompt and expeditious decision on IBSS' protest is an act of
26 bad faith.

27 3. This is a Final Administrative Decision. The Parties are hereby informed of their right
28 to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance

1 with Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final
2 Administrative Decision. 5 G.C.A. §5481(a). A copy of this Decision shall be provided to the
3 parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made
4 available for review on the OPA Website www.guamopa.org.

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6 **SO ORDERED** this 8th day of November, 2010.

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13 DORIS FLORES BROOKS, CPA, CGFM
14 PUBLIC AUDITOR
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