

CARLSMITH BALL LLP

ELYZE M. IRIARTE
emcdonald@carlsmith.com
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue
Hagåtña, Guam 96932-5027
Telephone No. 671.472.6813
Facsimile No. 671.477.4375

Attorneys for Party-in-Interest
XEROX CORPORATION

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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FILE NO: OPA-PA: 11-002

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT PETITION

IN THE PETITION OF

TOWNHOUSE DEPARTMENT STORES,
INC. dba ISLAND BUSINESS SYSTEMS &
SUPPLIES,

Appellant.

DOCKET NO. OPA-PA-11-002

**INTERESTED PARTY XEROX
CORPORATION'S OPPOSITION AND
RESPONSE TO APPELLANT'S
REQUEST THAT INTERESTED
PARTY PRODUCE DOCUMENTS AND
CORRESPONDENCE**

Interested Party Xerox Corporation opposes and responds to Appellant IBSS' February 15, 2011 Request That Interested Party Produce Documents and Correspondence as most of the requested documents are either already part of the record or irrelevant to this action.

A majority of the requests - **Request Nos. 3, 5, 6.2, 6.3, 6.4, 6.5, and 6.6** - are moot because the documents requested are already part of the record.

Another request - **Request No. 4** - seeks Xerox Services & Solutions Agreement No. 7099405. The disclosure of this document is at issue pursuant to IBSS' Motion to Disclose. Xerox incorporates its objections to this Request as stated in its Opposition to that Motion.

The remaining requests seek proprietary or irrelevant information. As a preliminary

matter, IBSS' Request makes its request under section 12108, which in actuality gives the Hearing Officer, not any party or interested party, the authority to request further information: "The Hearing Officer may require evidence in addition to that offered by the parties." 2 GAR Div. 4 § 12108(d). Xerox therefore asks the OPA and the Hearing Officer to use their discretion in considering the repercussions of producing the requested documents. In particular, in these remaining requests, the OPA already has the relevant documents before her, making production duplicative, or such documents are irrelevant or protected from disclosure.

Request No. 1 seeks documents, including notes and diary entries, related to Xerox's bid submission for DOE IFB 022-2010. With the exception of confidential material submitted as part of the bid, Xerox's bid is a matter of public record and should have been submitted as part of the record in this action. IBSS had the opportunity to inspect the bid at the bid opening. 2 GAR Div. 4 § 3109(I).

Xerox vigorously opposes any request that it produce internal notes, documents, memoranda, communications, and diary entries related to the preparation of its bid. IFB22 was a competitive process, and each bidder uses their own formulas and strategies in preparing their bids. IBSS and Xerox have been competing for numerous bids for multifunction machines solicited not just by the Department of Education, but other government of Guam agencies, federal agencies, and private businesses. Xerox's process in preparing such bids is proprietary and involves trade secrets. IBSS is trying to quash the competitive environment by forcing the disclosure of Xerox's methodology in computing its bids. This will permanently damage Xerox and the competitive process.

This is highly improper and unjustified. Forcing Xerox to disclose pre-bid documents violates the procurement law's policy to "foster effective broad-based competition within the free

enterprise system," and "to provide safeguards for the maintenance of a procurement system of quality and integrity." 5 G.C.A. § 5001(b).

Moreover, IBSS has not raised any protest with respect to Xerox's pre-bid activities. IBSS' protest relates to the language of the IFB, which was not prepared by Xerox, and to the performance of the IFB. There is no information within Xerox's pre-bid notes and, correspondence, and other documents, which would be relevant to IBSS' appeal.

Request No. 1 shows that IBSS is on a witch hunt. The OPA should deny this request in its entirety.

In addition, **Request No. 2** seeks the production of documents related to the award and execution of IFB22. Any correspondence between Xerox DOE on this issue should have been produced by DOE as part of the procurement file. All documents related to the award and execution can also be obtained from DOE. Already disclosed as public record in this matter is DOE's purchase order, Xerox's Equipment Recommendation Summary, Xerox's sample purchase order, and the December 9, 2010 Xerox letter correcting typographic errors. These documents complete the history as to the issue of the increase in quantities, therefore all relevant documents have been produced. Any further information on the award and execution can be obtained from witness testimony.

Xerox again vigorously protests any request that it produce internal notes and documents pertaining to Xerox's execution of this IFB. Because any documents or correspondence related to the award and execution should already be part of the record or available from DOE, the only information Xerox would have would be internal notes and information. Again, compelled production of these documents based on a request from Xerox's competitor stifles competition and the quality and integrity of the competitive bid system.

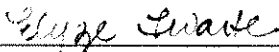
Finally, **Request No. 6.1** seeks the production of diary entry notes between any and all meeting between Xerox's Michael Salas and DOE's Taling Taitano. At the hearing in this matter, both Mr. Salas and Ms. Taitano would be able to be called as witnesses and testify as to the contents of their meetings. The production of Xerox's notes, if any exist, would only be redundant of the direct testimonies of Mr. Salas and Ms. Taitano.

Because IBSS' requests are directed at bid strategies, or duplicative documents, IBSS' motives in making these requests must be called into question. Xerox respectfully opposes IBSS' Request that the Hearing Officer order the production of these documents, and asks the Hearing Officer to execute his discretion in denying the requests.

Xerox also asks for a hearing on this matter.

DATED: Hagåtña, Guam, February 23, 2011.

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