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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

JAN 13 2011

FILE 9107  
10-010

IN THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEAL

In the Appeal of	)	DOCKET NO. OPA-PA 10-010
	)	
TOWN HOUSE DEPARTMENT STORES,	)	
INC., dba	)	APPELLANT'S COMMENTS ON
ISLAND BUSINESS SYSTEMS	)	XEROX' REQUEST TO RESCHEDULE
& SUPPLIES,	)	HEARING, AND REQUEST TO WAIVE
APPELLANT	)	HEARING ON MOTION
_____	)	

Appellant acknowledges Xerox' request to reschedule the hearing on DOE's Motion and the Pre-hearing conference, and is sympathetic to the time conflicts. Xerox fairly reports on matters which ensued among the parties in correspondence discussing this matter.

Appellant, requests, however, that DOE's Motion be expeditiously decided on the arguments and comments already submitted, without a hearing, for the following reasons.

This is not a routine IFB, but one issued to provide copiers for which DOE has issued Declarations of Emergency, certified by the Governor of Guam. In the Declarations, the Superintendent declared that obtaining copiers were of the "highest priority". DOE has finally identified funding for the copiers in this IFB and it should be allowed the opportunity to award the copier contract as specified in the Motion.

Further delay simply aggravates that emergency situation, and diverts valuable time and effort at DOE that could be applied to getting out other critical procurements necessary to meet US

ARRA funding deadlines.

DOE, as Xerox has faithfully pointed out, does not require a hearing on the Motion, and neither does IBSS. DOE Counsel advised IBSS and Xerox counsel, subsequent to the Hearing Officer's Notice setting time for her to reply to Xerox' opposition to the motion, that she "would believe the issue is one the OPA could determine based on the motion, responses and replies" already on record. She evidently does not feel the need to reply beyond what has already been said.

Xerox is not being denied the opportunity to be heard in this matter, and it has indeed been heard in submittals on the issues. But it has not been heard to demand a hearing, as required by 2 GAR § 12108(a) until this motion was made. IBSS is the only party having filed a Request for Hearing in this matter, and waived that request for purposes of the ruling on this Motion, as specified in its Reply to Xerox' Comments on the Motion.

Although this is admittedly in form a motion hearing and not a hearing on the merits, as Xerox has advised in its Rescheduling Request, all parties are agreed that the ruling on the Motion, if granted, will result in the issues in this appeal being moot. It may therefor be dispositive of this appeal, and the failure of parties other than Appellant to request a hearing (which is an *implied waiver* of hearing under 2 GAR § 12108(a)), and Appellant's prior *express waiver* of hearing on this motion, should be treated in same manner and to same effect as the waiver substantively intended by § 12108(a).

Moreover, 2 GAR § 12109, particularly subsection (d), does not require a formal hearing on motions in any event.

For these reasons, Appellant reiterates its statement, made in its Non-Opposition to the Motion, "the Motion should be granted without further ado".

Appellant joins Xerox, however, in asking that, pending a ruling on this Motion, the pre-hearing motion be rescheduled to another convenient time, if necessary.

Respectfully submitted,



John Thos. Brown  
for Appellant, IBSS