



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-11-002

**DECISION AND ORDER RE DOE'S
MOTION TO DISMISS**

To: Purchasing Agency:
Department of Education, Government of Guam
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Appellant:
IBSS
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Interested Party:
Xerox Corporation
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THIS MATTER came before the Public Auditor on April 29, 2011 pursuant to the Department of Education, Government of Guam's (Hereafter referred to as "DOE"), Motion to Dismiss. The Public Auditor hereby considers the record on file in this matter to decide this motion to include but not limited to Appellant's Opposition to Appellee DOE's Motion to

1 Decline Appeal filed on May 2, 2011, Interested Party XEROX's Response to DOE's Motion to
2 Dismiss Appeal filed on May 6, 2011, and DOE's Reply in Support of Motion to Dismiss filed
3 on May 6, 2011. After considering the aforementioned record and pleading filed by the parties,
4 the Public Auditor hereby FINDS and ORDERS the following:

5 1. The Public Auditor finds that *Town House Department Stores, Inc., dba Island*
6 *Business Systems & Supplies v. Department of Education, Government of Guam, et. al.*, Civil
7 Case No. CV1536 (Superior Court of Guam) concerns the procurement that is the subject of this
8 appeal. The aforementioned civil action concerns the Appellant in this matter seeking a civil
9 judgment against DOE and others pursuant to the Proper Government Spending Enforcement
10 Act as codified in 5 G.C.A. §7101 *et. seq.*, for DOE's, and other's alleged improper and illegal
11 expenditure of public funds to procure supplies and services in contravention of the procurement
12 laws and regulations, for the period starting from January, 2010 to the present. Further, the
13 specific supplies and services in the aforementioned civil action concern document management
14 services. Here, this appeal concerns the award of DOE-IFB-022-2010 (Document Management
15 Services) to XEROX. Thus, the document management services stated in the aforementioned
16 civil action are the same document management services that DOE awarded to XEROX via
17 DOE-IFB-022-2010. Further, part of the relief Appellant prays for in the aforementioned civil
18 matter is a preliminary and permanent injunction enjoining DOE and others from expending
19 public funds to procure document management services through the use of renewals, extensions,
20 and otherwise in violation of the applicable procurement regulations and laws. Thus, if
21 Appellant is successful obtaining the aforementioned injunctive relief, said relief may very well
22 enjoin and restrain DOE from expending public funds to pay for the document management
23 services XEROX is providing DOE via its award of DOE-IFB-022-2010. Therefore, the
24 aforementioned civil action concerns the document management services awarded to XEROX
25 via DOE-IFB-022-2010 which is the subject of this appeal.

26 2. The Public Auditor shall not take any further action on this appeal. Generally, if an
27 action concerning the procurement under appeal has commenced in court, the Public Auditor
28 shall not act on the appeal except to notify the parties and decline the matter due to judicial
involvement. 2 G.A.R., Div. 4, Chap. 12, §12103(b). This procurement regulation specifically

1 prohibits the Public Auditor from taking any action upon notification of pending judicial
2 proceedings. *Harbor Centre Guam Co., Ltd., et. al. v. Doris Flores Brooks as Public Auditor,*
3 *Office of Public Accountability*, SP0226, line 2, page 4, Decision and Order dated April 20, 2011
4 (Superior Court of Guam). Here, as stated above, *Town House Department Stores, Inc., dba*
5 *Island Business Systems & Supplies v. Department of Education, Government of Guam, et. al.*,
6 Civil Case No. CV1536 (Superior Court of Guam) concerns the procurement underlying this
7 appeal. Thus, the parties are hereby ON NOTICE of the aforementioned civil action and the
8 Public Auditor shall not take any further action on this appeal and hereby declines taking any
9 further action due to the aforementioned judicial involvement.

10 3. DOE's request for a dismissal of this action is not permissible as a matter of law. A
11 plain interpretation of 2 G.A.R., Div. 4, Chap. 12, §12103(b), and the obvious intent of the plain
12 language used in its terms, is to require the Public Auditor to refrain from any further action in a
13 procurement appeal upon the filing of judicial proceedings, and that the issuance of dismissal
14 with prejudice by the Public Auditor is a derogation of the rule. *Id.*, at line 7, page 5. Thus,
15 DOE is not entitled to a dismissal pursuant to 2 G.A.R., Div. 4, Chap. 12, §12103(b). Further,
16 the Public Auditor must now stay the appeal without taking any further action until the Superior
17 Court of Guam decides *Town House Department Stores, Inc., dba Island Business Systems &*
18 *Supplies v. Department of Education, Government of Guam, et. al.*, Civil Case No. CV1536
19 (Superior Court of Guam).

20 4. All pending motions shall be held in abeyance until the aforementioned civil action is
21 decided in the Superior Court of Guam.

22
23 **SO ORDERED** this 13th day of May, 2011 by:

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27 DORIS FLORES BROOKS, CPA, CGFM
28 Public Auditor

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FAX

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Agency:	Pages: 4 (Including cover)
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Re: Appeal No. OPA-PA-11-002 – DECISION AND ORDER re: DOE'S MOTION TO DISMISS

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