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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
FEB 15 2011
THE: 10'SSA BY: AZ
FILE NO. OPA-PA: 11-002

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

In the Appeal of)	DOCKET NO. OPA-PA 11-002
)	
TOWN HOUSE DEPARTMENT STORES,)	
INC., dba)	REQUEST THAT INTERESTED PARTY
ISLAND BUSINESS SYSTEMS)	PRODUCE DOCUMENTS AND
& SUPPLIES,)	CORRESPONDENCE
APPELLANT)	
_____)	

Appellant Requests that Interested Party Xerox Corporation be made to produce copies of all documents and correspondence in its possession or control not legally protected as follows:

- 1 All Documents, Correspondence and communications, notes and diary entries, memoranda and other documentation, (collectively, and as further described below, "Documents" and "Correspondence") which relate to its submission in response to DOE IFB 022-2010, together with any attachments or other matter referred to in any such Document.
- 2 All Documents and Correspondence which relate to the award, and the execution of any documents in implementation of the award, under DOE IFB 022.
- 3 All Documents and Correspondence which discuss, propose, confirm or memorialize any change in quantities, descriptions or terms of purchase of the items as described and solicited in the IFB to those specified in the P/O, No. 201100024.
- 4 The Xerox Services & Solutions Agreement No. 7099405 referenced in the aforesaid P/O.
- 5 Any form of proposed purchase order or requisition description prepared by Xerox and

communicated or otherwise submitted to DOE, such as the "Template" mentioned in DOE's Agency Report, Tab G, Paragraph 2(e), wherein it was asserted, "DOE accepted a Purchase Order Template from Xerox via email attachment", together with any associated Correspondence.

6 With reference to the "Procurement Meeting Notes" of date December 17, 2010, a copy of which is attached hereto for convenience, the following Documents:

6.1 Diary entries and notes regarding any and all meetings between "Mike" and "Taling", as mentioned in this passage: "Mike stated that he received news from Taling for the most part. He then stated that he only met with Taling for meetings."

6.2 The "list of recommendations", as mentioned in this passage: "Mike gave Taling his list of recommendations."

6.3 The "Purchase Order", as referred to in this passage: "Mike stated that he believed it was emailed to Taling."

6.4 The pre-amended Purchase Order and amended Purchase Order, as referred to in this passage: "Laura said that a meeting took place with Mike and Pam from Xerox, Taling, and Laura regarding the Purchase Order. It had to be amended but...."

6.5 The "cleaning letter" as referred to in this passage: "Laura asked if any of the changes in the "cleaning letter" was based on Mike's recommendations and not the original written proposal. Mike confirmed that the changes were just typos...."

6.6 The "formula" as referred to in this passage: "Laura wanted to clarify how the quantity could change without altering the price and Mike provided the formula...."

The term "Documents" is intended to include any written document, note, letter, order, instruction, memorandum, message or record, regardless if in electronic medium of transmission or storage, in which case it is to be provided in printed, hard copy form. "Correspondence" includes email, instant message, messages left on voice mail, or other electronic means of communication, and includes "one-way" communications as well as responsive communications, and together with any reply thereto. Correspondence includes communication to, from or with any person, including any persons within Xerox Corporation, and any persons within DOE, and whether any such person is authorized to correspond or communicate or not.

Appellant respectfully addresses this Request to the Hearing Officer for Order to issue without hearing, in like manner and effect as subpoena duces tecum, but in keeping with the informal procedures suggested by 2 GAR § 12108(d).

PROCUREMENT MEETING NOTES

COMPANY: Xerox

PURPOSE OF MEETING: Discuss History of IFB 022-2010

DATE/TIME: December 17, 2010, 10:23 AM

Attendees: Randy Romero, DOE Acting Supply Management Administrator
Albert Garcia, DOE Supply Management Dept.
Kathrina Bayson, DOE Supply Management Dept.
Laura Mooney, DOE Legal Counsel
PJ Sablan-Jalique, DOE Legal Dept. AO
Mike Salas, Xerox, Services & Solutions Executive
Pam Quinata, Xerox, Acting General Manager

Laura stated that the meeting was taking place to discuss the history of IFB 022-2010.

Pam stated that she was present at the meeting as the Acting GM but she was not part of the bid's review.

Laura referred to the documents that contained the line items as well as a copy of the IFB that was submitted and asked Kat why things were crossed out.

Kat stated that she tabbed the file but she did not cross anything out. Carmen Taitano was responsible for crossing the items out. Mike verified that the numbers that were crossed out were the correct numbers. Laura reiterated that Carmen Taitano crossed out the amounts and put the new amounts in the document(s).

Laura asked Mike how he found out Xerox was awarded the bid. Mike said it was through the Intent of Award as well as the newspaper. There was a press release from IBSS.

Laura asked Albert how Xerox received the notice and Albert said it was through the Bid Status and Notice of Intent. Albert stated that the date of the award was October 29.

Laura asked if the notice was given to the other bidders and Albert confirmed that it was. The copies of the Bid Status he faxed had successful transmissions. Laura asked if there were only two bidders and Albert confirmed that was correct.

Mike stated that he received news from Taling for the most part. He then stated that he only met with Taling for meetings. Laura asked what the purpose of the meeting was and Mike said it was to meet Xerox's General Managers from Hawaii, Glenn Sexton and Meg Tydingco.

Laura wanted to clarify at what point the Purchase Order was received. Mike said the 16th or 17th.

Laura wanted to clarify how the quantity changed from the bid. Mike stated that because he has worked with DOE for years, he was able to make recommendations as to how many machines were needed and where they were needed. A Change Order to the bid was not done prior to the Purchase Order. Mike



gave Taling his list of recommendations. Laura stated that Taling said she was unaware of changes in the quantity made after the bid.

Laura stated that there should not have been a change from what was in the bid to what was in the award. There isn't a contract in effect for the revised quantities. DOE cannot purchase machines that were not part of the original bid.

Mike asked if this was the case even if there was option to add-on and Laura confirmed that the option would not change things. There is a process that must take place regarding any changes to the bid.

Mike confirmed that he saw the Purchase Order which included his recommendations to revise the quantities of some items, and he assumed DOE was exercising its "option to add-on". Laura stated that what also makes this appear suspect is that the quantities were increased but the cost did not change.

Laura asked Albert what he developed the Purchase Order from. Laura said that the fax comes in and DOE Procurement takes the fax and keys it into the system. Randy stated that it must've been emailed and then printed, but regardless, it was transmitted to DOE somehow. Albert said that he did not remember how he received the document. Mike stated that he believed it was emailed to Taling. Kat stated that she keyed the document into the system because she was just following what Albert instructed her to do. Albert said he assumed that the document contained the same information as the original bid so he told Kat to key it into the system. He did not realize the quantities had changed.

Randy stated that he did not believe a Certified Requisition was done because it would have been inputted into the system. Inputting the Certified Requisition is Step 1 of the Procurement process. Randy stated that in a normal working environment the Certified Requisition would've been inputted in the system and anything issued thereafter would've been based on the Requisition. It was confirmed that Step 1 was not done and this was the catalyst for the change in quantity going unnoticed. Laura confirmed with Albert that there wasn't anything in the system for him to generate the Purchase Order so he took what he thought was the proposal and had Kat input it into the system.

Albert said he understands that procurement over \$500,000 must go to the Attorney General's office for review but he did not realize that it had to go back to the Attorney General's office after they had already reviewed it. Laura asked if there was a Certification done by Procurement because there was not one in the file and Albert confirmed that he did do one and will look for it.

Laura said that a meeting took place with Mike and Pam from Xerox, Taling, and Laura regarding the Purchase Order. It had to be amended but there wasn't an Emergency Purchase Order for the month of November. They bridged the pricing problems with the Purchase Order but they did not go over it item by item so there wasn't an issue at the time regarding the quantity.

Laura asked if any of the changes in the "cleaning letter" was based on Mike's recommendations and not the original written proposal. Mike confirmed that the changes were just typos and that the machine/equipment stayed the same.



Laura wanted to clarify how the quantity could change without altering the price and Mike provided the formula they use. Mike confirmed that the only thing that changed was the quantity but if the machines/equipment was the same. In the Purchase Order item review it became clear that there was a price change that also occurred. (See Attachment A)

Laura stated that the IFB items are non-transferrable and that the bid amount cannot change. Laura had Mike write his calculations on a copy of the Purchase Order. Pat wanted to clarify that the Purchase Order did not break down the price of each item and that just a total purchase price was provided. Laura stated that a major issue is that the quantity changed but the total purchase price remained the same. This makes it look like DOE negotiated with Xerox. Laura repeated that Xerox could not increase the dollar amount of the IFB Award.

Laura stated that none of the changes on the Abstract Sheet added up. Albert said that the highlights and changes to the numbers made on the IFB copy dated 11/24 were done by him. He made the changes after the Bid. Laura asked if Albert changed the quantities or if he did a Bid amendment. Albert showed her Amendment 6. Laura asked if the handwritten amounts went to 3 and asked when it went back. She also asked if item 2 was deleted and if that meant Albert was not bidding it. Albert stated that Amendment 4 increased item 1 and deleted items 2 and 3. Albert also stated that Clarification 1, Amendment 6, went up. Laura asked if that was what should be bidding and Albert indicated yes.

Laura said that the 10/22 amended original IFB requests 5 units amended to 3, submitted for 5 not 3, it was changed again. Albert said that 6 should be the last one. Laura asked if Albert submitted his proposal with all the attachments, why he didn't change the bid sheet. Pam stated that it was not the machine itself just the accessory. Laura clarified that the accessory Pam was referring to was the booklet finishers and that out of 5 of the machines 3 had to have it. Laura asked Pam when it went back on and Pam stated 10/22. Laura said that the 10/22 Clarification 3 puts it all back in and that she does not have an issue with that. Laura said the issue is that the amount of the bid remained the same even though the quantity changed. Laura wanted clarification on how the overall Purchase Order amount stayed the same. Mike said their formula consisted of the equipment plus the optional services and the number of items. Laura asked if the total amount for the 60 month lease stayed the same and Mike said that the amount stayed the same for the equipment. Laura asked for more clarification regarding the formula Mike used to keep the amount the same even though the quantity changed.

Mike clarified if the main issue was changing the quantities back. Xerox should be able to go back and reduce the quantities to what the IFB says. Mike stated that he and Pam would assess what's been delivered already. Laura confirmed that Xerox needs to stick with the original IFB quantities.

Laura brought up that there is a protest letter and that it is post award so there isn't an automatic stay. DOE will have to issue a Stop Order. Laura reiterated that DOE will issue a Stop Order as to the original quantities and that DOE would work on the corrected Purchase Order.

Laura asked Albert to obtain something from Carmen with today's date stating that the corrections she made were an error. Laura told Mike to stop everything today upon and that a meeting will be schedule for Monday or Tuesday of next week.

Mike asked if it would be okay if the quantities were less than what was on the original IFB. Laura said yes and that it could be due to a delay in delivery. Laura said she does not know who will be impacted



by the reduction in the quantities. Mike stated that it would be a total of 9 schools, administrative offices, personnel, teachers' lounges. Mike asked Laura where she wanted the 5 machines. Laura asked Mike if he could give Randy time to assess where the machines should go but if Mike already knows where the 5 machines should go then he can just deliver them there.

Mike wanted to clarify that the Stop Order was not going to be for the entire Purchase Order and Laura replied that the Stop Order would only be for items not part of the original IFB.

Reviewed and Approved by Randy Romero on 2/7/2011 at 10:20AM.

See Attachment B for original Sign-In Sheet for the meeting.

PURCHASE ORDER

BUSINESS OFFICE
 DEPARTMENT OF EDUCATION
 GOVERNMENT OF GUAM
 P.O. BOX DE
 HAGATNA, GUAM 96932

IMPORTANT
 PURCHASE ORDER NUMBER
 APPEAR ON ALL IN
 PACKAGES AND CORR

XEROX CORPORATION
 137 MURRAY BLVD
 HAGATNA GU 96910

SHIP TO: FINANCIAL AFFAIRS
 DEPUTY SUPT OF FINANCE & A
 P.O. BOX DE
 HAGATNA GU 96932
 (671) 300-1575

Fax Number: (671) 477-6421
 11/16/10

ATTN: TALING TAITANO
 Fax Number: (671) 472-5009

DATE: 11/16/10 REQUIRED: TIME OF DELIVERY: 60 DAYS ARO 00000000 REQ:

QTY	DESCRIPTION	DISCOUNT	UNIT PRICE	TOTAL
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REFERENCE GUAM DEPARTMENT OF EDUCATION
 INVITATION FOR BID NO. 022-2010,
 XEROX RESPONSE AND SERVICES & SOLUTIONS
 AGREEMENT NO. 7099405

805,39

13.11.24.00.26.0230.0000
 PURCHASE ORDER ISSUED TO COVER THE COST
 OF TEN (10) MONTHS OF A SIXTY (60)
 MONTH TERM FOR XEROX DOCUMENT
 MANAGEMENT SERVICE BILLED AT \$80,537.70
 PER MONTH TOTAL.

SERVICES & SOLUTIONS AGREEMENT NO.
 7099405 WILL INCLUDE XEROX MANAGED
 SERVICES AND THE FOLLOWING XEROX UNITS
 AND QUANTITIES AS FOLLOWS:

QTY	DESCRIPTION	DISCOUNT	UNIT PRICE	TOTAL
1	(14) XEROX 4112CP	5 X	XEROX 4112	3,582
2	(57) XEROX 3CQ9201	44 X	XEROX 3C9201	30,77
3	(45) XEROX W7545	47 X	XEROX W7545	13,15
4	(33) XEROX WC7435	48 X	XEROX 7435	6,93
6	(100 SEATS) SCAN TO PC DESKTOP SOFTWARE			54,4
	(1) CENTREWARE WEB SOFTWARE			

10,032.26
 1,566.37
 17,595.50
 4,746.85
 67,260.98

ADDITIONAL CONFIGURATION, ACCESORY, AND
 PRICING DETAIL INFORMATION ON THE ABOVE
 UNITS ARE AS PER THE ATTACHED
 DESCRIPTION PAGE.

PRINT ALLOWANCES FOR THE ABOVE WILL BE
 COMBINED AND POOLED TO INCLUDE

(Continued)

NOTE: ALL INVOICES MUST BE CERTIFIED
 (Please attach shipping and mailing charges. See important
 notice on reverse side.)

Attachment #

CHASING AUTHORITY
 Art G. Garcia, Supply Mgmt. Administrator, Acting

INSTRUCTION TO VENDOR

PRICE INCREASE OR INCREASES IN SHIPPING COST OVER TOTAL P.O. MUST
 RECEIVE PRIOR SCHOOL DISTRICT APPROVAL.
 TO EXPEDITE PAYMENT. PLEASE ATTACH ANY OF THE FOLLOWING TO
 YOUR SPECIFIC INVOICE.

- SIGNED DELIVERY RECEIPT
- INSURANCE RECEIPT/NUMBER
- AIR BILL, WAY BILL, BILL OF LADING

- DO NOT overship or substitute without prior Purchasing Dept. Approval.
- Send all invoices, certified original and one (1) copy only, to: BUSINESS OFFICE
 DEPARTMENT OF EDUCATION, P.O. BOX DE, HAGATNA, GUAM 96932
- A separate TAX FREE invoice set must be submitted for each order.
- Claims for Freight Charges must be accompanied by receipt Freight Bill or
 Postal Receipt.
- Purchase Order Number and Ship to Name must appear on all document
 relating to this order.

PURCHASE ORDER
 BUSINESS OFFICE
 DEPARTMENT OF EDUCATION
 GOVERNMENT OF GUAM
 P.O. BOX DE
 HAGATNA, GUAM 96932

IMPORTANT
 PURCHASE ORDER NUMBER MUST
 APPEAR ON ALL INVOICES
 PACKAGES AND CORRESPONDENT

XEROX CORPORATION
 137 MURRAY BLVD
 HAGATNA GU 96910

SHIP TO: FINANCIAL AFFAIRS
 DEPUTY SUPT OF FINANCE & A S
 P.O. BOX DE
 HAGATNA GU 96932
 (671) 300-1575

Fax Number: (671) 477-6421
 11/16/10

ATTN: TALING TAITANO
 Fax Number: (671) 472-5009

TIME OF DELIVERY: 60 DAYS ARO 000000099
 REQ:

QTY	DESCRIPTION	DISCOUNT	UNIT PRICE	TOTAL
	REFERENCE GUAM DEPARTMENT OF EDUCATION INVITATION FOR BID NO. 022-2010, XEROX RESPONSE AND SERVICES & SOLUTIONS AGREEMENT NO. 7099405			805,397.00
	13.11.24.00.26.0230.0000 PURCHASE ORDER ISSUED TO COVER THE COST OF TEN (10) MONTHS OF A SIXTY (60) MONTH TERM FOR XEROX DOCUMENT MANAGEMENT SERVICE BILLED AT \$80,537.70 PER MONTH TOTAL. SERVICES & SOLUTIONS AGREEMENT NO. 7099405 WILL INCLUDE XEROX MANAGED SERVICES AND THE FOLLOWING XEROX UNITS AND QUANTITIES AS FOLLOWS:			MONTHLY 3,583.00
1	- (14) XEROX 4112CP	5 X	XEROX 4112	735.00
2	- (57) XEROX 3CQ9201	44 X	XEROX CG9201	30,774.00
3	- (45) XEROX W7545	47 X	XEROX WC7545	13,153.00
4	- (33) XEROX WC7435	48 X	XEROX 7435	6,984.00
6	- (100 SEATS) SCAN TO PC DESKTOP SOFTWARE			54,446.00
	ADDITIONAL CONFIGURATION, ACCESSORY, AND PRICING DETAIL INFORMATION ON THE ABOVE UNITS ARE AS PER THE ATTACHED DESCRIPTION PAGE.			

10,032.26
 2,866.37
 12,595.90
 4,766.85
 61,260.99

PRINT ALLOWANCES FOR THE ABOVE WILL BE COMBINED AND POOLED TO INCLUDE

(Continued)

NOTE: ALL INVOICES MUST BE CERTIFIED
 Please refer to shipping and mailing charges. See important notice on reverse side.

Attachment A

BUYING AUTHORITY
 Art G. Garcia, Supply Mgmt. Administrator, Acting

PRICE INCREASE OR INCREASES IN SHIPPING COST OVER TOTAL P.O. MUST RECEIVE PRIOR SCHOOL DISTRICT APPROVAL
 TO EXPEDITE PAYMENT. PLEASE ATTACH ANY OF THE FOLLOWING TO YOUR SPECIFIC INVOICE.

- SIGNED DELIVERY RECEIPT
- INSURANCE RECEIPT/NUMBER
- AIR BILL, WAY BILL, BILL OF LADING

INSTRUCTION TO VENDOR

- DO NOT overship or substitute without prior Purchasing Dept. Approval.
- Send all invoices, certified original and one (1) copy only, to: BUSINESS OFFICE, DEPARTMENT OF EDUCATION, P.O. BOX DE, HAGATNA, GUAM 96932
- A separate TAX FREE invoice set must be submitted for each order.
- Claims for Freight Charges must be accompanied by receipt Freight Bill or Postal Receipt.
- Purchase Order Number and Ship to Name must appear on all document relating to this order.

12-17-2010

ATTACHMENT
B

Pam Quineta, Xerox, acty. GM.
Mike Sales, Xerox, Services & Solutions Executive
Dwight Romero Procurement
ALBERT G. GARCIA Procurement
Kathrina Bayson Procurement
JANUET J. OLLON, LEGAL Counsel.