

1 **DEPARTMENT OF EDUCATION**

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

MAY 31 2011

TIME: 10:54 BY: mav
FILE NO. OPA-PA: 11-002

5 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
6 **PROCUREMENT APPEAL**

7 In the Appeal of)

APPEAL NO. OPA-PA 11-002

8 TOWNHOUSE DEPARTMENT STORES,)

9 INC. dba ISLAND BUSINESS SYSTEMS)

& SUPPLIES, Appellant.)

**NOTICE OF CV 1536-10
PENDING COURT ACTION
INVOLVING IFB 022- 2010**

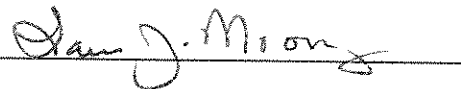
11 Appellant and Purchasing Agent DOE are parties in Superior Court of Guam Civil Case No.
12 CV1536-10, Townhouse Department Stores, Inc. dba Island Business Systems & Supplies v.
13 Department of Education, Government of Guam, et. al. A copy of the complaint is attached.

14 The underlying procurement action in the suit is IFB 022-2010, and all the emergency
15 procurements and other activities involved in the litigation involve IFB 022-2010.

16 The Appeal in OPA-PA 11-002 is brought post award in IFB 022-2010.

17 Respectfully submitted:


18 DEPARTMENT OF EDUCATION

19 

20 By: Laura J. Mooney

21 DOE Legal Counsel

MAHAR

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& THOMPSON,
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SUPERIOR COURT
OF GUAM

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CLERK OF COURT

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

IN THE SUPERIOR COURT OF GUAM **CV 1536-10**

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

Plaintiff,

vs.

DEPARTMENT OF EDUCATION,
GOVERNMENT OF GUAM,
GENERAL SERVICES AGENCY,
DEPARTMENT OF ADMINISTRATION,
GOVERNMENT OF GUAM
NERISSA BRETAGIA UNDERWOOD,
CLAUDIA AFCALLE & DOES I-X,

Defendants.

CIVIL CASE NO. CV _____

COMPLAINT

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Civil/Solicitor Division

Plaintiffs allege as follows:

1. This Court has jurisdiction pursuant to the Organic Act of Guam, §3105, Title 7, section 7102 and 7103, Title 5 of the Guam Code Annotated as this action involves the improper expenditure of public moneys by officers, employees and agents of agencies of the Government of Guam in violation of the procurement regulations and laws of Guam.
2. Plaintiff, TOWN HOUSE DEPARTMENT STORES, INC. dba Island Business Systems & Supplies, is and at all times mentioned herein, was, and at all times mentioned herein, a corporation duly registered and licensed to do business under the laws of Guam

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whose principal headquarters is Guam and which pays taxes under the laws of Guam.

3. Defendants, DEPARTMENT OF EDUCATION, GOVERNMENT OF GUAM, GENERAL SERVICES AGENCY DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, are, at all times mentioned herein, were, instrumentalities and line agencies of the Government of Guam.

4. Defendant, NERISSA BRETANIA UNDERWOOD, is, and at all times mentioned herein, was, Superintendent of Education, Department of Education, Government of Guam and an officer, agent and employee of the Government of Guam.

5. Defendant, CLAUDIA S. ACFALLE, is, and at all times mentioned herein, was, Chief Procurement Officer, Department of Administration, Government of Guam and an officer, agent and employee of the Government of Guam.

6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES I-X, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that the damage as herein alleged was proximately caused by their conduct.

7. Defendants, as agencies, officer, agents and employees of the Government of Guam are entrusted with public funds, stand in a fiduciary relationship to the people of Guam in regard to the management of public money and thus charged with expending public money in compliance with the laws of Guam pursuant to section 7102, 5 G.C.A.

8. Since January 2010 through the present, the defendants, DEPARTMENT OF EDUCATION, GOVERNMENT OF GUAM and GENERAL SERVICES AGENCY DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, acting through its officers, agents and employees, defendants, NERISSA BRETANIA UNDERWOOD, CLAUDIA S. ACFALLE and DOES

I-X, have, upon information and belief, improperly, contrary to law and illegally expended public funds in the approximate amount of \$133,037.00, or more, and will continue to spend public money to procure supplies and services in contravention of the procurement laws and regulations.

9. Since January 2010 through the present, the defendants, DEPARTMENT OF EDUCATION, GOVERNMENT OF GUAM and GENERAL SERVICES AGENCY, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, acting through its officers, agents and employees, defendants, NERISSA BRETANIA UNDERWOOD, CLAUDIA S. ACFALLE and DOES I-X, have, on information and belief, expended public money to procure document management services ("DMS") in violation of the applicable procurement regulations and law through the improper use of "emergencies", purported renewals and extensions of a non-existent contract which the Office Of The Public Auditor found was improperly procured, improperly renewed and which it terminated on November 28, 2008.

10. Defendants, NERISSA BRETANIA UNDERWOOD, CLAUDIA S. ACFALLE and DOES I-X are personally liable pursuant to section 7103, 5 G.C.A. for all public money expended improperly, illegally or contrary to law.

WHEREFORE, Plaintiff prays for judgment against defendants, and each of them, as follows:

1. For judgment against defendants, Nerissa Bretania Underwood, Claudia S. Acfalle and DOES I-X in an amount determined to have been expended improperly, illegally and contrary to law.

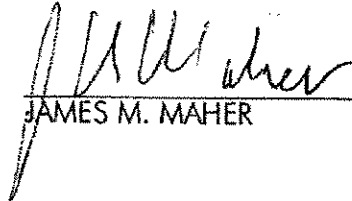
2. For a preliminary injunction and a permanent injunction, each enjoining defendants, and each of them, and their agents, officers and employees and all persons acting under, in concert with, or for them, from expending public funds to procure document management services through the use of renewals, extensions and

otherwise in violation of the applicable procurement regulations and laws.

- 3. For reasonable attorney's fee pursuant to section 7112 of 5 G.C.A.
- 4. For costs of suit herein incurred;
- 5. For such other and further relief as the court may deem proper.

Dated: 9/3/10

MAHER & THOMPSON, P.C.
Attorneys for Plaintiff

By: 
JAMES M. MAHER

VERIFICATION

I, John T. Brown, declare that I am plaintiff's duly authorized representative above-entitled action, that I have read the foregoing complaint and know the contents thereof, and that the same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and that as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that his declaration was executed on 3 September, 2010, at Hagatna, Guam.

