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RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

NOV 26 2010

TIME: 4:30 BY: AC  
FILE NO. OPA-PA: 10-210

IN THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT PETITION

In the Petition of	)	NOTICE OF APPEAL
	)	FROM DECISION ON PROTEST
TOWN HOUSE DEPARTMENT STORES,	)	
INC., dba	)	
ISLAND BUSINESS SYSTEMS	)	DOCKET NO. OPA-PA _____
& SUPPLIES,	)	
APPELLANT	)	
_____	)	

PETITIONER INFORMATION

Name: Town House Department Stores, Inc., dba Island Business Systems & Supplies ("IBSS")  
Mailing Address: P.O. Box 7, Hagåtña, Guam 96932  
Business Address: 545 Chalan Machaute (Route 8 @ Biang St), Maite, Guam 96910  
Daytime Contact No.: Roland R. Franquez, General Manager (671) 477-7454

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FURTHER PETITION INFORMATION

Purchasing Agency: Guam Department of Education (“DOE”)

Number/Description of Procurement:

DOE IFB No: DOE 006-2010, Bid Opening May 21, 2010

The IFB was issued to acquire 98 “stand-alone” multifunction copiers for use throughout DOE.

Protest and Appeal is made from Protest of method, solicitation or award, which Protest is of date September 2, 2010 (copy attached).

The decision being appealed is a Decision denying IBSS' Protest (copy attached), which Decision is dated November 24, 2010, which was received by Appellant at open of business on November 26, 2010.

Names of competing bidders, offerors, or contractors known to Appellant:

Xerox Corporation

CONTEXT OF APPEAL:

Petitioner brings this action following Protest of the referenced solicitation and reminder(s) of protest, followed by a Petition to Compel Decision, which the Public Auditor granted (see, OPA-PA-10-006).

The chronology of the events leading up to the within Appeal began in the year 2000, as has been chronicled in a series of OPA Appeals. See OPA-PA-08-003, OPA-PA-08-011 and OPA-PA-10-006. In summary, for most of the last decade Xerox has been providing copiers to DOE under a contract that the Public Auditor terminated in November 2008 (OPA-PA-08-011), and which by its own terms expired December 31, 2009.

On March 19, 2010, Appellant protested to DOE and GSA that from January 1, 2010, Xerox was being paid to continue to provide copiers to DOE notwithstanding the absence of any solicitation. (Copy attached.)

On April 9, 2010, DOE Legal Counsel formally responded to the March 19<sup>th</sup> Protest. (Copy attached.) In that letter DOE Counsel advised IBSS Counsel

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“[i]n an effort to resolve the protest, I met with you on March 6, 2010 and stated that the Department of Education will do the following: ... 2) No later than the last day of April the Department of Education will agree to issue an Invitation for Bid for all fax machines and if time permits small copier machines that are used throughout the Department.”

Consequently, DOE’s IFB 006-2010 was indeed issued to procure the small copier machines to resolve the March 19<sup>th</sup> Protest. Bids were opened on the scheduled date, May 21, 2010. There were two bidders, IBSS and Xerox Corporation. Appellant IBSS was the announced low bidder.

It is critical to understanding the facts and posture of this Appeal to appreciate the importance of these copiers.

These copiers were some of the many copiers which Xerox had been providing under the illegal, terminated and expired Xerox contract. They were therefore critical to the integral operation of DOE.

The critical need for these copiers was attested to by the Superintendent, under penalty of perjury, when she executed a Declaration of Emergency on May 21, 2010, THE VERY SAME DAY THE BIDS WERE OPENED for IFB 006-2010. Her Declaration of Emergency (copy attached), said:

“document management services is integral for the functioning of the department”, and

“the continuance of document management services is of the highest priority” and,

“I authorize the emergency procurement of document management services as necessary to ensure the continued functioning with the department and our schools”

The Superintendent had previously issued an Emergency Declaration, signed March 31, 2010, which was substantively identical.

To induce the Governor to *again* issue in May the same Declaration of Emergency issued in March, the Superintendent advised the Governor the following (see copy of letter dated May 21, 2010, attached):

“DOE has been working diligently since our last emergency declaration to produce a new scope of work for document management services. This new scope was tailored to ensure that the current and future needs of the department are addressed, identify areas of consolidation, and to provide open competition to all potential vendors.

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“Furthermore, since our last emergency declaration DOE has issued IFB 006-2010 for small multifunction copier machines to accommodate our larger solicitation.”

By her own words, then, the Superintendent swore that these particular machines, amongst others, were critically needed to meet an emergency. In this context, IFB 006-2010 was no ordinary procurement. It was a procurement specifically intended to alleviate a crisis.

Or was it? Subsequent events suggest IFB 006-2010 and the proposed resolution of the prior Protest lodged March 19 were simply a distraction undertaken in bad faith to put off IBSS’ interruption of the continuing illegal requisition of copiers from Xerox, including the very same copiers that were intended to be procured under IFB 006-2010.

While DOE sat on IFB 006-2010, it continued to pay Xerox over \$133,000 per month for copiers which could have been, and should have been, obtained under DOE’s IFB 006-2010. DOE diverted funds for copiers which could have been legally applied to IFB 006-2010 to obtain illegally requisitioned copiers.

As mentioned, the IFB was opened on May 21<sup>st</sup> in the midst of an emergency to acquire copiers for the integral operation of DOE. The IFB was not delayed by any protest; Xerox did not formally protest, but did communicate with DOE to try to undermine the award of the IFB.<sup>1</sup>

With no action having been taken on the IFB in June, despite the Declarations of Emergency previously issued, on July 1, 2010, IBSS’ General Counsel wrote to the Superintendent, complaining of the ongoing “emergency” acquisition of Xerox copiers based on the illegal, terminated and expired Xerox contract of year 2000 in the face of the failure to award a contract under IFB 006-2010. (Copy attached.)

The Superintendent responded, saying only that “no award has been made with regard to IFB 006-2010 due to a lack of funds. The Department is in the process of requesting a supplemental budget to secure funding to award IFB 006-2010.” (Copy attached.) In the event, DOE did find sufficient funds to continue to pay Xerox to supply the same machines properly solicited under IFB 006, but without legal authority to do so. DOE, it seems, can find funds how and when it wants, and did not want to do so in this case.

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<sup>1</sup> See letter from Xerox’ General Manager to Edith Pinault in DOE’s Office of Supply Management, dated June 17, 2010, ignoring the IFB and proposing to supply machines such as those subject to this Appeal, and a further letter, dated June 23rd, from Xerox’ General Manager to DOE’s Brian Mafnas, Supply Management Administrator, taking issue with DOE’s consideration of the bids in IFB 006-2010, particularly questioning the warranty terms and other specifications offered by IBSS . Copies of both letters attached.

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THE PROTEST:

Appellant's Protest was based in the apparent bad faith response of DOE to IFB 006-2010. It said,

“DOE's failure to conduct the solicitation and award the contract, particularly in those emergency circumstances, strongly suggests bad faith, as to which IBSS protests.”

In addition to the instances of bad faith alleged in the Protest, Appellant adds the statements of the Public Auditor in her Decision on the Petition to Compel a Decision on the protest, OPA-PA-006-2010:

“DOE's delay is (sic) issuing a decision is an act of bad faith”, adding, “Guam Procurement Law requires all parties involved in the negotiation, performance or administration of government contracts to act in good faith. (Citation omitted)”

The delay in this case is particularly bad faith given the express and sworn statements of the Superintendent to the effect that the continued provision of copiers is integral to DOE's operations, requiring emergency action.

THE DECISION DENYING THE PROTEST AND ARGUMENT:

Mr. Albert G. Garcia, Supply Management Administrator, Acting, acted for DOE in denying Appellant's protest.

In his Decision, he did not once address the allegations of bad faith raised in the Protest. Rather, he ticked off various apparent justifications for failing to award IFB 06-2010. Not one of them, by the way, indicates that IBSS' bid was non-responsive. Many of the reasons offered to reject the Protest are vague and therefore difficult to accurately address, but an attempt is made as follows, sticking to his numbered reasons.

1. “Certification of Funds was never reserved or obtained prior to for the processing of GDOE IFB 006-2010”

This is a red herring. The Superintendent herself advised the Governor in May that DOE was issuing the IFB to address an emergency situation. It was an unconditional statement of fact. She did not request any funding, or re-allocation of funding. She did not specify which Department within DOE would handle the solicitation. She simply affirmatively declared, “DOE has issued IFB 006-2010.”

The whole funding issue was not raised until after the bids were opened, and even then only after

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IBSS pressed DOE to award the contract under the IFB. The fact that funding, as an issue, was not identified in the IFB precludes raising it in this Appeal. 2 GAR § 3115(b) states,

“Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only. **The solicitation shall give the status of funding for the procurement.**”

Thus, when an IFB is issued, it is presumed that funding is reasonably available unless its status is stated otherwise in the IFB.<sup>2</sup>

Getting certification of funds is not a condition required by procurement law or regulation to issue a solicitation. The Superintendent affirmatively advised IBSS’ Counsel in her letter of July 7<sup>th</sup> that DOE was taking steps “to secure funding to award IFB 006-2010. Certification of funds, in this context, is an administrative matter that DOE was obliged to timely attend to in order to give effect to the commitments of DOE.

If it did not have the funds, or believe it had the ability to obtain them, DOE should not have issued the IFB in the first place or allowed it to go forward to bid opening (2 GAR § 3115(d)(1)(B)(ii)), but it did, and it did so to assure the Governor DOE was taking responsible steps to meet the declared emergency. It is noted that DOE has gone to the Legislature several times in the past year and obtained additional funds when it felt it needed them, and the sums required in this instance are insignificant to the larger sums sought.

2. “Fiscal 2010 funds have elapsed.”

This, again, is the funding red herring already discussed. Once an emergency was acknowledged, DOE was under an administrative obligation to act expeditiously to obtain or reprogram or reallocate funds to meet the situation.

3. “Item #7, titled “ALL OR NONE” BIDS, of the General Terms and Conditions should have been marked off.”“

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<sup>2</sup> “Prior to opening, a solicitation may be cancelled ... when ... the territory no longer can reasonably expect to fund the procurement”. This, coupled with § 3115(b), fairly implies a requirement that the territory should not even issue a solicitation if it cannot reasonably expect to fund the procurement, because the right to cancel is limited to cases where it “can **no longer**” expect to fund it.

This is contrasted with the situation regarding rejection of bids after bid opening in 2 GAR § 3115(d)(2)(A), which does not provide the “no longer can reasonably expect to fund” reason. The only justification allowed in this latter instance is if prices are in excess of funds. Price has never been suggested as an objection in this IFB.

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What is meant by this? No bidder protested this matter. How is this at all material? So what?

4. "The GDOE Facilities and Maintenance Division is the only Division within the GDOE to have authority to do Outright purchase only."

This is purely an internal administrative limitation. It was DOE that issued the IFB, not any particular division. If one division or another is to be responsible, it is the responsibility of DOE management to assign the task to the appropriate division. It does not affect the validity of the IFB.

5. "Page 1, Bid Package, which states in part, "...the undersigned agrees that this bid remain firm and irrevocable within 90 calendar days."

What is the significance of that? IBSS did not object to nor repudiate that clause. It was the requirement of DOE, not IBSS. Furthermore, it would not come into effect until a bid was accepted, and would not override any delivery requirements of the IFB specifications.

6. "Duplication of purchases between GDOE IFB 006-2010 (Outright) and GDOE IFB 022-2010 (Lease)."

If there is an issue here, it is with IFB 022-2010, and not a reason that should affect 006, the earlier solicitation. The decision to acquire copiers by purchase in 006 was a decision made by DOE itself when it drafted and issued 006. The Superintendent would have been aware of that when, on the same day the bids for 006 were opened (May 21<sup>st</sup>), she comforted the Governor with the declaration "DOE has issued IFB 006-2010 for small multifunction copier machines to accommodate our larger solicitation".

7. "Page 20, Caution to Bidders: The purchasing activity is not responsible for locating or securing, and information which are not identified in the bid and reasonably available to the purchasing activity... When we asked where we can find information regarding the confirmation of your warranty, we were told to put it in writing."

Since when has asking for information requests to be put in writing constituted grounds for punishing a bidder? Especially in a case like this that has been fraught with numerous instances where things said were later denied? Bidders have a due process right to require that communications be put in writing where they become part of the procurement record, and clear up not just disputes but ambiguities.

It should be added, that IBSS did timely point out, in response to the written email request for information, where the information regarding its warranty was in the IFB (it wasn't hidden), and that it was responsive. This is a petty, vindictive reason to reject the Protest.

But this reason for rejecting the Protest is also telling. It supports Appellant's argument that

DOE was acting in bad faith in its evaluation of its bid.

Appellant's bid was opened May 21<sup>st</sup>. No clarifications were then sought as to the warranty. Then, Xerox' General Manager raised questions regarding the warranty. It was not until after that letter was received by DOE that any question was raised with IBSS as to the warranty. The regulations require that matters outside of the IFB not be considered (2 Gar § 3109(n)(1)). It seems pretty clear that DOE has taken its clues from Xerox in evaluating the bid, at least insofar as this "reason" is concerned. It's just another instance of bad faith.

That's it. Those are the seven so-called "reasons" for rejecting the Protest. None of them are responsive to the Protest, none of them are substantive, none of them raise any issue of the responsiveness of Appellant's bid nor its responsibility. All of them suggest lame excuses for failing to award the contract to the lowest responsive, responsible bidder.

#### PREJUDICE:

Before getting to the subject of relief requested, it is important to highlight the prejudice that Appellant faces by reason of the rejection of its Protest in DOE IFB 006-2010.

IFB 006 was the very first competitively bid solicitation for copiers that DOE has issued in over a decade. IBSS sharpened its pencil and buttressed its available inventory to bid, and its bid was the low bid. It has laid bare its strategy for any competitor to exploit.

It is obvious that DOE will again solicit these devices. First, it is already the sworn statement of the Superintendent that having sufficient copiers is integral to its mission. Second, DOE has already attempted, in another act of bad faith, to gloss over IFB 006 and acquire the machines in DOE IFB 022-2010, as Mr. Garcia's letter affirms (reason #6).

Appellant has detailed prejudice it has suffered in this matter in its Petition to Compel Decision and Enforce Automatic Stay in OPA-PA-006, which, rather than repeat here, it incorporates by reference.



## RELIEF REQUESTED

This is admittedly an awkward situation. The solicitation is not in violation of law and no award has been made *or proposed*. 5 GCA § 5451, therefore, is not applicable.

It should be emphasized, however, that there is nothing in that section nor 5 GCA § 5450 that says the remedies mentioned are exclusive and that there is no other situation in which a remedy can be applicable.

Appellant protested “DOE's failure to conduct the solicitation **and award the contract**”. DOE rejected the Protest. Thus, the issue is not whether the solicitation is in violation of law but whether the failure to award is. And, DOE has not adduced any argument that IBSS' bid was nonresponsive or nonreponsible.

DOE has, however, evidenced apparent bad faith – indeed the Public Auditor made a finding that it engaged in actual bad faith in this matter by not expeditiously and promptly issuing a Decision on the Protest. DOE has not appealed that finding, whatever it may feel about it.

The duty for all parties to act in good faith is statutory. (5 GCA § 5003.) The Procurement Act is intended to be “construed **and applied** to promote its underlying purposes and policies”, amongst which is “to ensure the fair and equitable treatment of all persons who deal with the procurement system”. (5 GCA § 5001(a) and (b)(4).)

The Public Auditor shall issue a decision in writing **or take other appropriate action** on each appeal submitted. (5 GCA § 5702.)

The Public Auditor shall have the power to ... determine de novo any matter properly submitted and is charged with the duty to use her jurisdiction to promote the integrity of the procurement system. (5 GCA § 5703.)

The Superintendent advised IBSS' Counsel that no award had been made solely due to a lack of funds, and, further, that DOE was taking necessary steps “to secure funding to award IFB 006-2010”.

Appellant therefore respectfully asks that the Public Auditor issue an order compelling DOE to take all necessary steps to secure funding to award IFB 006-2010 to the lowest bidder, IBSS, and

that it take no steps to re-solicit or otherwise act to acquire the copiers therein specified until it has done so.

Dated this 26<sup>th</sup> day of November, 2010, and

Respectfully submitted,



Roland R. Franquez  
General Manager, IBSS



John Thos. Brown  
General Counsel for Petitioner

### SUPPORTING EXHIBITS, EVIDENCE, OR DOCUMENTS

With reference to all the matters submitted in the original Appeal as incorporated above, and reserving the right to provide further written material as it may be considered relevant or come to hand, there are attached hereto the following supporting materials:

Copies of:

1. DOE IFB No. 006-2010
2. Appellant's Protest Letter, September 2, 2010
3. DOE Decision denying Protest
4. Prior protest letter of March 19, 2010
5. DOE letter of terms resolving March 19 protest
6. Superintendent letter to Governor re Emergency, May 21, 2010
7. Declaration of Emergency, May 21, 2010
8. IBSS Counsel letter to Superintendent, July 1, 2010
9. Superintendent letter to IBSS Counsel, July 7, 2010
10. Xerox GM's letters to DOE, June 17 and June 23, 2010

DECLARATION RE COURT ACTION follows

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DECLARATION RE COURT ACTION

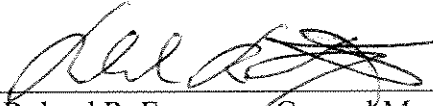
Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 26<sup>th</sup> day of Nov., 2010.

for Appellant Jones & Guerrero Co., Inc., dba Island Business Systems & Supplies

By: \_\_\_\_\_

  
Roland R. Franquez, General Manager-IBSS  
authorized representative for Appellant  
PO Box 7, Hagåtña, Guam 96932  
PH: (671)- 477-7454  
Fx: - 477-7660

\_\_\_\_\_  
Print Declarant's Name

EXHIBIT

1. DOE IFB No. 006-2010

5/21/0

Carmen Taitano } DOE  
Albert Garcia }

Mike Salas } Xerox  
Jose Napati }

① 2,604.00

② \$77.37

③ N/C

Xerox Phaser 3635 MFN/D

\$ 2681.37

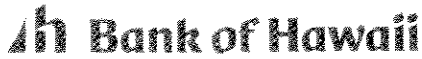
IBSS

① 2,436.00

② \$89.00

③ N/C

\$ 2525.00



CASHIER'S CHECK

101-501/12

381622

CUSTOMER'S RECEIPT AND AGREEMENT

ISSUED BY Hagatna

May 20, 2010

PAY TO THE ORDER OF \*\*\*\*TREASURER OF GUAM\*\*\*\*

\$35,686.83

NOTICE TO CUSTOMERS

You usually cannot stop payment of the attached check after you send it to the payee. If it is lost, stolen or destroyed, notify Bank of Hawaii immediately.

See reverse for agreement regarding this cashier's check.

NOT NEGOTIABLE

Fee \$ .00

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT

CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM



101-501/12

381622

CASHIER'S CHECK

ISSUED BY Hagatna

May 20, 2010

PAY TO THE ORDER OF \*\*\*\*TREASURER OF GUAM\*\*\*\*

\$35,686.83



If the check is not negotiated within three (3) years of the date hereof, such unclaimed funds shall be transferred to the Government of Guam for the benefit of the payee as required by law. Such funds shall escheat to the Territory of Guam if not claimed within five (5) years of the date of transfer.

CARLO GONZALES

AUTHORIZED SIGNATURE

⑈ 38 16 22 2 ⑈ ⑆ 1 2 1 4 0 5 0 1 8 ⑆ 00 38 ⑈ 0 7 4 2 6 1 ⑈

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO SEE THE MARK WHEN CHECKING THE ENDORSEMENT

# BID INVITATION AND AWARD



Brian C. Mafnas  
BRIAN C. MAFNAS  
Administrator, Supply Management

ISSUING OFFICE  
OFFICE OF SUPPLY  
MANAGEMENT  
DEPARTMENT OF EDUCATION  
P.O. BOX DE  
HAGATNA, GUAM 96922  
Tel: 306-1590/1581 Fax: 472-6001

DATE ISSUED: May 3, 2010

BID INVITATION NO: IFB 006-2010

BID FOR: SMALL MULTIFUNCTION COPIER MACHINES

SPECIFICATION: SEE ATTACHED SPECIFICATIONS

DESTINATION: SEE ATTACHED SPECIFICATIONS

REQUIRED DELIVERY DATE: IMMEDIATE AFTER RECEIPT OF ORDERS (ARO)

### INSTRUCTION TO BIDDERS:

INDICATE WHETHER:  INDIVIDUAL  PARTNERSHIP  CORPORATION

INCORPORATED IN: Guam

This bid shall be submitted in duplicate and sealed to the issuing office above no later than (Time) 10:00am  
Date: May 21, 2010 and shall be publicly opened. Bid submitted after the time and date specified above  
shall be rejected. See attached General Terms and Conditions, and Sealed Bid Solicitation for details.

The undersigned offers and agrees to furnish within the time specified, the articles and services at the price stated opposite the respective items listed on the schedule provided, unless otherwise specified by the bidder. In consideration to the expense of the Government in opening, tabulating, and evaluating this and other bids, and other considerations, the undersigned agrees that this bid remain firm and irrevocable within 20 calendar days from the date opening to supply any or all the items which prices are quoted.

NAME AND ADDRESS OF BIDDER:

Island Business Systems and Supplies (IBSS)

545 Route 8, Maite, Guam 96910

SIGNATURE AND TITLE OF PERSON  
AUTHORIZED TO SIGN THIS BID.

Roland Franquez/GM

AWARD: CONTRACT NO.: \_\_\_\_\_ AMOUNT: \_\_\_\_\_ DATE: \_\_\_\_\_

ITEM NO(S) AWARDED: \_\_\_\_\_

CONTRACTING OFFICER:

Brian C. Mafnas  
Administrator, Supply Management

NAME AND ADDRESS OF CONTRACTOR:

Island Business Systems and Supplies (IBSS)

545 Route 8, Maite, Guam 96910

SIGNATURE AND TITLE OF PERSON  
AUTHORIZED TO SIGN THIS CONTRACT:

Roland Franquez/GM





GUAM DEPARTMENT OF EDUCATION  
 MANUEL F.L. GUERRERO/ADMINISTRATION BUILDING  
 Government of Guam  
 P.O. Box DE, Hagatna, Guam 96932  
 Tel: 300-1580/1581 \* Telefax: 472-5001

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Accountability \* Impartiality \* Competence \* Openness \* Value

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INVITATION FOR BID (IFB) NO. : **IFB 006-2010**

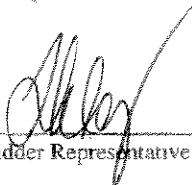
**DESCRIPTION: SMALL MULTIFUNCTION COPIER MACHINES**

**SPECIAL REMINDER TO PROSPECTIVE BIDDERS**

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid enveloped, in duplicate, at the date and time for bid opening.

- (X) **BID GUARANTEE (15% of Bid Amount) May be in the form of;**  
**Reference #11 on the General Terms and Conditions**
  - a. Cashier's Check or Certified Check
  - b. Letter of Credit
  - c. Surety Bond – Valid only if accompanied by:
    - 1. Current Certificate of Authority issued by the Insurance Commissioner;
    - 2. Power of Attorney issued by the Surety to the Resident General Agent;
    - 3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.
  
- (X) **BROCHURES/DESCRIPTIVE LITERATURE;**
  
- (X) **AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS - Must comply with the following requirements:**
  - a. Date of signature of the person authorized to sign the bid and the notary date must be the same.
  
- (X) **OTHER REQUIREMENTS:**  
Non-Collusion Affidavit, Restriction against Sex Offenders Affidavit, No Gratuities or Kickbacks Affidavit, and Ethical Standards Affidavit.

This reminder must be signed and returned in the bid envelope together with the bid. Failure to comply with the above requirements may be cause for disqualification and or rejection of the bid. On this May day of 21st, 2010, I, Frank Cruz, authorized representative of Island Business Systems and Supplies (IBSS) acknowledge receipt of this special reminder to prospective bidders with the above referenced IFB.

  
 Bidder Representative's Signature



**GOVERNMENT OF GUAM**

DEPARTMENT OF EDUCATION  
P.O. BOX DE  
Hagatna, Guam 96932

**SEE ATTACHED  
CASHIER'S CHECK**

**BID BOND  
NO. \_\_\_\_\_**

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_, as Principal Hereinafter called the Principal, and (Bonding Company), \_\_\_\_\_ A duly admitted insurer under the laws of the Territory of Guam, as Surety, hereinafter called the Surety are Held firmly bound unto the Territory of Guam for the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for Payment of which sum will and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for (identify project by number and brief description) \_\_\_\_\_

NOW, THEREFORE, if the Territory of Guam shall accept the bid of the Principal and the Principal shall enter into a Contract with the Territory of Guam in accordance with the terms of such bid, and give such bond or bonds as may be specified in bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Territory of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Territory of Guam may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

\_\_\_\_\_  
(PRINCIPAL) (SEAL)  
\_\_\_\_\_  
(WITNESS)  
\_\_\_\_\_  
(TITLE)  
\_\_\_\_\_  
(MAJOR OFFICER OF SURETY) (MAJOR OFFICER OF SURETY)  
\_\_\_\_\_  
(TITLE) (TITLE)  
\_\_\_\_\_  
(RESIDENT GENERAL AGENT)



**INSTRUCTION TO PROVIDERS:**

**NOTICE to all Insurance and Bonding Institutions:**

The Bond requires the signatures of the Vendor, two (2) major Officers of the Surety and Resident General Agent, if the Surety is a foreign or alien surety.

When the form is submitted to GUAM DEPARTMENT OF EDUCATION, it should be accompanied with copies of the following:

1. Current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation.
2. Power of Attorney issued by the Surety to the Resident General Agent.
3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.

Bonds, submitted as Bid Guarantee, without signatures and supporting documents are invalid and Bids will be rejected.



**EXHIBIT- A**  
**AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS**  
 RE: SMALL MULTIFUNCTION COPIER MACHINES

CITY OF Hagatna )  
 ) ss  
 STATE OF Guam )

- A. I, the undersigned, being first duly sworn, depose and say that I am an authorized Representative of the bidder and that [please check only one]:
- [ ] The bidder is an individual or sole proprietor and owns the entire (100%) interest in the offering business.
- [ X ] The bidder is a corporation, partnership, joint venture, or association known as Town House Dept. Stores Inc. dba. IBSS [please state name of bidder company], and the persons, companies, partners, or joint ventures who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows [if none, please so state]:

Name	Address	% of interest
<u>Kenneth Jones</u>	<u>POB 7, Hagatna, Guam 96932</u>	<u>99%</u>
<u>Elaine Jones</u>		

- B. Further, I say that the persons who have received or are entitled to receive a Commission, gratuity or other compensation for procuring or assisting in obtaining a business related to the bid or proposal for which this affidavit is submitted as follows [if none, please so state]:

Name	Address	Compensation
<u>n/a</u>		

- C. If the ownership of the offering business should change between the time this Affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA § 5233 by delivering another affidavit to the government.

Date: 05/20/2010

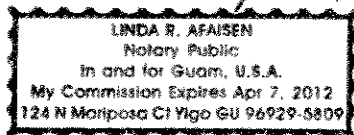
Noli C. Cadag Exec. VP

Signature of one of the following:  
 Bidder, if the bidder is an individual;  
 Partner, if the bidder is a partnership;  
 Officer, if the bidder is a corporation

Subscribed and sworn to before me  
 this 20th day of May, 2010.

Linda R. Afaisen  
 NOTARY PUBLIC  
 My commission expires: April 7, 2012

Seal Here



THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE FORMAL BID.



**SPECIAL  
PROVISION  
FOR  
AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS**

All bidders are required to submit a current affidavit as required below, failure to do so will mean disqualification and rejection of the bid.

Excerpt from P.L. 18-44

Section 44, a new Section 6961.3 is added to the Government Code to read.

"Section 6961.3. Affidavit Disclosing Ownership and Commissions. As a condition of bidding, any partnership, sole proprietorship or corporation doing business with the Government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have been held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for the procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying"

**EXAMPLE:**

1. A bidder intends to participate in a bid opening on October 15, and submits his/her Bid on September 12, the affidavit dated September 10 is acceptable.

**NOTE:** If the affidavit is a copy, indicate the Bid No. and where it is filed.



EXHIBIT- B  
FORM OF NON-COLLUSION AFFIDAVIT

RE: SMALL MULTIFUNCTION COPIER MACHINES

AFFIDAVIT

CITY OF Hagatna )  
 ) SS  
STATE OF Guam )

Noli C. Cadag [State name of affiant signing below], being first  
duly sworn, deposes and says that:

The name of the offering company or individual is [state name of company]  
Island Business Systems and Supplies (IBSS)

The proposal for the solicitation identified above is genuine and not collusive or a sham. The bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any other bidder or person, to put in a sham proposal or to refrain from making an offer. The bidder has not in any manner, directly or indirectly, sought by an agreement or collusion, or communication or conference, with any person to fix the proposal price or bidder or of any other bidder or to fix any overhead, profit or cost element of said proposal price, or of that of any other bidder, or to secure any advantage against the government of Guam or any other bidder, or to secure any advantage against the government of Guam or any person interested in the proposed contract. All statements in this affidavit and in the proposal are true to the best of the knowledge of the undersigned.

That I make this statement on behalf of myself as a representative of the bidder, and on behalf of the bidder's officers, representatives, agents, subcontractors, and employees.

Noli C. Cadag Exec. VP

Signature of:

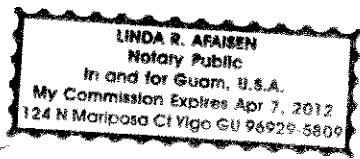
Bidder, if the bidder is an individual;  
Partner, if the bidder is a partnership;  
Officer, if the bidder is a corporation.

Subscribed and sworn to before me

this 20th day of May, 2010

Linda R. Afansen  
NOTARY PUBLIC

My commission expires: April 7, 2012



THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE FORMAL BID.



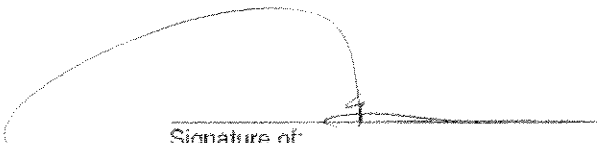
**EXHIBIT C**  
**AFFIDAVIT re NO GRATUITIES or KICKBACKS**  
 RE: SMALL MULTIFUNCTION COPIER MACHINES

CITY OF Hagatna )  
 ) SS  
 STATE OF Guam )

Noli C. Cadag [state name of affiant signing below], being first duly sworn, deposes and says that:

the name of the offering firm or individual is [state name of Bidder Company]  
Island Business Systems and Supplies (IBSS).

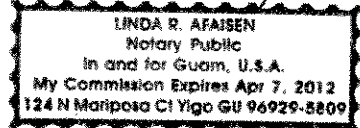
Affiant is Executive Vice President [state one of the following: the bidder, a partner of the bidder, an officer of the bidder] making the foregoing identified bid or proposal to the best of the affiant's knowledge neither affiant, nor any of the bidder's officer's, representative's agents, subcontractors, or employees has or have offered given or agreed to give, any government of Guam employee or former government employee, any payment, gift kickback, gratuity or offer of employment in connection with the bidder's proposal.



Signature of:  
 Bidder, if the bidder is an Individual;  
 Partner, if the bidder is a Partnership;  
 Officer, if the bidder is a Corporation.

Subscribed and sworn to before me  
 this 20th day of May, 2010.

Linda R. Afansen  
 NOTARY PUBLIC  
 My commission expires: April 7, 2010



THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE FORMAL BID.



**EXHIBIT D**  
**FORM OF ETHICAL STANDARDS AFFIDAVIT**  
RE: SMALL MULTIFUNCTION COPIER MACHINES

CITY OF Hagatna )  
 ) SS  
STATE OF Guam )

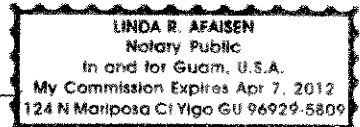
Noli C. Cadag [State name of affiant signing below],  
Being first duly sworn deposes and says that:

The affiant is Executive Vice President [state one of the following: the bidder, a Partner of the bidder, an officer of the bidder] making the foregoing identified bid or Proposal. To the best of the affiant's knowledge, neither affiant, nor any officer's, representatives, agents, subcontractors, or employees of the bidder have knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5, Article 11. Further, affiant promises that neither he or she, nor any officer, representative, agent, subcontractor, or employee of bidder will knowingly influence any government of Guam employee to breach any ethical standards set forth in 5 GCA Chapter 5, Article 11.

\_\_\_\_\_  
Signature of:  
Bidder, if the bidder is an individual;  
Partner, if the bidder is a partnership;  
Officer, if the bidder is a corporation.

Subscribed and sworn to before me

this 20th day of May, 2010



Linda R. Afaisen  
NOTARY PUBLIC  
My commission expires April 7, 2012

THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE FORMAL BID.





**FORM E  
DECLARATION RE COMPLIANCE WITH U.S. D.O.L. WAGE  
DETERMINATION**

RE: SMALL MULTIFUNCTION COPIER MACHINES

Procurement No: \_\_\_\_\_

Name of Offeror Company: Island Business Systems and Supplies (IBSS)

Noli C. Cadag hereby certifies under penalty of perjury:

(1) That I am Executive Vice President (the offeror, a partner of the offeror, an officer of the offeror) making the bid or proposal in the foregoing identified procurement;

(2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

**§ 5801. Wage Determination Established.**

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ("contractor") for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

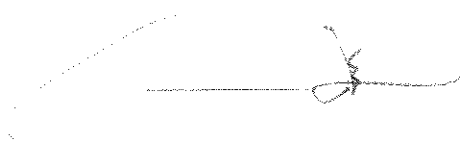
The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

**§ 5802. Benefits.**

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

(3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;

(4) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. (INSTRUCTIONS - Please attach!)

 05/20/2010

THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE FORMAL BID.

WD 05-2147.txt  
 WD 05-2147 (Rev.-10) was first posted on www.wdol.gov on 05/11/2010  
 \*\*\*\*\*

REGISTER OF WAGE DETERMINATIONS UNDER  
 THE SERVICE CONTRACT ACT  
 By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR  
 EMPLOYMENT STANDARDS ADMINISTRATION  
 WAGE AND HOUR DIVISION  
 WASHINGTON D.C. 20210

Shirley F. Ebbesen                      Division of  
 Director                                      Wage Determinations

Wage Determination No.: 2005-2147  
 Revision No.: 10  
 Date Of Revision: 05/05/2010

States: Guam, Northern Marianas, Wake Island

Area: Guam Statewide  
 Northern Marianas Statewide  
 Wake Island Statewide

**Fringe Benefits Required Follow the Occupational Listing**		
OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		12.50
01012 - Accounting Clerk II		13.21
01013 - Accounting Clerk III		15.59
01020 - Administrative Assistant		17.67
01040 - Court Reporter		15.38
01051 - Data Entry Operator I		10.48
01052 - Data Entry Operator II		11.99
01060 - Dispatcher, Motor Vehicle		13.06
01070 - Document Preparation Clerk		12.25
01090 - Duplicating Machine Operator		12.25
01111 - General Clerk I		10.29
01112 - General Clerk II		11.28
01113 - General Clerk III		12.32
01120 - Housing Referral Assistant		17.15
01141 - Messenger Courier		10.12
01191 - Order Clerk I		11.23
01192 - Order Clerk II		12.25
01261 - Personnel Assistant (Employment) I		14.33
01262 - Personnel Assistant (Employment) II		14.90
01263 - Personnel Assistant (Employment) III		16.09
01270 - Production Control Clerk		17.68
01280 - Receptionist		9.67
01290 - Rental Clerk		11.10
01300 - Scheduler, Maintenance		13.75
01311 - Secretary I		13.75
01312 - Secretary II		15.38
01313 - Secretary III		17.15
01320 - Service Order Dispatcher		11.57
01410 - Supply Technician		17.67
01420 - Survey Worker		15.26
01531 - Travel Clerk I		11.40
01532 - Travel Clerk II		12.35
01533 - Travel Clerk III		13.17
01611 - Word Processor I		12.25
01612 - Word Processor II		13.75
01613 - Word Processor III		15.38
05000 - Automotive Service Occupations		
05005 - Automobile Body Repairer, Fiberglass		13.08
05010 - Automotive Electrician		12.80
05040 - Automotive Glass Installer		11.86
05070 - Automotive worker		11.86

12250	- Pharmacy Technician	13.41
12280	- Phlebotomist	13.84
12305	- Radiologic Technologist	20.58
12311	- Registered Nurse I	20.70
12312	- Registered Nurse II	25.32
12313	- Registered Nurse II, Specialist	25.32
12314	- Registered Nurse III	30.64
12315	- Registered Nurse III, Anesthetist	30.64
12316	- Registered Nurse IV	36.72
12317	- Scheduler (Drug and Alcohol Testing)	19.59
13000	- Information And Arts Occupations	
13011	- Exhibits Specialist I	14.45
13012	- Exhibits Specialist II	17.92
13013	- Exhibits Specialist III	21.93
13041	- Illustrator I	14.45
13042	- Illustrator II	17.92
13043	- Illustrator III	21.93
13047	- Librarian	19.82
13050	- Library Aide/Clerk	11.51
13054	- Library Information Technology Systems Administrator	17.90
13058	- Library Technician	14.95
13061	- Media Specialist I	13.09
13062	- Media Specialist II	14.63
13063	- Media Specialist III	16.32
13071	- Photographer I	11.65
13072	- Photographer II	13.02
13073	- Photographer III	16.14
13074	- Photographer IV	19.75
13075	- Photographer V	23.91
13110	- Video Teleconference Technician	11.74
14000	- Information Technology Occupations	
14041	- Computer Operator I	13.65
14042	- Computer Operator II	15.76
14043	- Computer Operator III	17.56
14044	- Computer Operator IV	19.50
14045	- Computer Operator V	21.81
14071	- Computer Programmer I	(see 1) 15.73
14072	- Computer Programmer II	(see 1) 19.50
14073	- Computer Programmer III	(see 1) 23.84
14074	- Computer Programmer IV	(see 1)
14101	- Computer Systems Analyst I	(see 1) 24.23
14102	- Computer Systems Analyst II	(see 1)
14103	- Computer Systems Analyst III	(see 1)
14150	- Peripheral Equipment Operator	13.65
14160	- Personal Computer Support Technician	19.50
15000	- Instructional Occupations	
15010	- Aircrew Training Devices Instructor (Non-Rated)	24.23
15020	- Aircrew Training Devices Instructor (Rated)	29.32
15030	- Air Crew Training Devices Instructor (Pilot)	33.30
15050	- Computer Based Training Specialist / Instructor	24.23
15060	- Educational Technologist	22.82
15070	- Flight Instructor (Pilot)	33.30
15080	- Graphic Artist	18.61
15090	- Technical Instructor	17.65
15095	- Technical Instructor/Course Developer	21.58
15110	- Test Proctor	13.87
15120	- Tutor	13.87
16000	- Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010	- Assembler	7.68
16030	- Counter Attendant	7.68
16040	- Dry Cleaner	9.17
16070	- Finisher, Flatwork, Machine	7.68

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23530 - Machinery Maintenance Mechanic	17.38
23550 - Machinist, Maintenance	15.43
23580 - Maintenance Trades Helper	9.92
23591 - Metrology Technician I	15.43
23592 - Metrology Technician II	16.41
23593 - Metrology Technician III	17.35
23640 - Millwright	15.43
23710 - Office Appliance Repairer	13.90
23760 - Painter, Maintenance	13.55
23790 - Pipefitter, Maintenance	15.02
23810 - Plumber, Maintenance	14.22
23820 - Pseudraulic Systems Mechanic	15.43
23850 - Rigger	15.43
23870 - Scale Mechanic	13.55
23890 - Sheet-Metal Worker, Maintenance	15.21
23910 - Small Engine Mechanic	13.55
23931 - Telecommunications Mechanic I	19.01
23932 - Telecommunications Mechanic II	19.76
23950 - Telephone Lineman	18.24
23960 - Welder, Combination, Maintenance	14.49
23965 - Well Driller	15.43
23970 - Woodcraft Worker	15.43
23980 - Woodworker	11.67
24000 - Personal Needs Occupations	
24570 - Child Care Attendant	10.09
24580 - Child Care Center Clerk	12.58
24610 - Chore Aide	11.30
24620 - Family Readiness And Support Services Coordinator	11.93
24630 - Homemaker	16.12
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	15.43
25040 - Sewage Plant Operator	14.49
25070 - Stationary Engineer	15.43
25190 - Ventilation Equipment Tender	10.73
25210 - Water Treatment Plant Operator	14.49
27000 - Protective Service Occupations	
27004 - Alarm Monitor	10.90
27007 - Baggage Inspector	7.35
27008 - Corrections Officer	12.05
27010 - Court Security Officer	12.05
27030 - Detection Dog Handler	10.90
27040 - Detention Officer	12.05
27070 - Firefighter	12.05
27101 - Guard I	7.35
27102 - Guard II	10.90
27131 - Police Officer I	12.05
27132 - Police Officer II	13.40
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	9.53
28042 - Carnival Equipment Repairer	10.08
28043 - Carnival Equipment Worker	7.78
28210 - Gate Attendant/Gate Tender	13.18
28310 - Lifeguard	11.01
28350 - Park Attendant (Aide)	14.74
28510 - Recreation Aide/Health Facility Attendant	10.76
28515 - Recreation Specialist	18.26
28630 - Sports Official	11.74
28690 - Swimming Pool Operator	17.71
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	15.02
29020 - Hatch Tender	15.02
29030 - Line Handler	15.02

WD 05-2147.txt

99810 - Sales Clerk	8.95
99820 - School Crossing Guard	14.87
99830 - Survey Party Chief	19.95
99831 - Surveying Aide	11.34
99832 - Surveying Technician	14.74
99840 - Vending Machine Attendant	18.35
99841 - Vending Machine Repairer	21.43
99842 - Vending Machine Repairer Helper	18.35

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ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$3.35 per hour or \$134.00 per week or \$580.66 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; and 4 weeks after 3 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

- (1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- (2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- (3) The design, documentation, testing, creation or modification of computer

unless otherwise indicated. Copies of the Directory are available on the Internet. A link to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6 (C)(vi)} when multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.



**Special Provisions**

**BID NO.: IFB 006-2010**

**FOR: SMALL MULTIFUNCTION COPIER MACHINES**

**Restriction against Sex Offenders Employed by service providers to Government of Guam from working on Government Property.**

If a contract for services is awarded to the bidder or offeror, then the service provider must warranty that no person in its employment who has been convicted of a sex offense under the provisions of chapter 25 of Title 9 of Guam code Annotated or of an offense defined in Article 2 of chapter 28 of Title 9 of the Guam Code annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam property, with the exception of public highways. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four (24) hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four (24) hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service providers fail to take corrective steps within twenty-four (24) hours of notice from the Government, then the Government in its sole discretion may suspend temporarily and contract for services until corrective action has been taken.

\_\_\_\_\_  
Signature of Bidder  
Proposer, if an individual;  
Partner, if a partnership;  
Officer, if a corporation.

05/20/2011  
Date

**THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE FORMAL BID.**

GOVERNMENT OF GUAM  
GENERAL TERMS AND CONDITIONS



SEALED BID SOLICITATION AND AWARD

Only those Boxes checked below are applicable to this bid.

1. **AUTHORITY:** This solicitation is issued subject to all the provision of the Guam Procurement Act (5GCA, Chapter 5) And the Guam Procurement Regulations (copies of both are available at the Office of the Complier of laws, Department of Law, copies available for inspection at GUAM DEPARTMENT OF EDUCATION). It requires all parties involved in the Preparation, negotiation, performance, or administration of contracts to act in good faith.
2. **GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and conditions for the bidder to provide the Government of Guam (Government) with specified services or with materials, supplies or equipment completely assembled and ready for use.
3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
4. **LICENSING:** Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
5. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations.
6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidders shall comply with all specifications and other requirements of the Solicitation.
7. **"ALL OR NONE" BIDS:** Unless otherwise allowed under this Solicitation, "All or none" bids may be deemed to be non-responsive. If the bid is so limited, the Government may reject part of such proposal and award on the remainder.

**NOTE:** By checking this item, the Government is requesting all of the bid items to be bid or none at all. The Government will not award on an itemized basis. Reference: Section 3-101.06 of the Guam Procurement Regulations

8. **INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices in his bid were derived at without collusion, and acknowledge that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 5651 of that of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 5651 of the Government code.
9. **BIDDER'S PRICE:** The Government will consider not more than two (2) (Basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
10. **BID ENVELOPE:** Envelope shall be sealed and marked with the bidder's name, Bid number, time, date and place of Bid Opening.
11. **BID GUARANTEE REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by the Government pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier's Check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Treasure of Guam in the amount of fifteen percent (15%) of his highest total bid offer. The Bid Bond must be submitted on Government Standard Form BB-1 (copy enclosed). Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the bid or fails to enter into contract within the prescribed time, such Bid guarantee will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier's check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid. (GPR Section 3-202.03.3) Pursuant to Public Law 27-127, all competitive sealed bidding for the procurement of supplies or services exceeding \$25,000.00 a 15% Bid Security of the total bid price must accompany the bid package.



[ X ] 12. **PERFORMANCE GUARANTEE** Bidders, who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government and to enforce Section 23 of these General Terms and Conditions. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Section 41 of these General Terms and Conditions.

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[ X ] 13. **SURETY BONDS**: Bid and Performance Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The surety must be Insurance Company, authorized by the government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.

[ X ] 14. **COMPETENCY OF BIDDERS** Bids will be considered only from such bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.

[ X ] 15. **DETERMINATION OF RESPONSIBILITY OF BIDDERS**. The ADMINISTRATOR, SUPPLY MANAGEMENT reserves the right for securing from bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions (GPR Section 3-401).

[ X ] 16. **STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER**: In determining the lowest responsible offer, the ADMINISTRATOR, SUPPLY MANAGEMENT shall be guided by the following:

- a) Price of items offered.
- b) The ability, capacity, and skill of the Bidder to perform.
- c) Whether the Bidder can perform promptly or within the specified time.
- d) The quality of performance of the Bidder with regards to awards previously made to him.
- e) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
- f) The sufficiency of the financial resources and ability of the Bidder to perform.
- g) The ability of the bidder to provide future maintenance and services for the subject of the award.
- f) The compliance with all of the conditions to the Solicitation.

[ X ] 17. **TIE BIDS** If the bids are for the same unit price or total amount in the whole or in part, the ADMINISTRATOR, SUPPLY MANAGEMENT will determine award based on Section 3.202.15.2, or to reject all such bids (GPR Section 3-202.15.2).

[ X ] 18. **BRAND NAMES**: Any reference in the Solicitation to manufacturer's Brand Names and number is due to lack of a satisfactory specification of commodity description. Such preference is intended to be descriptive, but not restrictive and for the sole purpose of indicating prospective bidders a description of the article or services that will be satisfactory. Bids on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and how it differs from the original specification.

[ X ] 19. **DESCRIPTIVE LITERATURE**: Descriptive literature(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The literature furnished must clearly identify the item(s) in the Bid. The descriptive literature is required to establish, for the purpose of evaluation and award, details of the product(s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of manufacture, construction, assembly or other characteristics which are considered appropriate. Rejection of the Bid will be required if the descriptive literature(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the bid.

[ ] 20. **SAMPLES**: Sample(s) of item(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The sample(s) should represent exactly what the bidder proposes to furnish and will be used to determine if the item(s) offered complies with the specifications. Rejection of the Bid will be required if the sample(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the sample(s) by the time specified in the Solicitation will require rejection of the Bid.

[ ] 21. **LABORATORY TEST**: Successful bidder is required to accompany delivery of his goods with a Laboratory Test Report indicating that the product he is furnishing the Government meets with the specifications. This report is on the bidder's account and must be from a certified Testing Association.

[ X ] 22. **AWARD, CANCELLATION, & REJECTION**: Award shall be made to the lowest responsible and responsive bidder, whose bid is determined to be the most advantageous to the Government, taking into consideration the evaluation factors set forth in this solicitation. No other factors or criteria shall be used in the evaluation. The right is reserved as the interest of the Government may require to waive any minor irregularity in bid received. The ADMINISTRATOR, SUPPLY MANAGEMENT shall have the authority to award, cancel, or reject bids, in whole or in part for any one or more items if he determines it is in the public interest. Award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the

solicitation, results in a bidding contract without further action by either party. In case of an error in the extension of prices, unit price will govern. It is the policy of the Government to award contracts to qualified local bidders. The government reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type items and the vendor agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after original award. No award shall be made under this solicitation which shall require advance payment or irrevocable letter of credit from the government (GPR Section 3-202.14.1).

- 23. **MARKING:** Each outside container shall be marked with the Purchase Order number, item number, brief item description and quantity. Letter marking shall not be less than 3/4" in height.
- 24. **SCHEDULE FOR DELIVERY.** Successful bidder shall notify the GUAM DEPARTMENT OF EDUCATION, Telephone Nos 300-1580 or 475-0634/5, at least twenty-four (24) hours before delivery of any item under this solicitation.
- 25. **BILL OF SALE:** Successful supplier shall render Bills of Sale for each item delivered under this contract. Failure to comply with this requirement will result in rejection of delivery. The Bill of Sale must accompany the items delivered but will not be considered as an invoice for payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.

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- 26. **MANUFACTURER'S CERTIFICATE:** Successful bidder is required, upon delivery of any item under this contract, to furnish a certificate from the manufacturer indicating that the goods meet the specifications. Failure to comply with this request will result in rejection of delivery payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
- 27. **INSPECTION:** All supplies, materials, equipment, or services delivered under this contract shall be subject to the inspection and/or test conducted by the Government at destination. If in any case the supplies, materials, equipment, or services are found to be defective in material, workmanship, performance, or otherwise do not conform to the specifications, the Government shall have the right to reject the items or require that they be corrected. The number of days required for correction will be determined by the Government.
- 28. **MOTOR VEHICLE SAFETY REQUIREMENTS** The Government will only consider Bids on motor vehicles which comply with the requirements of the National Traffic and Motor Vehicle safety Act of 1966 (Public Law 89-563) and Clean Air Act as amended (Public Law 88-206), that are applicable to Guam. Bidders shall state if the equipment offered comply with these aforementioned Federal Laws.
- 29. **SAFETY INSPECTION:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.

30. **GUARANTEE:**

a) **Guarantee of Vehicle Type of Equipment:**  
The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune ups (change of spark plugs, contact points and condensers) and lubrication (change of engine and transmission oil). All parts and labor shall be at the expense of the bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced, or adjusted within six (6) working days after notice from the Government and without cost to the Government. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.

b) **Guarantee of Other Type of Equipment:**  
The successful bidder shall guarantee all other types of equipment offered, except those mentioned in 31a, above, against defective parts, workmanship, and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to the Government. Repairs, adjustments or replacements of defective parts shall be completed by the contractor within six (6) working days after notice from the Government.

c) **Compliance with this Section is a condition of this Bid.**

31. **REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The bidder or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

32. **REPRESENTATION REGARDING CONTINGENT FEES** The contractor represents that it has not retained a person to solicit or secure a Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business (GPR Section 11-207).

- [ X ] 33. **EQUAL EMPLOYMENT OPPORTUNITY:** Contractors shall not discriminate against any employee or applicant of employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.
- [ X ] 34. **COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standard, provisions, and stipulations of all pertinent Federal and/or local laws, rules, and regulations relative to the performance of this contract and the furnishing of goods.
- [ X ] 35. **CHANGE ORDER.** Any order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-03.1 of the Guam Procurement Regulations.
- [ X ] 36. **STOP WORK ORDER.** Any stop work order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-04.1 of the Guam Procurement Regulations.
- [ X ] 37. **TERMINATION FOR CONVENIENCE:** Any termination order for the convenience of the Government issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.10 of the Government Procurement Regulations.

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- [ X ] 38. **TIME FOR COMPLETION** It is hereby understood and mutually agreed by and between the contractor and the Government that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from the date Purchase Order is acknowledged by vendor), then the contractor is in default. Defaults will be treated subject to and in accordance with the provisions of Section 6-101-08 of the Guam Procurement Regulations.
- [ X ] 39. **JUSTIFICATION OF DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within the time specified. If the bidder is not able to meet the specified delivery date, he is required to notify the ADMINISTRATOR, SUPPLY MANAGEMENT of such delay. Notification shall be in writing and shall be received by the ADMINISTRATOR, SUPPLY MANAGEMENT at least twenty-four (24) hours before the specified delivery date. Notification of delay shall include an explanation of the causes and reasons for the delay including statement(s) from supplier or shipping company causing the delay. The Government reserves the right to reject delay justification if, in the opinion of the ADMINISTRATOR, SUPPLY MANAGEMENT, such justification is not adequate.
- [ X ] 40. **LIQUIDATED DAMAGES:** When the contractor is given notice of delay or nonperformance as specified in Paragraph 1 (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonable obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph 40 (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the territory. The contractor remains liable for damages caused other than by delay (GPR Section 6-101-09.1).
- [ X ] 41. **PHYSICAL LIABILITY:** If it becomes necessary for the Vendor, either as principal, agent or employee, to enter upon the premises or property of the Government of Guam in order to construct, erect, inspect, make delivery or remove property hereunder, the Vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or property during the progress of the work herein covered, and to be responsible for, and to indemnify and save harmless the Government of Guam from the payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such work, and fines, penalties and loss incurred for or by reasons of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the Government of Guam against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or his employees and agents of the services covered by the contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Government of Guam when required.
- [ X ] 42. **CONTACT FOR CONTRACT ADMINISTRATION:** If your firm receives a contract as a result of this Solicitation, please designate a person whom we may contact for prompt administration.

Name: Roland Franquez Title: IBSS General Manager  
 Address: 545 Route 8, Maite, Guam 96910 Telephone: 671-472-2200/477-7454



## GOVERNMENT OF GUAM

### SEALED BID SOLICITATION INSTRUCTIONS

1. **BID FORMS:** Each bidder shall be provided with two (2) sets of Solicitation forms. Additional copies may be provided upon request. Bidders requesting additional copies of said forms will be charged per page in accordance with Section 6114 of the Government Code of Guam. All payments for this purpose shall be by cash, certified check or money order and shall be made payable to the GUAM DEPARTMENT OF EDUCATION (EO 86-24).
2. **PREPARATIONS OF BIDS:**
  - a) Bidders are required to examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at bidder's risk.
  - b) Each bidder shall furnish the information required by the Solicitation. The bidder shall sign the solicitation and print or type his name on the Schedule. Erasures or other changes must be initiated by the person signing the bid. Bids signed by an agent are to be accompanied by evidence of this authority unless such evidence has been previously furnished to the issuing office.
  - c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the amount column of the Schedule for each item offered. In case of discrepancies between a unit price and extended price, the unit price will be presumed to be correct.
  - d) Bids for supplies or services other than those specified will not be considered.  
Time, if stated as a number of days, means calendar days and will include Saturdays, Sundays, and holidays beginning the day after the issuance of a Notice to Proceed. Time stated ending on a Saturday, Sunday or Government of Guam legal holiday will end at the close of the next business day.
3. **EXPLANATION TO BIDDERS:** Any explanation desired by a bidder regarding the meaning or interpretation of the Solicitation, drawings, specifications, etc., must be submitted in writing and with sufficient time allowed for a written reply to reach all bidders before the submission of their bids. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective bidder concerning a Solicitation will be furnished to all prospective bidders in writing as an amendment to the Solicitation if such information would be prejudicial to uninformed bidders.
4. **ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATIONS** Receipt of an amendment to a Solicitation by a bidder must be acknowledged by signing an acknowledgement of receipt of the amendment. Such acknowledgement must be received prior to the hour and date specified for receipt of bids.
5. **SUBMISSION OF BIDS:**
  - a) Bids and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the Solicitation. The bidder shall show the hour and date specified in the Solicitation for receipt, the Solicitation number, and the name and address of the bidder on the face of the envelope.
  - b) Telegraphic bids will not be considered unless authorized by the Solicitation. However, bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt (see paragraph 6 of these instructions).
  - c) Samples of items, when required, must be submitted within the time specified, unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at Bidder's request and expense, unless otherwise specified by the Solicitation.
  - d) Samples or descriptive literature should not be submitted unless it is required on this solicitation. Regardless of any attempt by a bidder to condition the bid, unsolicited samples or descriptive literature will not be examined or tested at the bidder's risk, and will not be deemed to vary any of the provisions of this Solicitation.
6. **FAILURE TO SUBMIT BID:** If no bid is to be submitted, do not return the solicitation unless otherwise specified. A letter or postcard shall be sent to the issuing office advising whether future Solicitations for the type of supplies or services covered by this Solicitation is desired.
7. **LATE BID, LATE WITHDRAWALS, AND LATE MODIFICATIONS:**
  - a) Definition: Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late (Guam Procurement Regulations Section 3-202)
  - b) Treatment: No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of territorial personnel directly serving the procurement activity.
8. **DISCOUNTS:**
  - a) Notwithstanding the fact that prompt payment discounts may be offered, such offer will not be considered in evaluating bids for award unless otherwise specified in the Solicitation. However, offered discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.

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b) In connection with any discount offered, time will be computed from date of delivery and acceptance of the supplies to the destination as indicated in the purchase order or contract. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

9. **GOVERNMENT FURNISHED PROPERTY:** No material, labor or facilities will be furnished by the Government unless otherwise provided for in the Solicitation.
10. **SELLER' INVOICES:** Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified. Invoices shall be "certified true and correct" and shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended total. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.
11. **RECEIPT, OPENING AND RECORDING OF BIDS:** Bids and modifications shall be publicly opened in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer, shall be read aloud and recorded, or otherwise made available. The names and addresses of required witnesses shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in accordance with Section 12, below. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary (Guam Procurement Regulations Section 3-202.12.2).
12. **CONFIDENTIAL DATA:** The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data



**DEPARTMENT OF EDUCATION  
 BID SPECIFICATIONS FOR  
 SMALL MULTIFUNCTION COPIER MACHINES**

Qty	Description	Unit of Issue	Unit Price	Extension
94	SMALL MULTIFUNCTION COPIER	EA	\$ 2,436.00	\$ 228,984.00

**Copy Type:** Black & White  
**Capabilities:** Multi User Network Printing, Network Scanning, and Fax capabilities.  
**Print Speed:** 33-35 Pages Per Minute  
**Feed Type:** Automatic Multiple Sheet Document Feeder  
**Sheet Capacity:** 500  
**Stack Bypass Tray:** 50 sheets  
**Paper Size:** Legal and Letter  
**Paper Weight:** 0-32lbs  
**Corner Stapling:** Yes  
**User Account setup:** Enables user to track prints, copies, faxes, and scans.  
**Scan to Folder/Email (PDF Format):** Black and Color  
**Faxing Capabilities:** Walkup Faxing, LAN Faxing, and Network Faxing  
**Operating Systems Capability:** Windows & Mac  
**Drivers:** PostScript and PCL Print

**MANUFACTURER:** Hewlett Packard

**ORIGIN:** United States

**MAKE & MODEL:** HP Laserjet M3035xs MFP

**WARRANTY:** 3 years on-site service  
 (see attached warranty terms and conditions)

Note: 30-45 days delivery lead time.

Qty	Description	Unit of Issue	Unit Price	Extension
100	<b><u>Software Specifications</u></b>	Seat	\$ 89.00	\$ 8,900.00

Software for working with scanned images, performing Optical Character Recognition. Working and Creating PDF files.

**SOFTWARE PROGRAM:**

Nuance PaperPort 12

*Possible software programs for reference:*

Image Retriever  
 OmniPage Professional  
 Paper Port Professional  
 PDF Creator Professional  
 (Above or Equal)

100	Network Device Management Software for monitoring Multifunction devices and printers on the network.	Seat	no charge/bundled with the printer	
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**SOFTWARE PROGRAM:**

HP Web JetAdmin

Note: 30-45 days delivery lead time

**DELIVERY ADDRESS:**

DOE Central Receiving Warehouse  
 162 North Marine Corps Drive  
 Piti, GU 96915



## HP LaserJet M3035 MFP series

M3035 • M3035xs



Empower workteams with print, copy, scan, fax, and digital sending functionality in one convenient device.

### Efficient

Get more done in less time. The MFP delivers print and copy speeds of up to 35 pages per minute (ppm) and a first page out in under 10 seconds with Instant-on Technology. The unique HP toner formula is engineered to deliver consistent, great-looking documents at fast speeds.

Accelerate existing workflows. The MFP comes standard with send to e-mail, send to network folder, network authentication, and LDAP support embedded in the device for easy integration into your existing infrastructure. Add optional HP Digital Sending Software 4.3 for send to ftp sites and fax services.<sup>1</sup> Consider optional HP AutoStore software to improve paper-intensive workflows by connecting the MFP to document management solutions.

Reduce interruptions. The MFP supports up to 1,100 sheets<sup>2</sup> plus a 20-sheet convenience stapler for easy finishing. A 50-sheet reversing automatic document feeder (ADF) provides effortless copying and scanning of multi-page documents.

### Easy

Experience simple, dependable networking. The MFP features IPv6-ready<sup>3</sup> best-in-class networking and management tools via the HP Jetdirect Fast Ethernet embedded print server. HP Web Jetadmin offers remote installation, configuration, and proactive management.

### Expandable

Add the solutions your business needs. An FIM port, open EIO slot, and host USB port allow you to easily expand the MFP's capabilities. Add HP and third-party solutions such as additional fonts, forms, barcode printing, and market-leading solutions for document capture, job accounting, and security. Get investment protection with access to IPSec TCP/IP security, Gigabit Ethernet, and wireless network compatibility.

### Reliable

Expect consistency. Original HP cartridges are carefully designed with HP Smart printing technology<sup>4</sup> to automatically optimize print quality and consistency throughout cartridge life, provide pages-remaining data and alerts when supplies run low, and facilitate convenient supplies reordering through HP SureSupply.<sup>5</sup>

<sup>1</sup> Fax functionality and 20-sheet convenience stapler come standard on the M3035xs model only and cannot be added to the M3035 model as accessories.

<sup>2</sup> The extra 500-sheet input tray comes standard on the M3035xs model only and can be added to the M3035 model as an accessory.

<sup>3</sup> IPv6 is only supported with Microsoft® Server 2003 and Windows XP® (print only).

<sup>4</sup> Using genuine HP supplies ensures availability of all HP printing features.

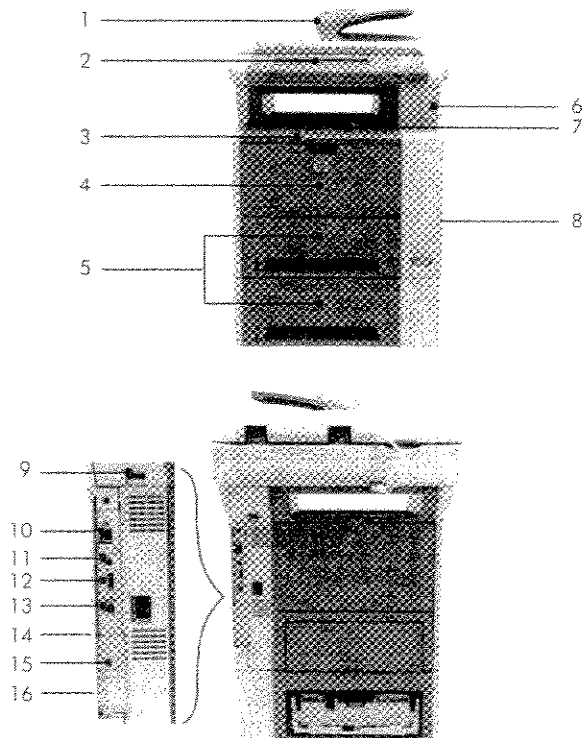
<sup>5</sup> For more information, visit [www.hp.com/go/suresupply](http://www.hp.com/go/suresupply).



## HP LaserJet M3035 MFP series

- 1 50-sheet reversing automatic document feeder (ADF) supports the two-sided copying and scanning of double-sided originals up to legal size
- 2 Easy-to-use touch-screen control panel with 13-key number pad provides effortless device interaction
- 3 Front door print cartridge access
- 4 100-sheet multipurpose input tray handles heavy custom paper up to 53 lb (199 g/m<sup>2</sup>)
- 5 Adjustable 500-sheet input trays 2 and 3 for a 1,100-sheet input capacity
- 6 20-sheet convenience stapler (M3035xs model only)
- 7 250-sheet output bin
- 8 Automatic two-sided printing
- 9 RJ-11 fax port
- 10 HP Jetdirect Fast Ethernet embedded print server (RJ-45 network port)
- 11 Foreign interface harness (FIH) port supports HP and third-party solutions
- 12 Host USB port for additional functionality
- 13 Hi-Speed USB 2.0 port for direct connection
- 14 256 MB total memory and a powerful 400 MHz processor perform complex tasks quickly
- 15 Open EIO slot for additional functionality
- 16 Built-in hard disk for effective digital sending, private printing, and job storage

HP LaserJet M3035xs MFP shown

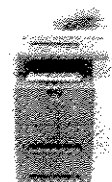


### Series at a glance



#### HP LaserJet M3035 MFP (CC476A)

- HP Jetdirect Fast Ethernet embedded print server
- Hi-Speed USB 2.0 port
- 256 MB total memory and a 400 MHz processor
- Open EIO slot
- Built-in HP high-performance EIO hard disk
- 50-sheet ADF automatically scans two-sided documents up to legal size
- Flatbed scanner
- 100-sheet multipurpose input tray and a 500-sheet input tray 2 for a 600-sheet input capacity



#### HP LaserJet M3035xs MFP (CC477A)

- All the features of the base model, plus:
- Analog faxing
  - 20-sheet convenience stapler
  - 500-sheet input tray 3 for a 1,100-sheet input capacity

Simplicity, convenience, and outstanding support make the HP LaserJet M3035 MFP series the perfect choice for small workteams with no time to worry about device management.



### Secure printing

For many businesses, information is one of their most valuable assets. The HP LaserJet M3035 MFP series is designed to protect critical information—in both hardcopy and electronic form—and simplify the way you manage your environment with easy tools and checklists.

- Private Printing lets you protect confidential documents by allowing you to hold a job for printing until you release it using a 4-digit Personal Identification Number (PIN) at the MFP's control panel.
- HP Secure Storage Erase makes sure that data you want to eliminate is unrecoverable. Unless otherwise specified, the MFP deletes data from the hard disk when the print job is finished.

- Our renowned family of HP Jetdirect connectivity products support a wide range of industry-standard and trusted security protocols, including 802.1x for Wired Networks, SNMPv3 and HTTPS, and Secure IPP (IPP-S) and IPsec.<sup>1</sup>
- Network authentication (LDAP, SMTP) adds another layer of security by allowing administrators to control device access. By requiring users to log in, administrators can limit usage of all the device features, or of just the copying or sending functions.

Go to [www.hp.com/go/secureprinting](http://www.hp.com/go/secureprinting) for more information.

### Get the most out of your MFP with HP accessories, supplies, and services.



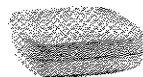
**Q7817A**  
500-sheet input tray offers an input capacity of up to 1,100 sheets.



**J7989G**  
HP high-performance EIO hard disk provides convenient storage.



**J7961G**  
HP Jetdirect 635n IPv6/IPSec Internal Print Server delivers the latest in network security.



**J7951G**  
Enjoy wireless networking with the HP Jetdirect ew2400 802.11g Wireless External Print Server (USB 2.0).



Choose from a selection of HP Brochure and Flyer papers to create impressive, professional marketing materials.

Put the power of HP Imaging and Printing Services to work to improve productivity and reduce costs. Select predefined services or tailor your own to meet your precise needs.

HP LaserJet M3035 MFP	CC476A
HP LaserJet M3035xs MFP	CC477A
<b>Paper handling</b>	
500-sheet input tray	Q7817A
<b>Supplies</b>	
HP LaserJet Black Print Cartridge with Smart Printing Technology. Average cartridge yield 6,500 standard pages. <sup>2</sup>	Q7551A
HP LaserJet Black Print Cartridge with Smart Printing Technology. Average cartridge yield 13,000 standard pages. <sup>2</sup>	Q7551X
Staple cartridge refill (2 cartridges, 1,500 staples each)	Q7432A
<b>Memory/storage</b>	
128 MB 100-pin DDR DIMM	Q7718A
256 MB 100-pin DDR DIMM	Q7719A
512 MB 100-pin DDR DIMM	Q7720A
HP high-performance ATA EIO hard disk	J7989G
<b>Connectivity</b>	
HP Jetdirect e1700 USB 2.0 Print Server <sup>3</sup>	J7988G
HP Jetdirect e1700 USB 2.0 Print Server <sup>4</sup>	J7942G
HP Jetdirect ew2400 802.11g Wireless External Print Server <sup>5</sup>	J7951G
HP Jetdirect 175x Fast Ethernet USB External Print Server <sup>6</sup>	J6035G
HP Jetdirect 630n IPv6 Gigabit Ethernet Print Server	J7997G
HP Jetdirect 635n IPv6/IPSec Internal Print Server	J7961G
HP Jetdirect 620n Fast Ethernet Print Server	J7934G
HP 1284S parallel card	J7972G
Hi-speed USB A to B printer cable (2 meter)	C6264A
<b>Digital sending software</b>	
HP Digital Sending Software 4.3	F1936AA
HP Auto Stone	F1943AA
<b>Service and support</b>	
3-year next-business-day hardware support	UE685E
4-year next-business-day hardware support	UE686E
3-year next-business-day hardware support	UE687E
3-year 4-hour response 9x5 hardware support	UE688E
4-year 4-hour response 9x5 hardware support	UE689E
3-year 4-hour response 9x5 hardware support	UE690E
3-year 4-hour response 13x5 hardware support	UE691E
1-year post-warranty 4-hour response 9x5 hardware support	UE694PE
1-year post-warranty next-business-day hardware support	UE695PE
Network install mid-range LaserJet MFP service	UE696PE
<b>Extended warranty options:</b> <a href="http://www.hp.com/support">www.hp.com/support</a>	Q2010E
<b>Paper</b>	
North America: <a href="http://www.hp.com/go/printer">www.hp.com/go/printer</a>	
Latin America: contact HP via phone	
USA: 1-800-477-3010; Europe: +800 7644 7644; Asia: 65-6253-8500; Australia/New Zealand: 61-7997-2299LAR; Brazil: sac 0800 700 700	
<b>Solutions:</b>	
<a href="http://www.hp.com/go/gsc">www.hp.com/go/gsc</a>	

<sup>1</sup> Currently only the HP Jetdirect 635n IPv6/IPSec print server supports Secure IPP (IPP-S) and IPsec capabilities.

<sup>2</sup> Declared yield value in accordance with ISO/IEC 19752. For page yields and other cartridge options, see [www.hp.com/go/pageyield](http://www.hp.com/go/pageyield)

<sup>3</sup> Supports printing only, no software scan, no webscan

<sup>4</sup> Supports printing only, no webscan

## HP LaserJet M3035 MFP series

Technical specifications	HP LaserJet M3035 MFP (CC476A)	HP LaserJet M3035xs MFP (CC477A)
<b>Print and copy speed</b>	Up to 35 pages per minute (ppm), letter, up to 33 ppm, A4 <sup>1)</sup>	
<b>First page out</b>	less than 10 seconds	
<b>Resolution</b>	Up to 1200 dpi, FastRes 1200, ProRes 1200 (1200 by 1200 dpi), REt (Resolution Enhancement technology)	
<b>Features</b>		
Copying	Up to 1000 multiple copies, reduce/enlarge from 25 to 400% (from scanner glass), two-sided copying, contrast adjustments, mixed originals, image adjustment, paper selection, content orientation, pages per sheet, booklet format, optimize text/picture, job build, edge to edge	
Scanning	Color flatbed scanner or ADF; scan input modes: front-panel scan, copy, fax (M3035xs only), e-mail; file types: PDF, JPG, TIFF, MIFF	
Faxing	Not available	Up to 33.6 kbps, auto fax reduction, fax forwarding, fax polling, broadcasting to up to 100 locations, speed dial (up to 100 lists), junk barrier, remote retrieval capability, auto redialing, Windows® faxing supported
Digital sending	Send to e-mail, send to network folder, LDAP and SMTP authentication, LDAP addressing, file formats: PDF, JPG, TIFF, MIFF	
Processor	400 MHz	
Memory/storage	256 MB DDR RAM (fixed), expandable to 512 MB via one open DDR DIMM slot; Memory Enhancement technology (MET); HP high-performance EIO hard disk	
Recommended monthly page volume <sup>1)</sup>	2,000 to 6,000 pages	
Duty cycle <sup>2)</sup>	Up to 75,000 pages per month	
Languages and fonts	HP PCL6, HP PCL5, HP postscript level 3 emulation, direct PDF printing (v. 1.4); 80 scalable TrueType fonts	
<b>Paper</b>		
Handling	100-sheet multipurpose input tray 1, 500-sheet input tray 2, 50-sheet two-sided reversing automatic document feeder (ADF), 250-sheet output bin, automatic two-sided printing	100-sheet multipurpose input tray 1, 500-sheet input trays 2 and 3, 50-sheet two-sided reversing automatic document feeder (ADF), 250-sheet output bin, automatic two-sided printing, 20-sheet convenience stapler
Sizes	Multipurpose input tray 1: 3 by 5 in (76 by 127 mm) to 8.5 by 14 in (216 by 356 mm); letter, legal, executive, envelopes 500-sheet input trays 2 and 3: 5.8 by 8.3 in (148 by 210 mm) to 8.5 by 14 in (216 by 356 mm); letter, legal, executive automatic two-sided printing unit: letter, legal, flatbed scanner; up to 8.5 by 14 in (216 by 356 mm); ADF: letter, legal, executive, custom	
Weights	Multipurpose input tray 1 (straight through paper path for special paper): 16 to 33 lb (60 to 199 g/m <sup>2</sup> ); 500-sheet input trays 2 and 3: 16 to 32 lb (60 to 120 g/m <sup>2</sup> ); ADF: 16 to 28 lb (60 to 105 g/m <sup>2</sup> )	
Types	Paper (plain, printed, letterhead, prepunched, bond, recycled, color, rough), transparencies, labels, envelopes, card stock	
<b>Connectivity</b>		
Interfaces	One HP Jetdirect Fast Ethernet embedded print server, one Foreign Interface Harness (FIH) port, one USB type A port for adding accessories, one USB type B port for printing, one open EIO slot	One HP Jetdirect Fast Ethernet embedded print server, one Foreign Interface Harness (FIH) port, one USB type A port for adding accessories, one USB type B port for printing, one open EIO slot, one analog fax port
Operating systems	Full software installation: Microsoft® Windows® XP® (32-bit), Windows Server 2003 (32-bit), Windows 2000; printer driver only: Windows XP (64-bit) (Web only), Windows Server 2003 (64-bit) (Web only), Linux (Web only), UNIX model scripts (Web only), Mac OS X v10.2.8, v10.3, v10.4 and later	
Network protocols	IPv4: FTP, IPP, Secure IPP, Auto-IP, Apple Bonjour Compatible, Telnet, SLP, IGMPv2, BOOTP/DHCP, WINS, SNMPv1/v2c/v3, TFTP, HTTP, HTTPS, Port9100, LPD, Other: IPX/SPX, DLC, AppleTalk, Network NDS, Binary, NCP	
Security	Private print, HP Secure Storage Erase, network authentication (LDAP, SMTP), HP Jetdirect 802.1x for Wired Networks, SNMPv3 and HTTPS, Secure IPP (IPP S), and IPsec <sup>1)</sup>	
<b>Dimensions (W by D by H)</b>	20.5 by 20 by 21.7 in (520 by 508 by 550 mm)	20.5 by 20 by 27.2 in (520 by 508 by 690 mm)
<b>Weight</b>	60.5 lb (27.6 kg)	73.5 lb (33.4 kg)
<b>What's in the box</b>	Both models include: print cartridge, support flyer, power cord, control panel overlays, software/documentation CD, Getting Started Guide, wall poster Also includes: HP LaserJet M3035 MFP	Also includes: HP LaserJet M3035xs MFP (with 20-sheet convenience stapler, analog fax, additional 500-sheet input tray), phone cord
<b>Warranty</b>	One-year on-site warranty, 24-hour, 7 days a week phone support	

Environmental ranges	Acoustics <sup>1)</sup>
Recommended temperature	Sound power
Storage temperature	Sound pressure
Operating relative humidity	Bystander sound pressure
Absolute	<b>Certifications</b>
Power specifications <sup>1)</sup>	Safety
Required input voltage	Canada (UL/CAH/CSA C22.2 No. 60950-1, IEC IEC 60950-1, FDA 21 CFR Chapter 1 Subchapter J for laser), Class 1 laser/LED Product
Power consumption	EMC
Typical Electricity Consumption (TEC): 6.131 kWh/Waek	TEC
ENERGY STAR <sup>2)</sup> qualified models, see <a href="http://www.hp.com/go/energystar">www.hp.com/go/energystar</a>	Telecom
	HP SureSupply enabled

<sup>1)</sup> Exact speed varies depending on the system configuration, software program, and document complexity. Speed specifications have been updated to reflect current industry testing methods.  
<sup>2)</sup> HP recommends that the number of pages per month of imaged output be within the stated range for optimum device performance, based on factors including typical replacement intervals and device life over an extended warranty period.  
<sup>3)</sup> Duty cycle is defined as the maximum number of pages per month of imaged output. This value provides a comparison of product robustness in relation to other HP LaserJet or HP Color LaserJet devices, and enables appropriate deployment of printers and MFPs to satisfy the demands of connected individuals or groups.  
<sup>4)</sup> IPv6 is only supported with Microsoft Server 2003 and Windows XP (print only).  
<sup>5)</sup> Power requirements are based on the country/region where the printer is sold. Do not convert operating voltages. This will damage the printer and void the product warranty.  
<sup>6)</sup> Configuration tested, base model, simplex printing, A4 paper at an average of 33 ppm.

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To learn more, visit [www.hp.com](http://www.hp.com)  
 4AA1-5419ENUC, October 2007, Rev. 1



GUAM DEPARTMENT OF EDUCATION  
GOVERNMENT OF GUAM



**BRAND NAME OR EQUAL**

(As used in this clause, the term "brand name" includes identification of products by make and model).

- a. If items called for by this Invitation for Bids have been identified in the schedule by the "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and determined by the Government to meet fully the salient characteristics requirements listed in the invitation.
- b. Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the Invitation for Bids.
- c. (1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the products offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid as well as other information reasonably available to the purchasing activity.

**Caution to Bidders:** The purchasing activity is not responsible for locating or securing, and information which are not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirement of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

**NOTE:** Supplemental of Section 19, D.O.E. General Terms and Conditions Sealed Bid Solicitation and Award.



DEPARTMENT OF EDUCATION  
GOVERNMENT OF GUAM

LOCAL PROCUREMENT PREFERENCE  
APPLICATION

Based on the law stipulated below, please place a check or mark an "x" on the (1-4) block indicating the section that applies to your business:

5GCA, Chapter 5, Section 5008 titled "Policy in Favor of Local Procurement" of the Guam Procurement Law and the Department of Education Procurement Regulations Section 1.7 States:

"All procurement of supplies and services shall be made from among business licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:

- 1. A licensed bona fide manufacturing business that adds at least twenty-five percent (25%) of the value of an item, not to include administrative overhead, using workers who are U.S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory of the Pacific Islands;
- 2. A business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured;
- 3. A business that has a bona fide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or one hundred fifty thousand dollars (\$150,000), whichever is less, of supplies and items of a similar nature to those being sought; or
- 4. A service business actually in business, doing a substantial portion of its business on Guam, and hiring at least ninety-five percent (95%) U.S. Citizens lawfully admitted permanent residents or nationals of the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

Procurement of supplies and services from off-Guam may be made if no local agent for such supplies or services may be found on Guam or if the total cost F.O.B. job-site, unloaded, of procurement from off-island is not greater than eighty-five percent (85%) of the total cost F.O.B. job-site, unloaded, of the same supplies or services when procured from a local source. Justification for off-island procurement must be submitted in writing to the Superintendent of Education or his designee.

I, Noli C. Cadag, representative for IBSS, have read the requirements of the law cited above and do hereby qualify and elect to be given the Local Procurement Preference for Bid No. IFB-006-2010. By filing in this information and placing my signature below, I understand that Department of Education will review my application and shall determine whether or not the fifteen percent (15%) preference will be applied to the referenced bid.

I, \_\_\_\_\_, representative for \_\_\_\_\_, have read the requirements of the law cited above and do not wish to apply for the Local Procurement Preference for Bid No. \_\_\_\_\_

Name: Noli C. cadag  
Address: 545 Route 8, Maite, Guam 96910

Title: Exec. Vice President  
Telephone No: 671-475-6110  
Fax No: \_\_\_\_\_  
E-Mail: nccadag@kuentos.guam.net



DEPARTMENT OF EDUCATION  
GOVERNMENT OF GUAM

BIODEGRADABLE, REUSABLE, RECYCLABLE OR RECYCLED PRODUCTS  
(Public Law 21-22, DOEPR Section 3.914.7)

When possible, emphasis shall be placed on the purchase of products that are biodegradable, reusable, recyclable, or recycled products, or any combination. These Regulations shall provide that the cost (prior to any adjustments for local vendors) of appropriate biodegradable, reusable, recyclable, or recycled products may be as much as ten percent (10%) greater than the cost of the non-biodegradable, non-reusable, recyclable, or non-recycled products they are replacing.

Please identify line items offered which are recyclable and/or biodegradable products which qualifies my offer to the ten percent (10%) preference allowed by law.

Under the Guam Public Law 21-22, ten percent (10%) allowable preference is given to vendor whose products are biodegradable, reusable, recyclable or recycled materials or any combination thereof.

Please identify products that fall under this category and provide products data sheet or other acceptable written supporting documents.

Bids will be considered only from the bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.

The Administrator, Supply Management reserves the right for securing from Bidders information to determine whether or not they are responsible and to inspect plant site, place of business, and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions (DOEPR Section 3.16).

All vendor(s) whose products qualify must complete the following for consideration:

1. Offering recyclable and / or biodegradable product(s):  Yes  No
2. List of products offered by the bid line item number(s):

Name: Roland Franquez  
 Address: 545 Route 8, Mafes, Guam 96910

Title: IBSS General Manager  
 Telephone No: 671-472-2200/477-7454  
 Fax No: 671-477-7660  
 E-Mail: rfranquez@ibssguam.com



**Special Provisions**

BID NO.: IFB 006-2010

FOR: SMALL MULTIFUNCTION COPIERS

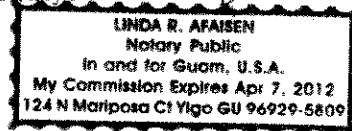
**Restriction against Sex Offenders Employed by service providers to Government of Guam from working on Government Property.**

If a contract for services is awarded to the bidder or offeror, then the service provider must warranty that no person in its employment who has been convicted of a sex offense under the provisions of chapter 25 of Title 9 of Guam code Annotated or of an offense defined in Article 2 of chapter 28 of Title 9 of the Guam Code annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam property, with the exception of public highways. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four (24) hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty four (24) hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service providers fail to take corrective steps within twenty four (24) hours of notice from the Government, then the Government in its sole discretion may suspend temporarily and contract for services until corrective action has been taken.

\_\_\_\_\_  
Signature of Bidder                      Date  
Proposer, if an individual;  
Partner, if a partnership;  
Officer, if a corporation.

Subscribed and sworn before me this 20th day of May, 2010

Linda R. Afaisen  
Notary Public



**THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE FORMAL BID.**

HPECOSOLUTIONS

USE OF RECLAIMED MATERIALS  
IN ORIGINAL HP LASERJET PRINT CARTRIDGES

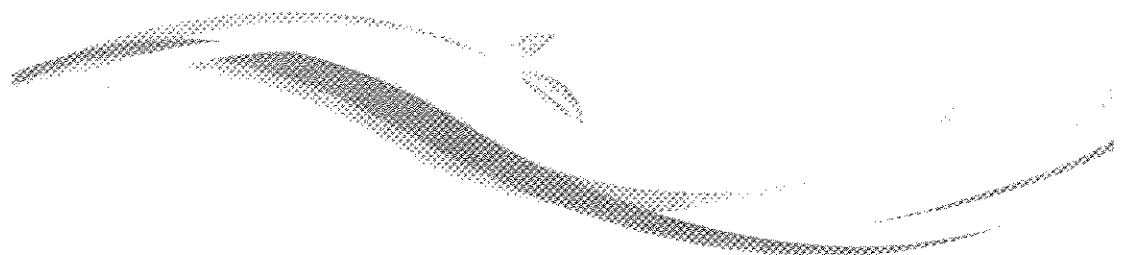
HIT PRINT  
RESPONSIBLY



OCTOBER 2009

HP uses recycled and recovered content in the manufacture of Original HP LaserJet print cartridges.

HP manufactures Original HP LaserJet print cartridges, in part, with post-consumer recycled plastics and recovered materials supplied by the HP Planet Partners return and recycling program. For Original HP LaserJet print cartridges manufactured with reclaimed materials, up to 20 percent of the cartridge is made from recycled and recovered content.\*



\*Percentage of recycled and recovered materials based on empty weight and not by market and volume.



**EXHIBIT**

2. Appellant's Protest Letter, September 2, 2010

**JOHN THOS. BROWN**  
ATTORNEY AT LAW \*

GENERAL COUNSEL  
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September 2, 2010

Mrs. Nerissa Bretania Underwood, Ph.D.  
Superintendent, Guam Department of Education  
P.O. Box DE  
Hagåtña, Guam 96932

PROCUREMENT PROTEST: Copiers IFB # 006-2010

GUAM DEPARTMENT OF EDUCATION  
Office of the Superintendent  
Rec'd by Maun  
Date/Time 9/2/10

Dear Superintendent,

IBSS (Island Business Systems and Supplies), is a division of Town House Department Stores, Inc., a J&G affiliate, a locally owned and operated Guam corporation. IBSS provides document scanning management services and equipment and was a bidder for the referenced solicitation. I am writing on behalf of IBSS, as its General Counsel.

The bid was for approximately 100 copier machines. At bid opening on May 21, 2010, the bid prices were read aloud and IBSS was the low bidder. IBSS has not been determined to be non-responsible nor has its bid been rejected.

The bid has not been yet awarded, and it cannot be cancelled after bid opening (2 GAR § 3115(d)(1)(B).)

This is not an ordinary bid, coming as it did and does in the midst of declarations of emergency which you have declared, and indeed signed on the date of bid opening.

In your emergency declaration you stated, under penalty of perjury, that "document management services is integral for the functioning of the department."

You again stated, "the continuance of document management services is of the highest priority."

\* Admitted to Practice: California, Guam and Commonwealth of Northern Mariana Islands, USA [Inactive in NSW, Australia]\*  
† Micronesian Brokers, Inc. (Guam and CNMI)/Town House Department Stores, Inc. (Guam)/J&G Distributors/Aquarius Beach Towers, (Saipan, CNMI)/Livno Holdings PTY LTD (A.C.N. 003 585 331)/Townhouse, Inc. (Saipan, CNMI)/ IBSS (Guam and Saipan)

So on the date you declared the emergency, a properly conducted solicitation for nearly one hundred copiers, which would obviously go some way toward alleviating the emergency, was opened and the low bid known.

Indeed, you indicated as much when you wrote to the Governor on May 21<sup>st</sup>, asking him to certify that declaration of emergency (for the month of June). To induce him to again certify another month-long state of emergency, you specifically pointed out to him,

“since our last emergency delcaration DOE has issued IFB 006-2010 for small multifunction copier machines to accommodate our larger solicitation. This solicitation is intended to outfit several areas of the department while the larger solicitation is awaiting approval.”

IBSS has been given a copy of the declarations of emergency, but I was not aware of your letter(s) requesting the certification(s) until you provided a copy of the quoted letter amongst documents you provided to me on August 19, 2010, in response to my request for procurement information and FOIA.

DOE's failure to conduct the solicitation and award the contract, particularly in those emergency circumstances, strongly suggests bad faith, as to which IBSS protests.

While no definitive reason was ever formally offered for DOE's delay in awarding the contract for the IFB, it was suggested, as one reason, that DOE lacked funding.

Lack of available funds cannot be a justifiable reason when, at the same time, DOE was coming up with funds for monthly extensions of the *expired, terminated and illegal* Xerox Document Management Services contract ever since the beginning of the year 2010. (See, e.g., Purchase Order No. P106G00144 issued to Xerox Corporation, Consignee GDOE, as requisitioned on or about December 29, 2009, by DOE requisition no. Q109100-030 and the extension for an additional month (February) thereafter by DOE requisition number Q109[illegible]00030.) ~~These~~ purchase orders not only lacked solicitation or contract to back them up, there was no emergency declaration, either.

Here was a duly solicited contract to provide machines obviously needed, and yet funds were being spent with purchase orders *not backed up by legal solicitation or contract* for other copiers easily enough. Surely it would have been better to pay for legally solicited equipment than illegally solicited

equipment?

Further evidence of bad faith is suggested by the now apparent plan to supercede the protested bid into another bid soon to be announced. IBSS opposes that action until the prior bid, and this protest of it, are properly dealt with.

Further evidence of bad faith motives in dragging out the award of this IFB is suggested by a letter from Xerox to DOE's Office of Supply Management Administrator dated June 23, 2010, which raises objections to the award of bid to IBSS.

Bids are not intended to be considered on the basis of material extraneous to the IFB, and any correspondence with another bidder concerning a bid during the pendency of consideration of the bids is improper. IBSS believes that DOE's action taken to delay award of the IFB and roll it into the upcoming solicitation was unfairly and improperly influenced by the letter.

If it had not been for my request for information and your disclosure of it on August 19, IBSS would never have known of this interference and the illegal communications between DOE and a competing bidder.

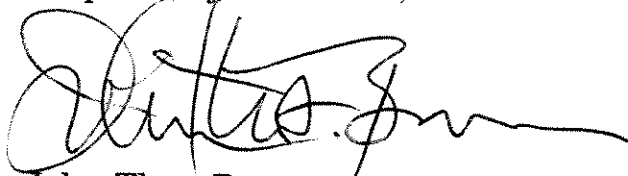
This letter very insolently demanded to know DOE's intentions with respect to the copiers in the IFB, and more pertinently "**[h]ow do you intend on evaluating IBSS's proposal...**?" Xerox had bid on the IFB and could have sought that information prior to bid opening, but did not.

The letter adds, "[s]hould you have any questions about the Document Management Services contract, or questions, or **Xerox' position** on the HP M3039x meeting the bid specs, please don't hesitate to call me...."

All of this compels the appearance that DOE and Xerox have contrived to avoid awarding the duly solicited contract to IBSS without good cause and in consideration of matters improperly submitted.

I hope to have your prompt and ~~expeditious~~ decision on this protest.

Respectfully submitted,

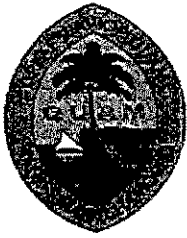


John Thos. Brown

**EXHIBIT**

3. DOE Decision denying Protest





**OFFICE OF SUPPLY MANAGEMENT  
GUAM DEPARTMENT OF EDUCATION**

*Manuel F.L. Guerrero / Administration Building  
2nd. Floor, Suite B-202  
Hagåtña, Guam 96932  
Telephone: (671) 300-1581  
Fax: (671) 472-5001*



NERISSA BRETANIA UNDERWOOD, Ph. D.  
Superintendent of Education

ALBERT G. GARCIA  
Supply Management Administrator, Acting

November 23, 2010

Island Business Systems and Supplies (IBSS)  
P.O. Box 7  
Hagatna, Guam, 96932  
Tel: (671) 477-7454  
Fax: (671) 477-7660  
E-Mail: support@ibssguam.com

Attention: Roland R. Franquez  
General Manager

Subject: Response to Protest Letter dated September 02, 2010

Reference: Small Multifunction Copier machines  
**Formal Bid: GDOE IFB 006-2010**

Dear Mr. Franquez,

This is an official response to your letter of protest dated September 02, 2010 and received by this office on November 03, 2010. Due to errors in the procurement process, the responses made are in light of your contentions.

Please be advised that your letter of protest is being rejected for the following reasons. The responses will precede your reasoning for the protest.

1. Certification of Funds was never reserved or obtained prior to for the processing of GDOE IFB 006-2010.
2. Fiscal 2010 funds have elapsed.
3. Item #7, titled "ALL OR NONE" BIDS, of the General Terms and Conditions should have marked off.
4. The GDOE Facilities and Maintenance Division is the only Division within the GDOE to have authority to do Outright purchase only.
5. Page 1, Bid Package, which states in part, "...the undersigned agrees that this bid remain firm and irrevocable within 90 calendar days."
6. Duplication of purchases between GDOE IFB 006-2010 (Outright) and GDOE IFB 022-2010 (Lease).
7. Page 20, Caution to Bidders: The purchasing activity is not responsible for locating or securing, and information which are not identified in the bid and reasonably available to the purchasing activity...When we asked where we can find information regarding the confirmation of your warranty, we were told to put it in writing.

Response to Protest ltr dtd 09/02/10  
November 23, 2010  
Page 2

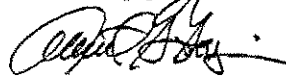
Therefore, as stated earlier, based on the aforementioned response the Department hereby rejects your protest.

Please be advised, that that pursuant to the Guam Department of Education's Procurement Regulations Section 9.2.8, you may request a re-consideration of this decision within fifteen (15) working days of receipt of this letter.

Pursuant to Guam Code Annotated (5 GCA) §5425 (e) titled "APPEAL" which states, a decision under subsection (c) of this Section including a decision there under regarding entitlement to costs as provided by Subsection (h) of this Section, may be appealed by the protestant, to the Public Auditor within fifteen (15) days after receipt by the protestant of the notice of decision.

Should you have any questions regarding this matter, please do not hesitate to call me at 300-1581.

Sincerely yours,



ALBERT G. GARCIA

Supply Management Administrator, Acting

cc: Procurement File

EXHIBIT

4. Prior protest letter of March 19, 2010



**JOHN THOS. BROWN**  
ATTORNEY AT LAW \*

GENERAL COUNSEL

Jones & Guerrero Co. Inc. (Guam, USA)  
Its divisions, subsidiaries and affiliates†

J&G Corporate Office  
545 Chalan Machaute, (Rte 8 @ Biang St.), Maite, Guam 96910

Telephone: +1-671-477-7293

Fax: +1-671-472-6153

email: jngo@ozemail.com.au

Mobile/Cell phone: +1-671-483-5960

POSTAL: GPO Box 7, Hagåtña, Guam 96932

March 19, 2010

Mrs. Nerissa Bretania Underwood, Ph.D.  
Superintendent, Guam Department of Education  
P.O. Box DE  
Hagåtña, Guam 96932

and

Ms. Claudia S. Acfalle, Chief Procurement Officer  
Guam General Services Agency  
Department of Administration, Government of Guam  
148 Route 1 Marine Drive  
Piti, Guam 96925

**PROCUREMENT PROTEST: Copiers and related services, GDOE**

Dear Superintendent and Chief Procurement Officer,

Guam Public School System  
Office of the Superintendent

Rec'd by:   
Date & Time: 3/19/10

**Buenas yan Hafa Adai!** (as letters from GSA always begin).

I am addressing this Protest Letter to each of you because I cannot figure out which of you, and to what extent, is currently holding the procurement hot potato, as you pass and “transition” responsibility for it back and forth.

IBSS (Island Business Systems and Supplies), is a division of Town House Department Stores, Inc., a J&G affiliate, a locally owned and operated Guam corporation. IBSS provides document scanning management services and equipment and is a potential bidder or offeror for the referenced solicitation. I am writing on behalf of IBSS, as its General Counsel.

I have received documentation, following an FOIA request, evidencing that

\* Admitted to Practice: California, Guam and Commonwealth of Northern Mariana Islands, USA [Inactive in NSW, Australia]\*

† Micronesian Brokers, Inc. (Guam and CNMI)/Town House Department Stores, Inc. (Guam)/J&G Distributors/Aquarius Beach Towers, (Saipan, CNMI)/Livno Holdings PTY LTD (A.C.N. 003 585 331)/Townhouse, Inc. (Saipan, CNMI)/IBSS (Guam and Saipan)

GSA/DOE is, and has been, procuring copiers and related copier services by executed purchase orders and amendments to these purchase orders. There has been no formal solicitation for any such procurement, thus these procurements are improper and illegal.

The copies of purchase orders I have sighted are dated December 30, 2009, for deliveries beginning in 2010. I have sighted amendments to the purchase orders dated January 28 and January 29, 2010.

The amounts indicated are beyond the small purchase limitations, requiring some form of competitive sealed bidding.

The purchase orders indicate the legal justification underlying the purchases is that they are some form of extension of a prior Xerox contract. I was not provided a copy of the pertinent contract, nor was there any record provided which evidenced any correspondence with Xerox or its agreement to any such extension.

In my Request for Information dated 23 February 2010, again addressed to each of you, I requested copies of all "records" (specifically referencing and incorporating 5 GCA § 5249), together with any and all correspondence regarding an continuation of Xerox' continued provision of copiers or copier services. § 5249 includes dates, time, subject matter and names of participants at any meeting including government employees that is in any way related to a particular procurement, as well as a log of all communications in any way related to the procurement.

No such records of any such communications or correspondence were provided. Am I to presume that Xerox and GSA/DOE did not correspond about this matter, and the PO's just materialized?

I would assume, rightly I believe, that the contract reference in the purchase order documentation is to the Document Services Agreement No. 7002364 made with Xerox Corporation in 2000, and purportedly extended, by Amendment 17, to December 31, 2009.

If I understand the intent here, then, GSA/DOE purports to base its continued acquisition of copiers and copier services by extension of a contract made in the year 2000. There is no authority granted anywhere in the Procurement Act which allows the government to continue extending contracts indefinitely.

The *only* authority to extend a contract is pursuant to an option to extend,

duly granted in a properly procured contract. (2 GAR § 3119(k).) Whatever *might* be said about DSA 7002364 and Amendment 17, no such option existed.

And there *is* something to say about DSA 7002364: it does not exist either. You cannot extend something that does not exist. The DSA cannot be resurrected by extensions, modifications or anything else. It is terminated, caput, finito, mak'pu.

The Decision of the Public Auditor in OPA-PA-08-011 clearly determined that the DSA was originally improperly procured in 2000 and again improperly renewed by Amendment 17 in 2005. That decision *terminated* the DSA, as amended, effective November 28, 2008. That decision is legally final and binding.

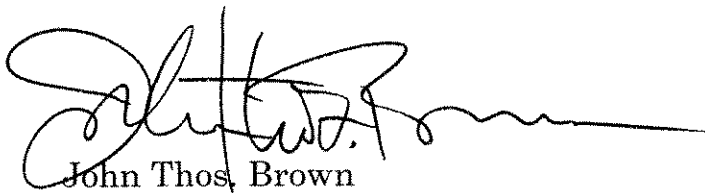
Nothing has transpired to change the finality of the Public Auditor's decision. Although Xerox (but not GPSS/DOE) brought suit in the Superior Court to contest the decision, the Superior Court left it standing when all the interested parties (IBSS, Xerox and DOE) stipulated to dismiss the action. All that happened was that the finality of the decision was delayed during the pendency of the Superior Court action. The Superior Court action was formally dismissed with prejudice by Order given January 20, 2010, without ever even considering the merits.

Throughout the year 2009, GSA/DOE and Xerox conducted business as usual under the defective DSA and protective cover of 5 GCA § 5425(f). That business included further amendments beyond the scope of the DSA and extraneous purchases orders for removal services based on the express (and wrongly interpreted) provisions of the Xerox contract forms.

The cover of that action is lifted and the time for business as usual has expired.

I hope to have your prompt and expeditious decision on this protest.

Respectfully submitted,



John Thos. Brown

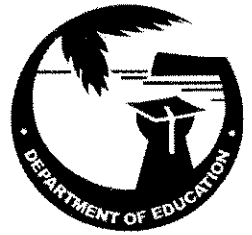
EXHIBIT

5. DOE letter of terms resolving March 19 protest



DEPARTMENT OF EDUCATION  
OFFICE OF THE SUPERINTENDENT

P.O. Box DE  
Hagåtña, Guam 96932  
Telephone: (671) 300-1537  
Fax: (671) 472-5003  
Email: [fnishihira@gdoe.net](mailto:fnishihira@gdoe.net)  
[ljmooney@gdoe.net](mailto:ljmooney@gdoe.net)

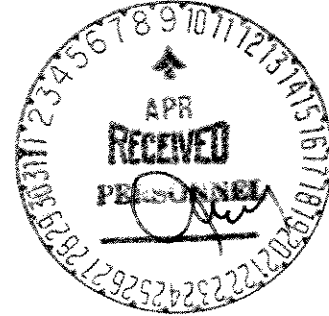


Nerissa Bretania Underwood, Ph.D.  
Superintendent of Education

Fred Nishihira  
Laura J. Mooney  
Legal Counsels

April 9, 2010

Mr. John Thos. Brown  
Attorney at Law  
General Counsel  
Jones & Guerrero Co. Inc. (Guam)  
J&G Corporate Office  
545 Chalan Machaute, (Rte 8, Biang St.)  
Maite, Guam 96910



**Re: Protest Letter filed March 19, 2010**

Dear Mr. Brown:

**Hafa Adai!** I am in receipt of your letter dated March 19, 2010 regarding the protest of the extension of a current document service contract. In an effort to resolve the protest, I met with you on March 6, 2010 and stated that the Department of Education will do the following:

- 1) Provide a copy of the Governor's Declaration of Emergency as well as a copy of the Emergency Bid to your office which I have attached as part of this letter.
- 2) No later than the last day of April the Department of Education will agree to issue an Invitation for Bid for all fax machines and if time permits small copier machines that are used throughout the Department.
- 3) The Request For Proposal (RFP) previously issued will be modified to secure a document management services company to put together a software package to meet the needs of the Department and to produce generalize specifications for the hardware necessary to operate the proposed system.
- 4) The company that prevails on the RFP stated in item 3 will be prohibited from submitting a bid for hardware.

Please note with regard to items 3 and 4, our Procurement Administrator may in the alternative create specifications and issue a bid for our document management needs.

Your understanding and continued patience in this matter is appreciated. If you have any questions, please do not hesitate to call me.

Sincerely,

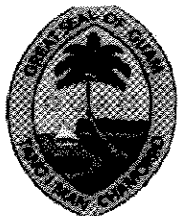
  
**FRED NISHIHIRA**  
Legal Counsel

Cc: Superintendent of Education  
Deputy Superintendent, F&AS  
Supply Management Administrator



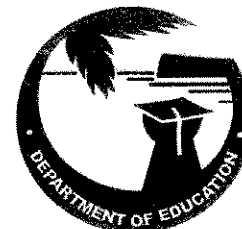
EXHIBIT

6. Superintendent letter to Governor re Emergency, May 21, 2010



**DEPARTMENT OF EDUCATION  
OFFICE OF THE SUPERINTENDENT**

www.gdoe.net  
P.O. Box D.E., Hagatña, Guam 96932  
Telephone: (671)475-0457 or 300-1547/1536 • Fax: (671)472-5003  
Email: nbunderwood@gdoe.net



Nerissa Bretania Underwood, Ph.D.  
Superintendent of Education

May 21, 2010

PROCUREMENT SECTION  
RECEIVED

MAY 10 2010

DEPARTMENT OF EDUCATION

TIME: 3:30 PM INITIAL: JB

Honorable Felix P. Camacho  
Governor of Guam  
Hagatna, Guam 96910

**RE: Declaration of Emergency for Document Management Services**

Dear Governor Camacho:

**Hafa Adai!** We are respectfully requesting your approval for the issuance of a Declaration of Emergency for document management services. A Declaration of Emergency is necessary to ensure the functioning of the Department of Education. As of May 21, 2010 a draft of the Document Management Services Proposal will be sent to the Attorney General as per Public Law 30-72. When our scope is approved, DOE will then commence procurement actions. In addition, DOE has been working diligently since our last emergency declaration to produce a new scope of work for document management services. This new scope was tailored to ensure that the current and future needs of the department are addressed, identify areas of consolidation, and to provide open competition to all potential vendors.

Furthermore, since our last emergency declaration DOE has issued IFB 006-2010 for small multifunction copier machines to accommodate our larger solicitation. This solicitation is intended to outfit several areas of the department while the larger solicitation is awaiting approval.

This service will commence for a period of (1) one month from June 1, 2010 – June 30, 2010 allotting the Department of Education time to establish a new contract.

Submitted and attached please find the Certificate of Emergency for continuance of document management services for your approval.

Your immediate attention in this matter is appreciated.

Sincerely,

**NERISSA BRETANIA UNDERWOOD, PH.D.**  
Superintendent of Education

Attachment

Cc: Supply Management Administrator  
Deputy Superintendent of Finance & Administrative Services

EXHIBIT

7. Declaration of Emergency, May 21, 2010





# DEPARTMENT OF EDUCATION OFFICE OF THE SUPERINTENDENT

www.gdoe.net  
P.O. Box D.E., Hagatña, Guam 96932  
Telephone: (671)475-0457 or 300-1547/1536•Fax: (671)472-5003  
Email: nbunderwood@gdoe.net



Nerissa Bretania Underwood, Ph.D.  
Superintendent of Education

## CERTIFICATE OF EMERGENCY

**WHEREAS**, the Organic Act of Guam requires the Government of Guam to provide a free and adequate public education to the students of Guam (48 U.S.C.A. §1421(g)(b)); and

**WHEREAS**, Public Law 28-45 created the Every Child is Entitled to a Public Education Act; and

**WHEREAS**, document management services is integral for the functioning of the department

**WHEREAS**, the continuance of document management services is the highest priority; and

**WHEREAS**, the previous contract for document management services was protested which delayed the establishment of a new contract; and

**NOW THEREFORE**, based on the aforementioned laws and need for document management services, I NERISSA BRETANIA UNDERWOOD PH.D, Superintendent, find that the Guam Department of Education is in a state of emergency jeopardizing the functioning of the Guam Department of Education; and

**FURTHERMORE**, upon the approval of the Governor, I authorize the emergency procurement of document management services as necessary to ensure the continued functioning within the department and in our schools; and

**FINALLY**, pursuant to 5 G.C.A. §5215 and under penalty of perjury, I certify that the facts stated above are true and that this statement of emergency is not being used solely for the purpose of avoidance of the provisions of Chapter 3 of the Procurement Regulations.

Signed this 21<sup>st</sup> day of May, 2010.

APPROVED [ ] DISAPPROVED

  
NERISSA BRETANIA UNDERWOOD PH.D  
Superintendent of Education

  
MIKE W. CRUZ, MD  
GOVERNOR OF GUAM ACTING  
MAY 28 2010  
DATE

EXHIBIT

8. IBSS Counsel letter to Superintendent, July 1, 2010

JOHN THOS. BROWN  
ATTORNEY AT LAW \*

COPY

GENERAL COUNSEL  
Jones & Guerrero Co. Inc. (Guam, USA)  
Its divisions, subsidiaries and affiliates<sup>†</sup>  
J&G Corporate Office  
545 Chalan Machaute, (Rte 8 @ Biang St.), Maite, Guam 96910

Telephone: +1-671-477-7293  
Fax: +1-671-472-6153  
email: jngo@ozemail.com.au  
Mobile/Cell phone: +1-671-483-5960  
POSTAL: GPO Box 7, Hagåtña, Guam 96932

July 1, 2010

Mrs. Nerissa Bretania Underwood, Ph.D.  
Superintendent, Guam Department of Education  
P.O. Box DE  
Hagåtña, Guam 96932

Handwritten note: Ray 7/1/10 2:30p

Copiers and related services, GDOE

Dear Superintendent,

IBSS (Island Business Systems and Supplies), is a division of Town House Department Stores, Inc., a J&G affiliate, a locally owned and operated Guam corporation. IBSS provides document scanning management services and equipment and is a potential bidder or offeror for same. I am writing on behalf of IBSS, as its General Counsel.

With this new month of July, I am assuming that DOE will be continuing its serial so-called emergency ad hoc procurement of copier equipment and services, in the manner reflected in the RFQ for one month's services for the month of June. If DOE does so, IBSS will formally protest the action as soon as it has notice of the action. It is hoped this letter will head off any such confrontation.

This does not come in a vacuum, as you would know. IBSS issued its first protest against the improper procurement of copiers and services in December 2007 after months of attempted dialogue with DOE was ignored.

When IBSS again protested the improper "renewal" of the expired Xerox 2000 contract in March this year, DOE Counsel sought IBSS' forbearance. In his letter to me dated April 9, 2010, Mr. Nishihira committed, "if time permits [DOE will issue an IFB for] small copier machines that are used throughout the Department."

True to his word, DOE did issue the IFB (# 006-2010), dated May 3, 2010, for a May 21

\* Admitted to Practice: California, Guam and Commonwealth of Northern Mariana Islands, USA [Inactive in NSW, Australia]\*  
<sup>†</sup> Micronesian Brokers, Inc. (Guam and CNMI)/Town House Department Stores, Inc. (Guam)/J&G Distributors/Aquarius Beach Towers, (Saipan, CNMI)/Livno Holdings PTY LTD (A.C.N. 003 585 331)/Townhouse, Inc. (Saipan, CNMI)/ IBSS (Guam and Saipan)

submission. IBSS submitted a bid and was noted to be low bid at bid opening. Nevertheless, time passes and no award has been made. Nor has there been any official notice that the solicitation is cancelled. DOE is permitting supposedly precious time to elapse.

Meanwhile, from April 1<sup>st</sup>, DOE continued to, in effect, renew the Xerox contract month to month, based on serial monthly declarations of emergency. Each declaration is a copy of the first, so no new emergency condition is cited with each passing emergency: they are all one and the same.

Thus, IBSS protests any continued use of the emergency declarations. They are factually incorrect and legally inadequate.

The declarations state that “the continuation of document management services is of the highest priority”, yet the one IFB issued to obtain such services has been left unattended. That’s not very good evidence of “highest priority”; indeed it belies the declared “emergency”.

The declarations state that “the previous contract for document management services was protested which delayed the establishment of a new contract”. That is simply preposterous.

The previous contract was made in the year 2000 and improperly renewed. The protest on that contract was made in December 2007. Final decision on the protest was rendered by OPA on November 28, 2008, which declared that the contract was as of that date terminated.

Is anyone truly to believe that a protest made in 2007 and decided in 2008 can be the basis for an emergency in 2010? Such a statement is factually without merit.

And the use of the declaration of emergency for the ongoing renewal of Xerox equipment and services is also legally without merit. It does not even pretend to meet the requirements of 5 GCA § 5215, which is the only authority to procure anything based on a condition of emergency.

For one thing, the law states that no procurement can be made of goods or services greater than that which is necessary to meet an emergency for the thirty (30) day period immediately following the emergency. The emergency was declared April 1<sup>st</sup>. Each subsequent declaration recites the same emergency, so the 30 days have elapsed. There is no new emergency to base ongoing procurements upon. Indeed, the law makes it clear that this is to apply to any “emergency procurement *or combination* of emergency procurements”.

Formally, the declarations do not contain the required “statement that emergency procurement is not being used solely for the purpose of avoidance of the provisions of this Chapter”.

Critically, an “emergency” procurement is not justified by “any threat to public health, welfare, or safety which could not have been foreseen through the use of reasonable and prudent management procedures”. (2 GAR § 1106(47).)

DOE knew that a new procurement would be necessary for at least two reasons, yet did not reasonably or prudently take a course of action to prepare for it. First, it knew in 2008 that the


prior contract was improper and terminated; second, it knew in 2005 that the contract would expire in 2009 if not sooner terminated.

The failure of DOE to prepare to provide for something its own declaration states "is integral for the functioning of the department" is a failure of management procedures, not an emergency within the contemplation of the emergency procurement statute.

IBSS has tried to cooperate with Mr. Nishihira, agreeing to cut him some slack in the expectation that the status quo would be disrupted. With the IFB, IBSS had high hopes, especially with its low bid, that DOE would level the playing field for copiers. Once again, however, I fear we are being led down a dark, dead end ally.

I will be more than amenable, as I have always been, to discussing a resolution of our protestable issues.

Respectfully submitted,



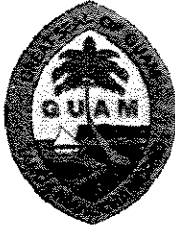
John Thos. Brown

email cc: Mr. Fred Nishihira



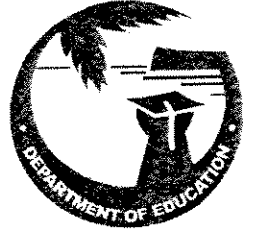
EXHIBIT

9. Superintendent letter to IBSS Counsel, July 7, 2010



**DEPARTMENT OF EDUCATION  
OFFICE OF THE SUPERINTENDENT**

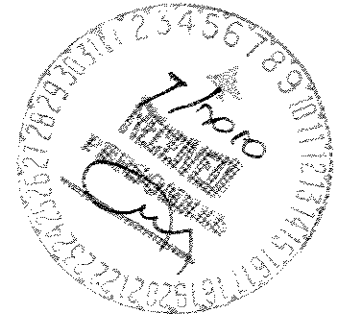
www.gdoe.net  
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Telephone: (671)475-0457 or 300-1547/1536 • Fax: (671)472-5003  
Email: nbunderwood@gdoe.net



Nerissa Bretania Underwood, Ph.D.  
Superintendent of Education

July 7, 2010

John Thos. Brown  
Attorney At Law  
General Counsel  
Jones & Guerrero Co. Inc. (Guam, USA)  
P.O. Box 7  
Hagatna, Guam 96932




**Re: Copiers and related services, GDOE**

Dear Mr. Brown:

*Hafa Adai!* I am in receipt of your letter dated July 1, 2010 regarding the aforementioned matter. Please be informed that no award has been made with regard to IFB 006-2010 due to a lack of funds. The Department is in the process of requesting a supplemental budget to secure funding to award IFB 006-2010. With regard to the larger copying services for the Department, on May 21, 2010 an IFB was forwarded to the Attorney General's office for review and approval pursuant to Public Law 30-72. Several follow-up attempts regarding this and other RFPs and IFBs were sent to the Attorney General with no response. Like you, the Department is anxious to get this approval and to bid out the copying management needs for the Department. As you can understand that although I have provided you a copy of the transmittal letter I cannot provide you a copy of the underlying IFB as this has not been issued nor has the Attorney General approved it at this time.

Your understanding in this matter is appreciated. If you have any further questions, please feel to contact our Legal Counsel, Mr. Fred Nishihira at 300-1534.

Sincerely,

  
NERISSA BRETANIA UNDERWOOD, PH.D.  
Superintendent of Education

Cc: Deputy Superintendent, F&AS  
Supply Management Administrator

EXHIBIT

10. Xerox GM's letters to DOE, June 17 and June 23, 2010



June 17, 2010

Edith A. Pinaula  
Office of Supply Management  
Guam Department of Education  
PO Box DE  
Hagatna, Guam 96931

Re: Response to Request for Quotation

Dear Edith:

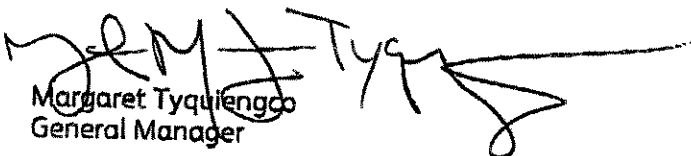
We are in receipt of your request for quotation. The requirements as indicated in your request are rather unclear, however, if it is the desire of GDOE to continue with the existing Xerox agreement for Document Management Services to include the existing in-place services and fleet of devices, the amount will be \$133,037.00 per month with a monthly black print allowance of 2,427,400 prints (black printing on black printing devices), a monthly color print allowance of 80,000 prints and a monthly black print allowance of 10,000 prints on the professional color device (Xerox DC3535). Each excess print over the black print allowance (on black printing devices) will be billed at \$.0120; each excess print over the black print allowance (on the professional color device) will be billed at \$.0143; and each excess print over the color print allowance will be billed at \$.10.

Depending upon device, these existing machines have a mix of capabilities including Network and PC Scanning, Copying, Faxing, and Scan to Email. Xerox offers a breadth of products and services to assist GDOE in its Document Management needs, and we'd be pleased to provide a proposal for replacement services and devices if desired. If this is the case, please provide us with more detailed equipment requirements including number of each type of machine, machine speed (black and color), specific machine capabilities (copy, print, fax, scan including type of scanning), number of paper trays, sizes and weights of paper and paper capacity, Network compatibility, stapling, hole punching, booklet folding capabilities, software applications desired including workflow, security requirements, usage and performance reporting requirements, training and support needs, etc.

The last GDOE Purchase Order we received covered Document Management Services for the month of May. We are currently in the month of June and require a Purchase Order to cover the current month. Can you please either provide a Purchase Order or a letter stating you are intending on issuing a PO to cover the services being rendered and that a PO is forthcoming? Absent a PO or the intent letter, Xerox will have no choice but to stop services and supplies being provided.

Should you wish to discuss this matter, please call me directly at 477-9456 or Mike Salas at 477-1907.

Sincerely,

  
Margaret Tyquiengco  
General Manager

137 Murray Blvd, Ste 101  
Hagatna, Guam 96910

Tel 671-477-1907  
Fax 671-472-3844

**XEROX CONFIDENTIAL**



MEG TYQUIENGCO  
General Manager  
Xerox Guam

Xerox Corporation  
137 Murray Blvd., Suite 101  
Hagatna, Guam 96910

Tel 671.477.9456  
Fax 671.472.3844

PROCUREMENT SECTION  
JUN 23 2010

JUN 23 2010

DEPARTMENT OF EDUCATION  
TITLE: \_\_\_\_\_

June 23, 2010

Mr. Brian C. Mafnas  
Office of Supply Management Administrator  
Guam Department of Education  
PO Box DE  
Hagatna, Guam 96931

Ref: Follow up on Purchase Order for June 2010 and Future Equipment Intentions

Dear Brian:

There are seven (7) days remaining in the month of June and we have yet to receive a Purchase Order covering the Document Management Services for this month. We understand that it is your full intention to continue the contract for the month of June and are working through the process to get us a Purchase Order to us by the end of this week. In the interim, we'd like to request for our files a letter of intent to continue the contract pending issuance of the Purchase Order.

Also, we have several questions regarding your future intent for the contract after June 30, 2010.

- 1.) The recent bid for small multifunction copier machines (IFB #006-2010) would allow small standalone multifunction devices to proliferate throughout GDOE.
  - a. Are these units meant to replace, machines currently provided under the Document Management Services contract and if so, which specific ones and when?
  - b. How do you intend on managing these units since supplies are not included in the maintenance/warranty plan and what specifically are your contractual expectations with "warranty" coverage? Because these units do not have supplies included and are not part of any fleet management plan, it is very likely that GDOE will have runaway supplies costs not figured in to the bid cost analysis. And with regard to warranty, the bid was not clear on describing "warranty" and how the proposed units will be maintained or supported. For example, will the awarded vendor be responsible for installing warrantable parts or will end users be required to do it? Can warrantable parts be replaced with Non-OEM parts? How long would GDOE provide the awarded vendor to bring in parts from off-island? What parts stocking levels does the vendor maintain to assure minimum downtime of the fleet of machines? Will the machines have a replacement guarantee for the warranty period? Etc.



- c. How do you intend on evaluating IBSS's proposal for a HP M3035x multifunction copier since it does NOT have the ability to set up individual user accounts, track copying, printing, scanning, and/or faxing and generate usage reports per user as is required in the bid specs? (The INABILITY of the HP M3035x to do this has been confirmed by HP Support and another locally authorized HP reseller.)
- 2.) When do you intend on issuing a bid for the larger equipment and when do you expect it to be awarded?
- 3.) When will you be issuing a purchase order for Document Management Services covering the next couple of months since it will likely take this long for the bid process to run its course?

Should you have any questions about the Document Management Services contract, or questions, or Xerox' position on the HP M3035x meeting the bid specs, please don't hesitate to call me or Mike Salas at 477-9456.

Sincerely,

  
Margaret Tyquiengco  
General Manager

MT/gacr