

1 **GUAM DEPARTMENT OF EDUCATION**  
Rebecca M. Perez, Legal Counsel  
2 P.O. Box DE  
Hagåtña, Guam 96910  
3 Telephone (671) 300-1537  
Email: legal-admin@gdoe.net

OFFICE OF PUBLIC ACCOUNTABILITY  
GOVERNMENT OF GUAM

August 28, 2012  
TIME 11:30am by Vince D.  
FILE NO. 11-002

4 *Attorney for Guam Department of Education*

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

7  
8 IN THE APPEAL OF

APPEAL NO. OPA-PA-11-002

9  
10 TOWN HOUSE DEPARTMENT  
STORES, INC. dba ISLAND BUSINESS  
11 SYSTEMS & SUPPLIES,

**REQUEST FOR CLARIFICATION  
REGARDING EFFECT OF JUDICIAL  
PROCEEDING**

12 Appellant.  
13

14  
15 Comes now the Guam Department of Education (“GDOE”) and submits this Request for  
16 Clarification in light of the commencement of a judicial proceeding involving the procurement  
17 that is the subject of the appeal captioned above.

18 This appeal stems from GDOE IFB022-2010 which involves the purchase of document  
19 management services. After a hearing on the merits, on August 8, 2012 the Office of Public  
20 Accountability (“OPA”) issued a Decision on the appeal and ordered the termination of GDOE’s  
21 existing purchase order with Xerox Corporation for document management services pursuant to  
22 IFB022-2010. Thereafter, GDOE filed a Request for Clarification and Extension of Termination.  
23 On August 15, 2012 the OPA issued an Order Granting [GDOE’s] Request for Extension of  
24 Termination. In that order the OPA modified the termination date for GDOE’s existing purchase  
25 order and listed certain actions to be taken by certain dates, to wit:

- 26 a. On or about August 31, 2012 – GDOE issue the new procurement  
27 solicitation for Document Management Services;

ORIGINAL

- 1
- 2           b.     On or about September 30, 2012 – Deadline for proposal submissions from
- 3                     potential bidders or offerors;
- 4           c.     On or about October 31 2012 – GDOE awards contract to successful bidder
- 5                     or offeror;
- 6           d.     Between November 1, 2012 to January 31, 2012 – Time allowed for
- 7                     delivery and installation of equipment completion by the vendor awarded
- 8                     the contract.

9     The OPA also ordered that GDOE “shall terminate the aforementioned purchase order in

10     accordance with the August 8, 2012 Decision no later than February 8, 2013.”

11           On August 22, 2012, Xerox Corporation, a party to the OPA appeal, filed a complaint in

12     the Superior Court of Guam alleging that the OPA’s findings and actions are erroneous and

13     contrary to law and seeking a declaration that the OPA lacks jurisdiction over this matter as well

14     as orders enjoining GDOE from terminating its purchase order with Xerox Corporation. The

15     Superior Court case is titled *Xerox Corporation vs. Territory of Guam; Department of Education;*

16     *The Office of the Public Accountability; Town House Department Stores, Inc. dba Island Business*

17     *Systems and Supplies*, Superior Court Case No. CV0968-12. (A copy of the title page of the filed

18     complaint is attached herewith as Exhibit 1).

19           2 GAR Div. 4 §12103(b) states:

20                     Effect of Judicial Proceedings. If an action concerning the

21                     procurement under Appeal has commenced in court, the Public

22                     Auditor shall not act on the Appeal except to notify the parties and

23                     decline the matter due to Judicial Involvement.

24     Though the OPA has already issued orders terminating GDOE’s current purchase order and

25     extending the termination, the dates for implementation of that order have not yet come to pass.

26     Given Xerox Corporation’s filing of its case before the Superior Court and the yet unfulfilled

27     actions ordered by the OPA, it appears that 2 GAR Div. 4 §12103(b) stays the termination and

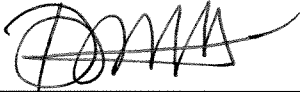
28     other deadlines set by the OPA in its orders of August 8 and 15, 2012.

1 GDOE therefore requests the OPA to clarify whether its orders of August 8 and 15, 2012  
2 are stayed pending resolution of the proceedings in Guam Superior Court Case No. CV0968-12.

3 Dated this 28<sup>th</sup> day of August, 2012.

4 Respectfully submitted,

5 **GUAM DEPARTMENT OF EDUCATION**

6   
7 By: \_\_\_\_\_  
8 **REBECCA M. PEREZ, ESQ.**  
9 *Legal Counsel*

# **Exhibit 1**

CARLSMITH BALL LLP

ELYZE MCDONALD IRIARTE  
*eiriarte@carlsmith.com*  
134 W. Soledad Ave  
Bank of Hawaii Bldg., Suite 401  
Hagåtña, Guam 96910  
Tel No. 671.472.6813

Attorneys for Plaintiff  
Xerox Corporation

SUPERIOR COURT

2012 AUG 22 AM 10:47

CLERK OF COURT

BY \_\_\_\_\_

IN THE SUPERIOR COURT OF GUAM

XEROX CORPORATION,

Plaintiff,

vs.

TERRITORY OF GUAM; DEPARTMENT  
OF EDUCATION; THE OFFICE OF PUBLIC  
ACCOUNTABILITY; TOWN HOUSE  
DEPARTMENT STORES, INC. DBA  
ISLAND BUSINESS SYSTEMS AND  
SUPPLIES,

Defendants.

CIVIL CASE NO. \_\_\_\_\_

CV 0968-12

**VERIFIED COMPLAINT**

Xerox Corporation hereby alleges the following:

1. This is a civil action requesting ordinary civil relief pursuant to 5 G.C.A. §§ 5425(f) and 5480.
2. Jurisdiction is vested in this Court pursuant to 5 G.C.A. § 5480(a).
3. Xerox Corporation is licensed to conduct business in the Territory of Guam, is a contractor with the Department of Education ("DOE"), and is a person receiving an adverse decision from the Office of Public Accountability ("OPA").
4. The Territory of Guam is a proper party and has waived sovereign