

COPY

John Thos. Brown  
General Counsel for Petitioner  
545 Chalan Machaute (Route 8 @ Biang St), Maite, Guam 96910  
Mail to: P.O. Box 7, Hagåtña, Guam 96932  
Ph: 477-7293; Fax: 472-6153  
[jngoza@ozemail.com.au](mailto:jngoza@ozemail.com.au)

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

JAN 21 2011

TIME: 12:45 PM BY: *JU*  
FILE NO. OPA-PA: 10-010

IN THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEAL

In the Appeal of	)	DOCKET NO. OPA-PA 10-010
	)	
TOWN HOUSE DEPARTMENT STORES,	)	
INC., dba	)	MOTION TO DISMISS XEROX'
ISLAND BUSINESS SYSTEMS	)	APPEARANCE
& SUPPLIES,	)	
APPELLANT	)	
_____	)	

Appellant IBSS hereby moves to dismiss the appearance of Xerox herein. It is not an interested party.

Xerox' claim to interest in the subject matter of this appeal is evidently, based on its claim to be an actual bidder in DOE IFB 006-2010; it has never articulated its interest but is noted as one which did *respond* to the IFB.

First, Xerox is not an "aggrieved person". Only an aggrieved person can protest. (5 GCA § 5425(a).) If it is not aggrieved, what is its interest?

Xerox did actually *participate* in the solicitation, but not as a bidder. Only actual bidders can be

considered aggrieved (*Id.*). (Prospective bidders can also be aggrieved, but Xerox cannot make another submission now that bids are opened: it is not “prospective”.)

Bidders, to be a bidder, must *unconditionally* accept the bid, *without alteration* (5 GCA § 5211(e)). Xerox did not do that. Xerox engaged in what can only aptly be described as a *proposal*. Indeed, that is the exact language Xerox used.

Xerox' submission in response to IFB 006 was framed by the cover letter submitted by General Manager Margaret Tyquingco<sup>1</sup>. She said:

“We have reviewed the Department’s Invitation for Bid (“Bid”) and have prepared the attached Sale *Proposal* for your consideration. “

Xerox itself said its submission is a *Proposal*. It is non-responsive to tender a *proposal* as a *bid*. A proposition is not an unconditional acceptance. Without unconditional acceptance, there is no “bidder”, actual or otherwise.

Xerox' proposal, furthermore, was not an unconditional acceptance because it was *conditional* on terms it characterized as “explanations” or “clarifications”. However you characterize it, it is not an unconditional acceptance. The time for explanation and clarification is prior to bid submission, not as conditions of the submission package. (2 GAR § 3109(g)(4).)

Xerox' conditional proposal offer said:

**Although the *Proposal* is based on the requirements included in your Bid it does include some responses that require an explanation.** Those explanations are included in Xerox' clarification document. In addition, we have included a copy of **our standard Purchase Agreement which further explains our offer.**

Xerox very specifically conditioned its offer on its *own contractual terms*, on its *own clarifications*, not the terms of the IFB. This is not the unconditional acceptance without alteration that is required of an actual bidder.

Xerox did not stop there in hammering the point that it was not making an unconditional acceptance, but was proposing and offering a process of negotiation. It said:

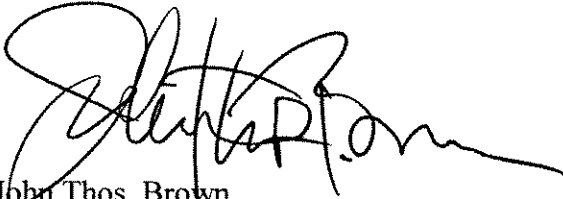
“Please note that Xerox **agrees to negotiate** a solution that is acceptable to both parties if any of the below comments or the Purchase Agreement Terms are inconsistent with Guam law, or are otherwise unacceptable to the Department.”

---

<sup>1</sup> Xerox' submission was first publically disclosed in the Agency Report filed herein, at TAB B2.)

5201(g); 2 GAR § 3109(n)(1): "No bid shall be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bids".)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Thos. Brown". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John Thos. Brown  
January 21, 2011