



OFFICE OF PUBLIC ACCOUNTABILITY  
 Doris Flores Brooks, CPA, CGFM  
 Public Auditor

**PROCUREMENT APPEALS**

IN THE APPEAL OF,  TOWN HOUSE DEPARTMENT STORES, INC, dba ISLAND BUSINESS SYSTEMS & SUPPLIES,  <p style="text-align: center;">Appellant</p>	}	<b>APPEAL NO: OPA-PA-10-010</b>  <b>ORDER DENYING PURCHASING          AGENCY'S REQUEST TO SEAL          PORTIONS OF PROCUREMENT          RECORD</b>
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To: **Purchasing Agency:**  
 Department of Education, Government of Guam  
 C/O Laura J. Mooney, Esq.  
 GDOE Office of the Superintendent  
 312 Aspinall Ave.  
 Hagåtña, Guam, 96932  
 Facsimile: (671) 472-5003

**Appellant:**  
 IBSS  
 C/O John T. Brown, Esq.  
 P.O. Box 7  
 Hagåtña, Guam, 96932  
 Facsimile: (671) 472-6153

**THIS MATTER** came before the Office of Public Accountability on December 21, 2010 pursuant to the Purchasing Agency's verbal request to seal portions of the Procurement Record and Agency Report in this matter. Specifically, the Purchasing Agency requested to seal XEROX's Response to GDOE IFB #006-2010 in Exhibit 3, and the Abstract of Bids for GDOE IFB #006-2010 in Exhibit 4 of the Procurement Record. The Purchasing Agency also requested to seal the Appellant's, and XEROX's, Response to GDOE IFB #006-2010, and the Abstract of Bids for GDOE IFB #006-2010 in Tab B-1, Tab B-2, and Tab D, respectively, of the Agency Report. After considering this verbal request, the Hearing Officer FINDS and ORDERS the following:

1           1. The Hearing Officer finds that there is no statutory or regulatory authority to support  
2 the Purchasing Agency's belief that the documents they are requesting to seal are not public  
3 records. One of the paramount policies underlying Guam's Procurement Law and Regulations is  
4 the policy to require public access to all aspects of procurement consistent with the sealed bid  
5 procedure and the integrity of the procurement process. 5 G.C.A. §5001(b)(8) and 2 G.A.R.,  
6 Div. 4, Chap. 1, §1102(7). Guam's Procurement Laws and Regulations fulfill this policy by  
7 making the date, time, subject matter, and names of any participants at any meeting that is in any  
8 way related to the procurement, and logs of all communication between government employees  
9 and any member of the public, potential bidder, vendor, or manufacturer, which is in any way  
10 related to the procurement public records. 5 G.C.A. §5249(a) and (b), and §5251 and 2 G.A.R.,  
11 Div. 4, Chap. 3, §3129(1) and (1), and §3131. Further, the Competitive Sealed Bidding  
12 procedure, which was used in the solicitation at issue in this matter, clearly requires that bids  
13 shall be opened publicly in the presence of one or more witnesses and that a bid abstract,  
14 containing the names of each bidder, the bid price, a tabulation of the bids, and such other  
15 information deemed appropriate by the Procurement Officer, shall be made and such information  
16 and each bid shall be open to public inspection after bid opening. 5 G.C.A. §5211(d) and 2  
17 G.A.R., Div. 4, Chap. 3, §3109(1)(2). Here, the Procurement Record indicates that bids for  
18 GDOE IFB #006-2010 were received by the Purchasing Agency and opened on May 21, 2010.  
19 Thus, pursuant to Guam's Procurement Law and Regulations, the Bid Abstract and the Bids  
20 received by the Purchasing Agency are Public Records.

21           2. The Trade Secret and Proprietary Data exception does not apply to the bids submitted  
22 in response to GDOE IFB #006-2010. Generally, opened bids are available to for public  
23 inspection except to the extent the bidder designates trade secrets or other proprietary data  
24 confidential and to the extent the Procurement Officer approves such requests. 2 G.A.R. Div. 4,  
25 Chap. 3, §3109(1)(2) and (3). However, prices, makes and models, or catalogue numbers of the  
26 items offered, deliveries, and terms of payment shall be public records at the time of bid opening  
27 regardless of any designation to the contrary. Here, there is no indication in the Procurement  
28 Record that the Appellant or XEROX designated any portions of their bids for GDOE IFB #006-

1 2010 as confidential trade secrets or proprietary data. Thus, the Trade Secret and Proprietary  
2 Data Exception does not apply to the Bid Abstracts and Bids at issue here.

3 3. The Office of Public Accountability has a duty to make the Bid Abstract and the Bids  
4 submitted in response to GDOE IFB #006-2010 available to the public because they are part of  
5 the Procurement Record at issue in this appeal. Upon written request, the Office of Public  
6 Accountability shall make available to any interested party or member of the public information  
7 submitted that bears on the substance of the Appeal except where information is proprietary,  
8 confidential, or otherwise permitted or required to be withheld by law or regulation. 2 G.A.R.,  
9 Div. 4, Chap. 12, §12106. Here, as stated above, the Bid Abstract and Bids at issue here are  
10 public records and the Trade Secret and Proprietary Data Exception does not apply to them.  
11 Thus, the Office of Public Accountability shall make the Bid Abstract and Bids submitted in  
12 response to GDOE IFB #006-2010 available to any interested party or to the public upon request.

13 4. Based on the foregoing, the Purchasing Agency's request to seal the portions of the  
14 Procurement Record and the Agency Report containing the Bid Abstract and the Bids received in  
15 response to GDOE IFB #006-2010 is hereby DENIED.

16  
17 **SO ORDERED** this 22nd day of December, 2010 by:

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20 ANTHONY R. CAMACHO, ESQ.  
21 Hearing Officer  
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# FAX

To: **Laura J. Mooney, Esq., Legal Counsel**  
**Department of Education (Appellee)**

**John T. Brown, Esq., Legal Counsel**  
**Town Hse. Dept. Stores dba IBSS**  
**(Appellant)**

**Elyze McDonald, Esq., Legal Counsel**  
**Xerox Corporation, Interested Party**

From: **Doris Flores Brooks, CPA, CGFM**  
**Public Auditor**  
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Agency:	Pages	4 (Including cover)
CC:	Date:	December 22, 2010
Fax:	GDOE: 472-5003 or 472-5001 IBSS: 472-6153 Carlsmith: 477-4375	Point of Contact Nos. <b>Tel: 475-0390 x 219 (Anne Camacho)</b> <b>Fax: 472-7951</b>
Re:	<b>Appeal No. OPA-PA-10-010: Order Denying Purchasing Agency's Request to Seal Portions of Procurement Record</b>	

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Anne Camacho -- [acamacho@guamopa.org](mailto:acamacho@guamopa.org)

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