GUAM DEPARTMENT OF EDUCATION
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BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

PROCUREMENT APPEAL

IN THE APPEAL OF TOWN HOUSE DEPARTMENT STORES, INC. dba ISLAND BUSINESS SYSTEMS & SUPPLIES, Appellant.	APPEAL NO. OPA-PA-11-002 **PURCHASING AGENCY'S HEARING BRIEF**

Comes now the Guam Department of Education ("GDOE"), the purchasing agency in this matter, and pursuant to the Scheduling Order issued by the Hearing Officer on May 31, 2012 hereby submits its Hearing Brief.

BACKGROUND

On September 10, 2010 GDOE issued an Invitation for Bids ("IFB") for Document Management Services. Specifically, GDOE IFB 022-2010 (hereafter the "IFB") states that "GDOE is soliciting bid proposals to support its document processing needs by providing and managing multifunction copiers, printers, scanners and fax machines ..., software... and support services." (GDOE IFB 022-2010 at p. 21.) The items and quantities sought by the IFB are as follows:

Item 1:	5 Units	200K Black Print Allowable Total High Volume Multifunction Copier/Printer/Scanner
Item 2:	44 Units	1.1M Black Print Allowable Total and Est. 50K Color Print

		High Volume Multifunction Copier/Printer/Scanner (and Fax for 3 Machines)
Item 3:	47 Units	470K Black Print Allowance Total and Est. 40K Co Color Print
		Mid Volume Multifunction Copier/Printer/Scanner (and Fax for 9 Machines)
Item 4:	48 Units	240K Black Print Allowance Total and Est. 24K Color Print
		Mid Volume Multifunction Copier/ Printer/ Scanner/ Fax
Item 5:	94 Units	188K Black Print Allowance Total
		Low Volume Multifunction Copier/ Printer/ Scanner/Fax
Item 6:	100 Seats	Software
Item 7:		Network Device Management Software for monitoring Multifunction devices and printers on the network. (Unlimited Devices).
Item 8:		Optional Overages/Device Management Services[1]

The bids received in response to the IFB were opened on October 26, 2010. There were two bids: one from Appellant IBSS and one from Interested Party Xerox Corporation. The bids were evaluated on pricing for the items and quantities listed in the IFB. (See IFB Bid Abstract, GDOE Exhibit A).

A GDOE Purchase Order dated November 16, 2010 (hereafter the "Purchase Order") to Xerox Corporation issued pursuant to the IFB contains the following items and quantities:

Bid Item 1:	Quantity 14
Bid Item 2:	Quantity 55 Without Fax and 2 With Fax
Bid Item 3:	Quantity 29 Without Fax and 16 With Fax
Bid Item 4:	Quantity 32 Without Fax and 1 With Fax
Bid Item 6:	Quantity 100 Seats
Bid Item 7:	Quantity 1

[1] GDOE IFB 022-2012, pp. 25 – 30.

(GDOE Purchase Order 201100024 dated November 16, 2010 filed as Appellant Hearing Exhibit 8).

Stop Work Orders for the IFB or extensions of the Stop Work Orders were issued by GDOE on the following dates: December 17, 2010; January 14 and 28, 2011; February 11 and 18, 2011. (GDOE Exhibits B, C, E, F, G and H, respectively). The Stop Work Orders and their extensions each advised Xerox Corporation that GDOE received a post-award protest and that Xerox was to discontinue work under the IFB except for the original bid amounts as follows:

Item 1: Quantity 5
Item 2: Quantity 44
Item 3: Quantity 47
Item 4: Quantity 48
Item 6: Quantity 100 Seats
Item 7: Quantity 1
Item 8: Quantity 1.

ARGUMENT

Appellant IBSS states the following in its December 16, 2010 protest of the IFB:

> One ground of protest is that the award is for quantities of product that vary significantly beyond the quantities indicated in the IFB, and in amounts and timing that cannot be considered, in good faith, as 'incremental'. The purchase orders issued in consequence of the award are materially different from the quantities of product specified in the IFB.

(See GDOE Exhibit I containing Procurement Protest dated December 16, 2010 from John Thos. Brown at p. 1.). Though Appellant includes other grounds in its protest and appeal, the primary basis for its allegation that GDOE has done wrong is that the quantity of items in the Purchase Order differs significantly from the quantity of items contained in the IFB. Appellant is correct in its assertion that the Purchase Order amounts are different than the amounts contained in the IFB. However, in its Protest and Appeal, Appellant ignores the fact that GDOE has not received any item from Xerox Corporation in excess of what was contemplated by the IFB. GDOE has instead, through Stop Work orders, limited the services it receives from Xerox under the IFB to the items and amounts that were clearly listed in the IFB. This fact alone renders moot any

argument that GDOE somehow violated applicable law or regulation by receiving from Xerox services or products not contemplated by the IFB.

Given that the increased quantity in the Purchase Order is the primary basis for Appellant's protest and appeal, and that GDOE did not receive the increased quantity of products and services, Appellant fails to make a rational connection to its request that the entire contract resulting from the IFB should be terminated. GDOE has already addressed and remedied Appellant's concerns that the Purchase Order amounts exceed those in the IFB; GDOE did this by issuing Stop Work Orders and limiting its purchases from Xerox Corporation to those services and products described in the IFB. Appellant has made no argument that any law or regulation was violated in the administration of the IFB up to the point of the bid opening or the selection of Xerox as the lowest responsive bidder. Therefore Appellant should not object to the implementation of a contract with Xerox for the products and quantities described in the IFB. To ask for the termination of the entire contract is simply an attempt by Appellant to get another opportunity to bid on the document management services required by GDOE. Termination of the entire contract serves no interest of GDOE or the Territory of Guam; it serves only IBSS.

CONCLUSION

Given that GDOE has not violated any law or regulation by receiving from Xerox Corporation products and services that were listed in GDOE IFB 022-2010, and that there is no allegation that the administration of the IFB was flawed before the bid opening or selection of Xerox as the lowest responsive bidder, the OPA should find that IBSS's Appeal should be denied and that GDOE should be allowed to continue its contract with Xerox Corporation pursuant to the terms of the IFB.

Dated this 25th day of June, 2012.

Respectfully submitted,

GUAM DEPARTMENT OF EDUCATION

By: _____

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