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OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEAL

IN THE APPEAL OF:

APPEAL CASE NO. OPA-08-012

TOWN HOUSE DEPARTMENT STORES, INC. DBA
ISLAND BUSINESS SYSTEMS & SUPPLIES,

APPELLANT

AGENCY REPORT

The General Services Agency, Department of Administration, Government of Guam (hereafter, GSA) submits this Agency Report, pursuant to 2 GAR Div. 4, § 12105, in response to the Notice of Appeal filed in this matter on September 12, 2008 by Town House Department Stores, Inc., doing business as Island Business Systems and Supplies (hereafter, IBSS).

I. Required Submittals.

GSA has submitted all required documents as set out here. For ease of reference, the documents required to be filed in the Agency Report may be located as follows:

- (a) A copy of the protest. This is found in the Procurement Record filed in this matter by GSA on September 19, 2008 (hereafter, Procurement Record) at Tab # 5.

COPY

1 (b) A copy of the bid or offer submitted or being considered. There has been
2 no bid or offer received or being considered. This is a protest of the process
concerning a series of six (6) Requests for Quotations.

3 (c) A copy of the solicitation. Six solicitations for quotations are found in the
4 Procurement Record at Tab #9.

5 (d) A copy of the abstract for bids or offers. There is no abstract for bids or
6 offers. The responses received by GSA to the Requests for Quotation are found
in the Procurement Record at Tab # 8.

7 (e) Any other documents relevant to the protest. Filed in this matter on October
8 10, 2008 is the Declaration of Anita Cruz, Acting Chief Procurement Officer,
GSA, setting out facts in support of this Agency Report.

9 (f) The decision from which the appeal is taken. The Protest Response of GSA
10 to the Protest Letter of IBSS is found in the Procurement Record at Tab # 1.

11 (g) A statement answering the allegation of the Appeal. The response of GSA
as required by this item is set out below.

12 (h) No award has been made.

13 (i) An executed Appendix B of 2 GAR, Div. 4, Chapter 12 is filed
14 contemporaneously herewith.

15 **II. Statement Answering Allegation of the Appeal.**

16 Comes now GSA, by and through its attorney, the Office of the Attorney General, and
17 answers to the Notice of Appeal, the Statement of Grounds for Appeal, and the Statement
18 Specifying Ruling Requested, all of which were filed in this matter as the basis of this appeal
19 by IBSS on September 12, 2008.

20 1. GSA agrees that the acquisition of the supply and service items covered by this
21 appeal, Appeal No. OPA-08-012, specifically identified in Request For Quotations numbered
22 RFQ # 08002241, RFQ # 08002249, RFQ # 08002251, RFQ # 08002252, RFQ # 08002255,
23 and RFQ # 08002256, which service and supply is available to the Government of Guam from
24 the Federal Supply Schedule Program (FSSP), shall be acquired by use of the competitive
25 sealed bid method of source selection specified in 5 GCA §5210(a).

2. In the competitive sealed bids that are being prepared as provided in paragraph 1,
above, GSA agrees to utilize non-proprietary commercial specifications that emphasize

1 functional and performance criteria, that meet the Government's minimum essential needs and
2 that foster competition, consistent with the Guam Procurement Act, 5 GCA §§ 5265 and 5268,
3 and Guam Procurement Regulations, 2 GAR Div. 4 §4102.

4 **III. Ruling Requested.**

5 In response to the Statement Specifying Ruling Requested, asserted by IBSS in its
6 Notice of Appeal, September 12, 2008, GSA responds, as follows:

7 A. IBSS has requested that the Public Auditor rule that FSSP purchases be conducted
8 by the competitive sealed bid method. GSA is pursuing these purchases by competitive
9 sealed bids.

10 B. IBSS has requested that if GSA has already entered an award or contract to
11 procure any item of copier specified in the protested Request For Quotations, that the award
12 or contract be terminated. GSA has not proceeded with the Requests for Quotations objected
13 to by IBSS since receipt of the Protest Letter on May 20, 2008. GSA is moving forward
14 with competitive sealed bids for the subject copiers and will publish Requests For Bids as
15 permitted and required by 5 GCA § 5210(a). No order is, therefore, required from the Public
16 Auditor.

17 C. IBSS has requested that GSA be prevented from using any pricing information
18 sourced from independent means to "compare" FSSP prices of contractors who do not
19 respond to requests for price quotations. GSA has not proceeded, and is not proceeding with
20 the subject Requests For Quotations, nor is it utilizing any information gathered concerning
21 subject Requests For Quotations. No order is, therefore, required from the Public Auditor.

22 D. IBSS has not requested any specific relief with regard to specifications.
23 Nonetheless, GSA has developed bid specifications for the copiers requisitioned in this
24 matter that are non-proprietary, commercial specifications that emphasize functional and
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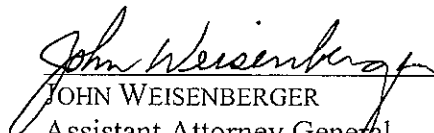
1 performance criteria, that meet the government's minimum essential needs, and that foster
2 competition. No order, therefore, is required from the Public Auditor.

3 **Now Therefore**, GSA prays that the Public Auditor determine that this matter is now
4 moot, as there is no issue remaining to be resolved, and enter an order dismissing this
5 Appeal.

6 Dated this 10th day of October, 2008.

7 OFFICE OF THE ATTORNEY GENERAL
8 Alicia G. Limtiaco, Attorney General of Guam

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10 By:


11 JOHN WEISENBERGER
12 Assistant Attorney General
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