



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

**PROCUREMENT APPEALS**

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5  
6 IN THE APPEAL OF,

APPEAL NO: OPA-PA-11-003

7 DATA MANAGEMENT RESOURCES, LLC )  
8 )  
9 )  
10 )

**DECISION**

Appellant

11 **I. INTRODUCTION**

12 This is the Decision of the Public Auditor for an appeal filed on February 25, 2011 by  
13 DATA MANAGEMENT RESOURCES, LLC. (Hereafter referred to as "DMR") regarding the  
14 DEPARTMENT OF EDUCATION, Government of Guam's (Hereafter referred to as "DOE")  
15 February 9, 2011 determination that MICROS FIDELIO MICRONESIA's (Hereafter referred to  
16 as "MFM") failure to meet Invitation for Bid No. GDOE IFB-023-2010 (Outright Purchase of  
17 Computer Systems and Multimedia Equipment) (Hereafter referred to as "IFB") specification for  
18 an anti-microbial keyboard for Item No. 1 of the IFB was a minor informality that DOE could  
19 waive. The Public Auditor holds that DOE violated Chapter III, §3.9.13.4.1, DOE Procurement  
20 Regulations by determining that it could waive, as a minor informality, MFM's failure to bid an  
21 Internal English Keyboard with Anti-Microbial Protection, as required by the IFB's  
22 specifications for Item No. 1. Accordingly, DMR's appeal is GRANTED.  
23

24  
25 **II. FINDINGS OF FACT**

26 The Public Auditor in reaching this Decision has considered and incorporates herein the  
27 procurement record and all documents submitted by the parties, pursuant to DMR's April 15,  
28 2011 Waiver of Hearing. Anthony R. Camacho, Esq. served as the Office of Public

1 Accountability's Hearing Officer for this appeal, and the Public Auditor makes the following  
2 findings of fact:

3  
4 1. On or about August 16, 2010, DOE issued the IFB.<sup>1</sup> The IFB was DOE's solicitation  
5 for the purchase of computer systems and multimedia equipment.<sup>2</sup>

6 2. The IFB solicited for eleven (11) items.<sup>3</sup> Relevant here, is the specification for Item  
7 No. 1, which was for one-hundred-eight (108) Dell Latitude 2100 Netbooks.<sup>4</sup>

8  
9 3. The IFB specifications for Item No. 1's Dell Latitude 2100 Netbooks required, in  
10 relevant part, that said computers systems have: (1) Genuine Windows 7 Professional 32 Bit;  
11 (2) Internal English Keyboard with Anti-Microbial Protection; and (3) Integrated 10/100/1000  
12 Ethernet.<sup>5</sup> Further, the IFB allowed the bids offering "equal" products (including products of  
13 the brand name manufacturer other than the one described by brand name) will be considered  
14 for award if such products are clearly identified in the bids and determined by the government  
15 (DOE) to meet fully the salient characteristics requirements listed in the IFB.<sup>6</sup>

16  
17 4. The IFB also required that bidders comply with all specifications and other  
18 requirements of the solicitation.<sup>7</sup>

19  
20 5. The IFB stated that award shall be made to the lowest responsible and responsive

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22 <sup>1</sup> IFB, Tab 2, Procurement Record filed on March 7, 2011.

23 <sup>2</sup> Id.

24 <sup>3</sup> Bid specifications, IFB, Id.

25 <sup>4</sup> Item No. 1, Bid Specifications, IFB, Id.

26 <sup>5</sup> Id.

27 <sup>6</sup> Brand Name or Equal Clause, IFB, Id.

28 <sup>7</sup> Compliance with Specifications and Other Solicitation Requirements,  
Paragraph 6, General Terms and Conditions, IFB, Id.

1 bidders, whose bid is determined to be the most advantageous to the Government, taking into  
2 consideration the evaluation factors set forth in the solicitation.<sup>8</sup>

3  
4 6. The deadline for bidders to submit their bids in response to the IFB was set for 10:00  
5 a.m. on September 6, 2010.<sup>9</sup>

6  
7 7. On August 16, 2010, DOE issued IFB Amendment No. 1, which extended the bid  
8 submission date from September 6 2010 at 10:00 a.m., to September 7, 2010 at 2:00 p.m.<sup>10</sup>

9  
10 8. On August 26, 2010, DOE issued IFB Amendment No. 2 which (1) clarified that the  
11 warranty for all hardware equipment being solicited under Item No. 1 must have a 5-year on-site  
12 warranty (3 years for laptops) or on-island warranty; (2) which stated that all the equipment  
13 being solicited will be delivered to DOE's Central Receiving Warehouse, 162 North Marine  
14 Drive, Piti, Guam, and (3) which stated that the bid was not funded via the American Recovery  
15 and Reinvestment Act, but was one-hundred-percent (100%) federally funded.<sup>11</sup>

16  
17 9. On September 2, 2010, DOE issued IFB Amendment No. 3 which extended the bid  
18 submission date from September 7, 2010 at 2:00 p.m., to September 14, 2010 at 2:00 p.m.<sup>12</sup>

19  
20 10. On September 8, 2010, DOE issued IFB Amendment No. 4 which (1) clarified that  
21 on-site installation will be required for IFB Bid Item Nos. 1 through 11 where needed; (2)  
22 clarified that the hard drive server configuration specifications for IFB Item No. 3 should have  
23 SAS configuration and two (2) 2.OTB drives for a total storage capacity of 4.OTB, and

24 <sup>8</sup> Award, Cancellation, & Rejection, Paragraph 22, General Terms and  
25 Conditions, IFB, Id.

26 <sup>9</sup> Bid Invitation and Award, IFB, Id.

27 <sup>10</sup> Amendment No. 1 dated August 16, 2010, IFB, Tab 3, Id.

28 <sup>11</sup> Amendment No. 2 dated August 26, 2010, IFB, Tab 4, Id.

<sup>12</sup> Amendment No. 3 dated September 2, 2010, IFB, Tab 4, Id.

1 (3) clarified that the specifications for Item No. 1's Dell Latitude 2100 Netbooks did not require  
2 said computers to have a rubberized outer coating.<sup>13</sup>  
3

4 11. On September 9, 2010, DOE issued IFB Amendment No. 5, which (1) further  
5 clarified that the hard drive configuration requirements for IFB Item No. 3 should have a SAS  
6 configuration with four (4) each of 600GB SAS drives, for a total storage capacity of 2.4TB.<sup>14</sup>  
7

8 12. On September 10, 2010, DOE issued IFB Amendment No. 6 which amended IFB  
9 Exhibit F, Affidavit re Contingent Fees and attached said document to Amendment No. 6.<sup>15</sup>  
10

11 13. On September 14, 2010, DMR, GUAM TECHNOLOGY ASSOCIATES, M.E.  
12 INTERNATIONAL, COMPACIFIC, and MFM submitted bids in response to the IFB.<sup>16</sup>  
13

14 14. In relevant part, for Item No. 1, DMR bid one-hundred-eight (108) Upgraded Dell  
15 Latitude E2110 Base Netbook computers, as a brand name or equal product, with a unit price of  
16 seven-hundred-twenty-five-dollars (\$725) for a total price of seventy-eight-thousand-three-  
17 hundred-dollars (\$78,300).<sup>17</sup>  
18

19 15. In relevant part, for Item No. 1, MFM bid one-hundred-eight (108) Nor-Tech  
20 Traveler NetBooks, as a brand name or equal product, each with a unit price of three-hundred-  
21 sixty-dollars (\$360) for a total price of thirty-eight-thousand-eight-hundred-eighty-dollars  
22 (\$38,880).<sup>18</sup>  
23

24 16. On September 14, 2010, DOE subsequently determined, in relevant part, that MFM

25 <sup>13</sup> Amendment No. 4 dated September 8, 2010, IFB, Tab 5, Id.

26 <sup>14</sup> Amendment No. 5 dated September 9, 2010, IFB, Tab 6, Id.

27 <sup>15</sup> Amendment No. 6, IFB, Tab 6, Id.

28 <sup>16</sup> Bid Submission Register dated September 14, 2010, TAB 8, Id.

<sup>17</sup> Bid Specifications, DMR Bid, Tab 8A, Id.

<sup>18</sup> Bid Specifications, MFM Bid, Tab 8C, Id.

1 had the lowest bid for IFB Item No. 1 at three-hundred-sixty-dollars (\$360) per unit,  
2 COMPACIFIC had the second lowest bid at six-hundred-ninety-four-dollars (\$694) per unit, and  
3 DMR had the third lowest bid for seven-hundred-twenty-five-dollars per unit (\$725).<sup>19</sup>  
4

5 17. On September 23, 2010, DOE Buyer I Katherina Bayson, in relevant part,  
6 recommended that IFB Item No. 1 be awarded to MFM, and said recommendation was approved  
7 on September 28, 2010 by, DOE's Supply Management Administrator Brian C. Mafnas.<sup>20</sup>  
8

9 18. On September 24, 2010, DOE issued a Bid Status stating, in relevant part, that DOE  
10 was recommending the award of Item No. 1 to MFM.<sup>21</sup>

11 19. On September 28, 2010, DOE's faxed a copy of its September 24, 2010 Bid Status to  
12 DMR.<sup>22</sup> On September 29, 2010, DMR acknowledged receipt of DOE's September 24, 2010  
13 Letter of Intent arising from DOE's Bid Status.<sup>23</sup>  
14

15 20. On October 4, 2010, six (6) days after DMR received DOE's September 24, 2010  
16 Bid Status, DMR filed a protest with DOE alleging that MFM's bid for Item No. 1 was non-  
17 responsive because MFM's Nor-Tech Traveler NetBooks: (1) used Genuine Windows 7 Starter  
18 and XP Home, which were the wrong operating systems because the IFB specifications required  
19 Genuine Windows 7 Professional 32 bit; (2) did not have an Internal English Keyboard with  
20 Anti-Microbial Protection; and (3) had the RJ45 LAN Port instead of the Integrated 10/100/1000  
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22 <sup>19</sup> DOE Price Comparison, Tab 9, Id.

23 <sup>20</sup> Memorandum Dated September 23, 2010 Re IFB Analysis and Recommendation, Tab  
24 9, Id.

25 <sup>21</sup> DOE Bid Status dated September 24, 2010, Tab 9, IFB.

26 <sup>22</sup> DOE Fax Confirmation Report for DMR dated September 28, 2010, Tab 10, Id.

27 <sup>23</sup> DOE Letter of Intent dated September 24, 2010 to DMR with DMR's September  
28 29, 2010 Acknowledgement of Receipt, Tab 10, Id.

1 Ethernet connection required by the IFB Specifications.<sup>24</sup>

2  
3 21. On February 9, 2011, DOE affirmed DMR's October 4, 2010 protest by agreeing that  
4 MFM's Nor-Tech Traveler NetBooks MFR bid for Item No. 1 of the IFB did not meet the IFB's  
5 specifications due to said computers not having the Genuine Windows 7 Professional 32 bit  
6 operating system, and as a result, DOE agreed to issue an Amended Bid Status.<sup>25</sup> DOE also  
7 found that DMR's allegation that MFM's Nor-Tech Traveler NetBooks did not have the anti-  
8 microbial key had merit, however, DOE determined that MFM's failure to meet this  
9 specification for Item No. 1 was a minor informality which DOE could waive.<sup>26</sup> Finally, DOE  
10 found that DMR's allegation that said computer's had a RJ45 LAN Port instead of the integrated  
11 10/100/1000 Ethernet connection required by the IFB Specifications had no merit by stating that  
12 MFM did meet specifications for Item No. 3.<sup>27</sup>

13  
14 22. On February 9, 2011, DOE recommended that the award for Item No. 1 of the IFB  
15 go to COMPACIFIC.<sup>28</sup>

16  
17 23. On February 10, 2011, DMR received DOE's February 9, 2011 affirmation of  
18 DMR's October 4, 2010 protest.<sup>29</sup>

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20 24. On February 25, 2011, fifteen (15) days after receiving DOE's February 9, 2011

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22 <sup>24</sup> DMR Protest Letter dated October 4, 2010, Tab 11, Id.

23 <sup>25</sup> DOE Affirmation of Protest dated February 9, 2011, Tab 17, Id.

24 <sup>26</sup> Id.

25 <sup>27</sup> Id.

26 <sup>28</sup> Memorandum dated February 9, 2011 from DOE Buyer I Katherina Bayson  
27 approved by DOE's Supply Management Administrator, Marcus Y. Pido, Tab 17,  
28 Id.

<sup>29</sup> DOE Fax Transmission report dated February 10, 2011, Id.

1 affirmation of DMR's October 4, 2010 protest, DMR filed this appeal concerning DOE's  
2 determination that that it could waive MFM's failure to meet the Internal English Keyboard with  
3 Anti-Microbial Protection as required by the IFB's specifications for Item No. 1.<sup>30</sup>  
4

### 6 III. ANALYSIS

7 The Public Auditor must decide an appeal regarding a procurement method, solicitation,  
8 or award, or entitlement to costs by determining whether the purchasing agency's decision on the  
9 protest of the method of selection, solicitation, or award of the contract, or entitlement to costs is  
10 in accordance with the statutes, regulations, and the terms and conditions of the solicitation. 2  
11 G.A.R., Div. 4, Chap. 12, §12201(a). Here, the only issue the Public Auditor must decide is  
12 whether DOE's February 9, 2011 determination that it could waive, as a minor informality,  
13 MFM's failure to meet the anti-microbial keyboard specification for Item No. 1 of the IFB was  
14 in accordance with the statutes, regulations, and the IFB's terms and conditions. The Public  
15 Auditor's will review this issue *de novo*. 5 G.C.A. §5703 and 2 G.A.R. Div. 4, Chap. 12,  
16 §12103(a).  
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#### 21 **A. DMR's Motion for An Order on the Pleadings has merit and this matter shall be 22 decided based on the record without a formal hearing.**

23 As a preliminary matter, the Public Auditor must decide DMR's April 1, 2011 Motion for  
24 an Order on the Pleadings. DMR argues that due to DOE's Agency Report, which admits that  
25 DOE could not waive MFM's failure to bid an Internal English Keyboard with Anti-Microbial  
26 Protection as required by Item No. 1 of the IFB's specifications, there are no material issues of  
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28 <sup>30</sup> Notice of Appeal filed on February 25, 2011.

1 fact left for the Public Auditor to determine and the appeal may properly be decided on the  
2 records submitted alone without a hearing.<sup>31</sup> DMR's relies on Rule 12(c) of the Guam Rules of  
3 Civil Procedure (Hereafter referred to as "GRCP").<sup>32</sup> Said rule states that after the pleadings are  
4 closed but within such time as not to delay the trial, any party may move for judgment on the  
5 pleadings. Rule 12(c), GRCP. The Public Auditor finds that Rule 12(c), GRCP is not applicable  
6 here because the Public Auditor's proceedings are not bound by the technical or formal rules of  
7 procedure except as provided in Guam Procurement Law or Regulations. 2 G.A.R., Div. 4,  
8 Chap. 12, §12108(d). Generally, in appeals concerning procurement protest decisions, the  
9 parties shall either request a hearing in writing or waive their right to a hearing and submit their  
10 case on the record without a hearing. 2 G.A.R., Div. 4, Chap. 12, §12108(a). As stated above,  
11 DMR filed their Waiver of Hearing on April 15, 2011. Thus, pursuant to 2 G.A.R., Div. 4,  
12 Chap. 12, §12108(a), DMR's Motion is hereby GRANTED and the Public Auditor shall decide  
13 this case on the record without a hearing.  
14  
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18 **B. DOE erred by determining that MFM's failure to bid an Internal English**  
19 **Keyboard with Anti-Microbial Protection, as required by IFB Item No. 1, was a**  
20 **minor informality that could be waived.**

21 The Public Auditor agrees with DOE's admission that MFM's failure to comply with the  
22 specification requiring an Internal English Keyboard with Anti-Microbial Protection for Item No.  
23 1 of the IFB was not a minor informality that can be waived. Minor informalities are matters of  
24 form, rather than substance evident from the bid document, or insignificant mistakes that can be  
25

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26  
27 <sup>31</sup> Line 4, page 3, DMR's Motion for an Order on the Pleadings filed on April  
28 1, 2011.

<sup>32</sup> Line 11, page 2, Id.



1 waived or corrected without prejudice to other bidders, that is the effect on price, quantity,  
2 quality, delivery, or contractual conditions is negligible. Chapter III, §3.9.13.4.1., DOE  
3 Procurement Regulations.<sup>33</sup> DOE's Superintendent shall waive such informalities or allow the  
4 bidder to correct them depending on which is in the best interest of DOE and examples of minor  
5 informalities include the failure of a bidder to: (1) Return the number of signed bids required by  
6 the invitation for bids; (2) Sign the bid, but only if the unsigned bid is accompanied by other  
7 material indicating the bidders intent to be bound; (3) Acknowledge the receipt of an  
8 amendment to the invitation for bids under specified circumstances. Chapter III, §3.9.13.4.1,  
9 DOE Procurement Regulations. Whenever DOE's Superintendent allows a bidder to correct a  
10 minor informality after opening of the bids but prior to award, the Superintendent must prepare a  
11 written determination showing that the relief was granted in accordance with DOE's  
12 Procurement Regulations. Chapter III, §3.9.13.6. Here, MFM's failure to bid an Internal  
13 English Keyboard with Anti-Microbial Protection was a matter of substance and not merely a  
14 matter of form. As stated above, the Internal English Keyboard with Anti-Microbial Protection  
15 was one of the specifications for Item No. 1 of the IFB. Further, the IFB specifically required  
16 that the bidders comply with all specifications and other requirements of the solicitation.<sup>34</sup>  
17 Further, DOE admits that whether the computers solicited by the IFB's Item No. 1 had the Anti-  
18 microbial Keyboard would have an effect on the price of such computers.<sup>35</sup> Thus, the Public  
19 Auditor finds that MFM's failure to bid an Internal English Keyboard with Anti-Microbial  
20 Protection is not a minor informality that DOE could waive.

21  
22  
23 <sup>33</sup> DOE is authorized to promulgate its own procurement regulations. 5 G.C.A.  
24 §5131.

25 <sup>34</sup> Compliance with Specifications and Other Solicitation Requirements,  
26 Paragraph 6, General Terms and Conditions, IFB, Tab 2, Procurement Record  
27 filed March 7, 2010.

28 <sup>35</sup> Letter dated March 14, 2011 from DOE's Marcus Y. Pido to Jaqueline T.  
Terlaje, Esq., Tab G, Agency Report filed on March 14, 2011.



1           3. DOE must cancel its proposed award of Item No. 1 to MFM and award Item No. 1 to  
2 the next lowest responsible and responsive bidder.

3           4. DMR is hereby awarded its reasonable costs, pursuant to 5 G.C.A. §5425(h) (2),  
4 excluding attorney's fees, incurred in connection with the solicitation and its October 4, 2010  
5 protest, including DMR's reasonable bid preparation costs, excluding DMR's attorney's fees,  
6 because, as DMR was the third lowest bidder for the IFB's Item 1, there is a reasonable  
7 likelihood that IBSS could have been awarded the contract but for DOE's proposed award to  
8 MFM which was caused in part, by DOE's violation of Chapter III, §3.9.13.4.1, DOE  
9 Procurement Regulations as set forth above. DMR shall submit its reasonable costs, excluding  
10 attorney's fees to DOE, within thirty (30) days of the date of this Decision. DOE may object to  
11 DMR's cost demand by filing the appropriate motion with the Public Auditor no later than  
12 fifteen (15) days after DMR submits such cost demand to DOE.

13           **5. DMR's Appeal is GRANTED.**

14           This is a Final Administrative Decision. The Parties are hereby informed of their right to  
15 appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with  
16 Part D of Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final Administrative  
17 Decision. 5 G.C.A. §5481(a).

18           A copy of this Decision shall be provided to the parties and their respective attorneys, in  
19 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website  
20 [www.guamopa.org](http://www.guamopa.org).

21  
22           **DATED** this 13<sup>th</sup> day of May, 2011.

23  
24           

25  
26           DORIS FLORES BROOKS, CPA, CGFM  
27           PUBLIC AUDITOR  
28



# FAX

To: **Laura J. Mooney, Esq., Legal Counsel**  
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**Jacqueline Taitano Terlaje, Esq., Legal Counsel**  
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From: **Doris Flores Brooks, CPA, CGFM**  
**Public Auditor**

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Agency:	Pages	12 (Including cover)
CC: <b>ALL MEDIA</b>	Date:	May 19, 2011
Fax: GDOE: 472-5003 or 472-5001 DMR: 648-9002	Point of Contact Nos.	<b>Tel: 475-0390 x 211 (Anne Camacho)</b> <b>Fax: 472-7951</b>

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Re: **Appeal No. OPA-PA-11-003 DECISION**

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