



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

PROCUREMENT APPEALS

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6 IN THE APPEAL OF,

APPEAL NO: OPA-PA-11-004

7 DATA MANAGEMENT RESOURCES, LLC,

DECISION

8
9 Appellant

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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 10, 2011 denial of DMR's October 15, 2010 protest concerning, in relevant part,
16 whether MICROS FIDELIO MICRONESIA's (Hereafter referred to as "MFM") was a
17 manufacturer-authorized reseller of the fully assembled equipment/hardware MFM bid for
18 Invitation for Bid No. GDOE IFB 025-2010 (Outright Purchase of Computer Systems)
19 (Hereafter referred to as "IFB"). The Public Auditor holds that MFM is a manufacturer
20 authorized reseller of the computers it bid in response to the IFB. Accordingly, DMR's appeal is
21 DENIED.

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23 **II. FINDINGS OF FACT**

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

1 findings of fact:

2 1. On or about August 26, 2010, DOE issued the IFB.¹ The IFB was DOE's solicitation
3 for the outright purchase of computer systems.²
4

5 2. The IFB solicited for four (4) items which were two (2) types of computer systems
6 and two (2) types of switches.³ Relevant here, is the requirement that vendors must be
7 manufacturer-authorized resellers of the fully assembled equipment/hardware which was a
8 specifications that applied to all of the four (4) items being solicited.⁴
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10 3. The IFB also required that bidders comply with all specifications and other
11 requirements of the solicitation.⁵

12 4. The IFB stated that award shall be made to the lowest responsible and responsive
13 bidders, whose bid is determined to be the most advantageous to the Government, taking into
14 consideration the evaluation factors set forth in the solicitation.⁶
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16 5. The deadline for bidders to submit their bids in response to the IFB was set for 2:00
17 p.m. on September 17, 2010.⁷

18 6. On September 3, 2010, DOE issued IFB Amendment No. 1, which: (1) stated that all
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21 ¹ IFB, Tab 1, Procurement Record filed on March 7, 2011.

22 ² Id.

23 ³ Bid specifications, IFB, Id.

24 ⁴ Id.

25 ⁵ Compliance with Specifications and Other Solicitation Requirements,
26 Paragraph 6, General Terms and Conditions, IFB, Id.

27 ⁶ Award, Cancellation, & Rejection, Paragraph 22, General Terms and
28 Conditions, IFB, Id.

⁷ Bid Invitation and Award, IFB, Id.

1 the equipment being solicited will be delivered to DOE's Central Receiving Warehouse, Piti,
2 Guam; (2) clarified IFB specifications by stating that DOE's requirement is for a standard
3 DVD+/-RW DL; (3) stated that units need to be assembled, tested in a standard quality control
4 environment and units require a 5 year on-island warranty for the equipment being purchased to
5 clarify the IFB's specifications relative to the assembly, testing, quality control, and warranty
6 requirements; (4) stated the IFB was not funded by American Recovery and Reinvestment Act
7 (ARRA) and that the IFB was one-hundred-percent (100%) locally Government of Guam
8 funded; and (5) changed specifications for IFB Item Nos. 1 and 2 from Microsoft Office Home
9 to Microsoft Office Professional.⁸
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12 8. On September 16, 2010, DOE issued IFB Amendment No. 2 which extended the
13 deadline to submit bids in response to the IFB from September 17, 2010 at 2:00 p.m., to
14 September 22, 2010 at 2:00 p.m..⁹
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16 9. On September 22, 2010, DMR, MFM, and COMPACIFIC, submitted bids in response
17 to the IFB.¹⁰

18 10. MFM's bid was for equipment manufactured by Nor-Tech, Northern Computer
19 Technologies. MFM included Nor-Tech's certification that Computerland was Nor-Tech's
20 authorized reseller for Guam and that MFM was a wholesale reseller under Computerland and is
21 provided full on-island warranty coverage from Computerland/Nor-Tech for equipment sold to
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26 ⁸ Amendment No. 1 dated September 3, 2010, IFB, Tab 2, Id.

27 ⁹ Amendment No. 2 dated September 16, 2010, IFB, Tab 2, Id.

28 ¹⁰ Bid Submission Register dated September 22, 2010, Tab 3, Id.

1 the Government of Guam.¹¹ MFM also included Acer's certification that Computerland and
2 MFM are authorized to sell Acer products in the United States, including U.S. Territories, under
3 Acer's authorized reseller name, Nor-Tech.¹² The Public Auditor's *de novo* review indicated
4 that the aforementioned documents date back to September 2009 and were each addressed to
5 GSA and not directly to DOE. The procurement record submitted by DOE on March 7, 2011 is
6 devoid of any written determination that DOE verified the documents submitted.
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9 11. MFM's bid for Item No. 1 was one-thousand-seventy-five-dollars (\$1,075) per unit,
10 its bid for Item No. 2 was one-thousand-four-hundred-eighty-dollars (\$1,480) per unit, its bid for
11 Item No. 3 was two-hundred-twenty-dollars (\$225), and its bid for Item No. 4 was forty-five-
12 dollars (\$45).¹³

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14 12. DMR's bid for Item No. 1 was one-thousand-three-hundred-seventy-nine-dollars
15 (\$1,379) per unit, its bid for Item No. 2 was two-thousand-seventy-nine-dollars (\$2,079) per unit,
16 its bid for Item No. 3 was two-hundred-forty-four-dollars (\$244), and its bid for Item No. 4 was
17 forty-eight-dollars (\$48).¹⁴

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19 13. COMPACIFIC's bid for Item No. 1 was one-thousand-nine-hundred-ninety-four-
20 dollars (\$1,194) per unit, its bid for Item No. 2 was for one-thousand-five-hundred-fifty-one-
21 dollars (\$1,551) per unit, its bid for Item No. 3 was two-hundred-nineteen-dollars (\$219), and its

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23 ¹¹ Letter dated September 4, 2009 from Sean Quinlan, Nor-Tech to General
24 Services Agency, Government of Guam (Hereafter referred to as "GSA"), MFM
25 Bid, Tab 4, Id.

26 ¹² Letter dated September 23, 2009 from Gordon Rosenberg, Acer America
27 Corporation, to GSA, Id.

28 ¹³ Abstract of Bidders dated September 22, 2010, Tab 5, Id.

¹⁴ Id.

1 bid for Item No. 4 was thirty-nine-dollars (\$39).¹⁵

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3 14. On September 22, 2010, DOE issued a Bid Status indicating that the IFB was
4 recommended for a split award between MFM for thirty-four-thousand-nine-hundred-forty-five-
5 dollars (\$34,945) and COMPACIFIC for two-hundred-fifty-eight-dollars (\$258).¹⁶

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7 15. On October 1, 2010, DOE faxed the aforementioned bid status to DMR.¹⁷ DMR
8 acknowledged receipt of said bid status that same day.¹⁸

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10 16. On October 15, 2010, fourteen (14) days after it received the aforementioned bid
11 status, DMR filed a protest with DOE alleging that MFM's and COMPACIFIC's bids were non-
12 responsive. DMR alleged that MFM's bid did not comply with the IFB bid specifications
13 requiring that: (1) Equipment/hardware manufacturers have current ISO Certification; (2)
14 Vendors must have in-house, or be partnered with an on-island service center staffed by A+
15 Certified Technicians; and (3) Vendors must be manufacturer authorized resellers of the fully
16 assembled equipment/hardware.¹⁹ DMR alleged that COMPACIFIC did not comply with the
17 IFB bid specifications requiring that: (1) Equipment/hardware manufacturers have current ISO
18 Certification; and (2) Vendors must have in-house, or be partnered with an on-island service
19 center staffed by A+ Certified Technicians.²⁰

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22 ¹⁵ Id.

23 ¹⁶ DOE Bid Status dated September 22, 2010, Tab 5, Id.

24 ¹⁷ DOE Fax Confirmation Report dated October 1, 2010 re September 22, 2010 Bid
25 Status Addressed to DMR, Tab 6, Id.

26 ¹⁸ DOE Bid Status dated September 22, 2010 addressed to DMR, with DMR
27 Acknowledgement Receipt dated October 1, 2010, Id.

28 ¹⁹ Procurement Protest dated October 15, 2010, Tab 7, Id.

²⁰ Id.

1 17. On February 10, 2011, DOE denied DMR's protest after determining that DOE may
2 waive minor informalities pursuant to Chapter III, §3.9.13.4.1, and after finding that MFM and
3 COMPACIFIC have a Manufacturer's current ISO Certification, that MFM and COMPACIFIC
4 maintain an A+ Certified Technician, and that MFM is a manufacturer authorized reseller.²¹
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6 18. On February 25, 2011, fifteen (15) days after DOE denied their protest, DMR filed
7 this appeal which only concerns DOE's finding that that MFM is a manufacturer authorized
8 reseller.²²
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10 III. ANALYSIS

11 The Public Auditor must decide an appeal regarding a procurement method, solicitation,
12 or award, or entitlement to costs by determining whether the purchasing agency's decision on the
13 protest of the method of selection, solicitation, or award of the contract, or entitlement to costs is
14 in accordance with the statutes, regulations, and the terms and conditions of the solicitation. 2
15 G.A.R., Div. 4, Chap. 12, §12201(a). Here, the only issue the Public Auditor must decide is
16 whether DOE's February 10, 2011 finding that MFM complied with the IFB's requirement that
17 that vendors must be manufacturer-authorized resellers of the fully assembled
18 equipment/hardware was in accordance with the statutes, regulations, and the IFB's terms and
19 conditions. The Public Auditor's will review this issue *de novo*. 5 G.C.A. §5703 and 2 G.A.R.
20 Div. 4, Chap. 12, §12103(a).
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23 **A. DMR's Motion for An Order on the Pleadings has merit and this matter shall be** 24 **decided based on the record without a formal hearing.**

25 As a preliminary matter, the Public Auditor must decide DMR's April 1, 2011 Motion for
26 an Order on the Pleadings. DMR argues that DOE's Agency Report admits the allegations in
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28 ²¹ DOE Denial of Protest dated February 10, 2011, Tab 10, Id.

²² Line 18, Page 2, Notice of Appeal filed on February 25, 2011.

1 DMR's appeal; that there are no material issues of fact left for the Public Auditor to determine;
2 and the appeal may properly be decided on the records submitted alone without a hearing.²³ The
3 Public Auditor finds that DOE's Agency Report admits that the issue of whether MFM is a
4 manufacturer authorized reseller could not be waived as a minor informality.²⁴ The Public
5 Auditor finds that DOE's Agency Report states that DOE confirmed that MFM is a manufacturer
6 authorized reseller.²⁵ Thus, the Public Auditor finds that despite DOE's admission concerning
7 the minor informality in its Agency Report, whether MFM complied with the IFB's requirement
8 that vendors must be manufacturer-authorized resellers of the fully assembled
9 equipment/hardware is still an issue in this matter. Further, DMR relies on Rule 12(c) of the
10 Guam Rules of Civil Procedure (Hereafter referred to as "GRCP").²⁶ Said rule states that after
11 the pleadings are closed but within such time as not to delay the trial, any party may move for
12 judgment on the pleadings. Rule 12(c), GRCP. The Public Auditor finds that Rule 12(c), GRCP
13 is not applicable here because the Public Auditor's proceedings are not bound by the technical or
14 formal rules of procedure except as provided in Guam Procurement Law or Regulations. 2
15 G.A.R., Div. 4, Chap. 12, §12108(d). Generally, in appeals concerning procurement protest
16 decisions, the parties shall either request a hearing in writing or waive their right to a hearing and
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22 ²³ Line 14, page 2, DMR's Motion for an Order on the Pleadings filed on April
23 1, 2011.

24 ²⁴ Letter dated March 14, 2011 from DOE's Supply Management Administrator,
25 Marcus Y. Pido to Jaqueline T. Terlaje, Esq., Tab G, Agency Report filed on
26 March 14, 2011.

27 ²⁵ Paragraph G(4), DOE Response to Appeal dated March 14, 2011, Tab G, Agency
28 Report filed on March 14, 2011.

²⁶ Line 11, page 2, Id.

1 submit their case on the record without a hearing. 2 G.A.R., Div. 4, Chap. 12, §12108(a). As
2 stated above, DMR filed their Waiver of Hearing on April 15, 2011. Thus, pursuant to 2
3 G.A.R., Div. 4, Chap. 12, §12108(a), DMR's Motion is hereby GRANTED and the Public
4 Auditor shall decide this case on the record without a hearing.
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6 **B. DOE erred by determining that the issue of whether MFM complied with the**
7 **bid specifications is a minor informality that could be waived.**

8 The Public Auditor agrees with DOE's admission that the issue of whether MFM complied with
9 the IFB's requirement that vendors must be manufacturer-authorized resellers of the fully
10 assembled equipment/hardware is not a minor informality that can be waived. Minor
11 informalities are matters of form, rather than substance evident from the bid document, or
12 insignificant mistakes that can be waived or corrected without prejudice to other bidders, that is
13 the effect on price, quantity, quality, delivery, or contractual conditions is negligible. Chapter
14 III, §3.9.13.4.1., DOE Procurement Regulations.²⁷ DOE's Superintendent shall waive such
15 informalities or allow the bidder to correct them depending on which is in the best interest of
16 DOE and examples of minor informalities include the failure of a bidder to: (1) Return the
17 number of signed bids required by the invitation for bids; (2) Sign the bid, but only if the
18 unsigned bid is accompanied by other material indicating the bidders intent to be bound; (3)
19 Acknowledge the receipt of an amendment to the invitation for bids under specified
20 circumstances. Chapter III, §3.9.13.4.1, DOE Procurement Regulations. Whenever DOE's
21 Superintendent allows a bidder to correct a minor informality after opening of the bids but prior
22 to award, the Superintendent must prepare a written determination showing that the relief was
23 granted in accordance with DOE's Procurement Regulations. Chapter III, §3.9.13.6. Here, the
24 issue of whether MFM complied with the IFB's requirement that vendors must be manufacturer-
25 authorized resellers of the fully assembled equipment is a matter of substance and not merely a
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28 ²⁷ DOE is authorized to promulgate its own procurement regulations. 5 G.C.A.
§5131.

1 matter of form. As stated above, the aforementioned requirement is an IFB specification.
2 Further, the IFB required that the bidders comply with all specifications and other requirements
3 of the solicitation.²⁸ Thus, the Public Auditor finds that whether MFM's complied with the
4 aforementioned IFB specification is not a minor informality that DOE could waive.

5 **C. MFM is a Manufacturer Authorized Reseller of the Computers MFM Bid.**

6 The Public Auditor agrees with DOE's February 10, 2011 finding that MFM complied
7 with the IFB's requirement that that vendors must be manufacturer-authorized resellers of the
8 fully assembled equipment/hardware. MFM Bid Voyageur Midtower computers for Item Nos. 1
9 and 2 of the IFB.²⁹ As stated above, MFM's Bid included Nor-Tech's certification that
10 Computerland was Nor-Tech's authorized reseller for Guam and that MFM was a wholesale
11 reseller under Computerland and is provided full on-island warranty coverage from
12 Computerland/Nor-Tech for equipment sold to the Government of Guam.³⁰ MFM's Bid also
13 included Acer's certification that Computerland and MFM are authorized to sell Acer products in
14 the United States, including U.S. Territories, under Acer's authorized reseller name, Nor-Tech.³¹
15 This documentation clearly indicates that Nor-Tech and Acer, the manufacturers of the
16 computers bid by MFM have identified MFM as an authorized reseller of their computers. It
17 appears that DMR's protest and appeal are based solely on Nor-Tech identifying Computerland
18 as its authorized reseller for Guam and MFM was Computerland's wholesale reseller. However,
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21 ²⁸ Compliance with Specifications and Other Solicitation Requirements,
22 Paragraph 6, General Terms and Conditions, IFB, Tab 1, Procurement Record
23 filed on March 7, 2011.

24 ²⁹ MFM Bid, Tab 4, Procurement Record filed on March 7, 2011.

25 ³⁰ Letter dated September 4, 2009 from Sean Quinlan, Nor-Tech to General
26 Services Agency, Government of Guam (Hereafter Referred to as "GSA"), MFM
27 Bid, Tab 4, Id.

28 ³¹ Letter dated September 23, 2009 from Gordon Rosenberg, Acer America
Corporation, to GSA, Id.

1 the broad language of the term “manufacturer-authorized reseller” does not exclude chain of
2 authorizations Nor-Tech and Acer describe in the certifications that MFM is an authorized
3 reseller of their products. Thus, the Public Auditor finds that MFM is a manufacturer authorized
4 reseller of the computers it bid in response to the IFB.³²

5 **D. DOE’s violation of Chapter III, §3.9.13.4.1, DOE Procurement Regulations does**
6 **not warrant vacating its proposed award to MFM.**

7 DOE’s violation of Chapter III, §3.9.13.4.1, DOE Procurement Regulations, as set forth
8 above, does not warrant vacating DOE’s proposed award to MFM. If prior to an award, it is
9 determined that a solicitation or proposed award is in violation of law, the solicitation or
10 proposed award shall be cancelled or revised to comply with the law. 5 G.C.A. §5451. Here, as
11 stated above, DOE violated Chapter III, §3.9.13.4.1, DOE Procurement Regulations when it
12 denied DMR’s October 15, 2010 protest on the ground that DOE could waive the issue of
13 whether MFM complied with the IFB’s requirement that vendors be manufacturer-authorized
14 resellers of the fully assembled equipment/hardware they bid. However, as stated above, DOE
15 also correctly determined that MFM was a manufacturer authorized reseller of the computers it
16 bid and denied DMR’s protest on that separate ground. Thus, the Public Auditor finds that the
17 violation of Chapter III, §3.9.13.4.1, DOE Procurement Regulations, concerns only a ground
18 used by DOE to deny DMR’s protest and does not concern DOE’s proposed award to MFM.
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25 ³² The Public Auditor notes that DOE, in Paragraph 7(g), line 13, page 2, of
26 DOE’s April 7, 2011 Reply to DMR’s Motion for Order on the Pleadings,
27 conceded that MFM was not a manufacturer-authorized reseller. However,
28 pursuant to 5 G.C.A. §5703, no prior determination, to include DOE’s
concession stated above, shall be final or conclusive on the Public Auditor.

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IV. CONCLUSION

Based on the foregoing, the Public Auditor hereby determines the following:

1. Pursuant to 2 G.A.R., Div. 4, Chap. 12, §12108(a), DMR's Motion for an Order on the Pleadings is hereby GRANTED and the Public Auditor shall decide this case on the record without a hearing.

2. DOE violated Chapter III, §3.9.13.4.1, DOE Procurement Regulations by determining that it could waive, as a minor informality, the issue of whether MFM complied with the IFB's requirement that vendors must be manufacturer-authorized resellers of the fully assembled equipment/hardware.

3. The Public Auditor finds that MFM is a manufacturer authorized reseller of the computers it bid in response to the IFB.

4. The Public Auditor finds that DOE's violation of Chapter III, §3.9.13.4.1, DOE Procurement Regulations, as set forth above, does not warrant vacating DOE's proposed award to MFM because said violation only concerns a ground used by DOE to deny DMR's protest and does not concern DOE's proposed award to MFM.

5. DMR's Appeal is DENIED.

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

A copy of this Decision shall be provided to the parties and their respective attorneys, in accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website www.guamopa.org.

DATED this 19th day of May, 2011.

DORIS FLORES BROOKS, CPA, CGFM
PUBLIC AUDITOR



FAX

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Agency: Pages 12 (Including cover)

CC: **ALL MEDIA** Date: May 19, 2011

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Re: **Appeal No. OPA-PA-11-004 DECISION**

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