

COPY

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Telephone 671.648.9001
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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

FEB 25 2011

TIME: 3:50 PM BY: GDOE
FILE NO. OPA-PA: 11-003

Attorneys for *Data Management Resources, LLC*

THE OFFICE OF PUBLIC ACCOUNTABILITY – GUAM
HAGATNA, GUAM

In the Appeal of) NOTICE OF APPEAL FROM DECISION ON
DATA MANAGEMENT RESOURCES,) PROTEST
LLC, Appellant)
)
)
) DOCKET NUMBER. OPA-PA-11-003

PART II Appellant Information

Name: Data Management Resources, LLC
Mailing Address: 284 W. Chalan Santo Papa, Hagatna, Guam 96910
Business Address: 284 W. Chalan Santo Papa, Hagatna, Guam 96910
Daytime Contact: Richard C. Taitano, Chief Technology Officer 671.647.3675

PART III Appeal Information

- A) Purchasing Agency: Guam Department of Education (“GDOE”)
- B) Number/Description of Procurement:

GDOE IFB023-2010: Outright Purchase of Computer Systems and Multimedia Equipment

1 C) Decision being appealed was dated February 9, 2011 by Marcus Y. Pido, Supply
2 Management Administrator, GDOE, and received by Appellant on February 10, 2011.

3 D) Appeal is made from:

4 *(Please select one and attach a copy of the Decision to this form)*

5 Decision on Protest of Method, Solicitation or Award

6 Decision on Debarment or Suspension

7 Decision on Contract or Breach of Contract Controversy

8 (Excluding claims of money owed to or by the government)

9 Determination on Award not Stayed Pending Protest or Appeal

10 (Agency decision that award pending protest or appeal was necessary to
11 protect the substantial interests of the government of Guam)

12 E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

13 (i) Micros-Fidelio Micronesia Inc

14 590 S. Marine Dr., ITC Bldg., Ste. 727, Tamuning, Guam 96913

15 (ii) ComPacific

16 1900 Harmon Loop Rod., Ste. 106 Dededo, Guam 96929

17 **PART IV Form and Filing**

18 **A. Grounds for Appeal**

19 (1) This Appeal arises out of the decision on Protest of the Method, Solicitation and
20 Award of IFB023-2010 to Micros-Fidelio for Item No. 1 of IFB023-2010 related to the
21 specification requiring 'Internal English Keyboard with Anti-Microbial Protection'
22 (hereinafter "Anti-Microbial Specification"). Specifically, GDOE failed to ensure that
23 bidder Micros-Fidelio complied with this Anti-Microbial Specification.

24 (2) On October 4, 2010, DMR lodged its protest (hereinafter "Protest"), attached
25 hereto as Exhibit 1.

26 (3) On February 10, 2011, GDOE issued a determination and response to the
27 Protest, attached hereto as Exhibit 2, denying the Protest, in part, and affirming the
28

1 Protest, in part. GDOE denied the Anti-Microbial Specification portion of the Protest
2 (hereinafter "Determination").

3 (4) DMR appeals the GDOE Determination pursuant to Title 5 Guam Code
4 Annotated, §5425(a).

5 (5) DMR is an actual bidder, aggrieved by the Determination of the award of
6 IFB023-2010 relating to the Anti-Microbial Specification.

7 (6) The Determination was based on Department of Education Procurement
8 Regulations (DOEPR) 3.9.13.4, which provides:

9 Minor informalities are matters of form, rather than substance evident
10 from the bid document, or insignificant mistakes that can be waived or
11 corrected without prejudice to other bidders; that is, the effect on price,
12 quantity, quality, delivery, or contractual conditions is negligible. The
13 Director of Education shall waive such informalities or allow the bidder
14 to correct them depending on which is the best interest of the Department
15 ..."

16 (7) First, and most importantly, Micros-Fidelio simply does not meet the Anti-
17 Microbial Specification; attached hereto as Exhibit 3 is an excerpt of the Micros-Fidelio
18 bid submission in IFB023-2010.

19 (8) Second, no explanation was provided by GDOE on the basis of its determination
20 that the Anti-Microbial Specification was an informality that did not affect the price of
21 the items requested in IFB023-2010. GDOE's determination was simply arbitrary and
22 erroneous.

23 (9) The specification requesting for Anti-Microbial Protection affects the substance
24 of the specifications. Attached hereto is Exhibit 4, which sets forth the health issues
25 addressed by providing Anti-Microbial Protection, as requested in IFB023-2010.

26 (10) The Anti-Microbial Specification also affects the overall cost in responding to
27 the IFB023-2010. Attached hereto is Exhibit 5, which supports Appellant's assertion
28 that waiver of this provision affects the price, and as such, is a substantive change in
IFB023-2010 which would prejudice Appellant and other bidders to IFB023-2010.

1 (11) DOEPR 3.9.13.4 requires that the GDOE Superintendent waive the informality.
2 On February 18, 2011, Appellant caused a Freedom of Information Request under the
3 Guam Sunshine Reform Act (hereinafter "FOIA") to be delivered to GDOE, which is
4 attached hereto is Exhibit 6. Appellant specifically requested that "All documents
5 related to the determination by DOE of any specification or provision of IFB023-2010
6 under DOEPR 3.9.13.4." On February 23, 2011, GDOE responded to the FOIA
7 request. No documents supporting the determination by the Superintendent were
8 provided by GDOE. Upon information and belief, the GDOE Superintendent has not
9 waived the Anti-Microbial Specification of IFB023-2010.

10
11 **B. PRAYER FOR RELIEF**

12 Appellant seeks ratification and affirmation in this Appeal of its Protest to IFB023-2010, and
13 requests that IFB023-2010 be allowed to proceed with the determination that Micros-Fidelio
14 has failed to meet the specifications of IFB023-2010. Appellants seeks any other relief that the
15 Office of the Public Auditor deems just and appropriate under the circumstances.

16 **C. SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS**

- 17
- | | | |
|----|-----------|---|
| 18 | Exhibit 1 | DMR, LLC Protest Letter dated October 4, 2010 |
| 19 | Exhibit 2 | GDOE Response to Protest received February 10, 2011 |
| 20 | Exhibit 3 | Micros-Fidelio Bid |
| 21 | Exhibit 4 | Agion Health Info |
| 22 | Exhibit 5 | Cost of Anti-Microbial Spec. |
| 23 | Exhibit 6 | FOIA Request to GDOE dated February 18, 2011 |

24
25 **D. DECLARATION RE COURT ACTION**

26 Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest
27 in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any
28 appeal where action concerning the protest or appeal has commenced in any court.

1 The undersigned party does hereby confirm that to the best of his or her knowledge, no case or
2 action concerning the subject of this Appeal has been commenced in court. All parties are
3 required to and the undersigned party agrees to notify the Office of the Public Auditor within
4 twenty-four (24) hours if court action commences regarding this Appeal or the underlying
5 procurement action.

6
7 Submitted this 25th day of February, 2011.

8
9 By: 

TRICIA T. CRUZ

Appellant's Duly Authorized Representative
284 W. Chalan Santo Papa, Hagåtña, Guam 96910
671.647.3675

12
13 **LAW OFFICE OF JACQUELINE TAITANO TERLAJE, P.C.**

14
15 By: 

JACQUELINE TAITANO TERLAJE

Attorneys for Appellant



data management resources, llc.

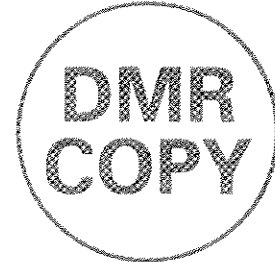


284 W. Chalan Santo Papa, Hagatna, Guam 96910
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dmr@dmrguam.com

Innovation: meet Vision

October 4, 2010

Procurement Administrator
Supply Management
Department of Education
P.O. Box DE
Hagatna, Guam 96932



RE: IFB-023-2010

Dear Sir or Madame:

Data Management Resources, LLC. (DMR) submits this formal protest of bid award to Micros-Fidelio Micronesia, Inc. for Item #1 of IFB-023-2010, Bid for Outright Purchase of Computer Systems and Multimedia Equipment. DMR protests the award of Item #1 to Micros-Fidelio on the grounds that bidder did not meet minimum specifications for the given item. Specifically:

IFB specification for Item 1:	Bidder's submitted specification:	REMARKS
Genuine Windows 7 Professional 32bit	<ul style="list-style-type: none"> Genuine Windows 7 Starter Genuine Windows XP Home 	Wrong operating system. SPECIFICATION NOT MET.
Internal English Keyboard with Anti-Microbial Protection	<ul style="list-style-type: none"> None specified. 	Bidder brochure does not indicate availability of anti-microbial keyboard. SPECIFICATION NOT MET.
Integrated 10/100/1000 Ethernet	<ul style="list-style-type: none"> Speed not specified. 	Bidder brochure only indicates "RJ45 LAN Port." SPECIFICATION NOT MET.

Given the above, we submit that bidder Micros-Fidelio's bid for IFB-023-2010 for Item Number 1 does not meet the minimum specifications required by the IFB. As such, DMR protests awarding of such contract to the aforementioned bidder for the given item.

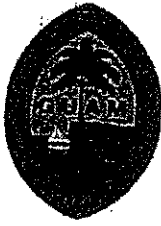
Should you have any questions regarding this bid protest, I may be contacted at 647-3675.

Sincerely,

FOR Richard C. Taitano
Chief Technology Officer

NOTICE OF APPEAL
In Re DMR, LLC
EXHIBIT 1-DMR PROTEST

OCT 14 2010



Nerissa Bretania Underwood, Ph.D.
Superintendent of Education

**OFFICE OF SUPPLY MANAGEMENT
GUAM DEPARTMENT OF EDUCATION**

Manuel F.L. Guerrero / Administration Building
2nd. Floor, Suite B-202
Hagåtña, Guam 96932
Telephone: (671) 300-1581
Fax: (671) 472-5001



Marcus Y. Pido
Supply Management Administrator

February 9, 2011

Data Management Resources, LLC
284 W. Chalan Santo Papa,
Hagatna, GU 96910
Tel: (671)647-3674
Fax: (671)477-3677

ATTN: Richard C. Taitano
Chief Technology Officer

Subject: Protest Letter dated October 4, 2011

Reference: Outright Purchase of Computer Systems and Multimedia Equipment
Formal Bid: GDOE IFB 023-2010

This letter is an official response to your letter of protest dated and received October 4, 2010.

Please be advised that your protest has been affirmed.

You have protested the recommendation of award to Micros-Fidelio Micronesia, Inc. for item #1 on the ground that bidder did not meet the minimum specifications for the item, specifically for the following reasons:

- (1) Micros-Fidelio provided the wrong operating system. Specifications on the bid packet indicate Genuine Windows 7 Professional 32bit. Micros Fidelio instead provided Windows 7 Starter.
- (2) Micros-Fidelio did not provide the required anti-microbial keyboard.
- (3) Micros-Fidelio only provides RJ45 LAN Port, as opposed to the required integrated 10/100/1000 Ethernet.

Upon further review of the above referenced IFB, we have concluded the following:

- Micros-Fidelio did not meet the minimum required operating system, as mentioned in item 1 above.
- Item 2, on the other hand, has been considered a minor informality, pursuant to the Department of Education Procurement Regulations (DOEPR) 3.9.13.4 which states:

"Minor informalities are matters of form, rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual

NOTICE OF APPEAL

In Re DMR, LLC

EXHIBIT 2 GDOE Response to Protest

Page 1 of 2

Protest Letter dated October 15, 2010
IFB 023-2010
February 9, 2011
Page 2


conditions is negligible. The Director of Education shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the Department...

- Micros-Fidelio does, in fact, meet specifications for item 3 above.

Therefore, as stated earlier and based on the aforementioned response, the Department hereby affirms your protest. As a result, an Amended Bid Status will be prepared.

Pursuant to Guam Code Annotated (5 GCA) § 5425 (e) titled "APPEAL" which states, " a decision under Subsection (c) of this Section including a decision there under regarding entitlement to costs as provided by Subsection (h) of this Section, may be appealed by the protestant, to the Public Auditor within fifteen (15) days after receipt by the protestant of the notice of decision".

For your information, a copy of the Department of Education's Procurement Regulations is on file in the Territorial Law Library.


MARCUS Y. PIDO
Supply Management Administrator

cc: Jaqueline T. Terlaje, ESQ

NOTICE OF APPEAL
In Re DMR, LLC
EXHIBIT 2 GDOE Response to Protest
Page 2 of 2

Nortech Traveler Netbook PC 1001PX



Processor: Intel Atom N450 (1.66GHz, 512KB L2 Cache)
Memory: 1GB DDR2 SODIMM memory, Max Capacity up to 2GB
Display: 10.1" WSVGA (1024x600) Non-Glare Screen LCD w/ LED-backlit
Graphics Module: Integrated Intel GMA 950 Graphics Controller
Hard Disk: 160GB 5400RPM SATA Hard Drive
Audio: Integrated Hi-Definition Audio CODEC; Built-in Speakers and Microphone
Connectivity: Gigabit Ethernet; 802.11b/g/n Wireless LAN
Interface: 2x USB 2.0 Ports; 1x VGA Port; 1x RJ45 LAN Port; 1x Microphone-in; 1x Headphone-out
Card Reader: 3-in-1 Card Reader, Support MMC/ SD/ SDHC
Camera: Built-in 0.3 Megapixel Camera
Battery Pack & life: 6 cells Lithium Battery, up to 9 hours
Color: Black
Dimension(WxDxH): 262 x 178 x 25.9 ~ 36.5 mm
Weight: 1.27 kg
Operating System: Microsoft Windows 7 Starter
Warranty: 3 Years On-Island On-Site

Operating System	Genuine Windows® XP Home Express Gate
Display	10.1" LED Backlight WSVGA Non-Glare Screen (1024x600)
CPU & Chipset	Intel® Atom™ N450
Memory	SO-DIMM 1GB/2GB
Wireless Data Network	WLAN 802.11b/g @2.4GHz BluetoothV2.1* + EDR * Optional
Storage	2.5" 160GB/250GB SATA2 HDD 5400rpm
Camera	0.3M Pixel
Audio	Hi-Definition Audio CODEC High Quality Speaker Built-in MIC
Input / Output	1 x VGA Connector 2x USB 2.0 1 x LAN RJ-45 1x Audio Jack (Head Phone / Mic-in) Card Reader: MMC/ SD(SDHC)
Battery	4.5 hrs* , 3 cell, 2.2Ah/cell, 23Whr 9 hrs* , 6 cell, 2.2Ah/cell, 48Whr *Subject to system configuration and usage
Dimensions	262(W)x178(D)x25.9~36.5(H)mm
Weight	1.27g (w/ 6cell battery), 1.1Kg (w/ 6cell battery)
Color	Black, White ,Blue



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Agion Technologies

June 10, 2009 06:00 AM Eastern Time

New Netbook with Agion Antimicrobial Protected Keyboard Keeps it Clean in the Classroom

WAKEFIELD, Mass.--(BUSINESS WIRE)--Agion Technologies, the worldwide leader in naturally-occurring silver-based antimicrobial solutions, today announced it has partnered with Dell to offer the world's first netbook computer with Agion antimicrobial protected keyboards, a high-touch area that is susceptible to microbial growth. The Dell Latitude 2100 is influenced by the needs of K-12 students with "student rugged" design to give students access to the world of knowledge beyond the classroom.

Awareness of microbes that cause odors and stains in classroom settings and other high-share environments is on the rise, particularly with regards to the surfaces of school and office products. The surfaces of these products are susceptible to harboring microbes and a recent consumer study done by Agion showed school and office products as one of the top product categories consumers would like antimicrobial protection.

"Agion antimicrobial protected keyboards from Dell will be an essential asset to classrooms," said Paul Ford, chief executive officer of Agion Technologies. "Dell is truly on the forefront of the industry as the first computer manufacturer to recognize the market need and offer antimicrobial protection on the Latitude 2100."

Agion Technologies is a leader in providing customized, natural, antimicrobial solutions based on silver that continuously inhibits the growth of bacteria, mold and fungus. Agion's antimicrobial technology is Cradle To Cradle Certified and is used in consumer, industrial and healthcare industries. The technology is incorporated into a wide variety of products including cell phones, footwear, keyboards, water filters, medical catheters, and ice machines. Agion's customers include many leading brands such as Motorola, Columbia, Stryker, Adidas, PPG, Carrier and DuPont. For more information about Agion Technologies, visit www.agion-tech.com.

"Dell is truly on the forefront of the industry as the first computer manufacturer to recognize the market need and offer antimicrobial protection on the Latitude 2100."

Contact

Agion Technologies
Cyndy Hunter, 781-224-7149
Director of Marketing
chunter@agion-tech.com

Permalink: <http://www.businesswire.com/news/google/20090610005120/en/Netbook-Agion-Antimicrobial-Protected-Keyboard-Clean-Classroom>



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NOTICE OF APPEAL
In re DMR, LLC
EXHIBIT 4-Agion Health Info

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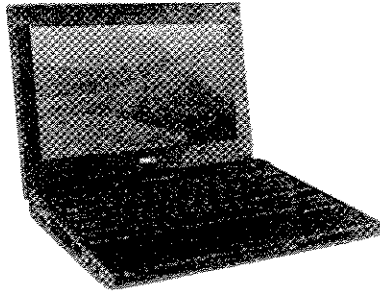
Windows® . Life without Walls™ . Dell recommends Windows 7.

Customize Accessories Recommended Add-ons & Services Review & Add to Cart

New! Instant Help via Screen Share Chat Now

SWITCH TO LIST VIEW

SELECT MY INTERNAL KEYBOARD



Sample image only

Optional keyboard includes Agion antimicrobial keyboard treatment fully registered by US EPA

- Internal English Keyboard [Included in Price]
- Internal lamp-resistant keyboard design with antimicrobial protection, English [add \$29.00]

Previous Component

Continue Customizing

Add to Cart



Important Product and Service Details

Latitude 2110 n-series

Starting Price \$642.00

Finance at a fixed rate of 2.25% on select Lattitudes

As low as \$16.00/mo

Dell Business Credit | Apply

Preliminary Ship Date: 2/18/2011

Print Summary

My System Details

- Ubuntu version 9.10
- Intel® Atom® Processor N470 (1.83GHz)
- Chalkboard Black
- No Camera, No Touch Screen (EDU)
- 10.1" WSVGA (1024 x 600) Anti-Glare LED-backlit
- Energy Star 5.0 Enabled / EPEAT Silver
- 3 Year ProSupport and 3 Year Next Business Day On-site Service
- Intel® Graphics Media Accelerator 3150
- 1.0GB, DDR2-800 SDRAM
- Internal English Keyboard
- 160GB Hard Drive, 5400RPM
- Dell Wireless™ 1520 802.11a/g/n Draft Mini Card

My Accessories

- 3 Cell Primary Battery
- 65W A/C Adapter (3-pin)

My Services & Warranties

- No Onsite System Setup

Small & Medium Business

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NOTICE OF APPEAL
 In re DMR, LLC
 EXHIBIT 5-Cost AntiMicrobial
 Spec.

JACQUELINE TAITANO TERLAJE, ESQ.

888 NORTH MARINE CORPS DRIVE
STAR BUILDING, SUITE 215
TAMUNING, GUAM 96913
PHONE: 671.648.9001
FAX: 671.648.9002

VIA FACSIMILE NO. 671.472.5001

February 18, 2011

MARCUS PIDO
Department of Education, Government of Guam
Supply Management Administrator
Administration Bldg., Second Floor, Ste. B202
Hagatna, Guam 96910

NOTICE OF APPEAL
In re DMR, LLC
EXHIBIT 6 - FOIA Request to GDOE

RE: IFB-023-2010, Freedom of Information Request

Dear Mr. Garcia,

This letter constitutes a request under the Freedom of Information Act (FOIA) pursuant to 5 G.C.A. §10103 et. seq., as amended ("Sunshine Reform Act of 1999"). I am requesting that the following public documents be produced for inspection and copying within four (4) business days of this letter, and **NO LATER THAN FEBRUARY 24, 2011:**

- (1) All documents produced or transmitted to DOE related to DOE IFB023-2010, after the bid submission deadline, as set by DOE IFB023-02010.
- (2) All communications between DOE and all bidders related to IFB023-2010, after the bid submission deadline, as set by DOE IFB023-2010.
- (3) All documents related to the determination by DOE of any specification or provision of IFB023-2010 under DOEPR 3.9.13.4.

The following words shall be defined as set forth below:

- (i) "Documents" shall include but not be limited to, correspondence, letters, facsimiles, e-mails, memoranda, notes, electronic transmissions and contracts.
- (ii) "DOE" shall mean the Department of Education.
- (iii) "IFB023-2010" shall mean the Invitation for Bid, Bid No. 023-2010.
- (iv) "DOEPR" shall mean the Department of Education's Procurement Regulations.


I acknowledge that pursuant to the Sunshine Reform Act, I will incur the cost of copying. Please advise so that I can forward immediate payment.

If you wish to discuss this matter further, please call me. If you are represented by counsel, please govern yourself accordingly. I look forward to receiving your response.

Best regards,


JACQUELINE TAITANO TERLAJE

cc: Rebecca Perez Santo Tomas, DOE Legal Counsel

OFFICE OF THE DEPARTMENT OF EDUCATION
Office of the Superintendent
Rec'd by: 
Date/Time: 2/18/11

JACQUELINE TAITANO TERLAJE, ESQ.

888 NORTH MARINE CORPS DRIVE
STAR BUILDING, SUITE 215
TAMUNING, GUAM 96913
PHONE: 671.648.9001
FAX: 671.648.9002

February 25, 2011

VIA HAND DELIVERY

THE OFFICE OF PUBLIC ACCOUNTABILITY – GUAM

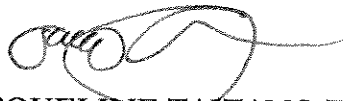
238 Archbishop Flores Street
DNA Bldg., Ste. 401
Hagatna, Guam 96910

In Re: PROCUREMENT APPEAL
by Data Management Resources, LLC of GDOE IFB023-2010

Dear Madam,

Please find enclosed the Notice of Appeal relative to Guam Department of Education IFB023-2010, and a Notice of Hearing in blank format. The Notice of Appeal is in triplicate as required by the Rules of Procedure for Procurement Appeals.

Best regards,



JACQUELINE TAITANO TERLAJE

Enclosures

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

FEB 25 2011

TIME: 3:50 pm BY: GSP
FILE NO. OPA-PA: 11-003

1 Jacqueline Taitano Terlaje, Esq.
2 Rachel Taimanao-Ayuyu, Esq.
3 **LAW OFFICE OF JACQUELINE TAITANO TERLAJE, P.C.**
4 888 North Marine Corps Drive, Suite 215
5 Tamuning, Guam 96913
6 Telephone 671.648.9001
7 Facsimile 671.648.9002
8 Email: info@terlajelaw.com

9 Attorneys for *Data Management Resources, LLC*


10 **OFFICE OF THE PUBLIC AUDITOR**
11 **HAGATNA, GUAM**


12 In the Appeal of) **NOTICE OF HEARING**
13)
14 DATA MANAGEMENT RESOURCES,)
15 LLC, Appellant)
16) DOCKET NUMBER OPA-PA _____
17)
18 _____)

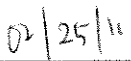
19 You are hereby notified that a hearing will be held before the Public Auditor or the Hearings
20 Officer for Procurement Appeals at the Office of the Public Auditor on the _____ day of
21 _____, 2011, at the hour of _____, relative to the above-referenced Procurement
22 Appeal. You may be present at the hearing; may be, but need not be, represented by counsel;
23 may present any relevant evidence; and will be given full opportunity to cross-examine all
24 witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the
25 attendance of witnesses and the production of books, documents or other things by applying to
26 the Hearings Officer for Procurement Appeals, Office of the Public Auditor.

27 Please acknowledge receipt of this Notice and return to the Office of the Public Auditor
28 immediately.

29 **Acknowledged receipt:**

30 
31 _____
32 Receiver's Signature

33 
34 _____
35 Print Name

36 
37 _____
38 Date

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