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IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

In the Appeal of DATA MANAGEMENT RESOURCES, LLC. Appellant.	)	**APPEAL NO. OPA-PA 11-004** **Reply To Appellant's Motion**

1. DOE is willing to waive its right to formal hearing on the matter and submit the matter on the record.

2. The procurement in IFB 025-2010 is pre-award. DOE issued a Notice of Intent to Award on October 1, 2010 and Appellant filed a protest to that notice. There has not been an award as stated by Appellant in its motion.

3. DOE pursuant to 5 GCA Ch 5 § 5425 and § 5451 has expressed its intent to Appellant to not proceed forward with the prior issued Notice of Intent(s) and to revise the notices as set forth in the stipulation of fact below.

4. Attorney fees have been requested by Appellant and are objected to by DOE. Attorney fees are not part of the remedies forth in § 5425 (h) which specifically excluded attorney fees and states as follows: ..."the protestant shall be entitled to reasonable costs incurred in connection with the solicitation and protest, including bid preparation costs, excluding attorney's fees."

5. DOE's Supply Management Administrator is authorized to waive minor informalities under § 3.9.13.4 (1) and pursuant to the Superintendent's delegation of authority under§ 2.5 of the DOEPR.

6. DOE's Supply Management Administrator has subsequently determined that what was believed to be a minor informality is not and DOE has met with Appellant with regard to the issues.

7. DOE has proposed the following stipulation of facts to Appellant and to the extent stated in Appellant's Motion agrees to the following:

(a) On August 26, 2010 GDOE issued IFB 025-2010 Outright Purchase of Computer Systems Items # 1 - # 4 and 7 prospective bidders picked up bid packages.

(b) On September 17, 2010 the bid closed and 3 bid submittals were received. GDOE Bid Abstract of the Bids of the same date indicated that the following as to the apparent lowest responsive responsible bidders for the Items #1 thru # 4.

Items # 1, # 2,	Micro Fidelios Micronesia, Inc.
Items # 3, #4	Comp Pacific
	Data Managment Resources, LLC.

(c) On September 23, 2010 GDOE completed its Bid Analysis & Recommendation.

(d) On October 1, 2010 GDOE sent notice to the Bidders of its Intent to Issue Awards as listed in No. 2 above.

(e) On October 15, 2010 Data Management Resources, LLC (DMR) filed a protest with regard to GDOE's intent to award Items #1 & # 2 to Micro Fidelios Micronesia, Inc. and also as to GDOE's intent to award Items # 3 & # 4 to Comp Pacific.

Items #1 and # 2 are computer systems (hardware, software)

Items # 3 and #4 are switches (accessories)

(f) On March 15, 2011, GDOE stipulated that the bid requirement that bidder be Manufacturer's Authorized Reseller is material to the bid and not a minor informality that can be waived in that it may effect warranty services being provided as to the equipment being procured.

(g) Micro Fidelios Micronesia, Inc. is not a Manufacturer's Authorized Reseller with regard to Items # 1 and # 2 therefore with regard to Items # 1 and #2 it is not GDOE's intent to award to Micro Fidelios Micronesia, Inc.

(h) The next apparent lowest, responsive and responsible bidder for Item # 1 and # 2 is Comp Pacific per No. 2 above.

(i) Comp Pacific is also not a Manufacturer's Authorized Reseller with regard to Items # 1 and # 2 therefore it is not GDOE's intent to issue them an award.

(j) GDOE pursuant to its authority under 5 GCA Chapter 5, Section 5425 (b), would like to mutually resolve the issues in this matter and wants to proceed with awarding the bids in GDOE IFB 025-2010.

(k) With regard to Item # 1 and # 2 GDOE modifies its October 1, 2010 Notice of Intent to Award to be an intent to award Item #1 and #2 to DMR.

(l) With regard to Items (#3 and #4) the bid documents had the same requirements as for #1 and #2, including that bidder be an Manufacturer's Authorized Reseller. None of the bidder's met that requirement with regard to Items # 3 and # 4. It is GDOE's intent to modify its October 1, 2011 and cancel IFB 025-2010 with regard to Items # 3, and #4 since none of the bidders met all the requirements. None of the bidder submitted documentation as to being authorized resellers with regard to the equipment bid in these items. DOE is not interested in waiving any informalities with regard to this issue at this date. The issue is with the way the bid was worded and DOE would like to re-issue a the bid worded properly so that it is fair and an even playing field for all the bidders.

Respectfully submitted,

Laura J. Mooney
DOE Legal Counsel