

COPY

Jacqueline Taitano Terlaje, Esq.  
Rachel Taimanao-Ayuyu, Esq.  
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RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

FEB 25 2011

TIME: 3:50 pm BY: [Signature]  
FILE NO. OPA-PA: 11-004

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-11-004

**PART II Appellant Information**

Name: Data Management Resources, LLC (“DMR”)  
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 IFB025-2010: Outright Purchase of Computer Systems**

1 Decision being appealed was dated February 10, 2011 by Marcus Y. Pido, Supply Management  
Administrator, GDOE, and received to DMR on February 10, 2011.

2 C) Appeal is made from:

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

4  Decision on Protest of Method, Solicitation or Award

5  Decision on Debarment or Suspension

6  Decision on Contract or Breach of Contract Controversy

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

8  Determination on Award not Stayed Pending Protest or Appeal

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

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

12 (i) Micros-Fidelio Micronesia Inc

13 590 S. Marine Dr., ITC Bldg., Ste. 727, Tamuning, Guam 96913

14 (ii) ComPacific

15 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 IFB025-2010 to Micros-Fidelio for Item Nos. 1 and 2 of IFB025-2010  
21 related to the specification that the vendor must be a "Manufacturer-Authorized  
22 Reseller" (hereinafter "Reseller Specification"). Specifically, GDOE failed to ensure  
23 that bidder Micros-Fidelio has met the Reseller Specification, as required by p.23 of  
24 IFB025-2010, an excerpt which is attached hereto as Exhibit 1.

25 (2) On October 15, 2010, DMR lodged its protest (hereinafter "Protest"), attached  
26 hereto as Exhibit 2.

27 (3) On February 10, 2011, GDOE issued a determination and response to the  
28 Protest, attached hereto as Exhibit 3, denying the Protest (hereinafter "Determination").

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

3 (5) DMR is an actual bidder, aggrieved by the Determination of the award of  
4 IFB025-2010 relating to the Reseller Specification.

5 (6) The Determination was provided no explanation other than a plain statement  
6 that "Micros-Fidelio . . . is a manufacturer authorized reseller."

7 (7) Generally, a manufacturer authorized reseller is a company or individual who  
8 has an agreement with a manufacturer to sell the manufacturers' products, and a reseller  
9 is granted a license from the manufacturer. Upon information and belief, Micros-  
10 Fidelio is not a manufacturer reseller of Acer America Corporation, but is merely an  
11 authorized agent of the authorized agent of the authorized reseller, Nor-tech.

12 (8) Upon information and belief, on September 4, 2009, Nor-tech by Sean Quinlan,  
13 account representative, represented that "Computerland is the authorized  
14 reseller/service center for Guam & Asia Pacific Region for Nor-tech . . . Micros-Fidelio  
15 is a wholesale reseller under Computerland . . ." A copy of the correspondence is  
16 attached hereto as Exhibit 4.

17 (9) Upon information and belief, on September 23, 2009, another account executive  
18 with Acer America Corporation represented that "Computerland and Micros-Fidelio are  
19 authorized to sell Acer products in the US under our Acer Authorized Reseller name,  
20 Nor-tech." A copy of the correspondence is attached hereto as Exhibit 5.

21 (10) Upon information and belief, on January 1, 2010, Sean Quinlan of Nor-tech  
22 represented "Micros-Fidelio is authorized to sell and service the entire Nor-tech product  
23 line for Guam and Micronesia." A copy of the correspondence is attached hereto as  
24 Exhibit 6.

25 (11) Micros-Fidelio fails to meet the Reseller Specification. Micros-Fidelio based on  
26 the submission of documents provided by GDOE in response to a Guam Sunshine  
27 Reform Act request reveals that Micros-Fidelio's relationship to the manufacturer is  
28 that of an authorized agent, and is as follows:

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ACER  
*Manufacturer*



NOR-TECH  
*Manufacturer Authorized Reseller*



COMPUTERLAND  
*Authorized by Nor-tech*



MICROS-FIDELIO  
*Authorized by Computerland*

20 None of the documentation provided by Micros-Fidelio substantiate that Micros-Fidelio is a  
21 Manufacturer Authorized Reseller. *See* Exhibits 4 – 6. Therefore, the determination of GDOE  
22 was arbitrary and erroneous.

23  
24 **B. PRAYER FOR RELIEF**

25 Appellant seeks ratification and affirmation in this Appeal of its Protest to IFB025-2010, and  
26 requests that IFB025-2010 be allowed to proceed with the determination that Micros-Fidelio  
27 has failed to meet the specifications of IFB025-2010. Appellant seeks any other relief that the  
28 Office of the Public Auditor deems just and appropriate under the circumstances.

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

5  
6 Exhibit 1 Excerpt, page 23 of IFB25-2010  
7 Exhibit 2 October 15, 2010 DMR Protest to IFB25-2010  
8 Exhibit 3 February 10, 2011 GDOE Response to Protest  
9 Exhibit 4 September 9, 2009 Nortech correspondence  
10 Exhibit 5 September 23, 2009 Acer correspondence  
11 Exhibit 6 January 1, 2010 Nortech correspondence

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15 **D. DECLARATION RE COURT ACTION**

16  
17 Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest  
18 in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any  
19 appeal where action concerning the protest or appeal has commenced in any court.  
20

21 The undersigned party does hereby confirm that to the best of his or her knowledge, no case or  
22 action concerning the subject of this Appeal has been commenced in court. DMR hereby  
23 discloses that a Special Proceedings in the Superior Court of Guam was filed in SP225-10  
24 related to IFB023-2010; the issues addressed in SP225-10 dealt with the failure of GDOE to  
25 comply with the Guam Sunshine Reform Act, and the subject of this Appeal was not before the  
26 Superior Court of Guam. All parties are required to and the undersigned party agrees to notify  
27 the Office of the Public Auditor within 24 hours if court action commences regarding this  
28 Appeal or the underlying procurement action.

1  
2 Submitted this 25<sup>th</sup> day of February, 2011.

3  
4 By: 

**TRICIA T. CRUZ**

5 Appellant's Duly Authorized Representative  
6 284 W. Chalan Santo Papa, Hagåtña, Guam 96910  
7 671.647.3675

8 **LAW OFFICE OF**  
9 **JACQUELINE TAITANO TERLAJE, P.C.**

10 By: 

**JACQUELINE TAITANO TERLAJE**

11 Attorneys for Appellant  
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Tower Case W/450Watt Dual Fan  
 ATX Power Supply W/Sata,  
 10/100/1000 BaseT Gigabit Ethernet  
 Lan Adapter (Integrated), Microsoft  
 Windows 7 Professional (64-Bit)  
 (License), Asus 22" LCD Display  
 2-Piece Speakers, PS2/USB Keyboard  
 & Mouse Combo, Microsoft Office  
 Home & Divers & Recovery Discs,  
 Maruson 700VA Back-Up  
 Battery, Assembly, Test, and  
 Quality Control, 5-year Limited  
 Warranty.

*Brand Name or Equal:*

*Origin:* \_\_\_\_\_

*Make/Model:* \_\_\_\_\_

*Manufacturer:* \_\_\_\_\_

3.	16-Port Gigabit Switch	1	EA
4.	5-Port 10/100MBPS Switch	1	EA

**PLEASE NOTE:**

**Vendors must be manufacturer-authorized resellers of the fully assembled equipment/hardware.**

**All equipment/hardware must have a 5 year on-site (3 years for Laptops) or on-island warranty.**

**All fully assembled equipment/hardware must be manufacturer-branded.**

**Fully assembled equipment/hardware manufacturers must have current ISO certification.**

**Vendors must have in-house, or be partnered with an on-island service center staffed by A+ certified or manufacturer-certified technicians.**

NOTICE OF APPEAL IFB025-2010  
 In re DMR, LLC  
 EXHIBIT 1 - Excerpt Page 23

October 15, 2010

NOTICE OF APPEAL IFB025-2010

In re DMR, LLC

EXHIBIT 2-DMR Protest

Page 1 of 4

OCT 15 2010

PROCUREMENT ADMINISTRATOR  
Supply Management  
Department of Education, Government of Guam  
P.O. Box DE  
Hagatna, Guam 96932

3:30pm

**COPY**

RE: IFB-25-2010

Dear Sir or Madame:

This firm represents Data Management Resources, LLC (DMR). On behalf of DMR, I hereby submit this formal protest of BID STATUS Recommendation for split-award to Micros-Fidelio Micronesia, Inc. ("Micros-Fidelio") and ComPacific received on October 1, 2010. A copy of the transmission is attached hereto for your convenience and reference.

DMR PROTESTS THE RECOMMENDED AWARD TO MICROS-FIDELIO ON THE FOLLOWING BASIS:

(1) No documentation for Micros-Fidelio's compliance with IFB requirement to provide current ISO certification has been disclosed.

- On October 1, 2010, DMR requested the bid documents of Micros-Fidelio, and any and all supporting documents submitted to DOE by Micros-Fidelio relative to bid.
- On October 5, 2010, the Procurement Officer produced Micros-Fidelio's bid documents. The Procurement Officer has failed to disclose public documents related to the ISO Certification of Nor-Tech.

**IFB, p. 23 requirement:** Fully assembled equipment/hardware manufacturers must have current ISO certification.

Bidder represents for Items 1 and 2 that Nor-Tech is the manufacturer. No documentation has been produced by the Procurement Officer supporting Micros-Fidelio's eligibility and compliance with this IFB requirement.



(2) No documentation certifying that Micros-Fidelio maintains or is partnered with a manufacturer-certified or A+ Certified Technician.

- On October 1, 2010, DMR requested the bid documents of Micros-Fidelio, and any and all supporting documents submitted to DOE by Micros-Fidelio relative to bid.
- On October 5, 2010, the Procurement Officer produced Micros-Fidelio's bid documents.
- The Procurement Officer has failed to disclose public documents related to Micro-Fidelio's compliance with in-house or partnership with manufacturer-certified or A+ Certified Technician requirement.

**IFB, p. 23 requirement:** Vendors must have in-house, or be partnered with an on-island service center staffed by A+ certified or manufacturer-certified technicians.

No documentation has been produced by the Procurement Officer supporting Micros-Fidelio's eligibility and compliance with this IFB requirement.

(3) Micros-Fidelio is not a manufacturer-authorized reseller.

- On October 1, 2010, DMR requested the bid documents of Micros-Fidelio, and any and all supporting documents submitted to DOE by Micros-Fidelio relative to bid.
- On October 5, 2010, the Procurement Officer produced Micros-Fidelio's bid documents.

**IFB, p. 23 requirement:** Vendors must be manufacturer-authorized resellers of the fully assembled equipment/hardware.

Documentation disclosed by the Procurement Officer indicates that Computerland is the authorized reseller for Nor-Tech. Micros-Fidelio is a wholesale reseller under Computerland. **Micros-Fidelio is not authorized by the manufacturer to resell the items.** Rather, Micros-Fidelio is only authorized by Computerland, as indicated in the documents produced. Thus, Micros-Fidelio is NOT eligible and fails to comply with the IFB.

DMR PROTESTS THE RECOMMENDED AWARD TO COMPACIFIC ON THE FOLLOWING BASIS:

(1) No documentation for ComPacific's compliance with IFB requirement to provide current ISO certification has been disclosed.

- On October 1, 2010, DMR requested the bid documents of ComPacific, and any and all supporting documents submitted to DOE by ComPacific relative to bid.
- On October 5, 2010, the Procurement Officer notified DMR that it did not disclose certain documents submitted by ComPacific on the basis that ComPacific requested that the documents be kept confidential.
- The Procurement Officer has failed and refused to disclose public documents related to the ISO Certification of ComPacific.

**IFB, p. 23 requirement:** Fully assembled equipment/hardware manufacturers must have current ISO certification.

Bidder represents for Items 1 and 2 that it is the manufacturer of the procurement items. No documentation has been produced by the Procurement Officer supporting ComPacific's eligibility and compliance with this IFB requirement.

(2) No documentation certifying that ComPacific maintains or is partnered with a manufacturer-certified or A+ Certified Technician.

- On October 1, 2010, DMR requested the bid documents of ComPacific, and any and all supporting documents submitted to DOE by ComPacific relative to bid.
- On October 5, 2010, the Procurement Officer notified DMR that it did not disclose certain documents submitted by ComPacific on the basis that ComPacific requested that the documents be kept confidential.
- The Procurement Officer has failed and refused to disclose public documents related to ComPacific's compliance with in-house or partnership with manufacturer-certified or A+ Certified Technician requirement.

**IFB, p. 23 requirement:** Vendors must have in-house, or be partnered with an on-island service center staffed by A+ certified or manufacturer-certified technicians.

No documentation has been produced by the Procurement Officer supporting ComPacific's eligibility and compliance with this IFB requirement.

NOTICE OF APPEAL IFB025-2010

In re DMR, LLC

EXHIBIT 2-DMR Protest

Page 4 of 4

Protest IFB25-2010

October 15, 2010

Page 4 of 4

Based on the foregoing, DMR formally protests any award to both Micros-Fidelio and ComPacific based on bidders' eligibility and compliance with IFB-025-2010 requirements.

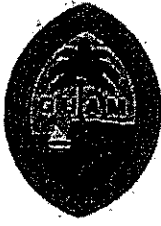
If you have any questions related to this bid protest, you may contact me. If you have legal counsel, please govern yourself accordingly. I look forward to your response.

Best regards,



JACQUELINE TAITANO TERLAJE

cc: Richard C. Taitano  
Data Management Resources, LLC  
Chief Technology Officer



*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 10, 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 15, 2010

Reference: Outright Purchase of Computer Systems  
**Formal Bid: GDOE IFB 025-2010**

This letter is an official response to your letter of protest dated and received October 15, 2010.

Please be advised that your protest is denied due to the following reasons.

You have protested the recommendation of award to Micros-Fidelio for items 1 and 2 due to the following:

- (1) No documentation for Micros-Fidelio's compliance with IFB requirement to provide current ISO certification has been disclosed.
- (2) No documentation certifying that Micros-Fidelio maintains or is partnered with a manufacturer-certified or A+ Certified Technician.
- (3) Micros-Fidelio is not a manufacturer-authorized reseller.

Furthermore, you have protested the recommendation of award to COMPacific for items 3 and 4 due to the following:

- (1) No documentation for COMPacific's compliance with IFB requirement to provide current ISO certification has been disclosed.
- (2) No documentation certifying that COMPacific maintains or is partnered with a manufacturer-certified or A+ Certified Technician.

Page 23 of IFB 025-2010 notes the following:

- Vendors must be manufacturer-authorized resellers of the fully assembled equipment/hardware.
- Fully assembled equipment/hardware manufacturers must have current ISO certification.

Protest Letter dated October 15, 2010  
IFB 025-2010  
February 10, 2011  
Page 2

- Vendors must have in-house, or be partnered with an on-island service center staffed by A+ certified or manufacturer-certified technicians.

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 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..."*

Although it is noted on the IFB that manufacturer must have current ISO Certification, it is not required to be a part of the submittal packet. However, such proof can be requested at a later time.

Upon receipt of protest, we have obtained confirmation that Micros-Fidelio does, in fact, have their manufacturer's current ISO certification, maintains an A+ Certified Technician, and is a manufacturer authorized reseller.

We have also obtained confirmation that COMPacific does, in fact, maintain an A+ Certified Technician. In addition, COMPacific's manufacturers do, in fact, have current ISO certifications.

Therefore, as stated earlier and based on the aforementioned response, the Department hereby denies your protest.

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



September 4, 2009

General Services Agency  
Government of Guam  
P.O. Box FG  
Agana, Guam 96910

**RE: reseller authorization & service center**


This is to certify that Computerland is the authorized reseller/service center for Guam & the Asia Pacific region for Nor-tech.

Computerland is authorized to sell & service the entire product line with full technical support, service, and warranty from Nor-tech.

Please note that Micros-Fidelio is a wholesale reseller under Computerland and is provided full on-island warranty coverage from Computerland/Nor-tech for equipment sold to GovGuam.

Should you have any questions regarding the above, please feel free to forward them to me at anytime.

Sincerely,

  
Sean Quinlan  
Nor-tech

NOTICE OF APPEAL IFB025-2010  
In re DMR, LLC  
EXHIBIT 4 - 9-04-09 Nortech by  
Sean Quinlan



**Acer America Corporation**  
333 West San Carlos St, Suite 1500  
San Jose, CA 95110  
Telephone: (408) 533-7700  
Facsimile: (408) 533-4574  
[www.acer.com/us](http://www.acer.com/us)

September 23, 2009

GSA - General Services Agency  
Government of Guam  
148 Route 1 Marine Drive  
Piti, Guam 96915

RE: Acer authorization for Guam, USA

This is to confirm that Computerland and Micros-Fidelio are authorized to sell Acer products in the US (including US Territories) under our Acer Authorized Reseller name, Nor-tech.

Any questions or concerns can be forwarded to Sean Quinlan at Nor-tech.

Sincerely,

*Gordon Rosenberg*

Gordon Rosenberg  
Acer America Corporation



January 1, 2010

Supply Administrator  
DOE - Supply Management  
Post Office Box DE  
Hagatna, Guam 96932

RE: Vendor Authorization - Micros

To whom it may concern:

This is to certify that Micros-Fidelio is authorized to sell and service the entire Nor-tech product line for Guam and Micronesia.

Sincerely,

Sean Quinlan  
Nor-tech

NOTICE OF APPEAL IFB025-2010  
In re DMR, LLC  
EXHIBIT 6 - 1-01-10 Nortech by  
Sean Quinlan



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](mailto: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 DATA MANAGEMENT RESOURCES, )  
14 LLC, Appellant )  
15 ) DOCKET NUMBER OPA-PA-11-004  
16 )

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

25 Please acknowledge receipt of this Notice and return to the Office of the Public Auditor  
26 immediately.

27 **Acknowledged receipt:**

28   
Receiver's Signature

GOPINATH RAMAKRISHNAN  
Print Name

02/25/11  
Date

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

FEB 25 2011  
TIME: 3:50 pm BY: Gopi  
FILE NO. OPA-PA: 11-004

**COPY**

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 IFB025-2010

Dear Madam,

Please find enclosed the Notice of Appeal relative to Guam Department of Education IFB025-2010, 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

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PROCUREMENT APPEALS  
FEB 25 2011  
TIME: 3:50 pm BY: Gopi  
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