

1 JEHAN'AD G. MARTINEZ  
2 BLAIR STERLING JOHNSON & MARTINEZ  
3 A PROFESSIONAL CORPORATION  
4 SUITE 1008 DNA BUILDING  
5 238 ARCHBISHOP F.C. FLORES STREET  
6 HAGÁTÑA, GUAM 96910-5205  
7 TELEPHONE: (671) 477-7857

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

JUN 07 2011

TIME: 4:00 BY: MHW  
FILE NO. OPA-PA: PP 11-08

Attorneys for Sanford Technology Group, LLC

6 )  
7 **IN THE MATTER OF:** )

**PROTEST NO:**  
**OPA-PP-11-008**

8 **SANFORD TECHNOLOGY GROUP,** )  
9 **LLC** )

**PROTESTER'S HEARING**  
**BRIEF**

10 **Protester** )

11 **COMES NOW, SANFORD TECHNOLOGY GROUP, LLC** ("STG"), by and  
12 through its counsel of record, and in protest of certain  
13 specifications articulated in the Department of Education's  
14 Invitation to Bid No. 006-2011 files its hearing brief. This  
15 brief is submitted pursuant to the Office of Public  
16 Accountancy's June 3, 2011 notice of hearing re procurement  
17 protest.

18  
19 **BACKGROUND**

20 On May 11, 2011, Guam Department of Education ("GDOE")  
21 published its Invitation for Bid No. 006-2011 (the "IFB") for  
22 an indefinite quantity of laptop computers and mobile computer  
23 labs. The IFB is for the benefit of the GDOE and is funded  
24 through the 2009 American Recovery and Reinvestment Act  
25 ("ARRA").

26  
27 STG, a local computer distributor with 25 years of  
28 experience, obtained the bid package and noticed that the

1 performance bond requirements articulated in IFB §2.5.4  
2 violated Guam's procurement law, 5 G.C.A. §5212 (g). On May  
3 27, 2011, STG filed the instant bid protest to require the IFB  
4 be amended to correct the offending specifications.

5  
6 **JURISDICTION OVER PROTEST**

7 Guam's procurement law, 5 G.C.A. §5425.1, vests in the  
8 Public Auditor, original and exclusive jurisdiction over ARRA  
9 funded, GDOE procurement protests. As a consequence, STG filed  
10 its bid protest with the Office of Public Accountability,  
11 Public Auditor.

12 **IFB PERFORMANCE GUARANTY SPECIFICATIONS**

13 IFB §2.5.4 articulates the bond requirements and  
14 performance guaranty specifications required to participate in  
15 the IFB. Specifically, IFB §2.5.4.3 requires a performance  
16 bond "equal to one hundred percent (100%) of the contract  
17 price." This requirement, however, violates Guam's Procurement  
18 Law, which does not require a performance bond at all. 5  
19 G.C.A. §5212 (g).<sup>1</sup> Instead, the law provides that the required  
20 fifteen percent (15%) bid security shall continue in force and  
21 effect until the supplies are delivered or services completed,  
22 and dispenses with any requirement of performance or payment  
23 bonds. 5 G.C.A. §5212 (c).  
24  
25

26 <sup>1</sup> 5 G.C.A. §5212(g) states: "No Requirement for Performance Bond. The bid  
27 security that shall be held until complete delivery of the supplies or services  
28 by the successful bidder is deemed to be satisfactory to adequately protect the  
best interest of the government of Guam, from default, and thus, no separate

1 Guam's procurement law section 5212 is made applicable to  
2 GDOE procurements through 5 G.C.A. §5125.

3 Consequently, the performance bond specifications required  
4 in the IFB violates Guam's Procurement Law. Furthermore, to  
5 require a bidder to place a Bid Bond of fifteen percent (15%)  
6 and a Performance Bond of one hundred percent (100%) will,  
7 especially in bid of this unit volume, effectively eliminate  
8 all locally owned small businesses from participating in this  
9 IFB opportunity.  
10

11 **CONCLUSION**

12 For the above-stated reasons, STG respectfully requests  
13 that the Public Auditor sustain this protest and require: (1)  
14 Amendment of the IFB to delete the Performance Bond request;  
15 and (2) Cancellation of the present IFB and preparation of an  
16 IFB that complies with Guam Law. STG believes that if the  
17 protest is not sustained, the performance bond requirement will  
18 eliminate essentially all locally owned Guam businesses from  
19 bidding on the IFB, a situation that is not in the best  
20 interest of Guam.  
21

22 **RESPECTFULLY SUBMITTED** this 7<sup>th</sup> day of June, 2011.

23 **BLAIR STERLING JOHNSON & MARTINEZ**  
24 A PROFESSIONAL CORPORATION

25  
26 BY:   
27 **JEHAN'AD G. MARTINEZ**  
*Attorneys for Sanford Technology Group, LLC.*