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A PROFESSIONAL CORPORATION

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HAGÁTÑA, GUAM 96910-5205

WRITER'S E-MAIL:  
jgmartinez@kbsjlaw.com

May 27, 2011

**PROTEST**

**VIA HAND DELIVERY**

Doris Flores Brooks  
Public Auditor  
OFFICE OF THE PUBLIC AUDITOR  
GOVERNMENT OF GUAM  
238 Archbishop Flores St.  
Suite 401  
Hagåtña, Guam 96910

<b>RECEIVED</b>	
OFFICE OF PUBLIC ACCOUNTABILITY	
DATE:	5/27/11
TIME:	2:30 pm
BY:	AZ

RECEIVED

2011 MAY 27 PM 1:47

GOVERNMENT

**RE: PROTEST OF BID INVITATION NO. 006-2011, BID FOR  
LAPTOPS AND MOBILE COMPUTER LABS**

Dear Ms. Acfalle:

We represent Sanford Technology Group, LLC ("STG"), a Guam limited liability company. Pursuant to 5 G.C.A. §5425.1, STG, as a prospective bidder, hereby protests the above-referenced invitation for bids ("IFB"). STG provides sales and service for computers, software, accessories, and networking products. It has previously been a successful bidder for computer and technology products for the Government of Guam, and has had 25 years experience providing the computing needs of Guam's businesses and public. As a consequence, STG has significant experience in responding to requests for proposals and invitations to bid, issued by the Government of Guam.

The IFB is for the benefit of the Government of Guam, Department of Education, and funded, in whole or part, by the 2009 American Recovery and Reinvestment Act ("ARRA").

**JURISDICTION OVER PROTEST**

Pursuant to 5 G.C.A. §5425.1, the exclusive remedy for "an actual or nonselected vendor, contractor, or service provider [who] is aggrieved by an award or [sic] a contract

To Doris Flores Brooks

Date May 27, 2011

Page 2

funded, in whole or in party, by the [sic] funds allotted to" the Department of Education through ARRA shall submit procurement protests to the Public Auditor. Since, however, this protest is prior to the award of the contract, STG perceives an ambiguity as to who has authority to preside over this protest. Because of this apparent ambiguity, STG respectfully submits its protest to both you, as the Public Auditor of Guam pursuant to 5 G.C.A. §5425.1, and to the Chief Procurement Offices of the Government of Guam pursuant to 5 G.C.A. §5425. STG leaves to your office, and that of the Chief Procurement Office, to determine who properly possesses authority to preside over and rule on this protest.

#### **IFB PERFORMANCE GUARANTY SPECIFICATIONS**

Insofar as the IFB is concerned, the Guam Department of Education seeks laptop and other mobile technology for students, and teachers, along with portable mobile carts and associated items. Section 2.5.4 of the IFB articulates the bond requirements and performance guaranty specifications required to bid on the IFB. Specifically, Section 2.5.4.3 states that a performance bond "equal to one hundred percent (100%) of the contract price" is obligatory. This requirement, however, violates Guam's Procurement Law, which does not require a performance bond at all. 5 G.C.A. §5212 (g).<sup>1</sup> Instead the law provides that the required fifteen percent (15%) bid security shall continue in force and effect until the supplies are delivered or services completed, and dispenses with any requirement of performance or payment bonds. 5 G.C.A. §5212 (c).

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

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<sup>1</sup> 5 G.C.A. §5212(g) states: "No Requirement for Performance Bond. The bid security that shall be held until complete delivery of the supplies or services 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 performance bond shall be required of the successful bidder on a contract for supplies or services."

To Doris Flores Brooks

Date May 27, 2011

Page 3

**CONCLUSION**

For the above-stated reasons STG hereby requests the Public Auditor/Chief Procurement Officer to sustain this protest and require: (1) Amendment of the IFB to delete the Performance Bond request; and (2) Cancellation of the present IFB and preparation of an IFB that complies with Guam Law. STG believes that if the protest is not sustained, the performance bond requirement will eliminate essentially all locally owned Guam businesses from bidding on the IFB, a situation which is not in the best interest of Guam.

Sincerely,

BLAIR STERLING JOHNSON & MARTINEZ  
A Professional Corporation



JEHAN'AD G. MARTINEZ  
RICHARD L. JOHNSON

cc: Claudia Acfalle, Chief Procurement Officer  
David Sanford  
Antoinette Sanford

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GROUP.DOC



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WRITER'S E-MAIL:  
jgmartinez@kbsjlaw.com

May 27, 2011

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**VIA HAND DELIVERY**

Ms. Claudia Acfalle  
Chief Procurement Officer  
GENERAL SERVICES AGENCY  
Government of Guam  
148 Route 1 Marine Corps Drive  
Piti, Guam 96915

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To Ms. Claudia Acfalle

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the Department of Education through ARRA shall submit procurement protests to the Public Auditor. Since, however, this protest is prior to the award of the contract, STG perceives an ambiguity as to who has authority to preside over this protest. Because of this apparent ambiguity, STG respectfully submits its protest to both you, as the Chief Procurement Officer of the Government of Guam pursuant to 5 G.C.A. §5425, and to the Office of the Public Auditor pursuant to 5 G.C.A. §5425.1. STG leaves to your office, and that of the Public Auditor, to determine who properly possesses authority to preside over and rule on this protest.

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JEHAN'AD G. MARTINEZ  
RICHARD L. JOHNSON

cc: Doris Flores Brooks, Public Auditor  
David Sanford  
Antoinette Sanford

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GROUP.DOC

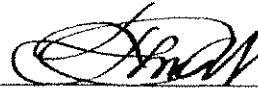




*I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN*  
2011 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that Substitute Bill No. 48-31 (COR), "AN ACT TO ADD A NEW §5425A TO PART A OF ARTICLE 9, CHAPTER 5 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING TEMPORARY EXPEDITED PROCUREMENT PROTEST PROCEDURES FOR ACQUISITIONS FUNDED WITH 2009 AMERICAN RECOVERY AND REINVESTMENT ACT MONEYS ALLOTTED TO THE GUAM DEPARTMENT OF EDUCATION", was on the 24<sup>th</sup> day of February, 2011, duly and regularly passed.



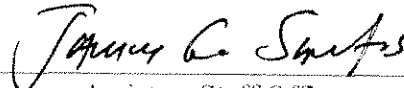
Judith T. Won Pat, Ed.D.  
Speaker

Attested:



Tina Rose Muña Barnes  
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 25<sup>th</sup> day of Feb, 2011, at 7:14 o'clock 7 .M.



Assistant Staff Officer  
*Maga'lahi's* Office

APPROVED:



EDWARD J.B. CALVO  
*I Maga'lahaen Guåhan*

Date:

MAR 09 2011

Public Law No. 31-12

Police Sgt 1 ESS

***I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN***  
**2011 (FIRST) Regular Session**

**Bill No. 48-31 (COR)**

As substituted by the Committee on Youth, Cultural Affairs,  
Procurement, General Government Operations, and Public  
Broadcasting, and amended on the Floor.

Introduced by:

J. T. Won Pat, Ed.D.  
T. C. Ada  
F. F. Blas, Jr.  
T. C. Ada  
V. Anthony Ada  
B. J.F. Cruz  
Chris M. Duenas  
Judith P. Guthertz, DPA  
Sam Mabini, Ph.D.  
T. R. Muña Barnes  
Adolpho B. Palacios, Sr.  
v. c. pangelinan  
Dennis G. Rodriguez, Jr.  
M. Silva Taijeron  
Aline A. Yamashita, Ph.D.

**AN ACT TO ADD A NEW §5425A TO PART A OF  
ARTICLE 9, CHAPTER 5 OF TITLE 5, GUAM CODE  
ANNOTATED, RELATIVE TO PROVIDING  
TEMPORARY EXPEDITED PROCUREMENT  
PROTEST PROCEDURES FOR ACQUISITIONS  
FUNDED WITH 2009 AMERICAN RECOVERY AND  
REINVESTMENT ACT MONEYS ALLOTTED TO THE  
GUAM DEPARTMENT OF EDUCATION.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
3 that the government of Guam has been granted closed to \$240 million dollars in

1 federal stimulus funding under the historic 2009 American Recovery and  
2 Reinvestment Act (ARRA), U. S. Public Law 111-5, which provides states and  
3 territories with funding for infrastructure projects to create jobs in the near term  
4 and to lay the foundation for long term economic growth. Many of ARRA's  
5 provisions include stringent "use it or lose it" deadlines that require states and  
6 territories to use the federal stimulus funds quickly or the funding will be  
7 reallocated to other states. More than \$150 million dollars plus in federal stimulus  
8 funding, including over \$80 million dollars in funds allocated to the Guam  
9 Department of Education remains to be obligated and/or expended on or before  
10 September 30, 2011.

11 *I Liheslaturan Guåhan* finds that, in order to mobilize economic recovery  
12 and so as not to lose federal stimulus funds, many states passed laws in 2009  
13 specifically intended to reap the maximum benefits of ARRA, including methods  
14 to comply with its deadlines. Among those many states are Colorado and Hawaii,  
15 both of which have procurement laws patterned after the American Bar  
16 Association's Model Procurement Law, like Guam, and both of which made  
17 changes to their procurement law specifically to accommodate the quick use of  
18 ARRA funds. Colorado added a new section to its procurement law to permit a  
19 waiver of one or more provisions of their procurement code to the extent the  
20 waiver was necessary to expedite the use of ARRA funds if strict adherence to the  
21 code would substantially impede the state's ability to expend the moneys in a  
22 manner or within the time required by ARRA. Hawaii streamlined the  
23 procurement process and protest process for ARRA funded procurements, and  
24 raised the threshold for all small purchases, regardless of source of funds, to sunset  
25 in 2012.

26 *I Liheslaturan Guåhan* finds that many of the deadlines for Guam to use its  
27 ARRA funds are now fast approaching, and the Guam Department of Education

1 has *not* yet been able to encumber or expend much of it. *I Liheslaturan Guåhan*  
2 intends for the government of Guam to maximize the ARRA funds, and finds that  
3 in order to facilitate compliance with the deadlines and other ARRA requirements,  
4 the Guam Department of Education needs special provisions that expedite  
5 procurement procedures, such as protest procedures similar to those taken by the  
6 states of Colorado and Hawaii in 2009. It is the intent of *I Liheslaturan Guåhan* to  
7 provide the Guam Department of Education special provisions to enable the  
8 expenditure of federal stimulus funds authorized by ARRA.

9 *I Liheslaturan Guåhan* finds that ARRA has specific accountability and  
10 transparency provisions to prevent fraud, waste, and abuse, to ensure against poor  
11 contracting or grant management, and to ensure the use of competitive procedures.  
12 ARRA provides the federal government with expansive investigatory and auditing  
13 powers to monitor, oversee, and ensure that the ARRA funds are used for their  
14 intended purposes. The Third party fiduciary agent of the Guam Department of  
15 Education will be responsible for the execution of these special provisions on  
16 behalf of the Department of Education. .

17 **Section 2.** A new §5425A is *added* to Part A of Article 9, Chapter 5 of  
18 Title 5, Guam Code Annotated, to read:

19 **“§5425A. Protest Procedure for Procurement Funded with 2009**  
20 **American Recovery and Reinvestment Act Moneys Allotted to the**  
21 **Guam Department of Education.** (a) Notwithstanding any other provision  
22 of this Chapter and any rules promulgated therefore, *if* an actual or non-  
23 selected vendor, contractor, or service provider is aggrieved by an award or  
24 a contract funded, in whole or in part, by the funds allotted to the Guam  
25 Department of Education from the 2009 American Recovery and  
26 Reinvestment Act (ARRA), the procedure for protest outlined in this Section  
27 *shall* apply, and *shall* be the exclusive means available to resolve the

1 concerns of persons aggrieved in connection with awards or solicitations  
2 involving ARRA funds, in whole or in part. The protest *shall* be submitted  
3 to the Public Auditor who may settle and resolve a protest by one (1) or  
4 more of the following means:

- 5 (1) amending or canceling the solicitation;
- 6 (2) terminating the contract that was awarded;
- 7 (3) declaring the contract null and void from the time of its award;
- 8 *or*
- 9 (4) affirming the contract award decision.

10 If the protest is *not* resolved by mutual agreement, the Public Auditor  
11 *shall* issue a decision, in writing, within *no more than* ten (10) working days  
12 of receipt of the protest. The decision *shall* state the reasons taken. A copy  
13 of the written decision *shall* be mailed, using certified mail, or otherwise  
14 furnished to the vendor, contractor, or service provider who initiated the  
15 protest, the person awarded the contract, and to all other non-selected  
16 bidders or offerors.

17 (b) For purposes of this Section, the determination of facts and  
18 decision by the Public Auditor for the resolution of protests of ARRA  
19 funded procurements *shall* be final and conclusive with *no* right of appeal *or*  
20 judicial review. The fact that a protest has been filed pursuant to this  
21 Section *shall not* stay the procurement process or award of any contract  
22 funded by ARRA moneys, whether in whole or in part, *unless* so ordered by  
23 the Public Auditor. A request for reconsideration *shall also not* stay the  
24 award of any contract funded by ARRA moneys, whether in whole or in  
25 part, *unless* so ordered by the Public Auditor.

26 This Section is repealed effective December 31, 2011, unless the federal  
27 grantor agency authorizes an extension of time for the obligation or expenditure of

1 ARRA funds, in which case this Section *shall* be repealed at the end of the  
2 extension period.”