

Seth Forman  
 DOOLEY ROBERTS & FOWLER LLP  
 Suite 201, Orlean Pacific Plaza  
 865 South Marine Drive  
 Tamuning, Guam 96913  
 Telephone No. (671) 646-1222  
 Facsimile No. (671) 646-1223  
 E-mail Forman@guamlawoffice.com

**RECEIVED**  
 OFFICE OF PUBLIC ACCOUNTABILITY  
 PROCUREMENT APPEALS  
 DATE: 5/1/13  
 TIME: 4:05  AM  PM BY: JH  
 FILE NO OPA-PA: 13-003

Attorneys for Appellant  
 Phil-gets (Guam) International Trading Corp.  
 dba J&B Modern Tech

**OFFICE OF PUBLIC ACCOUNTABILITY**

**PROCUREMENT APPEAL**

In the Appeal of	)	Docket No. OPA-PA-13-003
	)	
PHIL-GETS (GUAM) INTERNATIONAL	)	
TRADING CORP. dba J&B MODERN TECH,	)	<b>OPPOSITION TO MOTION TO</b>
	)	<b>ALLOW FOR PURCHASE OF</b>
Appellant.	)	<b>INDIVIDUAL AIR</b>
_____	)	<b>CONDITIONER UNITS</b>

Appellant J&B Modern Tech (“J&B”) opposes the Guam Department of Education’s (“GDOE”) Motion to Allow for the Purchase of Individual Air Conditioner Units for the reasons that follow. As shown by J&B’s agreement to expedite this appeal generally, J&B is not opposed in principal to actions that would hasten a resolution of this appeal and facilitate the provision of air conditioning to the island’s schoolchildren. However, GDOE’s motion to partially lift the procurement stay otherwise mandated by 5 GCA §5425(g) raises so many unanswered questions that it is difficult for J&B, and probably also the OPA, to take a position on the motion. Unless these questions are satisfactorily answered, it cannot be determined (a) if the requested relief is

**ORIGINAL**

*In the Appeal of J&B Modern Tech*  
Opposition to Motion  
OPA-PA-13-003

necessary at this time, and (b) if allowing the requested exception to the procurement stay would be contrary to controlling statutory law.

Questions raised, but not answered, by GDOE's motion include the following.

1. According to Mr. Cruz's Declaration, GDOE determined the two units were beyond repair on April 17, 2013. The motion to allow purchase was not filed until April 29, 2013. If there is an emergency, why was there this 12-day delay?

2. What is the legal basis for the motion? GDOE cites no statute or regulation in support of the motion. The procedures followed by GDOE with respect to this motion do not appear to comply with the procedural requirements of any statute that might provide a legal basis to lift the procurement stay as requested even if there were sufficient facts to support such an action. For example, there has been no written concurrence of the head of the agency and no written determination from the Attorney General or his designee, as would be required if GDOE is seeking to partially lift the stay pursuant to 5 GCA §5425(g)(1)-(3).

3. What exactly is wrong with the two units that causes GDOE to deem them "beyond repair"? GDOE does not specify any mechanical or other problem that would lead to such a conclusion. Instead, there is only a bald allegation that the units are "beyond repair". In fact, J&B is informed and believes that GDOE may in fact be repairing the units.

4. Are the new units that GDOE wishes to purchase available on island? J&B is informed and believes that this type of unit is not usually available on island. Even if the motion is granted, if the units will have to be shipped to Guam, they might not arrive and be installed before

*In the Appeal of J&B Modern Tech*  
Opposition to Motion  
OPA-PA-13-003

the end of the current school year. If that is the case, there is no need to address these two units separately from and before other issues in this appeal.

Unless and until GDOE can provide satisfactory answers to these questions, its motion to allow purchase of individual units should not be granted.

Respectfully submitted,

DOOLEY ROBERTS & FOWLER LLP

Date: May 1, 2013

By: Seth Forman  
**SETH FORMAN**  
Attorneys for Appellant Phil-Gets (Guam)  
International Trading Corp. dba J&B Modern  
Tech