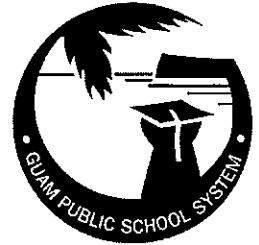




**GUAM PUBLIC SCHOOL SYSTEM
OFFICE OF THE SUPERINTENDENT**

P.O. Box DE
Hagåtña, Guam 96932
Telephone: (671) 475-0457/0458
Fax: (671) 472-5003
Email: lreyes@gdoe.net
www.gdoe.net



LUIS S.N. REYES
Superintendent of Education

September 17, 2007

Ms. Doris Flores Brooks
Public Auditor
Office of the Public Auditor
Suite 401 Pacific News Building
238 Archbishop Flores St.
Hagatna, Guam 96910

RECEIVED
OFFICE OF THE PUBLIC AUDITOR
PROCUREMENT APPEALS

SEP 17 2007

TIME: 11:35AM
BY: Anne Carnacho
FILE No. OPA-PA 07-008

Re: GPSS Answer, Reference No.: OPA-PA-008

Dear Ms. Brooks:

Hafa Adai! I am in receipt of your letter dated September 11, 2007. Your letter indicates that an appeal of GPSS "protest decision" has been filed with your office. A brief review of our records does not indicate that a protest decision has been issued to Advance Management, Inc. as required by 5 GCA, § 5425(c). Can you forward to me a copy of the decision you are referring to.

In the meantime I am requesting that the contract be permitted to move forward in accordance with 2 GAR § 12501(b) as the Every Child is Entitled to an Adequate Education Act requires 78° classrooms by October 1, 2007 without a contract for air conditioning repairs in place GPSS will not be able to meet this mandate. Please note that the Acting Governor has also recognized the repair of air conditioning as a priority matter and on August 28, 2007 signed an emergency declaration.

I look forward to hearing from soon.

Senseramente,

FRED NISHIHIRA
Legal Counsel

Attachments

cc: Superintendent of Education
Administrator, Supply Management

ORIGINAL



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LUIS S.N. REYES
Superintendent of Education

August 27, 2007

MEMORANDUM

TO: Governor of Guam
FROM: Superintendent of Education
SUBJECT: APPROVAL OF EMERGENCY PROCUREMENT
Ref: Air Conditioning



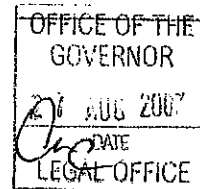
Hafa Adai! Pursuant to Rule 3.13.5.2 of the Department of Education Procurement Regulations, I am requesting your approval for the emergency procurement of emergency repair, installation of necessary equipment and the purchase of supplies for air conditioning in our public schools.

Your timely action in this matter is appreciated. If you have any further questions please feel free to call me or Fred Nishihira at 475-0658.

LUIS S.N. REYES
Superintendent of Education

Attachment: Certificate of Emergency

*Make copies for
Legal/
procurement
CFO*



CPB-0807-0794



LUIS S.N. REYES
Superintendent of Education

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CERTIFICATE OF EMERGENCY

WHEREAS, the Organic Act of Guam requires the Government of Guam to provide a free and adequate public education to the students of Guam (48 U.S.C.A. §1421(g)(b)); and

WHEREAS, Public Law 28-45 created the Every Child is Entitled to an Adequate Public Education Act, which will go into full effect on October 1, 2007; and

WHEREAS, adequate education is defined in 1 G.C.A. §715 which specifically states that public schools must provide air conditioned or properly ventilated classrooms in which the sensible air temperature is no greater than 78° F; and

WHEREAS, Public Law 29-03 appropriated \$1,503,510.10 Dollars for the repair of air conditioners at Southern High School and Tamuning Elementary School, on August 1, 2007 the funds were released to the Guam Public School System; and

WHEREAS, on August 22, 2007 at a regularly scheduled board meeting the Guam Education Policy Board (GEPB) declared Southern High School in a state of emergency as the air conditioning system for more than half of the school is not functioning; and

WHEREAS, despite closing the school for two days and going to a modified bell schedule the repairs of air conditioning systems cannot proceed at a faster pace utilizing the regular procurement process; and

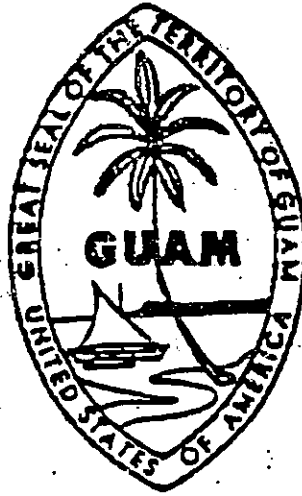
WHEREAS, in an effort to ensure that the students of the Guam Public School Systems have schools with classrooms that meet the requirements of the Every Child is Entitled to an Adequate Public Education Act emergency procurement procedures need to be invoked to secure contractors to accomplish the task; and

NOW, THEREFORE, pursuant to the Emergency Procurement Section (3.13) of Department of Education (GPSS), Procurement Regulations I, LUIS S.N. REYES, Superintendent of Education, along with members of the GEPB, hereby find that the Southern High School is in a state of emergency jeopardizing the health and safety of students; and

FURTHERMORE, upon approval by the Governor of Guam, I authorize the emergency procurement of emergency repairs, installation of necessary equipment and the purchase of supplies necessary to secure classrooms at all schools with 78° air temperature as required by law; and

FINALLY, under penalty of perjury, I certify that the facts stated above are true and that this statement of emergency procurement is not being used solely for the purpose of avoidance of the provisions of Chapter 3 of the Procurement Regulations.

Signed this 27th, day of August, 2007.



**DEPARTMENT OF EDUCATION
GOVERNMENT OF GUAM**



PROCUREMENT REGULATIONS

Project Managers
Roland L.G. Taimanglo, Department of Education
Taling Taitano, Deloitte & Touche

Section

3.13.4.1. GENERAL (GSA Section 3-206.05.1).

The procedure used shall be selected to assure that the required supplies, services or construction items are procured in accordance with the provisions of Section 3.13. (Emergency Procurements), and in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

3.13.4.2. AFTER UNSUCCESSFUL COMPETITIVE SEALED BIDDING (GSA Section 3-206.05.2).

When competitive sealed bidding is unsuccessful because bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bidding, then an emergency procurement may be made.

3.13.5. DETERMINATION AND CERTIFICATE OF EMERGENCY PROCUREMENT (GSA Section 3-206.06).

3.13.5.1. DETERMINATION (GSA Section 3-206.06.1).

Section

2. The factual basis of the determination that an emergency procurement is necessary; and
3. A statement that emergency procurement is not being used solely for the purpose of avoidance of the provisions of this Chapter.

In addition to any other requirement, the Governor must approve in writing all authorizations for emergency procurement prior to the emergency procurement.

3.13.6.

RECORD (GSA Section 3-206.06.2).

For the purpose of complying with Section 5249 (Record of Procurement Actions Taken Under Section 5214 (Sole Source Procurement) and Section 5215 (Emergency Procurements) of the Guam Procurement Act, a record listing all contracts made under emergency procurement shall be maintained for a period of five (5) years. The record shall contain:

1. The supplier or contractor's name;