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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

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FILE NO OPA-PA: 13-003

1 **GUAM DEPARTMENT OF EDUCATION**
Andrew T. Perez, Legal Counsel
2 P.O. Box DE
Hagåtña, Guam 96910
3 Telephone (671) 300-1537
Email: legal-admin@gdoe.net

4 *Attorney for Guam Department of Education*

5 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**
6 **PROCUREMENT APPEAL**

7
8 IN THE APPEAL OF

9 PHIL-GETS (GUAM)
10 INTERNATIONAL TRADING CORP.
11 dba J&B MODERN TECH,

12 Appellant.

APPEAL NO. OPA-PA-13-003

13 **MOTION FOR AN EXPEDITED HEARING**

14 Comes now Guam Department of Education (“GDOE”) and moves for an expedited
15 hearing in OPA-PA-13-003.

16 **BACKGROUND**

17 On February 25, 2013, GDOE issued GDOE Invitation for Bid 008-2013 (“IFB”) for the
18 Indefinite Quantity Bid for Purchase of Air Conditioning Equipment. The IFB was to replace air
19 conditioner units that are beyond their life expectancy. On March 28, 2013, bids were accepted
20 and a bid opening was conducted. On April 1, 2013, in response to protests filed by Phil-Gets
21 (Guam) International Trading Corp. dba J&B Modern Tech (“J&B”), GDOE issued a Notice of
22 Stay of the Procurement, and pursuant to 5 G.C.A. § 5425(g) and 2 G.A.R. Div 4 § 9101(e),
23 GDOE took no further action on the IFB.

24
25 On April 3, 2013, GDOE issued a Written Response to J&B’s First Protest and Second
26 Protest denying both protests in their entirety. On April 5, 2013, J&B filed an appeal with the
27 Office of Public Accountability (“OPA”) regarding GDOE’s denial of its protests.
28

ORIGINAL

1 GDOE has several air conditioner units cooling classrooms that have passed their life
2 expectancy, and were set to be replaced by air conditioner units purchased through the IFB.
3 GDOE has become aware that a couple of air conditioner units have been reported broken and
4 unsalvageable at one school. GDOE notes that these irreparable air conditioner units cooled
5 classrooms, and as a result of them being down, the air temperatures in these classrooms range
6 from 80°F-84°F. GDOE acknowledges that these air conditioner units need to be completely
7 replaced, and if not for the stay issued in the IFB, GDOE would purchase these replacement air
8 conditioner units.
9

10 DISCUSSION

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12 GDOE asks the OPA to grant its Motion for Expedited Hearing. Public Law 28-45 is
13 known as the Every Child is Entitled to an Adequate Public Education Act. Every Child is
14 Entitled to an Adequate Public Education. 20 G.C.A. § 15136. Under Guam law, GDOE is
15 required to keep all GDOE classrooms at an air temperature no greater than 78°F (“the
16 Mandate”). *See* 1 G.C.A § 715(12)(f).
17

18 The IFB was specifically issued in order to purchase new air conditioner units to replace
19 older air conditioner units that have passed their life expectancy. The threat of these older air
20 conditioner units breaking down is eminent, if not already apparent. In addition, due to the stay
21 in the IFB, GDOE lacks the ability to purchase any replacement air conditioner units.
22

23 If GDOE fails to comply with the Mandate, GDOE is open to suits for injunctive relief
24 under the Every Child is Entitled to an Adequate Public Education Act. *See* 7 G.C.A. §
25 12108.1(a); 19 G.C.A. § 1116(b); 7 G.C.A. § 20302(8); P.L. 28-45. Furthermore, “any action or
26 proceeding to enforce a provision of the Every Child is Entitled to an Adequate Public Education
27
28

1 Act, a court, in its discretion, may allow the prevailing party reasonable attorney's fees as part of
2 the costs." 7 G.C.A. § 26603.1.

3 GDOE has pointed out that a couple air conditioner units have already broke down, and
4 have left classrooms with air temperatures ranging from 80°F-84°F – well above the mandated
5 temperature of 78°F. If not for the stay issued in the IFB, GDOE would outright purchase new air
6 conditioner units to replace units that have broken down beyond repair. Therefore, GDOE
7 respectfully asks the OPA to expedite hearing the matter in OPA-PA-13-003 in order to prevent
8 GDOE from falling into non-compliance of the Every Child is Entitled to an Adequate Public
9 Education Act.
10

11 **CONCLUSION**

12
13 For the foregoing reasons, GDOE respectfully requests that the Office of Public
14 Accountability grant GDOE's Motion for an Expedited Hearing.

15
16 Dated this 24th day of April, 2013.

17 Respectfully submitted,

18 **GUAM DEPARTMENT OF EDUCATION**

19
20 By: 

ANDREW T. PEREZ, ESQ.
Legal Counsel