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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO OPA-PA: 13-002/03

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*

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

8 IN THE APPEAL OF

APPEAL NO. OPA-PA-13-002  
OPA-PA-13-003

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

**REPLY TO J&B'S OPPOSITION TO GDOE'S  
MOTION TO ALLOW FOR THE PURCHASE  
OF INDIVIDUAL AIR CONDITIONER  
UNITS**

12 Appellant.

13  
14 Comes now Guam Department of Education ("GDOE") and files this Reply to J&B's  
15 Opposition to Allow for the Purchase of Individual Air Conditioner Units.

16 In its opposition, J&B argues that GDOE should have complied with 5 G.C.A. § 5425(g)  
17 in order to request the Office of Public Accountability ("OPA") allow for the purchase of two 7.5  
18 ton air conditioner units to replace those that are no longer able to be repaired. In support of its  
19 position, J&B cites 5 G.C.A. § 5425(g), which states the Territory shall not proceed further with  
20 the solicitation or with the award unless a written determination that the award of the contract  
21 must proceed to protect the substantial interest of the Territory is made by the head of the  
22 purchasing agency with the concurrence of the Attorney General or his designee.

23 However, GDOE is not asking the OPA to allow for the award of the contract for GDOE  
24 Invitation under Bid 008-2013 ("IFB"). Rather, GDOE requests only that it be allowed to use  
25 applicable competitive procurement procedures apart from the IFB to purchase two 7.5 ton air  
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1 conditioning units in order to comply with the mandates of Every Child is Entitled to an Adequate  
2 Public Education Act.

3 In addition, J&B made the statement that it was informed that GDOE may be repairing the  
4 air conditioner units in question. As GDOE has stated in its Motion to Allow for the Purchase of  
5 Individual Air Conditioner Units, several air conditioner units were down at Simon Sanchez High  
6 School. Although some of these air conditioner units may have been repaired, the two 7.5 ton air  
7 conditioner units were not repaired. In fact, GDOE has stated that the two 7.5 ton air conditioner  
8 units are no longer able to be repaired. *See Declaration in Support of Department of Education's*  
9 *Motion to Allow for the Purchase of Individual Air Conditioner Units.*

10 Finally, J&B speculated that new 7.5 ton air conditioner units are not usually available on  
11 island, and that if the OPA were to allow GDOE to replace these air conditioner units, they might  
12 not arrive before the end of the school year. J&B does not give any evidence to support its  
13 statements. GDOE is not in a position to know whether these units are available on island, or  
14 know the timetable of how long it will take to have these two units installed, if it is not allowed to  
15 procure these air conditioner units. All that GDOE can do is inform the OPA of the need to  
16 replace these air conditioner units in order to comply with Every Child is Entitled to an Adequate  
17 Public Education Act's mandate to provide "air conditioned or properly ventilated classrooms in  
18 which the sensible air temperature is no greater than 78°F." Public Law 28-45; 1 G.C.A §  
19 715(12)(f). GDOE is therefore requesting that the OPA allow GDOE to move forward to  
20 purchase the two 7.5 ton air conditioner units pursuant to applicable competitive procurement  
21 procedures.

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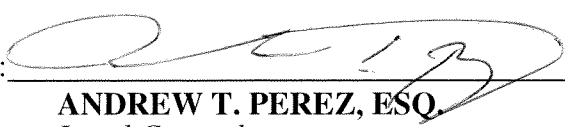
**CONCLUSION**

For the foregoing reasons, GDOE respectfully requests that the Office of Public Accountability to grant GDOE's Motion to Allow for the Purchase of Individual Air Conditioner Units.

Dated this 8<sup>th</sup> day of May, 2013.

Respectfully submitted,

**GUAM DEPARTMENT OF EDUCATION**

By:   
**ANDREW T. PEREZ, ESQ.**  
*Legal Counsel*