

MAY 05 2009

TIME: 2:40 PM  
BY: A Camacho  
FILE No. OPA-PA 09-002

1 FRED NISHIHIRA  
Legal Counsel  
2 GUAM PUBLIC SCHOOL SYSTEM  
P.O. BOX DE  
3 HAGATNA, GUAM 96932  
TEL: 475-0658  
4 FAX: 472-5003

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PROCUREMENT APPEAL

6 In the Appeal of ) APPEAL NO.: OPA-PA-09-002  
7 )  
7 TEAL PACIFIC, LLC, ) MOTION TO DISMISS  
8 )  
8 Appellant. )  
9 )

10 COMES NOW the Guam Public School System through Legal Counsel, Fred  
11 Nishihira, moving the Public Auditor to dismiss the appeal of Teal Pacific, LLC ("Appellant")  
12 filed on April 28, 2009, on the basis that on February 12, 2009 GPSS issued IFB No.  
13 004-2009, on March 16, 2009 a Letter of Stay was issued by our Procurement Officer (see  
14 Attachment A). On the same date, GPSS received a letter from Appellant's attorney from  
15 GPSS that they were protesting GPSS's decision (see Attachment B). On March 25, 2009,  
16 GPSS issued a letter informing Appellant that the protest was rejected (see Attached C). On  
17 April 28, 2009, Appellant filed an appeal with the Office of the Public Auditor.

18 ARGUMENT

19 The Appellant has failed to submit a timely appeal to Office of the Public Auditor and  
20 therefore should be dismissed. Appeals of an Agency decision should be made within 15 days  
21 of the department's issuance of a decision. **5 GCA Section 5425(e) states:**

22 (e) **Appeal.** A decision under Subsection (c) of this Section including a decision  
23 there under regarding entitlement to costs as provided by Subsection (h) of this  
24 Section, may be appealed by the protestant, to the Public Auditor within fifteen  
25 (15) days after receipt by the protestant of the notice of decision.

1 Appellant as well as representative, Legal Counsel, William Gavras was involved in this  
2 protest since March 16, 2009. In Appellant's appeal filed with the Office of the Public Auditor  
3 on April 28, 2009, an argument was made that the statute of limitation should be waived as  
4 GPSS failed to inform the Appellant that fifteen (15) days was the statute of limitation  
5 established by law. GPSS argues that the purpose that Appellant secures the services of Legal  
6 Counsel was to ensure that all procedures are properly complied with. The appeal filed with  
7 Office of the Public Auditor was nineteen (19) days late. The day that the Appellant should  
8 have filed for an appeal with Office of the Public Auditor is April 9, 2009.

9 **CONCLUSION**

10 Appellant has failed to comply with the statute of limitations for filing an appeal within  
11 the fifteen (15) day time limit established by 5 GCA Section 5425(e). Based on the  
12 aforementioned facts and statements on this appeal should be dismissed.

13 Dated this 5th day of May, 2009.

14 GUAM PUBLIC SCHOOL SYSTEM

15 By: 

16 **FRED NISHIHIRA**

17 Legal Counsel  
18  
19  
20  
21  
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23  
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25



NERISSA BRITANIA-SHAFFER, Ph.D.  
Superintendent of Education

# GUAM PUBLIC SCHOOL SYSTEM OFFICE OF SUPPLY MANAGEMENT

Manuel P.L. Guerrero / Administration Building  
2nd Floor, Suite B-220  
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Fax: (671) 472-5101  
www.gdpc.net



ROQUE A. ALCANTARA  
Administrator, Supply Management

March 16, 2009

Mr. Joseph M. Slomka  
President  
MEGABYTE Guam  
Fax No. 649-7458

Subject: STAY OF PROCUREMENT

Reference: IFB-004-2009  
Indefinite Quantity Bid for Administrative Supplies

Dear Sir:

On Monday, March 16, 2009, the Guam Public School System (GPSS) received a letter of "Protest" from Teal Pacific LLC, regarding issues of the above referenced formal bid.

Therefore, pursuant to Section 9.2.5 of the DOE/GPSS Procurement Regulations titled "STAY OF PROCURMENT" the department shall suspend further activity of IFB-004-2009 until further notice.

Thank you for your understanding in this matter.

Sincerely,  
  
Roque Alcantara  
Administrator

cc: Bid file IFB-004-2009

### ACKNOWLEDGMENT RECEIPT

Signature  
Joe Slomka  
3/16/2009  
Date Time

Attachment A

Mar-16-2009 03:56pm From-GDOE, Office of Supply Management

+671 472 6001

T-572 P.001/001 F-542



NERISSA BRETANIA-SHAFER, Ph.D.  
Superintendent of Education

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ROQUE A. ALCANTARA  
Administrator, Supply Management

March 16, 2009

Rose Santo Tomas  
General Manager  
School Essentials  
Fax No. 648-7246

Subject: STAY OF PROCUREMENT

Reference: IFB-004-2009  
Indefinite Quantity Bid for Administrative Supplies

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Thank you for your understanding in this matter.

Sincerely,

  
Roque Alcantara  
Administrator

cc: Bid file IFB-004-2009

### ACKNOWLEDGMENT RECEIPT

  
\_\_\_\_\_  
Signature  
3/16/09 4:54 PM  
\_\_\_\_\_  
Date Time



**NERISSA BRETANIA-SHAVER, Ph.D.**  
Superintendent of Education

# GUAM PUBLIC SCHOOL SYSTEM OFFICE OF SUPPLY MANAGEMENT

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www.gdoe.net*



**ROQUE A. ALCANTARA**  
Administrator, Supply Management

March 16, 2009

Mr. Ronald Hidalgo  
Manager  
National Office Supply  
Fax No. 734-0317

Subject: **STAY OF PROCUREMENT**

Reference: IFB-004-2009  
Indefinite Quantity Bid for Administrative Supplies

Dear Sir:

On Monday, March 16, 2009, the Guam Public School System (GPSS) received a letter of "Protest" from Teal Pacific LLC, regarding issues of the above referenced formal bid.

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Thank you for your understanding in this matter.

Sincerely,

  
Roque Alcantara  
Administrator

### ACKNOWLEDGMENT RECEIPT

  
Signature

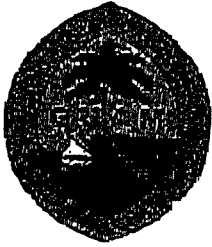
3-17-09

Date

10:00 AM

Time

cc: Bid file IFB-004-2009



NERISSA BRETANIA-SHAFFER, Ph.D.  
Superintendent of Education

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Fax: (671) 472-5001  
www.gdos.net



ROQUE A. ALCANTARA  
Administrator, Supply Management

March 16, 2009

Mr. Mark B.S. Mariano  
General Manager  
M.D. Wholesale  
Fax No. 649-5830

Subject: STAY OF PROCUREMENT

Reference: IFB-004-2009  
Indefinite Quantity Bid for Administrative Supplies

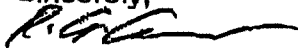
Dear Sir:

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Therefore, pursuant to Section 9.2.5 of the DOE/GPSS Procurement Regulations titled "STAY OF PROCURMENT" the department shall suspend further activity of IFB-004-2009 until further notice.


Thank you for your understanding in this matter.

Sincerely,

  
Roque Alcantara  
Administrator

cc: Bid file IFB-004-2009

### ACKNOWLEDGMENT RECEIPT

  
\_\_\_\_\_  
Signature

3-16-09 3:45 pm  
\_\_\_\_\_  
Date Time

Law Offices of  
**WILLIAM L. GAVRAS**  
A Professional Corporation  
101 Salisbury Street  
Dededo, Guam 96929

Telephone: (671) 632-4357  
Facsimile: (671) 632-4368  
williamgavras@yahoo.com

*Received!*

**VIA HAND DELIVERY and FACSMILE**

**March 16, 2009**

**Roque Alcantra  
Department of Education**

**Larry Perez  
Department of Public Works**

**Re: Protest – Bid Invitation No.: IFB 004-2009 – Item No. 114; Guam Public School System Office Of Supply Management Indefinite Quantity Bid For Administrative Supplies; IFB 004-2009 – Item No. 114.**

Dear Sir,

On behalf of Teal Pacific LLP (Teal) please accept the following as a PROTEST of the above referenced Invitation To Bid (ITB).

On March 12, 2009, Teal received information from the Government of Guam that it was failed to win the bid on Item No. 114. Teal and National Office Supply, who also bid on this Item, tied for the lowest bid at \$38.00/case. On that same day it was revealed to Teal that National Office Supply would be awarded (or recommended for award for) Item No. 114. The explanation given for Teal having lost is that the National Office Supply was given preference and/or consideration as a local supplier under Guam law favoring Local Procurement Preference (5 GCA section 5008 and DOE procurement regulations).

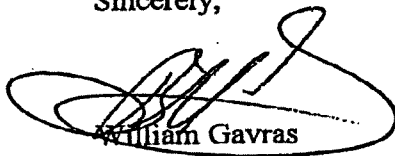
Teal protests on the basis that the local procurement law(s) which gave National Office Supply an advantage over Teal violated Teal's equal protection rights afforded by

*Attachment B*

the Constitution of the United States of America as well as the Organic Act of Guam.  
The reasons for such violations include but are not limited to:

1. the fact that the purpose of the law is not legitimate;
2. local businesses suffer no disadvantages over non-local businesses;
3. the Government of Guam creates no disadvantages to local business;
4. there is no heavier burden on local business doing business in Guam than on non-local businesses;
5. local business are not at a competitive disadvantage with businesses from other areas;
6. the means adopted to pursue any assumed legitimate end were not reasonable, measured or appropriate
7. the definition of and criteria for those benefiting and to be benefited by the local preference under Guam law is not a rational, measured, reasonable or appropriate definition in order to achieve any of the assumed legitimate ends of the applicable law.

Sincerely,



William Gavras





Nerissa Bregania-Shafer, Ph.D.  
Superintendent of Education

**OFFICE OF SUPPLY MANAGEMENT  
GUAM PUBLIC SCHOOL SYSTEM**

*Manuel F.L. Guerrero / Administration Building  
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Fax: (671) 472-5001*



Roque A. Alcantara  
Administrator, Supply Management

March 25, 2009

William L. Gavras  
Attorney at Law  
101 Salisbury Street  
Dededo, Guam 96929

Subject: Protest letter dated March 16, 2009 and received on the same

Reference: Indefinite Quantity Bid for Administrative Supplies  
**GPSS IFB 004-2009**

Dear Mr. Gavras,

**Buenas Yan Saludas!** The Department is in receipt of your protest letter dated March 16, 2009 and received on the same.

This letter is in response to your protest letter regarding the bid award of item number 114. The responses are made in light of your contentions.

Please be advised that your submittal was rejected because it was not in total compliance with the award evaluation procedures.

On **page 2**, titled: "**SPECIAL REMINDER TO PROSPECTIVE BIDDERS**", **item #6**, which states, "*Local Procurement Preference application qualifying on section number 2 & 3 only. Failure to indicate qualification on sections 2 & 3 and to complete and sign application will result in disqualification of this preference.*"

Pursuant to the Guam Public School System Procurement Regulation (**GPSS Procurement Regulation Section 1.7**) (**GSA Section 1-104/GCA Section 5008**) which states in part, "*All procurement of supplies and services shall be made from among business licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:*

2. *A business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured;*
3. *A business that has a bona fide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or one hundred fifty thousand dollars (\$150,000), which ever is less, of supplies and items of a similar nature to those being sought; or*

**Attachment C**

Teal Pacific, LLC chose not to mark or identify what section identifying whether they elect to have local procurement preference or not instead marked their document N/A.

Furthermore, **GPSSPR Section 3.9.15.1 (GSA Section 3-202.15.1)** titled, "**DEFINITION**" states that, "*Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids*".

In addition, **GPSSPR Section 3.9.15.2 (GSA Section 3-202.15.2)** titled, "**AWARD**" states, "*Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the Superintendent of Education, award shall be made in any permissible manner that will discourage tie bids. If no permissible method will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots.*"

In regards to the Local Procurement Preference which is a requirement to the bid awarding process, the Buy American Act is applicable and a fifteen percent (15%) is added to the non-qualifying bidder. National Office qualified for the Local Procurement Preference and thus the lowest bidder.

Based on the aforementioned response, the Department hereby rejects your protest

Please be advised, that pursuant to the Guam Public School System's Procurement Regulation Section 9.2.8, you may request a reconsideration of this decision within ten (10) working days of receipt of this letter.

For your information, a copy of the Department Procurement Regulations are on file in the Territorial Law Library.



ROQUE A. ALCANTARA

**ACKNOWLEDGEMENT RECEIPT**

\_\_\_\_\_  
**Received By: (Please Print Name)**

\_\_\_\_\_  
**Date:**

\_\_\_\_\_  
**Time:**

AM/PM

Confirmation Report - Memory Send

Page : 001  
Date & Time: Apr-07-2009 09:53am  
Line 1 : +671 472 5001  
Machine ID : GDOE, Office of Supply Management

Job number : 086  
Date : Apr-07 09:52am  
To : 4722342  
Number of pages : 003  
Start time : Apr-07 09:52am  
End time : Apr-07 09:53am  
Pages sent : 003  
Status : OK

Job number : 086

\*\*\* SEND SUCCESSFUL \*\*\*



**GUAM PUBLIC SCHOOL SYSTEM**  
**OFFICE OF SUPPLY MANAGEMENT**  
*Manuel F.L. Guerrero / Administration Building*  
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*Hagåtña, Guam 96932*  
*Telephone: (671) 472-0432/0440*  
*Fax: (671) 472-5001*



**FACSIMILE COVER**

**Date:** April 7, 2009  
**To:** William L. Garvas  
**Attn:**  
**Fax#:** 632-4368 / 472-2342  
**Subject:** GPSS IFB-004-2009  
**Comments:**  
**From:** Edith A. Pinaula  
**email:** eapinaula@gdoe.net  
**Fax#:** 472-5001

**Hafa Adai,**

**Accompanying this cover sheet is our respond to your protest.  
Kindly acknowledge and return by fax.**

Number of pages plus cover: 3