



**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](http://www.gdoe.net)



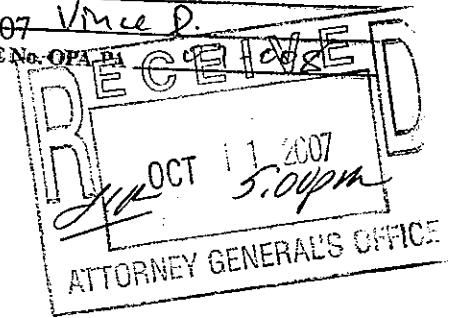
**RECEIVED**  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

OCT 12 2007

TIME: 8:10 am

October 11, 2007 *Vince P.*

FILE No. OPA 04



**LUIS S.N. REYES**  
Superintendent of Education

**URGENT**

**MEMORANDUM**

To: Deputy Attorney General, Civil & Solicitors Division  
Office of the Attorney General

Via: Superintendent of Education *[Signature]*

From: Legal Counsel

**SUBJECT: CONTINUANCE OF AIR CONDITIONING REPAIR CONTRACT**

**Hafa Adai!** Please be informed that unless your Office advises the Guam Public School System otherwise, the stop order for the repair of air conditioners at schools will be lifted and work will commence on October 17, 2007. It should be noted that a thorough review of our files has confirmed that no protest has been filed with the Guam Public School System. Because no protest has been filed there is no decision which the Office of the Public Auditor (OPA) may review. Protest decisions are appealed to the OPA. (See 5 G.C.A. §5425(e))

The OPA has not been granted jurisdiction for initial protest. Bid Protests must be filed with the Chief Procurement Officer, the Director of Public Works or the head of the purchasing agency. (See 5 G.C.A. §5425(a))

Because no protest has been file there is no reason that GPSS cannot lift the stop work order.

This contract is especially important as the schools are in dire need of air conditioning repairs. The Governor has recognized the importance of this matter and issued a Certificate of Emergency on August 28, 2007. (See attached)

If GPSS is incorrect in proceeding with the repairs, a stop order can be issued pursuant to 5 GCA 5452(a)(ii). On the other hand failing to make repairs to the air conditioners will subject GPSS to liability as stated in the Every Child is Entitled to an Adequate Act.

I have also enclosed for your review the correspondence between our office and the OPA. Please take notice of the initial response letter to the OPA on September 17, 2007, wherein,

**ORIGINAL**

Memo to Deputy Atty Gen.  
October 11, 2007  
Page 2 of 2

GPSS requested a copy of the "protest decision" as stated in the OPA's letter dated September 11, 2007. To date no "protest decision" has been provided to GPSS.

I am enclosing a copy of letter dated October 11, 2007 from the contractor in which he is informing GPSS that he is in full compliance with 26-111. In an Agency Report submitted to the OPA on September 24, 2007 GPSS argued, that the Department of Labor is the agency tasked by statute to monitor compliance with P.L. 26-111 and thus the appeal should be dismissed.

Finally, on October 9, 2007 the OPA submitted a letter to GPSS requesting that GPSS secure a written determination, that the award of the contract without delay is necessary to protect substantial interests of the Territory, from your Office pursuant to 5 G.C.A. §5425(g). The aforementioned statute requires the AG's approval only in the event that a **protest** was filed with the agency. As stated above no protest has been filed with GPSS and thus the statute would not be applicable.

Your understanding in this matter is appreciated. If you have any further questions please do not hesitate to contact either the Superintendent of myself at 475-0658.



FRED NISHIHIRA

cc: OPA

Attachments: Certificate of Emergency  
AMI's Appeal, 9/6/07  
OPA's Notice, 9/11/07  
GPSS Stop Work Order, 9/11/07  
GPSS Ltr. to OPA, 9/17/07  
GPSS' Agency Report, 9/24/07  
GPSS Ltr. to OPA, 10/4/07  
OPA's Response, 10/9/07  
JRN's Ltr, 10/11/07



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**LUIS S.N. REYES**  
Superintendent of Education

**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.

  
\_\_\_\_\_  
LUIS S.N. REYES  
Superintendent of Education

Approved this 28, day of August, 2007 by:

  
\_\_\_\_\_  
MIKE W. CRUZ, MD  
GOVERNOR OF GUAM ACTING

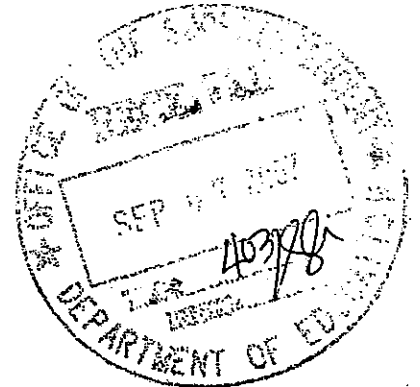


# ADVANCE MANAGEMENT, INC.

"THE FACILITY MAINTENANCE & PROPERTY MANAGEMENT PROFESSIONALS"

September 6, 2007

Office of the Public Auditor  
238 Archbishop Flores Street  
Suite 401 Pacific News Building  
Hagåtña, Guam 96910



Attention: Public Auditor of Guam, Ms. Doris Flores Brooks

Subject: Appeal of the results of GPSS IFB 006-2007

Dear Ms. Brooks,

Enclosed please find our Procurement Appeal of the GPSS IFB 006-2007.

We believe we have provided sufficient supports for this appeal, and have completed the forms we understand to be appropriate to such Appeals.

We ask for your prompt review of said documentation, and pray for your acceptance of the logic thereof.

Sincerely,

Monty A. McDowell  
CEO  
Advance Management, Inc.

James C. McFerran  
Director of Business Development  
Advance Management, Inc.

CC: Mr. Luis Reyes, Superintendent, Guam Public School System



## OFFICE OF THE PUBLIC AUDITOR

VIA FACSIMILE 472-5003

September 11, 2007

Mr. Luis S.N. Reyes  
 Superintendent  
 Guam Public School System  
 Manuel F.L. Guerrero / Administration Building  
 Hagatna, Guam 96932

Re: Receipt of Notice of Appeal Regarding Invitation to Bid (IFB) No. GPSS IFB 006-2007  
 Title: Preventive Maintenance and Repair of Split Type Air Conditioning Units for Various Public Schools and Support Facilities / OPA File No.: OPA-PA-07-008

Dear Mr. Reyes:

Please be advised that Advanced Management, Inc. filed an appeal with the Office of the Public Auditor on September 10, 2007, of your protest decision on the above-stated procurement action. Immediate action is required of your office pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of Title 2 of the Guam Administrative Regulations. Copies of the Rules and the appeal are available at our office, and on our website [www.guamopa.org](http://www.guamopa.org). The front page of the appeal is enclosed for your reference.

Please provide the required notice of this appeal to the required parties with instructions that they should communicate directly with OPA regarding the appeal. You are also responsible for giving notice to the Attorney General or other counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your counsel.

Please submit one complete copy of the procurement record to OPA within five working days of receiving notice of the appeal. When filing other required documents with our office, please provide an original and two copies for OPA, and serve a copy to Advance Management Inc. the Appellant.

Thank you for your prompt attention to this matter. Please contact OPA if you have any questions regarding this notice.

Sincerely,

DORIS FLORES BROOKS, CPA, CGFM  
 PUBLIC AUDITOR

Enclosure: Front Page of Appeal OPA-PA-07-008  
 cc: Monty A. McDowell, CEO Advanced Management Inc. (Via Facsimile 646-3739)  
 JRN Air Conditioning & Ref. (Via Facsimile 649-5737)  
 J & B Modern Tech (Via Facsimile 646-0588)  
 Lawrence Perez, Director - Department of Public Works (Via Facsimile 649-6178)  
 Pete San Nicolas, Acting Chief Procurement Officer - Department of Administration General Services Administration  
 (Via Facsimile 472-7558/4217) 1727



**LUIS S.N. REYES**  
Superintendent of Education

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September 11, 2007

Guam Public School System  
Office of the Legal Counsel  
Received by: *[Signature]*  
Date: 9/11/07, 10:20 AM

**STOP WORK ORDER**

To: **JRN Air Conditioning & Refrigeration**  
P.O. Box 27070  
GMF, Guam 96921  
Tel. No. 649-2180

Project Name: Preventive Maintenance and Repairs of Split Type/Central Air Conditioning Units for Various Guam Public Schools and Support Facilities

Project Number: IFB#006-2007 PO#200701789

*Gentlemen:*

You are hereby notified to **STOP** all work related to preventive maintenance and repairs of split type and central air conditioning units to the Guam Public School System. This letter is to inform you that effective today, September 11, 2007, work on this contract is suspended until further notice.

In accordance to the Guam Public School System Procurement Regulation Section 6.1.4.3 "STOP WORK ORDER", the Superintendent of Education, by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for in this contract for the convenience of the Department.

Additionally, you shall not base any claim or request for equitable adjustment for additional time and money on any suspended order issued under these circumstances.

Please notify the GPSS Procurement Office at 475-0440 if you have questions on this matter.

*[Signature]*  
Luis S.N. Reyes  
Superintendent of Education

cc: Acting CFO, GPSS  
Administrator, Supply/Procurement  
Legal Counsel



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**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.  
Hagåtña, Guam 96910

**RECEIVED**  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

SEP 17 2007

TIME: 11:35 AM  
BY: Ayne Camacho  
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

**COPY**

1 Guam Public School System  
Fred Nishihira  
2 Legal Counsel  
P.O. Box DE  
3 Hagåtña, Guam 96932  
(671) 475-0658 • (671) 472-5003 (Fax)

4  
5 **PROCUREMENT APPEAL**

6 In the Appeal of )  
7 **ADVANCE MANAGEMENT, INC.** ) **AGENCY REPORT**  
8 )  
9 Appellant. ) Docket No. OPA-PA-07-008

10 **GPSS LEGAL COUNSEL'S STATEMENT**

11 The Advance Management, Inc. (AMI) alleges that the Guam Public School System  
12 (GPSS) failed to comply P.L. 26-111 of Article 13 of the Title 5 of the Guam Code Annotated.  
13 As a result of the alleged violation AMI seeks either a re-bid or an award to the lowest bidder  
14 providing evidence of wage compliance with the aforementioned laws.

15 **JURISDICTION**

16 GPSS moves for immediate dismissal of this appeal due to the Office of the Public  
17 Auditor's (OPA) lack of jurisdiction in this matter. The Guam Department of Labor (DOL) is  
18 the agency tasked by statute to monitor for compliance with P.L. 26-111. If allegations arise  
19 regarding the violation of wages 5 GCA § 5803 states:

20 **§ 5803. Department of Labor Monitoring and Penalizing Authority.**

21 The Guam Department of Labor, or its successor, shall monitor  
22 compliance with the provisions of this Article. The Director of the Department of  
23 Labor, or that person's successor, shall investigate possible or reported  
24 violations of the provisions of this Article, and shall forward such findings to  
the Chief Procurement Officer of the General Services Agency, or that  
person's successor.

25 The Department of Labor, or its successor, shall promulgate rules and  
regulations, pursuant to the Administrative Adjudication Law, as needed to ensure



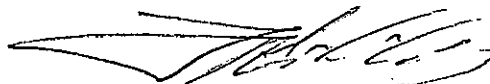
1 the equitable investigation of violations and the maintenance of due process, as  
2 well as the assessment of monetary penalties in the event of a violation,  
3 providing that such monetary penalties shall be limited to the assessment of  
4 daily penalties of no less than One Hundred Dollars (\$100.00) per day, and  
5 no more than One Thousand Dollars (\$1,000.00) per day, until such time as a  
6 violation has been corrected, as well as the payment of all back wages and  
7 benefits due. (Emphasis added.)

8 If the DOL finds a violation, the remedy is not the cancellation of a contract. Rather, the  
9 winning company is made to pay the labor cost or penalized or both.

10 The bottom line is that GPSS receives the benefit of the bargain. It is GPSS' duty to  
11 award a bid to the lowest bidder, it is the lowest bidders' duty to comply with the law.

12 Based on the aforementioned this matter should be immediately dismissed and the award  
13 for air conditioning repairs should be granted so GPSS can move forward with meeting the  
14 mandates of the Every Child is Entitled to an Adequate Education Act.

15 Dated this 24<sup>th</sup> day of September, 2007.

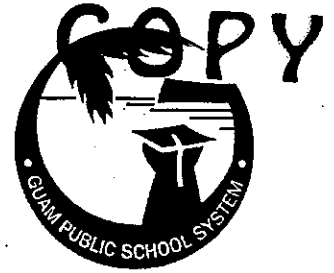


16 FRED NISHIHIRA  
17 GPSS Legal Counsel  
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**LUIS S.N. REYES**  
Superintendent of Education

**FRED NISHIHIRA**  
Legal Counsel

October 4, 2007

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

**Re: Follow-up GPSS Request**  
**Ref: OPA-PA-07-008**

**RECEIVED**  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

OCT 04 2007  
TIME: 3:20 PM  
BY: L. Cuneo  
FILE No. OPA-PA -07-008

Dear Ms. Brooks:

*Hafa Adai!* This is to follow-up on my letter dated September 17, 2007 requesting that the contractor, JRN, be permitted to resume work regarding preventive maintenance and repair of split type and central air conditioning units for Guam Public School System facilities.

It is important that JRN move forward to ensure that the students of GPSS have schools with classrooms that meet the requirements of the Every Child is Entitled to an Adequate Education Act, further delay may result in lawsuits from students and parents against Guam Public School System.

I look forward to hearing from you. If you have any questions or concerns regarding this matter, please contact me at 475-0658. Your prompt response is greatly appreciated.

*Senseramente,*

**FRED NISHIHIRA**  
GPSS Legal Counsel

cc: Superintendent of Education

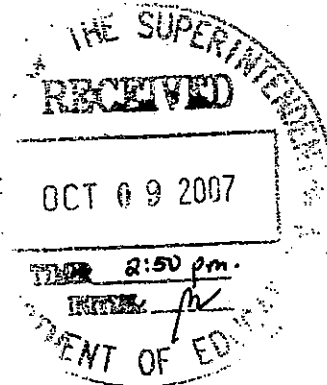


OFFICE OF THE PUBLIC AUDITOR

October 9, 2007

Fred Nishihira, Esq.  
Legal Counsel, Guam Public  
School System  
Hagatna, Guam 96910

Re: OPA-PA-07-008



Dear Mr. Nishihara:

This is to respond to your letters dated September 17 and October 4, 2007 concerning that the contractor JRN, be permitted to resume work regarding preventative maintenance and repair of split type and central air conditioning units for Guam Public School System facilities.

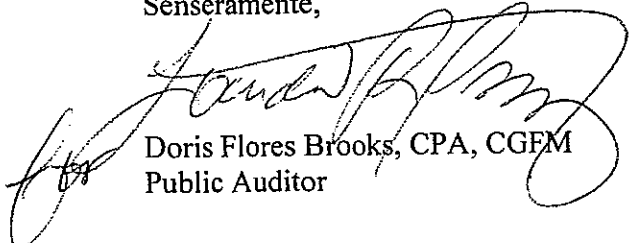
I regret the delay in responding to your letter. It was referred to newly hired Legal Counsel Robert Cruz, who has been working on other pressing matters, including litigation on behalf of the office. However, he has been able to complete his review as well as consult with the Office of the Attorney General on the area of concern.

The main issue of our office has been that once a timely appeal has been filed, the Guam Procurement Law requires that the appeal run its course, even when a Certificate of Emergency is issued by the Superintendent, unless the Attorney General or specified Deputy Attorney General signs a written determination that the award of the contract without delay is necessary to protect substantial interests of the territory, etc. 5 GCA Section 5425 (g). There is nothing in the file or correspondence from your agency that indicates such clearance has been obtained.


The procurement appeal by Advance Management Inc. is focused upon the GPSS paying the prevailing wage for any services provided by any contractor. It would seem that the procurement could be resolved if GPSS can provide assurances to OPA and the Attorney General from the contractor that it will pay the prevailing wages required under Guam law, as well as following up with the Wage and Hour Division of our Department of Labor to ensure that they do.

Realize that if the written determination is not provided by the Office of the Attorney General, we will require that that matter go through the Procurement appeal process. It is anticipated a Pre-hearing conference will be scheduled within the next few weeks.

Senseramente,

  
Doris Flores Brooks, CPA, CGEM  
Public Auditor

RECEIPT ACKNOWLEDGED:

By:   
Date: 10.09.07



# AIR CONDITIONING & REFRIGERATION

SALES • SERVICE • MAINTENANCE • INSTALLATION • ELECTRICAL



October 11, 2007

Mr. Luis S.N. Reyes  
Superintendent of Education  
Guam Public School System

Guam Public School System  
Office of the Legal Counsel  
Received by: [Signature]  
Date: 10/11/07, 9:35A

Project Name : Preventive Maintenance and Repairs of Split Type / Central Air Conditioning Units for Various Guam Public Schools and Supports Facilities

Project Number : IFB# 006 – 2007

R E : Stop Work Order

Dear Mr. Reyes :


It was been a month since we received your stop order notice dated September 11, 2007, that till to date we do not received a words from your office.

We would like to inform you that JRN Air Conditioning and Refrigeration is fully cognizant of Public Law 26 – 111, Article 13 : Wage and Benefit Determination, and is hereby to be in full compliance.

Also, be advised that JRN Air Conditioning and Refrigeration's winning bid on the aforementioned project, is well within the legal wage and benefits parameters set by said law pursuant to the U.S. Department of Labor's Wage Determination for Guam and the Northern Mariana Islands.

Hence, the temporary hold hereto placed on all work unnecessary, and the contract should be reinstated at once to avoid any more needless delays and financial strains. In addition, the students were the one suffering on this situation.

Sincerely yours,

  
Julius R. Nucum  
President

Cc:

Ms. Frances T. Danieli – Comptroller  
Mr. Roque Alcantara - Administrator, Supply / Procurement  
Legal Counsel