

RECEIVED

OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 11/15/13

TIME: 3:56  AM  PM BY: \_\_\_\_\_

FILE NO OPA-PA: 13-013

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

7 *Attorney for Guam Department of Education*

8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**  
9 **PROCUREMENT APPEAL**

10 IN THE APPEAL OF

11 G4S SECURITY SYSTEMS (GUAM)  
12 INC.,

13 Appellant.

14 APPEAL NO. OPA-PA-13-013

15 **STATUS OF PROCUREMENT**

16 Comes now Guam Department of Education (“GDOE”) and files this Status of Procurement  
17 as requested by the Office of Public Accountability (“OPA”) in OPA-PA-13-013.

18 **BACKGROUND**

19 On November 13, 2013, the OPA issued a Decision and Order granting G4S Security  
20 Systems (Guam) Inc.’s Motion to Declare Automatic Stay. In its Decision and Order, the OPA  
21 determined that the automatic stay provision imposed by 5 G.C.A. §5425(g) remained in effect.  
22 The OPA further explained that in the event of a timely protest, GDOE should not have proceeded  
23 further with the award of the contract in GDOE Invitation for Bid 032-2013 (“IFB”) for the Design  
24 Build Fire Alarm System Upgrade/Replacement and Fire Suppression/Sprinkler System Repair for  
25 Southern High School (“IFB”), prior to final resolution of such protest, and further action is void.  
26 As a result, the OPA determined “DOE’s award of the contract is void.”

27 Subsequently, on November 13, 2013, a Pre-Hearing Conference was held. The OPA  
28 scheduled a hearing on the merits for December 2, 2013. Additionally, the OPA ordered that GDOE  
provide a status of the procurement in light of the issuance of the above Decision and Order, and  
to provide the latest copy of the monthly Adequate Education Trust Account Status as required by

ORIGINAL

1 Public Law 31-234. *See*, Exhibit 1, Adequate Education Trust Account Status dated October 31,  
2 2013.

### 3 STATUS OF PROCUREMENT

4 After the issuance of the OPA's November 13, 2013, Decision and Order, GDOE issued a  
5 notice to Orion and provided them with the November 13, 2013, Decision and Order, and instructed  
6 Orion not to proceed any further under the contract. *See* Exhibit 2, Letter to Orion Construction  
7 Corporation (Guam) dated November 13, 2013. To date no funds were drawn from the purchase  
8 order issued pursuant to the contract.

9 As the OPA is well aware, the IFB was funded with moneys from the Adequate Education  
10 Act Trust ("Trust"). The Trust was established by Public Law 31-40 and amended by Public Law  
11 31-234. *See* Exhibit 3, Public Law 31-234 at pp. 2-3 and Exhibit 4, Public Law 31-40 at pp. 5-7.  
12 Pursuant to Public Law 31-234, the funds contained in the Trust were required to be obligated by  
13 September 30, 2013, and if the funds are not obligated by this date, the Fund would expire. *See*  
14 Exhibit 3, Public Law 31-234 at pp. 2-3.

15 The OPA has determined that the contract executed between GDOE and Orion pursuant to  
16 the IFB is void. As a result of the contract being void, the September 30, 2013, obligation date of  
17 the Trust funds earmarked for the IFB was not met, and therefore, these funds have expired since  
18 the issuance of the OPA's Decision and Order.

19 GDOE acknowledges that, on September 26, 2013, the United States Department of  
20 Education ("USDOE") issued an extension to GDOE for the obligation of any funds that remained  
21 in the Trust after September 30, 2013. *See* Exhibit 5, Letter from Ann Whalen dated September  
22 26, 2013. This extension date is January 31, 2013. *Id.* Although this may seem that the funds are  
23 currently available to fund the IFB, pursuant to Public Law 31-234, the Trust has since expired.  
24 There is no public law to allow GDOE to expend funds currently contained in the Trust beyond  
25 September 30, 2013.

1 Without legal authority, GDOE is prevented from obligating Trust funds beyond September  
2 30, 2013. In addition, the lack of a public law to address this issue prevents GDOE from certifying  
3 funds from the Trust for the IFB. Therefore, a new award of the contract for the IFB cannot be  
4 made due to the inability of GDOE to certify funds from the Trust, and any administrative process  
5 in furtherance of an award of the IFB would be disallowed due to a lack of the ability to certify  
6 funds for the IFB.

7 Dated this 15<sup>th</sup> day of November, 2013.

8 Respectfully submitted,

9 **GUAM DEPARTMENT OF EDUCATION**

10  
11 By:   
12 **ANDREW T. PEREZ, ESQ.**  
13 *Legal Counsel*

# **Exhibit 1**

GOVERNMENT OF GUAM - GUAM DEPARTMENT OF EDUCATION  
 ADEQUATE EDUCATION ACT TRUST ACCOUNT STATUS  
 As of October 31, 2013 and USDOE-Approved Reprogramming Request (11-15-2013)

ACCOUNT TITLE	APPROVED BUDGET 4-18-2013	REPROGRAMMING REQUEST	REVISED BUDGET	EXPENDITURES			TOTAL EXPENDITURES	ENCUMBRANCES	AVAILABLE BALANCE
				FY 11	FY 12	FY 13			
<b>CAPITAL IMPROVEMENT PROJECTS:</b>									
SOUTHERN HIGH FINE ARTS	3,787,457.57	157,820.81	3,945,278.38	544.75		3,184,424.64	760,308.99	-	
SOUTHERN HIGH GYM	2,916,244.63	360,259.43	3,276,504.06	544.75		2,777,520.57	498,438.74	-	
ROOFING/STRUCTURAL	9,876,343.94	3,292,270.47	13,168,614.41	441.10		11,514,842.07	1,057,979.13	-	
FIRE ALARM & PA SYSTEM/ELECTRICAL	5,245,985.99	945,795.83	6,191,781.82	130.00	165,559.24	4,455,210.45	1,570,882.13	-	
HVAC	9,835,439.78	(2,350,765.78)	7,484,674.00			254,703.00	7,229,971.00	-	
PLUMBING & DOOR REPLACEMENT	3,394,623.39	(3,394,623.39)	-					-	
STEM CLASSROOM RENOVATION	4,125,554.90	45,471.50	4,171,026.40		671,080.69	3,499,945.71	-	-	
SECURITY FOR TECH EQUIPMENT	558,256.00	(436,446.27)	121,809.73				121,809.73	-	
SERVER ROOM- ELECTRICAL	-	-	-					-	
UNTALAN RENOVATION	4,800,000.00	1,698,888.00	6,498,888.00				6,498,888.00	-	
ARCHITECT & ENGINEERING	4,771,234.51	268,418.38	5,039,652.89	600,766.00	1,952,450.45	2,293,334.22	193,102.22	-	
PROJECT MANAGEMENT	1,750,282.50	289,808.00	2,040,090.50	56,616.44	1,113,554.68	540,311.38	329,608.00	-	
<b>UNALLOCATED CIP RESERVED</b>	1,137,195.79	(772,838.45)	364,357.34					364,357.34	
<b>TOTAL - CIPs</b>	<b>52,198,619.00</b>	<b>104,058.53</b>	<b>52,302,677.53</b>	<b>659,043.04</b>	<b>3,902,645.06</b>	<b>28,520,292.04</b>	<b>18,260,987.94</b>	<b>364,357.34</b>	
<b>STEM-EQUIPMENT</b>	1,326,200.00	(116,777.86)	1,209,422.14			1,051,670.08	137,421.26	-	
<b>TOTAL - STEM EQUIPMENT</b>	<b>1,326,200.00</b>	<b>(116,777.86)</b>	<b>1,209,422.14</b>	<b>-</b>	<b>-</b>	<b>1,051,670.08</b>	<b>137,421.26</b>	<b>-</b>	

GOVERNMENT OF GUAM - GUAM DEPARTMENT OF EDUCATION  
ADEQUATE EDUCATION ACT TRUST ACCOUNT STATUS  
As of October 31, 2013 and USDOE-Approved Reprogramming Request (11-15-2013)

ACCOUNT TITLE	APPROVED BUDGET 4-18-2013	REPROGRAMMING REQUEST	REVISED BUDGET	EXPENDITURES			TOTAL EXPENDITURES	ENCUMBRANCES	AVAILABLE BALANCE
				FY 11	FY 12	FY 13			
TECHNOLOGY (GATEWAY TO SUCCESS):									
INFRASTRUCTURE	4,093,831.07	68,588.09	4,162,419.16	69,072.55	1,478,554.64	1,482,908.57	-	1,131,883.40	-
SOFTWARE	1,421,021.89	-	1,421,021.89	25,906.13	584,533.65	413,332.11	-	397,250.00	-
EQUIPMENT	299,263.04	(1,472.59)	297,790.45	544.75	80,672.50	180,401.40	-	36,171.80	-
OVERTIME	250,000.00	(22,297.50)	227,702.50	-	12.50	227,690.00	-	-	-
FMIS PROJECT MANAGER	500,000.00	(32,098.67)	467,901.33	-	-	467,901.33	-	-	-
<b>TOTAL - TECHNOLOGY</b>	<b>6,564,116.00</b>	<b>12,719.33</b>	<b>6,576,835.33</b>	<b>95,523.43</b>	<b>2,143,773.29</b>	<b>2,772,233.41</b>	<b>-</b>	<b>1,565,305.20</b>	<b>-</b>
<b>GRAND TOTAL</b>	<b>60,088,935.00</b>	<b>0.00</b>	<b>60,088,935.00</b>	<b>754,566.47</b>	<b>6,046,618.35</b>	<b>32,344,195.53</b>	<b>615,682.91</b>	<b>19,963,714.40</b>	<b>364,357.34</b>

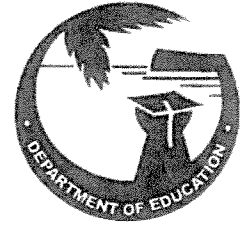
Interest thru 8/31/13 78,605.56

# **Exhibit 2**



**GUAM DEPARTMENT OF EDUCATION  
OFFICE OF SUPPLY MANAGEMENT**

*Manuel F.L. Guerrero Administration Building  
2nd. Floor, Suite B-220  
Hagåtña, Guam 96910  
Telephone: (671) 475-0438  
Fax: (671) 472-5001*



**MARCUS Y. PIDO**  
Supply Management Administrator

**JON J. P. FERNANDEZ**  
Superintendent of Education

November 13, 2013

To: Orion Construction Corporation (Guam)  
P.O. Box 24348  
Barrigada, Guam 96921  
Tel: (671) 633-2203  
Fax: (671) 633-2208  
E-Mail: [pmiguel@orionguam.com](mailto:pmiguel@orionguam.com)  
[atacosta@orionguam.com](mailto:atacosta@orionguam.com)

Attn: Mr. Prudencio Miguel, Jr.

Ref: **OPA-PA-13-013 Decision and Order Re Appellant's Motion to Declare Automatic Stay in Effect**  
Formal Bid: GDOE IFB 032-2013 Design Build Fire Alarm System Upgrade/Replacement and  
Fire Suppression/Sprinkler System Repair for Southern High School

Dear Mr. Miguel,

Please see the attached Decision and Order from the Office of Public Accountability ("OPA"). You are hereby ordered to cease and desist. Orion Construction shall not proceed further with any work under this Contract. GDOE shall not be responsible for any work performed or costs incurred as of this date.

Senseramente,

**MARCUS Y. PIDO**  
Supply Management Administrator

Attachment

cc: Randy Romero  
Albert Garcia





OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

**PROCUREMENT APPEALS**

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6 IN THE APPEAL OF,

7 G4S SECURITY SYSTEMS (GUAM), INC.

8 Appellant  
9

) APPEAL NO: OPA-PA-13-013

) **DECISION AND ORDER RE**  
) **APPELLANT'S MOTION TO DECLARE**  
) **AUTOMATIC STAY IN EFFECT**

10  
11 To: **Purchasing Agency:**  
12 Department of Education, Government of Guam  
13 C/O Andrew T. Perez, Esq.  
14 P.O. Box DE  
Hagåtña, Guam, 96910  
E-Mail: legal-admin@gdoe.net

15 **Appellant:**  
16 G4S Security Systems (Guam), Inc.  
17 C/O Seth Forman, Esq.  
18 Dooley, Roberts & Fowler, LLP-  
865 S. Marine Corps Drive  
19 Orlean Pacific Plaza, Ste. 201  
Tamuning, Guam, 96913  
E-Mail: Forman@guamlawoffice.com

20 **THIS MATTER**, came before the Hearing Officer on October 24, 2013 for a hearing on  
21 the Appellant's Motion to Declare the Automatic Stay in Effect. Director Ed Bitanga and  
22 Director of Finance Kathleen Brown were present on behalf of G4S Security Systems (Guam),  
23 Inc. (Appellant), and they were represented by the Appellant's counsel of record, Seth Forman,  
24 Esq. Marcus Y. Pido, Guam Department of Education's (DOE) Supply Management  
25 Administrator, was present on behalf of the Purchasing Agency, and he was represented  
26 by DOE's Counsel of Record, Andrew T. Perez, Esq. After hearing the arguments of the parties,  
27 the Hearing Officer makes the following findings and orders:  
28

1           1. The Automatic Stay imposed by 5 G.C.A. §5425(g) and Chapter IX, Section 9.2.5.,  
2 DOE Procurement Regulations remains in effect. The main issue here is whether DOE's lifting  
3 of the automatic stay on September 19, 2013 complied with Guam's Procurement Laws and  
4 DOE's Procurement Regulations. Generally, in the event of a timely protest, the purchasing  
5 agency shall not proceed further with the solicitation or award of the contract prior to final  
6 resolution of such protest, and any such further action is void unless the head of the purchasing  
7 agency and the Attorney General of Guam, make written determinations that award of the  
8 contract without delay is necessary to protect substantial interests of the Government of Guam,  
9 and the protestant is given at least two (2) days prior notice. 5 G.C.A. §5425(g). Further, a  
10 protestant may appeal a decision denying a protest to the Office of Public Accountability within  
11 fifteen (15) days after receipt of a decision denying their protest. 5 G.C.A. §5425(e). DOE is  
12 governed by Article 9 of Guam's Procurement Law. *Town House Department Stores dba Island*  
13 *Business Systems and Supplies v. Guam Department of Education, et.al.*, 2012 Guam 25, ¶20  
14 (Supreme Court of Guam). Hence, 5 G.C.A. §5425(g), which is part of Article 9 of Guam's  
15 Procurement Law, applies to DOE. Further, despite conflicting language in DOE's Procurement  
16 Regulations, it has been conclusively determined that an appeal from a DOE decision denying a  
17 procurement protest shall proceed through the Office of Public Accountability pursuant to  
18 Articles 9 and 12 of Guam's Procurement Law. *Id.*, at ¶19. Thus, the fifteen (15) day period for  
19 a protestant to appeal a decision denying their protest to the Office of Public Accountability  
20 applies to DOE. DOE's Procurement Regulations closely tracks the statutory language of 5  
21 G.C.A. §5425(g), and states that when a protest has been filed within fourteen (14) working days  
22 and before an award is made, DOE's Superintendent shall make no award of the contract, until  
23 the protest is settled, unless the Superintendent makes a written determination that the award of  
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1 the contract without delay is necessary to protect substantial DOE interests and the protestant has  
2 been given at least two (2) working days of notice. Chapter IX, Section 9.2.5, DOE Procurement  
3 Regulations. Clearly, both 5 G.C.A. §5425(g) and Chapter IX, Section 9.2.5., DOE Procurement  
4 Regulations allow DOE to lift the automatic stay triggered by the Appellant's protest if certain  
5 requirements are met. The Hearing Officer must now look to the procurement record to  
6 determine if DOE complied with these requirements before lifting the automatic stay on  
7 September 19, 2013.  
8

9  
10 The procurement record shows that DOE failed to comply with 5 G.C.A. §5425(g) and  
11 Chapter IX, Section 9.2.5., DOE Procurement Regulations. The procurement record shows that  
12 on September 16, 2013, the Appellant filed their protest concerning DOE's rejection of the  
13 Appellant's Bid which was the same day the Appellant received notice of said rejection. Hence,  
14 the Hearing Officer finds that the Appellant's Protest was timely and that it triggered the  
15 automatic stay set forth in 5 G.C.A. §5425(g) and Chapter IX, Section 9.2.5., DOE Procurement  
16 Regulations. The procurement record also shows that on September 19, 2013, DOE denied the  
17 Appellant's protest, issued a Notice that the automatic stay was lifted, and awarded the contract  
18 to the remaining bidder. The procurement record shows that this contract was finalized and fully  
19 executed by September 30, 2013. The procurement record contains no evidence that DOE's  
20 Superintendent issued a Written Determination that lifting the automatic stay and awarding the  
21 contract without delay was necessary to protect substantial DOE interests as required by Chapter  
22 IX, Section 9.2.5., DOE Procurement Regulations. There is no evidence in the procurement  
23 record that DOE gave the Appellant the two (2) days prior notice that it was going to lift the  
24 automatic stay and award the contract which is required by Chapter IX, Section 9.2.5., DOE  
25 Procurement Regulations and 5 G.C.A. §5425(g). Finally, there is no evidence in the  
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1 procurement record that DOE obtained a written determination from the Attorney General of  
2 Guam that lifting the automatic stay to award the contract without delay was necessary to protect  
3 substantial Government of Guam interests as required by 5 G.C.A. §5425(g). Although, DOE's  
4 Procurement Regulations state that the only DOE's Superintendent is required to lift an  
5 automatic stay triggered by a timely protest, the written determination by the Attorney General  
6 of Guam is still required to comply with 5 G.C.A. §5425(g). *Guam Imaging Consultants, Inc.,*  
7 *and RADS, v. Guam Memorial Hospital Authority, et.al.*, 2004 Guam 15, ¶41 (Supreme Court of  
8 Guam). DOE now argues necessity by pointing out that the funds for the contract being solicited  
9 came from the Adequate Education Act Trust Account, created by Public Law 31-234, which  
10 were set to expire if not obligated by September 30, 2013. Albeit the concern on funding was  
11 noted in the Supply Management Administrator's September 4, 2013 memorandum justifying a  
12 shorter bid time and that this reason would be a valid justification to lift the automatic stay, it  
13 being posed as an argument to oppose a motion well after DOE lifted the automatic stay is not in  
14 the proper form of a written determination nor is it timely. The Hearing Officer finds that DOE  
15 violated Chapter IX, Section 9.2.5., DOE Procurement Regulations, and 5 G.C.A. §5425(g) by  
16 lifting the automatic stay without written determinations from DOE's Superintendent and  
17 Guam's Attorney General, and by failing to give the Appellant two (2) days prior notice.

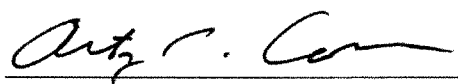
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22 2. The Decision in *In the Appeal of Guam Publications, Inc.*, OPA-PA-08-007 (Office  
23 of Public Accountability) is distinguishable from this matter. DOE argues that the Decision in  
24 OPA-PA-08-007 should be applied here because it found that a purchasing agency did not  
25 violate the automatic stay by awarding a contract after it had denied a protest but before the  
26 protestant's appeal to the Office of Public Accountability. However, in OPA-PA-08-007 this  
27 finding was made as part of the Office of Public Accountability's denial of a request for attorney  
28

1 fees made by that case's appellant which is different from the issue here. Further, that finding in  
2 OPA-PA-08-007 relied in part on the Office of Public Accountability's analysis of 2 G.A.R.,  
3 Div. 4, Chap. 9, §9101(e) which is a procurement regulation that does not apply to DOE. DOE  
4 is really arguing that its decision denying the Appellant's protest had sufficient finality to  
5 terminate the automatic stay. DOE's procurement regulations state that after the automatic stay  
6 is triggered by a timely protest, it remains in effect until the protest is settled. Chapter IX,  
7 Section 9.2.5., DOE Procurement Regulations. Hence, it could be argued that DOE's denial of  
8 the Appellant's protest settled it to the extent that DOE could unilaterally lift the automatic stay  
9 and proceed with the award of the contract. However, as stated above, Article 9 of Guam's  
10 Procurement Law, which includes 5 G.C.A. §5425(g), is also applicable to DOE. *Town House*  
11 *Department Stores dba Island Business Systems and Supplies v. Guam Department of Education,*  
12 *et.al.*, 2012 Guam 25, at ¶20. That statute specifically states that once the automatic stay is  
13 triggered by a timely protest it remains in effect until the final resolution of the protest. 5 G.C.A.  
14 §5425(g). Hence, to comply with 5 G.C.A. §5425(g), DOE's decision denying the Appellant's  
15 protest would not become final until the fifteen (15) days the Appellant had to appeal to the  
16 Office of Public Accountability had expired, and only if the Appellant did not file an appeal  
17 during that timeframe. Thus, the Hearing Officer finds that DOE violated the 5 G.C.A. §5425(g)  
18 by lifting the automatic stay before its denial of the Appellant's protest became a final resolution  
19 of the Appellant's protest.

24 3. DOE's award of the contract is void. As stated above, DOE violated 5 G.C.A.  
25 §5425(g) and Chapter IX, Section 9.2.5., DOE Procurement Regulations by lifting the automatic  
26 stay on September 19, 2013. Hence, pursuant to said statute and procurement regulation, the  
27 Hearing Officer finds that DOE's subsequent award of the contract is void.  
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**SO ORDERED** this 12<sup>th</sup> day of November, 2013 by:

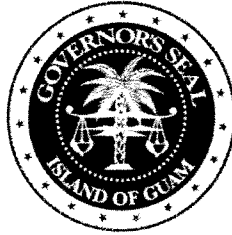


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ANTHONY R. CAMACHO, ESQ.  
Hearing Officer

# **Exhibit 3**

EDDIE BAZA CALVO  
Governor



*Office of the Governor of Guam*

2012 OCT 11 PM 4:27  
RAY TENORIO  
Lieutenant Governor

October 10, 2012

Honorable Judith T. Won Pat, Ed.D.  
Speaker  
*I Mina'trentai Unu Na Liheslaturan Guåhan*  
155 Hesler Street  
Hagåtña, Guam 96910

~~31-12-1857~~ 31-12-1857

Office of the Speaker  
Judith T. Won Pat, Ed. D.

Date 10/11/12  
Time 11:17 AM  
Received by [Signature]

Dear Madame Speaker:

Transmitted herewith is Bill No. 496-31 (COR), "AN ACT TO AMEND SECTION 3 OF PUBLIC LAW 31-40, RELATIVE TO EXTENDING THE DEADLINE TO OBLIGATE OR EXPEND AMERICAN RECOVERY AND REINVESTMENT FUNDS; TO AMEND SECTION 13 OF CHAPTER XII OF PUBLIC LAW 31-233, RELATIVE TO RESTRICTIONS ON HIRING OF UNCLASSIFIED EMPLOYEES; AND TO AMEND SECTION 14(a) OF CHAPTER X OF PUBLIC LAW 31-233, RELATIVE TO SERVICE AND REPORTING REQUIREMENTS OF THE TOURIST ATTRACTION FUND (TAF)", which I signed into law on October 9, 2012 as **Public Law 31-234**.

*Senseramente,*

EDDIE BAZA CALVO

Attachment: copy of Bill

1957



*I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN*  
2012 (SECOND) Regular Session

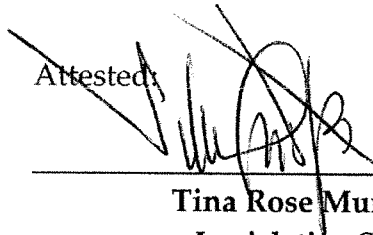
CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that Substitute Bill No. 496-31 (COR), "AN ACT TO AMEND SECTION 3 OF PUBLIC LAW 31-40, RELATIVE TO EXTENDING THE DEADLINE TO OBLIGATE OR EXPEND AMERICAN RECOVERY AND REINVESTMENT FUNDS; TO AMEND SECTION 13 OF CHAPTER XII OF PUBLIC LAW 31-233, RELATIVE TO RESTRICTIONS ON HIRING OF UNCLASSIFIED EMPLOYEES; AND TO AMEND SECTION 14(a) OF CHAPTER X OF PUBLIC LAW 31-233, RELATIVE TO SERVICE AND REPORTING REQUIREMENTS OF THE TOURIST ATTRACTION FUND (TAF)", was on the 1<sup>st</sup> day of October, 2012, duly and regularly passed.



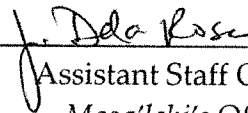
Judith T. Won Pat, Ed.D.  
Speaker

Attested:



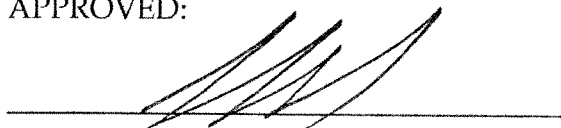
Tina Rose Muña Barnes  
Legislative Secretary

-----  
This Act was received by *I Maga'lahaen Guåhan* this 2<sup>nd</sup> day of Oct, 2012, at 09:40 o'clock A.M.



Assistant Staff Officer  
*Maga'lahi's Office*

APPROVED:



EDWARD J.B. CALVO  
*I Maga'lahaen Guåhan*

Date: OCT 09 2012

Public Law No. 31-234

*I MINA'TRENTAI UNU NA LIHESLATURAN GUÁHAN*  
2012 (SECOND) Regular Session

**Bill No. 496-31 (COR)**

As substituted by the Author, and amended on the Floor.

Introduced by:

J. T. Won Pat, Ed.D.  
Tina Muña Barnes  
V. C. Pangelinan  
T. C. Ada  
V. A. Ada  
F. F. Blas, Jr.  
Chris M. Dueñas  
J. P. Guthertz, DPA  
Sam A. Mabini, Ph.D.  
T. R. Muña Barnes  
Adolpho B. Palacios, Sr.  
R. J. Respicio  
Dennis G. Rodriguez, Jr.  
M. Silva Taijeron  
Aline A. Yamashita, Ph.D.

**AN ACT TO AMEND SECTION 3 OF PUBLIC LAW 31-40, RELATIVE TO EXTENDING THE DEADLINE TO OBLIGATE OR EXPEND AMERICAN RECOVERY AND REINVESTMENT FUNDS; TO AMEND SECTION 13 OF CHAPTER XII OF PUBLIC LAW 31-233, RELATIVE TO RESTRICTIONS ON HIRING OF UNCLASSIFIED EMPLOYEES; AND TO AMEND SECTION 14(a) OF CHAPTER X OF PUBLIC LAW 31-233, RELATIVE TO SERVICE AND REPORTING REQUIREMENTS OF THE TOURIST ATTRACTION FUND (TAF).**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

1           **Section 1.** Section 3 of Public Law 31-40 is hereby *amended* to read as  
2 follows:

3           **“Section 3. Appropriation.** Upon USDOE approval to amend the  
4 Phase I and Phase II ARRA SFSF grant application, whereby, the amount of  
5 Sixty Million Eighty-Eight Thousand Nine Hundred Thirty-Five Dollars  
6 (\$60,088,935) of federal funds originally allocated for Capital Improvement  
7 Projects (CIPs), Technology Upgrades and Science, Technology, Engineering  
8 and Math (STEM) CIPs and Equipment is reprogrammed to Salaries and  
9 Benefits resulting in a reimbursement of funds appropriated and expended in  
10 Section 2 of Chapter II, Part I of Public Law 30-196, the reimbursement of  
11 Sixty Million Eighty-Eight Thousand Nine Hundred Thirty-Five Dollars  
12 (\$60,088,935) from the SFSF grant authorized by the USDOE pursuant to the  
13 expenditure of local funds and certified by the TPFA *shall* be deposited to the  
14 Trust Account. The use of the reimbursed funds in the Trust Account *shall* be  
15 pursuant to the following amounts and requirements:

16           (a) Sixty Million Eighty-Eight Thousand Nine Hundred Thirty-  
17 Five Dollars (\$60,088,935) is appropriated from the Adequate Education  
18 Act Trust Account to the Guam Department of Education in Object  
19 Classes 230, 250 and 450 as follows: object class 230 (Contracts) –  
20 Thirty-Five Thousand Dollars (\$35,000); object class 250 (Equipment) –  
21 Three Million Fifty Thousand Dollars (\$3,050,000); and object class 450  
22 (Capital Outlay) – Fifty-Seven Million Three Thousand Nine Hundred  
23 Thirty-Five Dollars (\$57,003,935).

24           (b) The appropriation to Object Classes 230, 250 and 450 in this  
25 Section *shall* be continuing appropriations for the GDOE and *shall* be  
26 earmarked for Capital Improvement Projects and for the renovation,

1 rehabilitation, and repair of Untalan Middle School, Technology  
2 Upgrades and Science, Technology, Engineering and Math (STEM) CIPs  
3 and Equipment approved by USDOE contained in the ARRA SFSF  
4 Phase I and Phase II grant application, including any subsequent  
5 amendments approved by USDOE; *provided*, that all these appropriations  
6 *shall* expire if *not* obligated by September 30, 2013.

7 (c) *Up to* the sum of Two Hundred Twenty-Six Thousand Dollars  
8 (\$226,000) from the appropriation in Subsection (a), object class 250  
9 may be transferred to personnel object classes 112 to fund overtime for  
10 GDOE employees for the implementation of GDOE's Financial  
11 Management Information System.

12 (d) GDOE *shall* report to *I Maga'lahi* and *I Liheslatura* on a  
13 monthly basis as to the obligation and expenditure of the funds from the  
14 Trust Fund and the completion of the ARRA/SFSF projects.”

15 **Section 2.** Section 13 of Chapter XII of Public Law 31-233 is hereby  
16 *amended* to read as follows:

17 **“Section 13. Restrictions on Executive Branch Hiring of Unclassified**  
18 **Employees.** No government funds of any kind or description may be expended  
19 for the employment or hiring of unclassified employees in the Executive Branch  
20 of the government of Guam during Fiscal Year 2013, *except* for the following:

21 (a) Certified persons in the Guam Department of Education, as  
22 identified in §715(12) of Chapter 7, Title 1 GCA;

23 (b) Any academic positions at the University of Guam and the  
24 Guam Community College;

25 (c) Nurses, doctors, licensed health professionals and ancillary  
26 health employees necessary for clinical purposes at the Department of

1 Public Health and Social Services, the Department of Mental Health and  
2 Substance Abuse, the Office of the Chief Medical Examiner, the Guam  
3 Memorial Hospital Authority, the Guam Police Department, and the  
4 Department of Integrated Services for Individuals with Disabilities;

5 (d) Department of Labor Survey Workers;

6 (e) Systems and Programming Administrator, Junior Systems  
7 Programmer, Senior Programmer Analyst, Junior Application Analyst,  
8 Junior Programmer Analyst and Junior Application Programmer; and  
9 positions dealing with reporting, tax audits, tax investigations, tax  
10 collections, and processing of taxes at the Department of Revenue and  
11 Taxation;

12 (f) Federally-funded positions (matching and up to 100%);

13 (g) Persons filling temporary vacancies created by the call to active  
14 military duty of employees who are members of the reserve components  
15 of the Department of Defense and the Department of Transportation,  
16 including, but *not* limited to, the United States Army, United States  
17 Navy, United States Marine Corps, United States Air Force, the Army  
18 National Guard, the Air National Guard, and the United States Coast  
19 Guard, *or* created by absence due to a long term disability status which  
20 has been certified by a medical doctor. Departments may exercise this  
21 hiring authority; *provided*, its authorized budget for personnel is *not*  
22 exceeded;

23 (h) Positions within the Office of *I Maga'låhen Guåhan*, the Office  
24 of *I Segundu Na Maga'låhen Guåhan* and the Guam State Clearinghouse,  
25 and department or agency heads, deputies and private secretaries;

26 (i) Positions within the Mayors' Council of Guam;

- 1 (j) Positions within the Guam Election Commission;  
2 (k) Limited-term, part time substitute teachers of the Guam  
3 Department of Education; and  
4 (l) professional engineers required to fill Chief Engineer positions.  
5 (m) All persons employed pursuant to this Section, effective  
6 October 1, 2011, *shall* meet the minimum Knowledge, Abilities  
7 and Skills (KAS) associated with such position.”

8 **Section 3.** Section 14(a) of Chapter X of Public Law 31-233 is hereby *amended*  
9 to read as follows:

10 **“Section 14. Service and Reporting Requirements.** (a) Organizations  
11 receiving funding from the Tourist Attraction Fund (TAF) *shall* provide  
12 community service in the amount of ten (10) hours of service per One Thousand  
13 Dollars (\$1,000) appropriated to them for activities and/or events. The services  
14 *shall* be consistent with the services provided pursuant to the respective TAF  
15 appropriation.”



**OFFICE OF THE SPEAKER**  
**JUDITH T. WON PAT, Ed.D.**  
CHAIRPERSON OF THE COMMITTEE ON EDUCATION AND PUBLIC LIBRARIES

---

**VICE CHAIR**

COMMITTEE ON TOURISM,  
MUNICIPAL AFFAIRS,  
HOUSING AND  
RECREATION

October 1, 2012

COMMITTEE ON  
TAXATION,  
APPROPRIATIONS, PUBLIC  
DEBT, BANKING,  
INSURANCE, RETIREMENT  
AND LAND

**MEMORANDUM**

**COMMISSIONER**

GUAM COMMISSION ON  
DECOLONIZATION

To: Honorable Rory Respicio  
Chairperson, Committee on Rules

GUAM FIRST  
COMMISSION

From: Vice Speaker Benjamin J.F. Cruz

Subject: Waiver of Public Hearing Bill No. 496-31 (COR)

**VICE PRESIDENT**

ASSOCIATION OF  
PACIFIC ISLAND  
LEGISLATURES  
(APIL)

After carefully evaluating the request to waive the requirement of a public hearing on Bill No. 496- 31 (COR) - An act to amend Section 3(b) of Public Law 31-40, relative to extending the deadline to obligate or expend American Recovery and Reinvestment Funds.

I certify that Bill No.496 -31 (COR) meets one of the requirements set forth in §2103(a) of Title 2 Guam Code Annotated and the requirement for a public hearing is hereby waived.

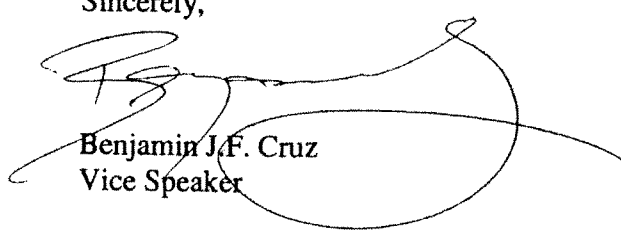
**BOARD MEMBER**

PACIFIC RESOURCES FOR  
EDUCATION  
AND LEARNING  
(PREL)

Sincerely,

**LEGISLATIVE  
REPRESENTATIVE**

PACIFIC ISLAND  
DEVELOPMENT BANK  
(PIDB)

  
Benjamin J.F. Cruz  
Vice Speaker

FESTIVAL OF THE  
PACIFIC ARTS  
(FESTPAC)

cc: Clerk of the Legislature

6

**I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN**  
**2012 (SECOND) Regular Session**

Date: 10/01/12

**VOTING SHEET**

Bill No. 496-31 (COOK)

Resolution No. \_\_\_\_\_

Question: \_\_\_\_\_

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>OUT DURING ROLL CALL</u>	<u>ABSENT</u>
ADA, Thomas C.	✓				
ADA, V. Anthony	✓				
BLAS, Frank F., Jr.	✓				
CRUZ, Benjamin J. F.	✓				
DUENAS, Christopher M.	✓				
GUTHERTZ, Judith Paulette	✓				
MABINI, Sam	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RESPICIO, Rory J.	✓				
RODRIGUEZ, Dennis G., Jr.	✓				
SILVA TAIJERON, Mana	✓				
WON PAT, Judith T.	✓				
YAMASHITA, Aline A.	✓				

TOTAL

15      0      0      0      0

CERTIFIED TRUE AND CORRECT:

  
 Clerk of the Legislature

\* 3 Passes = No vote  
 EA = Excused Absence



I MINA'TRENTAI UNU NA LIHESLATURAN GUÁHAN  
2012 (SECOND) Regular Session

Bill No. 496-31 (COR)

Introduced by:

J.T. Won Pat, Ed.D.  
Tina Muna Barnes

2012 AUG -2 PM 3:50  
OK

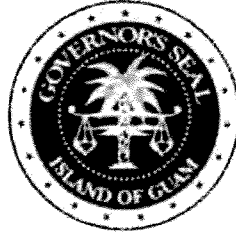
**AN ACT TO AMEND SECTION 3(b) OF PUBLIC LAW  
31-40, RELATIVE TO EXTENDING THE DEADLINE  
TO OBLIGATE OR EXPEND AMERICAN RECOVERY  
AND REINVESTMENT FUNDS.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1.** Section 3(b) of Public Law 31-40 is hereby amended to read as follows:

(b) the appropriation to Object Classes 230, 250 and 450 in this Section shall be continuing appropriations for the GDOE and shall be earmarked for Capital Improvement Projects, Technology Upgrades and Science, Technology, Engineering & Math (STEM) CIPs and Equipment approved by USDOE contained in the ARRA SFSF Phase I and Phase II grant application, including any subsequent amendments approved by USDOE; provided, that all these appropriations shall expire if not obligated by September 30, 20123.

# **Exhibit 4**



EDDIE BAZA CALVO  
Governor

RAY TENORIO  
Lieutenant Governor

*Office of the Governor of Guam*

31-11-535

May 17, 2011

Honorable Judith T. Won Pat, Ed.D.  
Speaker  
*I Mina'trentai Unu Na Liheslaturan Guåhan*  
155 Hesler Street  
Hagåtña, Guam 96910

5/18/11  
3:57 PM  
B

Dear Madame Speaker:

Transmitted herewith is Substitute Bill No. 103-31 (COR) "AN ACT TO APPROPRIATE SIXTY MILLION EIGHTY EIGHT THOUSAND NINE HUNDRED THIRTY FIVE DOLLARS (\$60,088,935) TO THE GUAM DEPARTMENT OF EDUCATION FOR ONGOING AND CONTINUING CAPITAL IMPROVEMENT PROJECTS (CIPS), TECHNOLOGY UPGRADES AND EQUIPMENT PROJECTS", which I signed into law on May 16, 2011 as Public Law 31-40.

2011 MAY 19 AM 7:51

*Senseramente,*

EDDIE BAZA CALVO

2011 MAY 19 AM 7:51  
PR

Attachment: copy of Bill

535

**I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN**  
**2011 (FIRST) Regular Session**

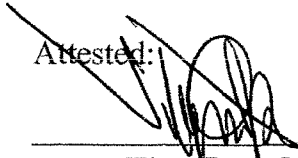
**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN**

This is to certify that **Substitute Bill No. 103-31 (COR)**, "AN ACT TO APPROPRIATE SIXTY MILLION EIGHTY EIGHT THOUSAND NINE HUNDRED THIRTY FIVE DOLLARS (\$60,088,935) TO THE GUAM DEPARTMENT OF EDUCATION FOR ONGOING AND CONTINUING CAPITAL IMPROVEMENT PROJECTS (CIPs), TECHNOLOGY UPGRADES AND EQUIPMENT PROJECTS," was on the 2<sup>nd</sup> day of May, 2011, duly and regularly passed.



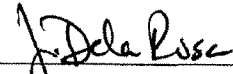
**Judith T. Won Pat, Ed.D.**  
**Speaker**

Attested:



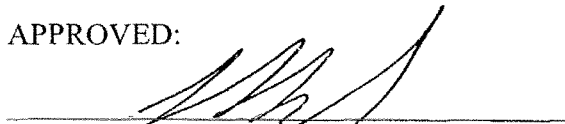
**Tina Rose Muña Barnes**  
**Legislative Secretary**

This Act was received by *I Maga'lahaen Guåhan* this 5<sup>th</sup> day of May, 2011, at 09:55 o'clock A.M.



**Assistant Staff Officer**  
***Maga'lahaen's Office***

APPROVED:



**EDWARD J.B. CALVO**  
***I Maga'lahaen Guåhan***

Date: MAY 16 2011

Public Law No. 31-40

*I MINA'TRENTAI UNU NA LIHESLATURAN GUÁHAN*  
**2011 (FIRST) Regular Session**

**Bill No. 103-31 (COR)**

As substituted by Committee on Appropriations, Taxation,  
Public Debt, Banking, Insurance, Retirement, and Land,  
and amended on the Floor.

Introduced by:

v. c. pangelinan  
Judith T. Won Pat, Ed.D.  
T. C. Ada  
V. Anthony Ada  
F. F. Blas, Jr.  
B. J.F. Cruz  
Chris M. Dueñas  
Judith P. Guthertz, DPA  
Sam Mabini, Ph.D.  
T. R. Muña Barnes  
Adolpho B. Palacios, Sr.  
Dennis G. Rodriguez, Jr.  
R. J. Respicio  
M. Silva Taijeron  
Aline A.Yamashita, Ph.D.

**AN ACT TO APPROPRIATE SIXTY MILLION EIGHTY  
EIGHT THOUSAND NINE HUNDRED THIRTY FIVE  
DOLLARS (\$60,088,935) TO THE GUAM DEPARTMENT  
OF EDUCATION FOR ONGOING AND CONTINUING  
CAPITAL IMPROVEMENT PROJECTS (CIPs),  
TECHNOLOGY UPGRADES AND EQUIPMENT  
PROJECTS.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Statement and Intent.** The 111<sup>th</sup> United States  
3 Congress enacted the American Recovery and Reinvestment Act (ARRA) of 2009

1 for the purpose of providing economic stimulus and relief to states and taxpayers.  
2 In enacting ARRA, the primary goal of its framers was to provide a quick infusion  
3 of cash to state and local governments for the preservation and creation of jobs,  
4 thus stimulating the economy. *I Liheslaturan Guåhan* agrees with the economic  
5 basis of the following approach and seeks to promote the principles and objectives  
6 of this federal legislation at the local level.

7 *I Liheslaturan Guåhan* finds that the U.S. Department of Education  
8 (USDOE) approved the Guam Department of Education (GDOE) State Fiscal  
9 Stabilization Fund (SFSF) Phase I and Phase II application which budgets Forty  
10 One Million Seventy Three Thousand Three Hundred Seventy Dollars  
11 (\$41,073,370) for the modernization, renovation and repair of public educational  
12 facilities used primarily for classroom instruction that are most in need of  
13 modernization, renovation and repair; Twenty Six Million Three Hundred  
14 Nineteen Thousand Four Hundred Fourteen Dollars (\$26,319,414) for Technology  
15 Upgrades, Financial Management Information System (FMIS) and Consultant  
16 Services; and Eight Million Three Hundred Fifty Thousand Dollars (\$8,350,000)  
17 for administrative services of a Third Party Fiduciary Agent (TPFA) required by  
18 the USDOE. The GDOE, which was awarded the SFSF funds two (2) years ago,  
19 has experienced difficulty in obligating and expending the funds prior to the  
20 September 2011 deadline. In failing to obligate and expend the funds, the GDOE  
21 shall forfeit the funds earmarked to improve the physical infrastructure of our  
22 educational institutions and other projects.

23 The management of the GDOE cites the legal review of procurement  
24 contracts, applicable to all government of Guam entities, as a bottleneck in the  
25 obligation and the expenditure of the funds. In citing the following provision, the  
26 GDOE has requested exemption to the legal review requirement within the

1 procurement statutes and to preclude the legal right of bidders to protest bid  
2 awards.

3 *I Liheslaturan Guåhan* affirms that the GDOE has *not* presented a  
4 compelling reason to merit exemption from the procurement statutes, which were  
5 crafted to protect the public interest in contractual negotiations. Furthermore, *I*  
6 *Liheslaturan Guåhan* finds that the following solution to GDOE’s difficulties to  
7 expend the funds represents a dangerous precedent whereby legislative remedies  
8 are sought for administrative issues.

9 *I Liheslaturan Guåhan* wherever possible seeks a win-win approach to  
10 problems facing our community and thus finds that the difficulty of the GDOE to  
11 expend ARRA SFSF funds presents an opportunity for such a solution. *I*  
12 *Liheslaturan Guåhan* recognizes that the following approach is consistent with the  
13 spirit of *Inafa’maolek* and is an example of a bi-partisan approach to solving  
14 problems because “*the greatness of Guam transcends all political lines.*”

15 In granting the following budgetary mechanisms, *I Liheslaturan Guåhan* is  
16 providing a solution and creating the opportunity for the chief executive and  
17 GDOE to request the USDOE to reprogram Sixty Million Eighty Eight Thousand  
18 Nine Hundred Thirty Five Dollars (\$60,088,935) of the ARRA SFSF grant  
19 earmarked for Capital Improvement Projects, Technology Upgrades, Science,  
20 Technology, Engineering & Math (STEM) CIPs and Equipment for the payment of  
21 personnel cost for FY 2011.

22 The following approach will *not* reduce or redirect funds due to the GDOE  
23 for repairs of educational institutions and other projects. Rather, the approach  
24 seeks to guarantee that the GDOE *not* lose ARRA SFSF funds due to failure to  
25 expend the funds by December 2011, and ensure that GDOE complies with local  
26 procurement laws. In doing so, the approach merely utilizes the ARRA SFSF  
27 funds for salaries and benefits of school-based teachers, administrators and support

1 staff and appropriates and reserves the funds transferred for Technology Upgrades,  
2 Equipment and Capital Improvement Projects as they become shovel ready.

3 *I Liheslaturan Guåhan* finds that the use of ARRA SFSF funds for GDOE's  
4 payroll will provide the following advantages to GDOE, as well as the General  
5 Fund:

- 6 • Approximately fourteen (14) pay periods of salaries and benefits for  
7 the GDOE will be covered;
- 8 • Reporting requirements for expenditures of GDOE payroll will be less  
9 burdensome to the administrative infrastructure of the department;
- 10 • The GDOE will be able to preserve and retain jobs, consistent with  
11 the overarching principle of ARRA;
- 12 • The GDOE will *not* need to seek an exemption from the procurement  
13 statutes;
- 14 • The risk of losing ARRA SFSF funds due to inability to expend funds  
15 or due to procurement challenges will be abated;

16 Many of the priorities set forth by *I Liheslaturan Guåhan* and *I Maga'låhen*  
17 *Guåhan* enacted into law through the General Appropriations Act of 2011 remain  
18 unfulfilled due to redirecting budgeted cash collections for other purposes. *I*  
19 *Liheslaturan Guåhan shall* require stringent conditions of depositing  
20 reimbursements from USDOE into a trust account in order to ensure and reaffirm  
21 its commitment to education by providing safeguards to the funds transferred to be  
22 used in FY 2011 and beyond.

23 The USDOE has required that Guam obligate the funds for the proposed  
24 projects no later than September 2012, or Guam DOE risks being ordered to  
25 reimburse ARRA/SFSF funds for failure of maintenance of effort. Following the  
26 appropriation of funds in this Act, it will be beyond the Organic Act authority of *I*



1 *Liheslaturan Guåhan* (the Guam Legislature) to ensure the funds are obligated for  
2 the authorized projects on time. In light of the extreme hardship that  
3 reimbursement of Sixty Million Dollars (\$60,000,000) will impose on all the  
4 people of Guam, *I Liheslatura* (the Legislature) must emphasize and caution the  
5 Guam Education Board and the Executive Branch as to the huge risk of loss Guam  
6 faces if the improvements are not made by the deadline and consistent with all  
7 other terms of the agreement.

8 **Section 2. Creation of the Adequate Education Act Trust Account.**

9 (a) There is hereby created, separate and apart from all other funds of the  
10 government of Guam, a trust account known as the Adequate Education Act Trust  
11 Account (Trust Account). The Trust Account *shall not* be commingled with the  
12 General Fund or any other funds of the government of Guam, and it *shall* be  
13 maintained in a separate bank account, administered by a trustee that is selected in  
14 accordance with the government of Guam procurement rules and regulations. The  
15 Trust Account's interest and investment earnings *shall* be continuously  
16 appropriated to the Department of Administration for the payment of the GDOE-  
17 Guam Power Authority Promissory Note. Upon full payment of the Promissory  
18 Note, succeeding interest and investment earnings *shall* be continuously  
19 appropriated to the GDOE for maintenance and repair of its facilities.

20 (b) Monies deposited into the Trust Account *shall* be invested or  
21 reinvested into interest bearing instruments, United States treasury notes,  
22 investment grade and insured corporate notes, and other like instruments which are  
23 readily convertible to cash needed to pay for projects approved in the ARRA SFSF  
24 Phase I and Phase II grant application, including any subsequent amendments  
25 approved by USDOE in accordance with the appropriation in Section 3(a) of this  
26 Act.

1 (c) Monies deposited into the Trust Fund *shall not* be subject to any  
2 transfer authority of *I Maga'lahaen Guåhan* or any representative of the Guam  
3 Department of Education.

4 **Section 3. Appropriation.** Upon USDOE approval to amend the Phase I  
5 and Phase II ARRA SFSF grant application, whereby, the amount of Sixty Million  
6 Eighty Eight Thousand Nine Hundred Thirty Five Dollars (\$60,088,935) of federal  
7 funds originally allocated for Capital Improvement Projects, Technology Upgrades  
8 and Science, Technology, Engineering & Math (STEM) CIPs and Equipment is  
9 reprogrammed to Salaries and Benefits resulting in a reimbursement of funds  
10 appropriated and expended in Section 2 of Chapter II, Part I of Public Law 30-196,  
11 the reimbursement of Sixty Million Eighty Eight Thousand Nine Hundred Thirty  
12 Five Dollars (\$60,088,935) from the SFSF grant authorized by the USDOE  
13 pursuant to the expenditure of local funds and certified by the TPFA *shall be*  
14 deposited to the Trust Account. The use of the reimbursed funds in the Trust  
15 Account *shall* be pursuant to the following amounts and requirements:

16 (a) Sixty Million Eighty Eight Thousand Nine Hundred Thirty Five  
17 Dollars (\$60,088,935) is appropriated from the Adequate Education Act  
18 Trust Account to the Guam Department of Education in Object Classes 230,  
19 250 and 450 as follows: object class 230 (Contracts) - Thirty Five Thousand  
20 Dollars (\$35,000); object class 250 (Equipment) - Three Million Fifty  
21 Thousand Dollars (\$3,050,000); and object class 450 (Capital Outlay) - Fifty  
22 Seven Million Three Thousand Nine Hundred Thirty Five Dollars  
23 (\$57,003,935).

24 (b) the appropriation to Object Classes 230, 250 and 450 in this  
25 Section *shall* be continuing appropriations for the GDOE and *shall* be  
26 earmarked for Capital Improvement Projects, Technology Upgrades and  
27 Science, Technology, Engineering & Math (STEM) CIPs and Equipment

1 approved by USDOE contained in the ARRA SFSF Phase I and Phase II  
2 grant application, including any subsequent amendments approved by  
3 USDOE; provided, that all these appropriations *shall* expire if *not* obligated  
4 by September 30, 2012.

5 (c) GDOE *shall* report to *I Maga'lahi* and *I Liheslatura* on a  
6 monthly basis as to the obligation and expenditure of the funds from the  
7 Trust Fund and the completion of the ARRA/SFSF projects.

8 **Section 4.** §3108 of Title 17, Guam Code Annotated, is hereby *enacted* to  
9 read:

10 “§3108. **Attorney for the Board.** The Board may employ an  
11 attorney(s) to assist and represent it in all matters that concern the Board and  
12 the GDOE.”

13 **Section 5. Severability.** *If* any provision of this Law or its application to  
14 any person or circumstances is found to be invalid or contrary to law, such  
15 invalidity shall *not* affect other provisions or applications of this Law which can be  
16 given effect without the invalid provisions or application, and to this end the  
17 provisions of this Law are severable.

# **Exhibit 5**



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE DEPUTY SECRETARY

September 26, 2013

Honorable Eddie Calvo  
Governor of Guam  
P.O. Box 2950  
Hagåtña, Guam 96932

Dear Governor Calvo:

The purpose of this letter is to inform you that, subject to the conditions set forth in this letter, the U.S. Department of Education (Department) extends from September 30, 2013 to January 31, 2014 the date by which Guam may obligate funds under the Adequate Education Act Trust Account (Trust Account). This extension is based on information that Guam provided to the Department regarding its progress in obligating Trust Account funds. In a report sent to the Department on September 23, 2013, Guam indicated that approximately \$56 million of the \$60 million of Trust Account funds were obligated and that contracts were pending for the obligation of approximately \$3 million of additional funds.

The conditions for this extension are as follows:

- The Guam Department of Education will continue to have administrative responsibility for the Trust Account funds;
- Guam will obligate all Trust Account funds by January 31, 2014;
- By October 15, 2013, Guam will provide the Department with the amount of funds obligated by project as of September 30, 2013;
- On the 15<sup>th</sup> of each month, Guam will continue to provide the Department with a report on the progress in obligating funds and completing the relevant projects ;
- Guam will not oppose any steps by the Department to recover Trust Account funds not obligated by January 31, 2014; and
- Guam will not oppose any steps by the Department to rescind approval of the extension or to recover funds if Guam fails to provide the required reports by the dates noted above or does not make adequate progress in obligating the funds.

The Department will continue to work with Guam to ensure that public school children in Guam benefit from the timely obligation of the Trust Account funds.

[www.ed.gov](http://www.ed.gov)

400 MARYLAND AVE., SW, WASHINGTON, DC 20202

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

If you need any assistance or have any questions regarding this matter, please do not hesitate to contact James Butler of my staff at [James.Butler@ed.gov](mailto:James.Butler@ed.gov) or 202-260-9737.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'A' followed by a series of loops and a long horizontal tail.

Ann Whalen  
Director, Policy and Program Implementation  
Implementation and Support Unit

cc: Jon Fernandez  
Art Mariano