



Department of Education
OFFICE OF THE SUPERINTENDENT

P.O. Box DE
Hagåtña, Guam 96932
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Nerissa Bretania Underwood, Ph.D.
Superintendent of Education

August 12, 2009

The Honorable Judith Won Pat, Ed.D.
Speaker, 30th Guam Legislature
155 Hesler Place
Hagatna, Guam 96910

30-09-1007
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 8/12/09
Time 8:20 AM
Received by [Signature]

Dear Speaker Won Pat,

Hafa Adai! As you already know, Sodexo filed a protest on August 11, 2009 relative to awarding the food service contract to King's Restaurant LLC. The protest consequently triggered a stay on the procurement process, which adversely affects our capacity to provide breakfast and lunch to public school students.

On August 12, 2009 the Governor signed a Declaration of Emergency to ensure that the DOE can award the contract without delay due to the protest. (See attached) Now that the Governor has signed a Declaration of Emergency the only hurdle that prevents the Department from completing the contract is the lack of funds.

On April 29, 2009 the Guam Education Policy Board passed a supplemental budget which was forwarded to the Legislature the following day. On August 10, 2009 the GEPB submitted a letter to the Legislature outlining the need to move forward with DOE's supplemental request.

At this point without legislative action to address DOE's funding shortfall I will have no choice but to order our vendor to stop providing food services. The DOE certifying officer is unable to certify funds for the new contract without the requested supplemental appropriation. I am attaching a breakdown of our food and nutrition expenses for FY2009 for your review.

Your action on DOE's supplemental budget request is appreciated. If you have any further questions please do not hesitate to call me at 475-0457.

Respectfully yours,

[Signature]
Nerissa Bretania-Shafer, Ph.D.

Attachments

Cc: Chairman & Members, GEPB
Dep Supt, FAS

1020



**DEPARTMENT OF EDUCATION
FINANCE & ADMINISTRATIVE SERVICES**

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Salvatore G.T. Sgambelluri
Deputy Superintendent

Ricardo M. Ang
Acting Comptroller

12 August 2009

TO: Nerissa Bretania Underwood, Ph.D., Superintendent

FROM: Salvatore G.T. Sgambelluri, Deputy Superintendent
Finance & Administrative Services

SUBJECT: CASH REQUIREMENT – FNS

Analysis of Cash Requirement-FNS
For FY Ending 09/30/09

	<u>Amount</u>
FNS Budget (PL 29-113)	7,500,000.00
Add Income from Lunch Collections	616,293.00
Total Expected Revenue	<u>8,116,293.00</u>
Recorded expenditures, as of 07/31/09	5,157,893.00
Obligated expenditures (Naval Hospital, DODEA, DYA, etc.)	192,058.00
Payable to King's	1,204,398.00
Payable to Defense Logistics	1,744,749.00
Expected Defense Invoices, Aug-Sept. 2009	700,000.00
Expected King's Invoices, Aug-Sept. 2009	<u>1,400,000.00</u>
Total Expenditures	<u>-10,399,098.00</u>
Expected Cash Shortfall	-2,282,805.00
Add receivable from DOA (P.L. 29-106)	-1,071,034.75
Total Cash Requirement to operate until Sept. 2009	<u><u>-3,353,839.75</u></u>

Prepared by:

RICARDO M. ANG
Acting Comptroller

Approved by:

SALVATORE G.T. SGAMBELLURI
Deputy Superintendent-FAS



Office of the Governor of Guam

P.O. Box 2950 Hagåtña, Guam 96932
TEL: (671) 472-8931 • FAX: (671) 477-4826 • EMAIL: governor@mail.gov.gu

RELATIVE TO DECLARING A STATE OF EMERGENCY
AT THE DEPARTMENT OF EDUCATION

WHEREAS, Superintendent, on August 12, 2009, issued a "Letter of Substantial Government Interest" stating that the award of the Food Services Management Contract is necessary to protect the interest Of the Department of Education ("DOE"); and

WHEREAS, the Attorney General of Guam, on August 12, 2009, concurred with the Superintendent in that "providing breakfast and lunch services to 31,000 public school students is a substantial interest of the Department of Education" and "that award of the food services management contract without delay is necessary to protect these substantial interests"; and

NOW THEREFORE, I, MICHAEL W. CRUZ, M.D., I Maga' lähen Guahan, para pa'go, Acting Governor of Guam, by virtue of the authority vested to me by the Organic Act of Guam, as amended, do declare that a state of emergency exists within the Department of Education.

OFFICE OF THE GOVERNOR

Dated: 08.12.09

[Handwritten signature of Michael W. Cruz]

MICHAEL W. CRUZ, M.D.
I Maga' lähen Guahan, para pa'go
Acting Governor of Guam



GUAM DEPARTMENT OF EDUCATION
OFFICE OF THE SUPERINTENDENT

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Nerissa Bretania Underwood, Ph.D.
Superintendent of Education

**DECLARATION OF EMERGENCY AND
LETTER OF SUBSTANTIAL GOVERNMENT INTEREST**

On August 11, 2009 the Department of Education received a protest for the Food Services Contract. Pursuant to Rule 9.2.5 of Department of Education Procurement Rules and Regulations a stay was immediately implemented. After carefully considering the matter I have concluded that the feeding of students is an integral part of providing an adequate education as required by the Organic Act. (48 U.S.C.A. 1421g(b)).

In an effort to ensure that students continue to be fed while resolving the protest the Superintendent invokes the following procurement procedures. Pursuant to 5 GCA §5425(g) and Rule 9.2.5 of Department of Education Procurement Rules and Regulations I hereby find that the award of the Food Services Management Contract without delay is necessary to protect the substantial interests of the Department. I am further requesting that the Governor approve this Declaration of Emergency in order to ensure that students attending our public schools are provided breakfast and lunch.

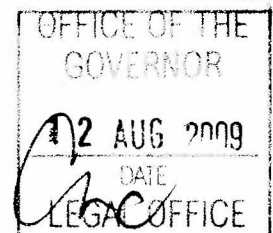
Signed this 12th day of August, 2009.

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

Pursuant to 5 GCA §5425(g) and Rule 9.2.5 of the Department of Education Procurement Rules and Regulations I agree with the Superintendent's findings as concurred by the Attorney General that students are provided breakfast and lunch on school days. In an effort to ensure that there is no break in the provision of breakfast and lunch I issue this Declaration of Emergency on this 12th day of August, 2009 by:

MIKE W. CRUZ, MD
Governor of Guam, Acting

cc: Guam Education Policy Board



Alicia G. Limtiaco
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

Office of the Attorney General

August 12, 2009

MEMORANDUM

Ref: DOE 09-0754

TO: Lieutenant Governor
Superintendent, Department of Education

FROM: Attorney General

SUBJECT: Food Services Contract Emergency

I am in receipt of your "Declaration of Emergency and Letter of Substantial Government Interest."

This is to advise you that, pursuant to 5 GCA 5425(g), I concur with you that providing breakfast and lunch services to 31,000 public school students is a substantial interest of the Department of Education and the government of Guam, which must be protected. I concur with your written determination that award of the food services management contract without delay is necessary to protect these substantial interests.

Alicia G. Limtiaco
ALICIA G. LIMTIACO
Attorney General of Guam

Alicia G. Limtiaco
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

Office of the Attorney General

August 12, 2009

INFORMATION AND GUIDANCE (Confidential)

Ref: DOE 09-0754

TO: Superintendent, Department of Education

FROM: Assistant Attorney General

SUBJECT: Food Services Contract Emergency

We reviewed your "Declaration of Emergency and Letter of Substantial Government Interest" and have the following comments.

The procurement law at 5 GCA § 5425(g) provides for a stay of procurement when a protest is lodged unless, according to subsection (1), there is a concurrence between the purchasing agency and the Attorney General, and a written determination is made that the award must be made without delay to protect substantial interests.

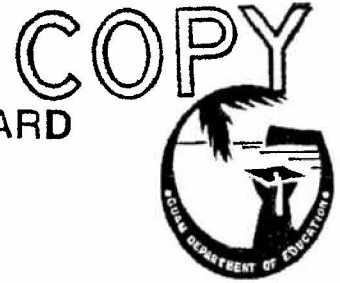
For emergency procurement to take place, however, the Attorney General's concurrence is not required. See 5 GCA § 5215 which provides that emergency procurement requires either (a) an executive order by the Governor, or (b) a certification of emergency by the head of the purchasing agency and approved by the Governor. Either writing should include (1) a statement of the facts giving rise to the emergency; (2) the factual basis of the determination that an emergency procurement is necessary; and (3) a statement that emergency procurement is not being used solely for the purpose of avoidance of the provisions of the procurement law. If the certificate route is taken, it must be sent to the Speaker of the Legislature prior to any award being made.

J. PATRICK MASON
Deputy Attorney General



GUAM EDUCATION POLICY BOARD

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JOE S. SAN AGUSTIN
Chairman

RONALD A. AYUYU
Vice-Chair

August 10, 2009

VOTING MEMBERS

Haya District
Anita A. Manibusan
Rosie R. Tainatongo

Kattan District
Ronald A. Ayuyu
Vacant

Lagu District
Evangeline M. Cepeda
Maria A. Gutierrez
Joe S. San Agustin

Luchan District
Jose Q. Cruz, Ed. D.
Lee H. Meadows, MD

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Student Representative
Ha'ane San Nicolas

Parent Representative
Roland M. Selvidge

Business Sector Representative
Lorraine S. Okada

GFT Representative
Corazon Mucho

Mayors' Council Representative
Jessy Gogue

EXECUTIVE SECRETARY
Nerissa Bretania-Shafer, Ph.D.
Superintendent of Education

Honorable Judith Won Pat, Ed.D.
Speaker
Trenta Na Liheslaturan Guahan
155 Hesler Place
Hagatna, Guam 96910

Dear Madam Speaker:

Hafa Adai! On April 29, 2009, the Guam Education Policy Board (GEPB) passed a supplemental budget that was transmitted to the Legislature on April 30, 2009 (see attached). On August 7, 2009, the GEPB convened a special meeting to address the projected shortfall of \$8,626,371.03 for Fiscal Year 2009. (see attached) As a result of the information presented to GEPB, a motion was made and unanimously passed to request the Legislature to go into an emergency session to address the Department's shortfall.

Among the critical areas that are affected by the shortfall is \$3.5 million that is needed to certify funds for the SY 2009-2010 food service contract. DOE will not be able to complete the contract without this supplemental. Also affected are contractual services for trash pickup and custodial services both are critical to avoid citations from the Department of Public Health and Social Services.

Based on the aforementioned information, the GEPB is requesting that the Trenta Na Liheslaturan Guahan take immediate action on DOE's Supplemental request.

If you have any further questions, please contact Dr. Nerissa Bretania Underwood at 300-1547.

Senseramente,

RONALD A. AYUYU
Acting Chairman

Attachments

cc: Superintendent of Education
Deputy Superintendent, F&AS

Office of the Speaker
Judith T. Won Pat, Ed. D.
2009/08/11



**GUAM PUBLIC SCHOOL SYSTEM
OFFICE OF THE SUPERINTENDENT**

P.O. Box DE

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

April 30, 2009

Honorable Judith Won Pat
Speaker, 30th Guam Legislature
Hagatna, Guam 96910

Re: GEPB Resolution No. 2009-06, Supplemental Budget request

Dear Speaker Won Pat:

Hafa Adai! Attached please find the aforementioned Resolution passed by the Guam Education Policy Board on April 29, 2009. GPSS is requesting a supplemental budget to ensure compliance with the Every Child is Entitled to an Adequate Education Act as required by P.L. 28-45.

Your attention to this matter is greatly appreciated. If you have any further questions, please contact me at 300-1547.

Sincerely,

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

Attachment

cc: GEPB

Office of the Speaker
Judith T. Won Pat, Ed. D.
Date: 04/30/09
Time: 10:20
Received by: [Signature]

RECEIVED
GPSS
APR 30 2009
10:14am
[Signature]

GUAM EDUCATION POLICY BOARD
RESOLUTION NUMBER 2009-06



Introduced by:

Guam Education Policy Board Members

Relative to requesting the *I Mina Trenta Na Liheslaturan Guahan* (30th Guam Legislature) to approve a Supplemental budget for Fiscal Year 2009 for the Guam Public School System as approved by the Guam Education Policy Board.

WHEREAS, the Guam Education Policy Board is required to approve the budget for the Guam Public School System (GPSS) pursuant to 17 G.C.A. §3112(a)(17); and

WHEREAS, GEPB Resolution No. 2008-08 was passed by the GEPB on April 24, 2008 revising the GPSS Fiscal Year 2009 budget in the amount of \$263,048,293.00; and

WHEREAS, pursuant to statute the revised budget was forwarded via GEPB Resolution 2008-08 to the 29th Guam Legislature; and

WHEREAS, the Legislature adopted and the Governor approved a total of \$189,753,771.00 for GPSS' F.Y. 2009 budget; and

WHEREAS, there exist a difference of \$73,294,522.00 between what was requested by the GEPB and P.L. 29-113 (F.Y. 2009 GovGuam Budget); and

WHEREAS, as a result of receiving a smaller budget GPSS has implemented austerity measures; and

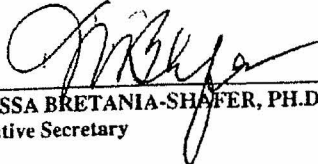
WHEREAS, despite best efforts, additional funds are necessary for GPSS to open school year 2009-2010 in compliance with P.L. 28-45 the Every Child is Entitled to an Adequate Education Act; and

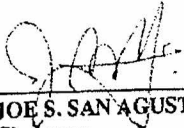
NOW THEREFORE BE IT FURTHER RESOLVED, that the GEPB does hereby approve GPSS' supplemental budget request for FY 09 in the amount of \$13,061,549.00 (attached); and

BE IT FURTHER RESOLVED, that the GEPB request expedited legislative action in order to be able to take advantage of the summer break and prepare for the new school year; and

BE IT FURTHER RESOLVED, that a copy of this Resolution be transmitted to *I Mina Trenta Na Liheslaturan Guahan*; and

BE IT FURTHER RESOLVED, THAT THE GUAM EDUCATION POLICY BOARD DULY AND REGULARLY ADOPTS RESOLUTION NUMBER 2009-06 ON THIS 29TH DAY OF APRIL, 2009.


NERISSA BRETANIA-SHAFFER, PH.D.
Executive Secretary


JOE S. SAN AGUSTIN
Chairman

GUAM PUBLIC SCHOOL SYSTEM
 FISCAL YEAR 2009 DETAIL PROJECTION
 As of April 20, 2009

CASH RECEIPTS

Projected Cash Receipts April 20, 2009 - September 30, 2009

81,269,982.00

TOTAL PROJECTED CASH RECEIPTS

81,269,982.00

CASH DISBURSEMENTS

Projected Cash Disbursements:

Accounts Payables Posted not Released		1,223,956.13
Remaining Encumbrances		235,043.57
Salaries & Benefits up to September 30, 2009	1	68,875,878.39
Settlement (Court, Civil Services)		577,015.33
Critical Vacant Positions	3	67,290.47
Salaries & Benefits up to 9/30/09 & Settlement		69,549,984.19

Contracts:

Trash Collections up to September 30, 2009	PACIFIC WASTE SYSTEMS	331,549.00
Copying Services up to September 30, 2009	XEROX	933,785.00
Custodial Services up to May 31, 2009:	ADVANCE MANAGEMENT INC	426,640.31
	BJ'S QUALITY SERVICES COI	21,024.00
	GUAM CLEANING MASTERS	222,414.87
	J.J. JANITORIAL SERVICE	68,693.49
Custodial Services up to September 30, 2009:	08/01/09 - 09/30/09	440,000.00
Internet Services up to September 30, 2009:	PACIFIC DATA SYSTEMS	286,401.38
	GUAM TELECOM LLC	217,000.00
SAT 10 Scoring	PEARSON	133,333.00
Accreditation	WASC	116,892.82
Additional Arbitration for Board Attorney	GARY GUMATAOTAO	57,761.41
Annual Audit Services	DELOITTE & TOUCHE	21,000.00
Total Contracts		3,281,062.08
Supplies to Open the Schools		400,000.00
Utilities:		
Power	GPA (March - Sept)	4,624,078.68
Promissory Note	GPA (May-Sept)	1,000,000.00
Water	GWA	1,018,333.13
Telephone	GTA	217,637.63
	PACIFIC DATA SYSTEMS	280,981.56
Total Utilities	2	7,141,041.00

TOTAL PROJECTED CASH DISBURSEMENTS

81,831,086.97

CASH BALANCE AS OF APRIL 17, 2009

561,104.97

PROJECTED REMAINING CASH BALANCE

0.00

SUPPLEMENTAL REQUEST FOR FISCAL YEAR 2009:

Judgement - Reyes Case	500,000.00	
Food & Nutrition Local Subsidy up to September 30, 2009	3,584,864.00	
Textbooks:		
Re-Orders	3,545,991.27	
Adoption	5,430,893.62	
Total Textbook Re-Orders and Adoption	8,976,884.89	
Total Supplemental Request for Fiscal Year 2009		13,061,548.89

NOTES:

1. PPE 4/1/09 is included in the Salaries and Benefits. Projection calculation is as follows:
 Salaries and Benefits Exp. As of April 15, 2009 67,859,954.32
 # of PPE Included 14
 Average Salaries and Benefits per PPE 6,281,425.31

2. Utilities were projected by dividing the remaining encumbrance by 7 months:

	Encumbrance	Per Month
Power	151,959.26	21,708.47
	4,472,119.42	638,874.20
	1,018,333.13	145,476.16
Water	486,629.10	71,232.73
Telephone	6,141,040.91	877,291.56
Total		

The GPA note of \$200,000.00 per month was projected by dividing the remaining amount of \$1,000,000.00 by 5 months.

3. The following are critical vacant positions needed up to September 30, 2009:

Position Name	Number of Positions	Salary & Benefits
One-to-One School Aides	15	28,803.60
RP&E Administrator	1	21,885.23
School Health Counselor	1	21,885.23
Chief Planner	1	24,716.41
		<u>97,290.47</u>

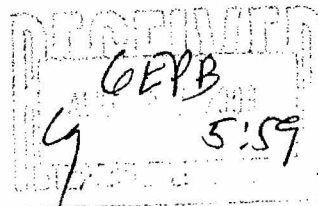
Prepared By: Frances T. Daniek 4/29/09
 Frances T. Daniek, Comptroller

DEPARTMENT OF EDUCATION
 FISCAL YEAR 2009 FINANCIAL CONDITION
 As of August 4, 2009

General Fund and Territorial Education Facilities Fund Appropriation P.L. 29-113		\$179,392,395.00	
ALLOTMENT			
Allotment Release from October 1, 2008 - August 4, 2009		152,071,048.00	
Projected Allotment Release from BBMR		<u>27,321,347.00</u>	
TOTAL ALLOTMENT			179,392,395.00
CASH RECEIPTS			
Actual Cash Receipts October 1, 2008 - August 3, 2009 from DOA		147,836,978.00	
Projected Cash Receipts August 5, 2009 - September 30, 2009		<u>31,555,417.00</u>	
TOTAL CASH RECEIPTS			179,392,395.00
CASH DISBURSEMENTS			
Actual Cash Disbursements as of August 4, 2009	1	147,527,763.55	
Projected Cash Disbursements as of August 4, 2009		<u>40,181,788.03</u>	
TOTAL CASH DISBURSEMENTS			187,709,551.58
CASH BALANCE AS OF AUGUST 4, 2009	2		<u>(309,214.45)</u>
ESTIMATED CASH BALANCE			(8,626,371.03)

NOTES:

1. Subtracted out from the Actual Cash Disbursements the Accounts Payable and PPE 8/1/09 since it is included in the Projected Cash Disbursements
2. The cash balance as of August 4, 2009 was calculated by subtracting the Actual Cash receipts from the Actual Cash Disbursements (over)/under.



DEPARTMENT OF EDUCATION
 FISCAL YEAR 2009 DETAIL PROJECTION
 As of August 4, 2009

CASH RECEIPTS

Projected Cash Receipts August 4, 2009 - September 30, 2009

31,555,417.00

TOTAL PROJECTED CASH RECEIPTS

31,555,417.00

CASH DISBURSEMENTS

Projected Cash Disbursements:

Accounts Payables Posted not Released

750,470.81

Remaining Encumbrances

2,761,604.99

Encumbered Contracts Adjusted:

Accrediting Commission

(67,419.34)

Guam Cleaning Masters

(106,703.67)

Encumbered Utilities Adjusted

GTA

(51,866.65)

GPA

2,889,474.34

GPA Promissory Note

200,000.00

GWA

(166,820.91)

Pacific Data Systems

(112,371.21)

Total Encumbrances

5,345,897.55

Food & Nutrition Local Subsidy up to September 30, 2009

3,584,864.00

Retirement Pay Requests

1 185,271.20

Military Benefits

2 52,539.42

Salaries & Benefits:

Salaries & Benefits for PPE August 1, 2009

3 5,196,219.08

Salaries & Benefits for PPE August 15, 2009

4 6,159,861.59

Salaries & Benefits for PPE August 29, 2009 thru September 26, 2009 (3 PP remain

5 18,906,664.38

6. Total Salaries & Benefits

30,262,745.05

TOTAL PROJECTED CASH DISBURSEMENTS

40,181,788.03

PROJECTED REMAINING CASH BALANCE

(8,626,371.03)

NOTES:

1. Retirement pay requests were calculated by taking the actual expenditures (\$778,139.03) divided by 21 PPE times the 5 remaining PPE.
2. Military Benefits were calculated by taking the actual expenditures (\$220,665.56) divided by 21 PPE times the 5 remaining PPE.
3. Actual PPE 08/01/09 salaries and benefits.
4. Used the PPE 06/06/09 salaries and benefits since it includes one week of the 21 PP option employees.
5. Used the PPE 05/23/09 salaries and benefits since it includes all PP option employees of \$6,302,221.46
6. Increase in Salaries due to Increments and Reclassification 3,999,750.00
 Increase in Benefits due Retirement of 1.13% 1,332,582.84