

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HĀGAN GUĀHAN
OFFICE OF THE GOVERNOR OF GUAM

Transmitted via email to: speaker@guamlegislature.org

July 5, 2023

HONORABLE THERESE M. TERLAJE, Speaker

I Mina'trentai Siette Na Liheslaturan Guåhan

37th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: Bill No. 94-37 (COR) - AN ACT TO REPEAL AND REENACT CHAPTER 58D OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE MA KĀHAT ACT OF 2013

Håfa Adai Madame Speaker,

Enactment of Bill No. 94-37, which amends the *Ma Kāhat* Act of 2013, is a critical step toward finally building the new Simon Sanchez High School. This bill simplifies the procurement process for the new school, authorizing the Guam Department of Education ("GDOE"), in cooperation with the Department of Public Works ("DPW") to utilize the reliable leaseback method our government has utilized to build our island's most recent schools.

In the ten (10) years that have passed since the original *Ma Kāhat* Act was enacted, the law has undergone several amendments intended to shift procurement responsibility between relevant agencies to accomplish specific operational or financing goals. Bill 94-37 takes into account the concerns of all agency stakeholders, and restores responsibility for the procurement of the new school to GDOE, whose efforts will be bolstered by the technical expertise to be provided by DPW. These amendments clarify the respective responsibilities of our agencies, and resolve lingering concerns regarding the applicable procurement structure, which will enable our agencies to move forward expeditiously and minimize confusion that may lead to protests.

The proposed design of the school was previously procured and completed, and Bill No. 94-37 contemplates that the solicitation for the financing, construction and all the related services for the new Simon Sanchez High School will be issued within ninety (90) days of the bill's signing. Based on my discussions with GDOE and DPW, I am confident that we have the capacity to proceed without further delay. I would like to thank Senator Roy Quinata, who is himself a proud graduate of Simon Sanchez High School and whose accomplishments are a testament to the power of public school education, for his leadership on this issue.

To: Therese M. Terlaje, *Speaker, 37th Guam Legislature*
Fr: Lourdes A. Leon Guerrero, *Governor of Guam*
Date: July 5, 2023
Re: Bill No. 94-37 (COR) nka P.L. 37-22

Page 2 of 2

The wait for the construction of a new Simon Sanchez High School is coming to an end, and our future Sharks can look forward to a new home, in a modern facility that will provide them with the resources they need to prepare them for their bright futures. For this reason, I sign Bill No. 94-37 (COR) into law as ***Public Law 37-22***.

Senseramente,



LOURDES A. LEON GUERRERO

Maga'hågan Guåhan
Governor of Guam

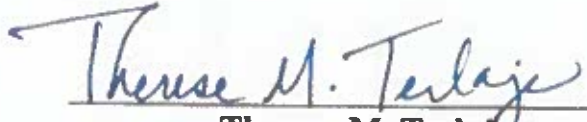
Enclosure: Bill No. 94-37 (COR) nka P.L. 37-22

cc via email: *Honorable Joshua F. Tenorio, Sigundo Maga'låhen Guåhan*, Lt. Governor of Guam
Compiler of Laws

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

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

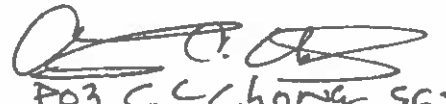
This is to certify that Bill No. 94-37 (COR), "AN ACT TO **REPEAL AND REENACT** CHAPTER 58D OF TITLE 5, GUAM CODE ANNOTATED, **RELATIVE TO THE MA KÅHAT ACT OF 2013,**" was on the 30th day of June 2023, duly and regularly passed.


Therese M. Terlaje
Speaker


Attested:


Amanda B. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 30TH day of June, 2023, at 6:57 o'clock P.M.


P03 C C Chong S62
Assistant Staff Officer
Maga'håga's Office

APPROVED:


Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 7/5/2023

Public Law No. 37-22

RCVD AT CENTRAL FI
JUL 3 '23 AM 10:51

2023-19469

Jessica Dydasco

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 94-37 (COR)

As amended by the Committee on Infrastructure,
Economic Development, Simon Sanchez High School,
Disability Services, Self-Determination, and Historic Preservation,
Housing, Public Accountability, and the Guam Buildup; and
further amended on the Floor.

Introduced by:

Roy A.B. Quinata
Joe S. San Agustin
Tina Rose Muña Barnes
Chris Barnett
Sabina Flores Perez
Amanda L. Shelton
Dwayne T.D. San Nicolas
William A. Parkinson
Thomas J. Fisher
Frank Blas, Jr.
Joanne Brown
Christopher M. Dueñas
Jesse A. Lujan
Telo T. Taitague
Therese M. Terlaje

**AN ACT TO REPEAL AND REENACT CHAPTER 58D OF
TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO
THE *MA KÅHAT* ACT OF 2013.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Chapter 58D of Title 5, Guam Code Annotated, is hereby
repealed and reenacted to read:

**“CHAPTER 58D
MA KÅHAT ACT OF 2013**

§ 58D101. Title.

1 § 58D102. Definitions.

2 § 58D103. Authorization to Enter Into Long-Term Leases.

3 § 58D104. Procurement.

4 § 58D105. Responsibilities of Contractor.

5 § 58D106. Contractual Safeguards.

6 § 58D107. Assignments.

7 § 58D108. Financing.

8 § 58D109. Leaseback Payments Under the Lease Payable from Lawfully
9 Available Monies.

10 § 58D110. Utilities and Routine Maintenance and Repair.

11 § 58D111. Maintenance Fund.

12 § 58D112. Severability.

13 **§ 58D101. Title.**

14 This Act shall be known and shall be cited as the “*Ma Kåhat* Act of 2013.”

15 **§ 58D102. Definitions.**

16 For purposes of this Chapter and unless otherwise specified, the following
17 words and phrases are defined to mean:

18 (a) *Act* shall mean Chapter 58D of Title 5, Guam Code Annotated,
19 known as the “*Ma Kåhat* Act of 2013.”

20 (b) *Contract* shall mean the agreement entered into by and between
21 the Guam Department of Education (GDOE) and the contractor for the
22 following services with regard to the new Simon Sanchez High School: (1)
23 financing; (2) construction; (3) providing and installing fixtures, furniture, and
24 equipment (FF&E services); and (4) insurance and maintenance.

25 (c) *Contractor* shall mean the authorized entity which shall be the
26 signatory on the contract, and shall be fully responsible for carrying out the
27 services required therein.

1 (d) *New Simon Sanchez High School* (or school) shall mean the
2 replacement high school to be constructed on the school property.

3 (e) *Lease* shall mean a lease from the GDOE to the Contractor for
4 the school property.

5 (f) *Leaseback* shall mean a lease from the Contractor to the GDOE
6 of the new Simon Sanchez High School.

7 (g) *Leaseback period* shall mean the term of the leaseback from the
8 Contractor to the GDOE for the new Simon Sanchez High School.

9 (h) *School property* shall mean the property on which the existing
10 Simon Sanchez High School is currently located.

11 (i) *School design* shall mean the architectural and engineering
12 design procured by GDOE in solicitation number RFP 006-2020 pursuant to
13 Public Law 34-101 without a firing range.

14 **§ 58D103. Authorization to Enter Into Long-Term Leases.**

15 (a) The GDOE is authorized to lease the school property to the Contractor
16 for the purpose of facilitating the financing, construction, FF&E services, and
17 maintenance of the new Simon Sanchez High School.

18 (b) The GDOE is also authorized to lease back from the Contractor the new
19 Simon Sanchez High School for a period mutually agreed upon between the GDOE
20 and the Contractor as may be reasonably necessary to amortize over the leaseback
21 period the costs associated with the financing, construction, and FF&E services for
22 the new Simon Sanchez High School as provided in this Act. In no event shall the
23 end of such leaseback period be later than the date thirty (30) years from the
24 scheduled date of completion of the new Simon Sanchez High School. The leaseback
25 may be structured as an annually renewable lease with a provision for automatic
26 renewal to the extent that pledged revenue under § 58D109 is available. The

1 leaseback shall not be construed as "public indebtedness," as that term is defined in
2 48 USC § 1423a, §11 of the Organic Act of Guam, or Guam law.

3 **§ 58D104. Procurement.**

4 (a) Within ninety (90) days of the enactment of this Act, the GDOE,
5 through the Department of Public Works (DPW), shall issue a solicitation in
6 compliance with the Guam Procurement Law, for the following services with regard
7 to the new Simon Sanchez High School: (1) financing; (2) construction; (3) FF&E
8 services; and (4) insurance and maintenance. The services provided shall utilize and
9 incorporate the school design.

10 (b) The determination of responsible offerors and responsive offers shall
11 be made by an evaluation committee comprised of the Superintendent of the
12 Department of Education, serving as the Chairman, and including the Director of
13 Public Works or Deputy Director and the Building Permits Administrator; the
14 Director of Land Management or Guam Chief Planner; the Administrator of the
15 Guam Economic Development Authority or Deputy Administrator; and the Principal
16 of Simon Sanchez High School or his/her designee.

17 (c) The Committee shall evaluate offerors and the offers received based on
18 the requirements set forth in the solicitation.

19 (d) Upon completion of the committee's evaluation, the Superintendent
20 through the Department of Public Works shall issue the award in accordance with
21 the Guam Procurement Law.

22 **§ 58D105. Responsibilities of Contractor.**

23 The Contractor shall be responsible for all costs, expenses, and fees of any
24 kind or nature, associated with civil improvements, on-site and off-site
25 infrastructure, construction, demolition of the existing facility, permits, FF&E
26 services, and financing associated with the completion of the new Simon Sanchez
27 High School, consistent with the school design, as and to the extent provided in the

solicitation. The contractor shall also be responsible for maintenance of and insurance for the new Simon Sanchez High School during the leaseback period, but shall not be responsible for maintenance of the furniture and equipment. The leaseback may provide that if sufficient funds are not appropriated or otherwise available for the payment of amounts due under the lease and any maintenance agreement, the GDOE will have the obligation to vacate the new Simon Sanchez High School, and the contractor shall have the right of use and occupancy of the new Simon Sanchez High School for the remainder of the term of the lease, unless the parties to the contract enter into new mutually satisfactory terms. For this purpose, the lease may provide that its term shall be extended for a period not to exceed the shorter of ten (10) years beyond the original term of the leaseback or such period of time as is necessary to repay in full any financing arranged pursuant to § 58D108.

Furniture and equipment maintenance costs shall be paid by the GDOE on a periodic basis as incurred by the contractor on terms to be agreed to in the contract.

§ 58D106. Contractual Safeguards.

The contract for the new Simon Sanchez High School shall provide for the construction of and FF&E services for the new Simon Sanchez High School in accordance with the Guam Building Code under Chapter 67 of Title 21, Guam Code Annotated, and any other applicable requirements. The contract shall contain contractual obligations typically found in government of Guam construction contracts, including, but not limited to, the following:

- (a) all major subcontracts shall be covered by a performance bond;
- (b) the government of Guam and financing entities, or bondholders, shall be the named obligee under the bond;
- (c) the government of Guam shall have the sole right to call on the bid bond;

(d) requirements to obtain performance and or payment bonds, indemnification, standard insurance specifications, technical building/construction specifications, construction progress schedule, applicable and or necessary maintenance schedules, and compliance with applicable rules, regulations, and Guam law; and

(e) there shall be a specific delivery date with liquidated damages for failure to deliver the new Simon Sanchez High School by the specified date, which may include warranties for liquidated damages.

§ 58D107. Assignments.

To facilitate the purposes of this Act and to provide security for the holders of any financing instruments issued pursuant to this Act, the Contractor may assign, with the consent of GDOE, the contract, the lease, and the leaseback to any underwriter, trustee; or other party as appropriate, to facilitate the issuance of the tax-exempt obligations, other financial instruments or alternative financing for the new Simon Sanchez High School.

§ 58D108. Financing.

To minimize the cost to the government of Guam, financing utilized by the Contractor to fund the construction of and FF&E services for the new Simon Sanchez High School shall be through tax-exempt obligations, or other financial instruments; provided, that such financing is available at an interest rate of no more than eight-and-a-half percent (8.5%). The contractor may use an alternative method of financing, including, but not limited to, a short-term debt, mortgage, loan, federally guaranteed loan, or loan by an instrumentality of the United States of America if such financing will better serve the needs of the people of Guam, subject to approval by *I Liheslaturan Guåhan*. The principal amount of financing authorized under this Section shall not exceed One Hundred Sixty-six Million Three Hundred Sixty-five Thousand Dollars (\$166,365,000).

1 **§ 58D109. Leaseback Payments Under the Lease Payable from**
2 **Lawfully Available Monies.**

3 (a) Payments under the lease and the leaseback may be secured by a pledge
4 or other reservation of revenues payable from any lawfully available monies of the
5 government of Guam, and may be secured by a pledge or other reservation of such
6 monies on an annual basis.

7 (b) Any amounts pledged or reserved as provided in this Section and
8 subsequently appropriated for the purpose of making leaseback payments may
9 thereafter be pledged toward making leaseback payments; provided, however, that
10 any amounts reserved as provided in this Section shall be subject to an annual
11 appropriation by the Guam Legislature for the purpose of funding the activities set
12 forth in § 58D104 of this Chapter, and making leaseback payments.

13 (c) Any such pledge or reservation authorized hereunder shall be valid and
14 binding from the time the pledge or reservation is made and shall be limited to the
15 sum of Sixteen Million Three Hundred Seventy-seven Thousand One Hundred
16 Twenty-five Dollars (\$16,377,125) per year during the pre-development,
17 construction, and leaseback period. The revenues pledged or reserved and thereafter
18 received by the government of Guam or by any trustee, depository or custodian shall
19 be deposited in a separate account and shall be immediately subject to such
20 reservation or the lien of such pledge without any physical delivery thereof or further
21 act, and such reservation or the lien of such pledge shall be valid and binding against
22 all parties having claims of any kind in tort, contract or otherwise against the
23 government of Guam or such trustee, depository or custodian, irrespective of
24 whether the parties have notice thereof. The instrument by which such a pledge or
25 reservation is created need not be recorded.

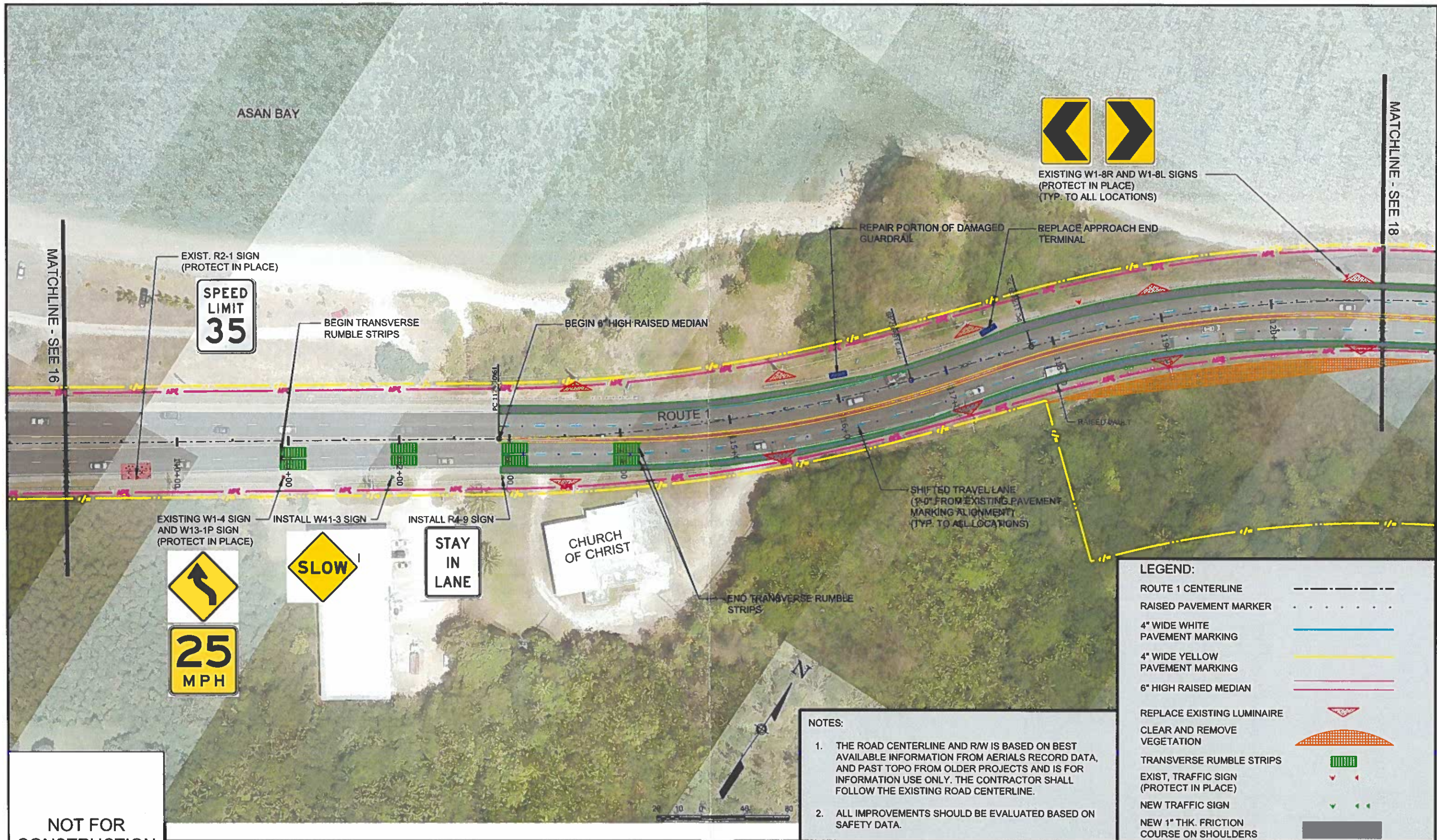
26 **§ 58D110. Utilities and Routine Maintenance and Repair.**

1 The contractor shall be responsible for the connection of all utilities, including
2 without limitation, power, water, sewer, telephone and cable, and all routine interior
3 and exterior maintenance and repair, and exterior groundskeeping and landscaping,
4 and upkeep of the new Simon Sanchez High School.

5 **§ 58D111. Maintenance Fund.**

6 The contract and the leaseback shall provide that all maintenance of the new
7 Simon Sanchez High School not described in § 58D110 be performed by the
8 Contractor as a separate cost, the terms of which, and the manner for establishing
9 the amount of payment, shall be determined as a part of the contract; provided,
10 however, that the contract may, at the discretion of the GDOE, provide that
11 maintenance with respect to equipment (including collateral equipment), onsite
12 utilities, offsite utilities, access roads and other similar improvements need not be
13 performed by the Contractor.

14 **§ 58D112. Severability.** If any provision of this Act or its application to any
15 person or circumstance is found to be invalid or inorganic, such invalidity shall not
16 affect other provisions or applications of this Act that can be given effect without
17 the invalid provision or application, and to this end the provisions of this Act are
18 severable.”



NOT FOR
CONSTRUCTION

DRAWING REVISIONS			
REVISION	DATE	BY	DESCRIPTION

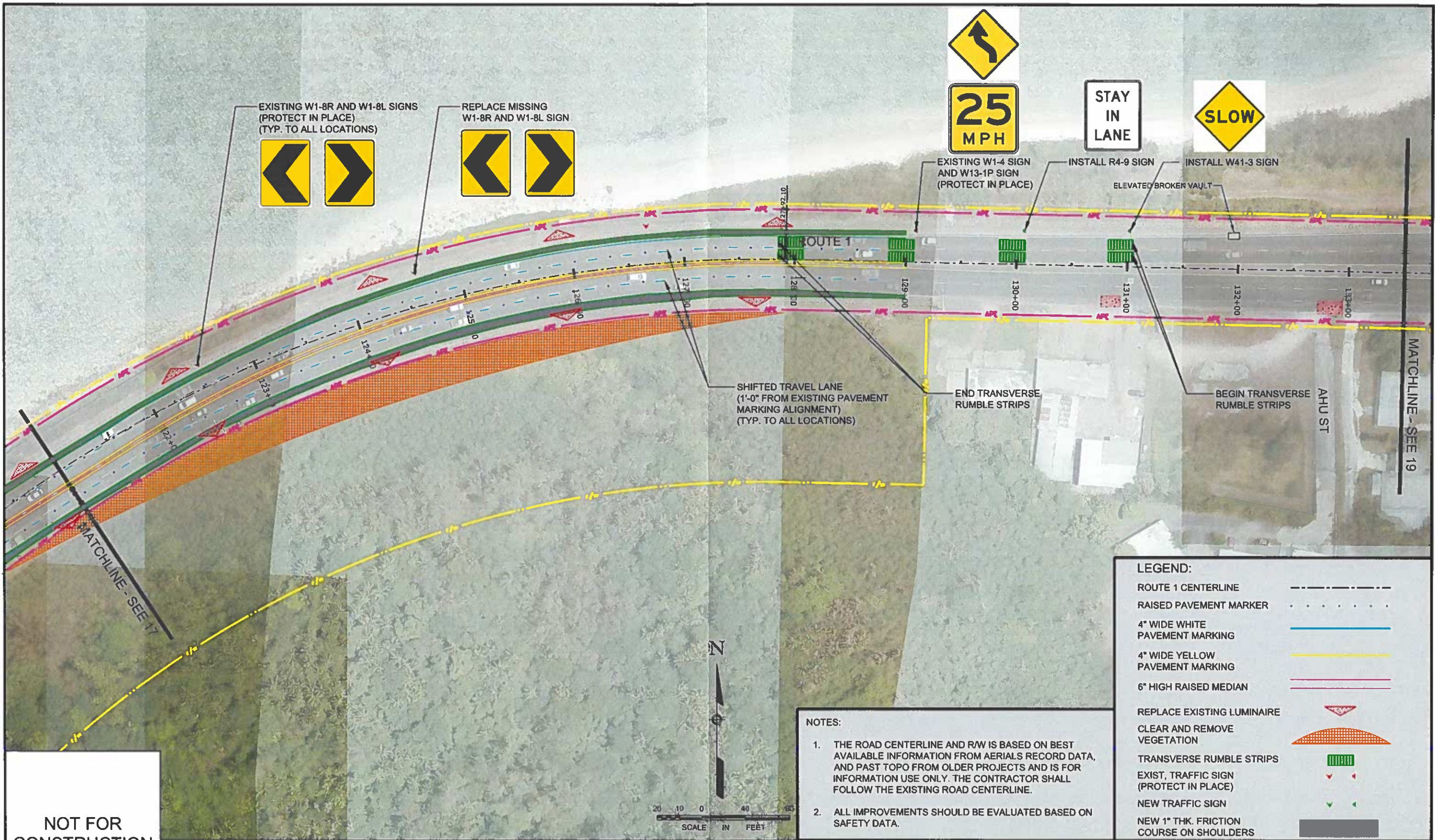
DESIGNER	C. PAGCU
DETAILER	C. PAGCU
CHECKER	L. KOBAYASHI
DATE	MARCH 2024



Guam International Trade Center
590 South Marine Corps Dr. Suite 421
Tamuning, Guam 96913
(671) 646-6872 Tel
(671) 646-6873 Fax

DEAD MAN'S CURVE SAFETY IMPROVEMENTS

DIVISION OF HIGHWAYS GUAM DEPARTMENT OF PUBLIC WORKS					
VILLAGE	TERRITORY	PROJECT NO.	DRAWING NO.	SHEET NO.	TOTAL SHEETS
ASAN	GUAM		C1	1	2



NOT FOR
CONSTRUCTION

DRAWING REVISIONS			
REVISION	DATE	BY	DESCRIPTION

DESIGNER	C. PAGCU
DETAILER	C. PAGCU
CHECKER	L. KOBAYASHI
DATE	MARCH 2024



Guam International Trade Center
500 South Marine Corps Dr. Suite 421
Tamuning, Guam 96913
(671) 646-6672 Tel
(671) 646-6673 Fax

- NOTES:
1. THE ROAD CENTERLINE AND R/W IS BASED ON BEST AVAILABLE INFORMATION FROM AERIALS RECORD DATA, AND PAST TOPO FROM OLDER PROJECTS AND IS FOR INFORMATION USE ONLY. THE CONTRACTOR SHALL FOLLOW THE EXISTING ROAD CENTERLINE.
 2. ALL IMPROVEMENTS SHOULD BE EVALUATED BASED ON SAFETY DATA.

DEAD MAN'S CURVE SAFETY IMPROVEMENTS

LEGEND:

ROUTE 1 CENTERLINE

RAISED PAVEMENT MARKER

4" WIDE WHITE PAVEMENT MARKING

4" WIDE YELLOW PAVEMENT MARKING

6" HIGH RAISED MEDIAN

REPLACE EXISTING LUMINAIRE

CLEAR AND REMOVE VEGETATION

TRANSVERSE RUMBLE STRIPS

EXIST, TRAFFIC SIGN (PROTECT IN PLACE)

NEW TRAFFIC SIGN

NEW 1" THK. FRICTION COURSE ON SHOULDERS

DIVISION OF HIGHWAYS GUAM DEPARTMENT OF PUBLIC WORKS					
VILLAGE	TERRITORY	PROJECT NO.	DRAWING NO.	SHEET NO.	TOTAL SHEETS
ASAN	GUAM		C2	2	2

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

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

This is to certify that **Bill No. 226-32 (COR)**, "AN ACT TO *ADD* A NEW CHAPTER 58E TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS," was on the 1st day of February, 2014, duly and regularly passed.



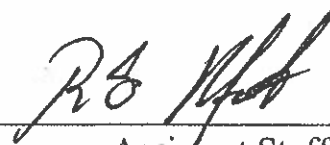
Judith T. Won Pat, Ed.D.
Speaker

Attested:



Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 1st day of FEB,
2014, at
10:50 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: FEB 10 2014

Public Law No. 32-121

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 226-32 (COR)

As amended by the Author;
and further amended on the Floor.

Introduced by:

Judith T. Won Pat, Ed.D
Aline A. Yamashita, Ph.D.
T. R. Muña Barnes
Brant T. McCreadie
Dennis G. Rodriguez, Jr.
Tommy Morrison
Chris M. Dueñas
Michael T. Limtiaco
FRANK B. AGUON, JR.
R. J. Respicio
T. C. Ada
V. Anthony Ada
B. J.F. Cruz
Vicente (ben) C. Pangelinan
Michael F. Q. San Nicolas

**AN ACT TO *ADD* A NEW CHAPTER 58E TO TITLE 5,
GUAM CODE ANNOTATED, RELATIVE TO THE
FINANCE, DESIGN, RENOVATION, REHABILITATION,
CONSTRUCTION OR MAINTENANCE OF PUBLIC
SCHOOLS.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 58E is hereby *added* to Title 5, Guam Code
Annotated, to read as follows:

“CHAPTER 58E

1 **THE FINANCE, DESIGN, RENOVATION,**
2 **REHABILITATION, CONSTRUCTION OR MAINTENANCE OF**
3 **PUBLIC SCHOOLS**

4 § 58E100. Legislative Findings and Intent.

5 § 58E101. Definitions.

6 § 58E102. Authorization to Enter into Long-Term Leases.

7 § 58E103. Identification of Projects and Procurement.

8 § 58E104. Responsibilities of Developer/Contractor.

9 § 58E105. Contractual Safeguards.

10 § 58E106. Assignments.

11 § 58E107. Pledge of Revenues.

12 § 58E108. Use of Tax-Exempt Bond and Other Financing
13 Instruments for Financing.

14 § 58E109. Utilities, Maintenance and Repair.

15 § 58E110. Severability.

16 **§ 58E100. Legislative Findings and Intent.** *I Liheslaturan*
17 *Guåhan* finds that Guam public school facilities face deficiencies in its
18 roofing, exterior, interior, structural, mechanical, electrical, plumbing, and
19 school grounds, which create a non-conducive environment that hinders
20 learning and the work and production of teachers and students.

21 *I Liheslaturan Guåhan* finds that the Guam Department of Education
22 is about \$90 Million behind on maintenance projects for the island's public
23 schools, according to a report commissioned by the Department of the
24 Interior in 2012, and recently submitted to the Guam Department of
25 Education in August 2013.

26 It is, therefore, the intent of *I Liheslaturan Guåhan* for the
27 government of Guam to use one quarter of the business privilege tax to pay

1 for the interest payments of the lease and lease-back as a form of bridge
2 financing until the maturity of the Business Privilege Tax bond series
3 2013C.

4 *I Liheslatura* finds that after reviewing the summary of outstanding
5 General and Limited Obligation debts as of March 1, 2013, that the debt
6 ceiling assessed value is at One Billion One Hundred Thirty Nine Million
7 Four Hundred Sixty Four Thousand Eight Hundred Fifty Three Dollars
8 (\$1,139,464,853). It also states that the General Obligation Debt is Four
9 Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight
10 Hundred Fifty Three Dollars (\$446,473,853), and the Limited Obligation
11 Debt is Six Hundred Sixty Three Million Eight Hundred Ninety Six
12 Thousand Eight Hundred Three Dollars (\$663,896,803), with an
13 accumulated total of One Billion One Hundred Ten Million Three Hundred
14 Seventy Thousand Six Hundred Fifty Six Dollars (\$1,110,370,656).
15 Subtracting the debt ceiling limit less the General and Limited Obligation
16 Debts leaves the amount for future debt obligation at Twenty Nine Million
17 Ninety Four Thousand One Hundred Ninety Seven Dollars (\$29,094,197).

18 *I Liheslatura* further finds that the cost to fund the rehabilitation of
19 the public schools will certainly exceed the debt ceiling obligation if a
20 general obligation bond is pursued. To circumvent Guam's debt ceiling cap,
21 *I Liheslatura* finds that the construction of *Okkodo* High School, *Astumbo*
22 Middle School, *Liguan* Elementary School, *Adacao* Elementary School,
23 John F. Kennedy High School, and the expansion of *Okkodo* High School,
24 has demonstrated the fundamental soundness of using municipal lease as a
25 vehicle to build new educational facilities. By making the most of municipal
26 leasing to rehabilitate and construct Guam public schools, the remaining

1 future debt obligation may be used to fund other priorities of the
2 government.

3 § 58E101. **Definitions.** For purposes of this Chapter and *unless*
4 otherwise specified, the following words and phrases are defined to mean:

5 (a) *Comprehensive capital improvement plan* means a plan
6 that takes into consideration the physical condition of each school
7 along with attendance area population, enrollment patterns, and
8 bussing logistics. It *shall* also include how each school meets the
9 instructional needs of GDOE, and prioritizes repairs of existing
10 schools and renovation and construction of new school facilities in
11 order to deal with GDOE limited resources.

12 (b) *Contract shall* mean the design, renovation,
13 rehabilitation, construction, and financing contract entered into by and
14 between the education agency and the contractor chosen by the Guam
15 Economic Development Agency and approved by *I Liheslaturan*
16 *Guåhan*.

17 (c) *Contractor shall* mean the authorized entity which *shall*
18 be the signatory on the contract and *shall* be fully responsible for
19 carrying out the design, renovation, rehabilitation, construction,
20 financing, or maintenance of the education facility. The contractor
21 may cooperate with another entity or entities in any manner the
22 contractor deems appropriate to provide for the financing, design,
23 renovation, rehabilitation, construction or maintenance of the public
24 school facilities envisioned by this Act.

25 (d) *Education agency shall* mean the Guam Department of
26 Education.

1 (e) *Education facility* as used in this Act *shall* mean public
2 elementary and secondary schools on Guam, to include its athletic
3 fields and playgrounds, excluding the five leased schools under the
4 education agency.

5 (f) *Lease shall* mean a lease from an education agency to the
6 contractor entered into at the time of the contract for the property.

7 (g) *Lease-back shall* mean the lease from the contractor to
8 the education agency of the rehabilitated, renovated or newly
9 constructed education facility.

10 (h) *Lease-back period shall* mean the term of the lease from
11 the contractor to the education agency.

12 (i) *Property shall* mean any property on which an education
13 facility is located.

14 **§ 58E102. Authorization to Enter into Long-term Leases.** For
15 the purpose of facilitating the financing, design, construction and
16 rehabilitation and maintenance of an education facility encompassed by this
17 Act, the government of Guam or an education agency, as the case may be, is
18 authorized to lease, if required, to the contractor sufficient government of
19 Guam real property on which to rehabilitate an education facility; provided,
20 such property is in the inventory of the education agency or the government
21 of Guam. The property may be the site of an existing education facility
22 under the control of an education agency, which existing facility may be
23 rehabilitated under the provisions of this Act.

24 The education agency is also authorized to lease back from the
25 contractor the property for a period mutually agreed upon between the
26 education agency and the contractor as may be reasonably necessary to
27 amortize over the lease-back period the costs associated with the design,

1 renovation, rehabilitation, construction or maintenance of the education
2 facility. In no event shall the end of such lease-back period be later than the
3 date thirty (30) years from the scheduled date of completion of the education
4 facility. The lease-back may be structured as an annually renewable lease
5 with a provision for automatic renewals to the extent that pledged revenue
6 under § 58E107 is available. The lease-back *shall not* be construed as a debt
7 under any applicable debt limitation under the Guam Organic Act or Guam
8 law.

9 **§ 58E103. Identification of Projects and Procurement.** Under the
10 Superintendent of Education's direction, the education agency *shall* utilize
11 the Program Study, and the report generated by the Department of Interior
12 (DOI)-funded assessment report by the Army Corps of Engineers, to identify
13 and prioritize potential projects to be completed. The list of projects *shall* be
14 included in a Request for Proposals developed by the education agency.
15 Upon receipt of the Program Study, the Superintendent of Education *shall*
16 solicit Requests for Proposals (RFP) through the Department of Public
17 Works, in compliance with the Guam Procurement Law, for the financing,
18 design, construction and rehabilitation of the education facility, according to
19 the needs of the education agency and consistent with this Chapter. The
20 choice of the contractor *shall* be made by a selection committee comprised
21 of the Superintendent of the Department of Education, serving as Chairman,
22 and including the Director of the Department of Public Works or Deputy
23 Director, the Director of the Department of Land Management or Deputy
24 Director, the Administrator of the Guam Environmental Protection Agency
25 or Deputy Administrator, and the Administrator of the Guam Economic
26 Development Authority or Deputy Administrator. The committee *shall*
27 assess the prior performance of the contractor on similar projects, and *shall*

1 be free to disqualify any contractor that *does not* have a successful record of
2 project completion on Guam.

3 The selection of a contractor *shall* be based upon the proposal that
4 delivers the best value for Guam in meeting the objectives of the education
5 agency.

6 The RFP *shall* be issued within thirty (30) days after the receipt of the
7 Program Study for the design, renovation, rehabilitation, construction or
8 maintenance of the education facility.

9 **§ 58E104. Responsibilities of Developer/Contractor.** The
10 contract *shall* require that the contractor be responsible for all costs,
11 expenses and fees of any kind or nature, associated with the rehabilitation,
12 design, civil improvements, on-site and off-site infrastructure, construction,
13 permits, and financing associated with the completion of an education
14 facility, including the financing of furniture and equipment for the education
15 facility, as and to the extent provided by the education agency in the Request
16 for Proposals. The lease-back may provide that if sufficient funds are not
17 appropriated or otherwise available for the payment of amounts due under
18 the lease, the education agency will have the obligation to vacate the
19 education facility, and the contractor *shall* have the right of use and
20 occupancy of the education facility for the remainder of the term of the
21 lease, *unless* new mutually satisfactory terms are entered into. For this
22 purpose, the lease may provide that its term *shall* be extended for a period
23 *not to exceed* the shorter of ten (10) years beyond the original term of the
24 lease-back, or such period of time as is necessary to repay in full any
25 financing arranged pursuant to § 58E108 of this Chapter. The capital
26 maintenance costs *shall* be paid by the education agency.

1 **§ 58E105. Contractual Safeguards.** Prior to undertaking the work
2 of rehabilitating educational facilities, the Guam Economic Development
3 Authority, the Department of Public Works, the Guam Department of
4 Education, and the developer or contractor, *shall* negotiate and enter into a
5 binding construction contract to build or refurbish the educational facility in
6 accordance with the Guam Building Code (21 G.C.A. Ch. 67), and any other
7 applicable requirements. The construction contract *shall* contain contractual
8 obligations typically found in government of Guam construction contracts,
9 including, but *not* limited to:

- 10 (a) warranties;
- 11 (b) liquidated damages;
- 12 (c) performance and payment bonds;
- 13 (d) indemnity;
- 14 (e) insurance;
- 15 (f) standard specifications;
- 16 (g) technical specifications;
- 17 (h) progress schedule;
- 18 (i) maintenance;
- 19 (j) compliance with Guam labor regulations;
- 20 (k) compliance with Guam prevailing wage rates for
21 employment of temporary alien workers (H2) on Guam;
- 22 (l) compliance with Public Law 29-98: restriction against
23 contractors employing convicted sex offenders to work at government
24 of Guam venues.

25 The contract must be submitted for review and approval to all entities
26 charged by law with the duty to review and approve government contracts,
27 including the Office of the Attorney General.

1 **§ 58E106. Assignments.** To facilitate the purpose of this Act and
2 provide security for the holders of any financing instruments issued pursuant
3 to this Act, the contractor may assign, without the need of the consent of the
4 education agency, the contract, the lease and lease-back to any underwriter,
5 trustee or other party as appropriate to facilitate the contractor financing.

6 **§58E107. Pledge of Revenues.**

7 (a) Rental payments under the lease and the lease-back may
8 be secured by a pledge or other reservation of revenues collected by
9 the government of Guam from the following:

10 (1) Taxes collected under the Business Privilege Tax
11 Law (namely, 11 GCA Chapter 25, excluding the alcoholic
12 beverage taxes, liquid fuel taxes, automotive surcharges,
13 tobacco taxes and real property taxes). The business privilege
14 tax pledged or reserved *shall only* apply to the unpledged
15 portion of the business privilege tax (currently one percentage
16 point of the current four percent business privilege tax rate) so
17 as not to violate the government's covenants to bondholders of
18 the Series A, Series B and Series C Limited Obligation bonds
19 authorized through Public Law 31-76, Public Law 31-196 and
20 Public Law 31-276. The sum of approximately One Million
21 Eight Hundred Eighty-Two Thousand Eighty-Two Dollars
22 (\$1,882,082) *shall* fund interest in Fiscal Year 2015, and the
23 sum of approximately Two Million Five Hundred Sixty Four
24 Thousand One Hundred Sixty-Five Dollars (\$2,564,165) *shall*
25 fund interest payment annually for Fiscal Years 2016 through
26 2018.

1 (2) The sum of One Million Two Hundred Thousand
2 Dollars (\$1,200,000) from the revenues received pursuant to
3 §22425(q)(5) of Article 4, Chapter 22 Division 2, Title 5, Guam
4 Code Annotated will be available annually beginning in Fiscal
5 Year 2016; and

6 (3) The sum of Four Million Eight Hundred Thousand
7 Dollars (\$4,800,000) from the maturity of Business Privilege
8 Tax Bond Series 2013C *shall* be available annually beginning
9 in Fiscal Year 2019.

10 (b) Revenues pledged or reserved *shall* be remitted in the
11 following manner:

12 (1) The Business Privilege Tax *shall* only pay for the
13 interest payments of the lease and the lease-back pending the
14 maturity of the Business Privilege Tax Bond Series 2013C in
15 Fiscal Year 2019, and said interest payments *shall* cease.

16 (2) Revenues received pursuant to §22425 (q)(5) of
17 Article 4, Chapter 22 Division 2, Title 5, Guam Code
18 Annotated, upon availability; and

19 (3) Upon the maturity of the Business Privilege Tax
20 Bond Series 2013C.

21 Any amounts pledged as provided in this Section are hereby
22 continuously appropriated for the purpose of making lease-back payments,
23 but any amounts only reserved as provided in this Section, and not pledged,
24 shall be subject to annual appropriation for the purpose of making lease-back
25 payments. The revenues pledged or reserved and thereafter received by the
26 government of Guam or by any trustee, depository or custodian *shall* be
27 deposited in a separate account and *shall* be immediately subject to such

1 reservation or the lien of such pledge without any physical delivery thereof
2 or further act, and such reservation or the lien of such pledge *shall* be valid
3 and binding against all parties having claims of any kind in tort, contract or
4 otherwise against the government of Guam or such trustee, depository or
5 custodian, irrespective of whether the parties have notice thereof. The
6 instrument by which such pledge or reservation is created need not be
7 recorded.

8 **§ 58E108. Use of Tax-Exempt Bond, Taxable Bond and Other**
9 **Financing Instruments for Financing.** To minimize the financing cost to
10 the education agency, financing utilized by the contractor to fund the
11 design, renovation, rehabilitation, construction or maintenance of an
12 education facility *shall* be through tax-exempt obligations, taxable bond
13 obligation, or other financial instruments, provided, such financing is
14 available at interest rates determined by the education agency to be
15 reasonable and competitive. Alternatively, the contractor may use an
16 alternative method of financing, including, but *not* limited to, a short
17 term debt, mortgage, loan, federally guaranteed loan or loan by an
18 instrumentality of the United States of America if such financing will
19 better serve the needs of the people of Guam. Such alternative financing
20 *shall* be approved by *I Liheslaturan Guåhan*. The purpose for the
21 requirements of this Section is to assure the education agency pays the
22 lowest possible interest rate so that the cost to the education agency of
23 financing the design and construction of an education facility,
24 amortized through the lease-back payments from the education
25 agency to the contractor, will be lower than regular commercial rates.

26 **§ 58E109. Utilities, Maintenance and Repair.** The education
27 agency *shall* be responsible for the connection and payment of all utilities,

1 including without limitation, power, water, sewer, telephone, and cable, and
2 all maintenance and repair and exterior groundskeeping and landscaping,
3 and upkeep of the education facility.

4 **§ 58E110. Severability.** If any provision of this Act or its
5 application to any person or circumstance is found to be invalid or contrary
6 to law, such invalidity *shall not* affect other provisions or applications of this
7 Act which can be given effect without the invalid provisions or application,
8 and to this end the provisions of this Act are severable.”



I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
THIRTY-SECOND GUAM LEGISLATURE
155 Hesler Place, Hagåtña, Guam 96910

February 1, 2014

The Honorable Edward J.B. Calvo
I Maga'lahaen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910

Dear Maga'lahi Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 61-32(COR), 70-32(COR), 71-32(COR), 130-32(COR), 146-32(COR), 169-32(COR), 179-32(COR), 180-32(COR), 190-32(COR), 192-32(COR), 197-32(COR), 201-32(COR), 202-32(COR), 204-32(COR), 206-32(COR), 214-32(COR), 221-32(COR), 225-32(COR), 226-32(COR), 231-32(COR), 232-32(COR), 235-32(COR), 236-32(COR), 237-32(COR), 242-32(COR), 245-32(COR), 247-32(COR), 248-32(COR) and 268-32(LS) which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on February 1, 2014.

Sincerely,

TINA ROSE MUÑA BARNES
Legislative Secretary

FEB 1, 2014
10:50 p.m.
J.S. Muña

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

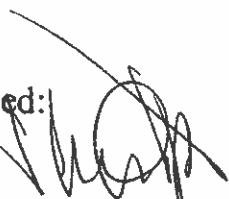
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Bill No. 226-32 (COR)**, "AN ACT TO ADD A NEW CHAPTER 58E TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS," was on the 1st day of February, 2014, duly and regularly passed.



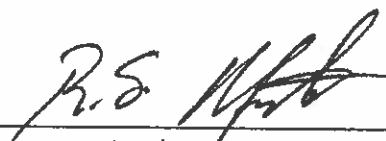
Judith T. Won Pat, Ed.D.
Speaker

Attested:



Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 1st day of FEB,
2014, at
10:50 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 226-32 (COR)

As amended by the Author;
and further amended on the Floor.

Introduced by:

Judith T. Won Pat, Ed.D
Aline A. Yamashita, Ph.D.
T. R. Muña Barnes
Brant T. McCreadie
Dennis G. Rodriguez, Jr.
Tommy Morrison
Chris M. Dueñas
Michael T. Limtiaco
FRANK B. AGUON, JR.
R. J. Respicio
T. C. Ada
V. Anthony Ada
B. J.F. Cruz
Vicente (ben) C. Pangelinan
Michael F. Q. San Nicolas

**AN ACT TO *ADD* A NEW CHAPTER 58E TO TITLE 5,
GUAM CODE ANNOTATED, RELATIVE TO THE
FINANCE, DESIGN, RENOVATION, REHABILITATION,
CONSTRUCTION OR MAINTENANCE OF PUBLIC
SCHOOLS.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 58E is hereby *added* to Title 5, Guam Code
Annotated, to read as follows:

“CHAPTER 58E

1 **THE FINANCE, DESIGN, RENOVATION,**
2 **REHABILITATION, CONSTRUCTION OR MAINTENANCE OF**
3 **PUBLIC SCHOOLS**

4 § 58E100. Legislative Findings and Intent.

5 § 58E101. Definitions.

6 § 58E102. Authorization to Enter into Long-Term Leases.

7 § 58E103. Identification of Projects and Procurement.

8 § 58E104. Responsibilities of Developer/Contractor.

9 § 58E105. Contractual Safeguards.

10 § 58E106. Assignments.

11 § 58E107. Pledge of Revenues.

12 § 58E108. Use of Tax-Exempt Bond and Other Financing
13 Instruments for Financing.

14 § 58E109. Utilities, Maintenance and Repair.

15 § 58E110. Severability.

16 **§ 58E100. Legislative Findings and Intent.** *I Liheslaturan*
17 *Guåhan* finds that Guam public school facilities face deficiencies in its
18 roofing, exterior, interior, structural, mechanical, electrical, plumbing, and
19 school grounds, which create a non-conductive environment that hinders
20 learning and the work and production of teachers and students.

21 *I Liheslaturan Guåhan* finds that the Guam Department of Education
22 is about \$90 Million behind on maintenance projects for the island's public
23 schools, according to a report commissioned by the Department of the
24 Interior in 2012, and recently submitted to the Guam Department of
25 Education in August 2013.

26 It is, therefore, the intent of *I Liheslaturan Guåhan* for the
27 government of Guam to use one quarter of the business privilege tax to pay

1 for the interest payments of the lease and lease-back as a form of bridge
2 financing until the maturity of the Business Privilege Tax bond series
3 2013C.

4 *I Liheslatura* finds that after reviewing the summary of outstanding
5 General and Limited Obligation debts as of March 1, 2013, that the debt
6 ceiling assessed value is at One Billion One Hundred Thirty Nine Million
7 Four Hundred Sixty Four Thousand Eight Hundred Fifty Three Dollars
8 (\$1,139,464,853). It also states that the General Obligation Debt is Four
9 Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight
10 Hundred Fifty Three Dollars (\$446,473,853), and the Limited Obligation
11 Debt is Six Hundred Sixty Three Million Eight Hundred Ninety Six
12 Thousand Eight Hundred Three Dollars (\$663,896,803), with an
13 accumulated total of One Billion One Hundred Ten Million Three Hundred
14 Seventy Thousand Six Hundred Fifty Six Dollars (\$1,110,370,656).
15 Subtracting the debt ceiling limit less the General and Limited Obligation
16 Debts leaves the amount for future debt obligation at Twenty Nine Million
17 Ninety Four Thousand One Hundred Ninety Seven Dollars (\$29,094,197).

18 *I Liheslatura* further finds that the cost to fund the rehabilitation of
19 the public schools will certainly exceed the debt ceiling obligation if a
20 general obligation bond is pursued. To circumvent Guam's debt ceiling cap,
21 *I Liheslatura* finds that the construction of *Okkodo* High School, *Astumbo*
22 Middle School, *Liguan* Elementary School, *Adacao* Elementary School,
23 John F. Kennedy High School, and the expansion of *Okkodo* High School,
24 has demonstrated the fundamental soundness of using municipal lease as a
25 vehicle to build new educational facilities. By making the most of municipal
26 leasing to rehabilitate and construct Guam public schools, the remaining

1 future debt obligation may be used to fund other priorities of the
2 government.

3 § 58E101. **Definitions.** For purposes of this Chapter and *unless*
4 otherwise specified, the following words and phrases are defined to mean:

5 (a) *Comprehensive capital improvement plan* means a plan
6 that takes into consideration the physical condition of each school
7 along with attendance area population, enrollment patterns, and
8 bussing logistics. It *shall* also include how each school meets the
9 instructional needs of GDOE, and prioritizes repairs of existing
10 schools and renovation and construction of new school facilities in
11 order to deal with GDOE limited resources.

12 (b) *Contract shall* mean the design, renovation,
13 rehabilitation, construction, and financing contract entered into by and
14 between the education agency and the contractor chosen by the Guam
15 Economic Development Agency and approved by *I Liheslaturan*
16 *Guåhan*.

17 (c) *Contractor shall* mean the authorized entity which *shall*
18 be the signatory on the contract and *shall* be fully responsible for
19 carrying out the design, renovation, rehabilitation, construction,
20 financing, or maintenance of the education facility. The contractor
21 may cooperate with another entity or entities in any manner the
22 contractor deems appropriate to provide for the financing, design,
23 renovation, rehabilitation, construction or maintenance of the public
24 school facilities envisioned by this Act.

25 (d) *Education agency shall* mean the Guam Department of
26 Education.

1 (e) *Education facility* as used in this Act *shall* mean public
2 elementary and secondary schools on Guam, to include its athletic
3 fields and playgrounds, excluding the five leased schools under the
4 education agency.

5 (f) *Lease shall* mean a lease from an education agency to the
6 contractor entered into at the time of the contract for the property.

7 (g) *Lease-back shall* mean the lease from the contractor to
8 the education agency of the rehabilitated, renovated or newly
9 constructed education facility.

10 (h) *Lease-back period shall* mean the term of the lease from
11 the contractor to the education agency.

12 (i) *Property shall* mean any property on which an education
13 facility is located.

14 **§ 58E102. Authorization to Enter into Long-term Leases.** For
15 the purpose of facilitating the financing, design, construction and
16 rehabilitation and maintenance of an education facility encompassed by this
17 Act, the government of Guam or an education agency, as the case may be, is
18 authorized to lease, if required, to the contractor sufficient government of
19 Guam real property on which to rehabilitate an education facility; provided,
20 such property is in the inventory of the education agency or the government
21 of Guam. The property may be the site of an existing education facility
22 under the control of an education agency, which existing facility may be
23 rehabilitated under the provisions of this Act.

24 The education agency is also authorized to lease back from the
25 contractor the property for a period mutually agreed upon between the
26 education agency and the contractor as may be reasonably necessary to
27 amortize over the lease-back period the costs associated with the design,

1 renovation, rehabilitation, construction or maintenance of the education
2 facility. In no event shall the end of such lease-back period be later than the
3 date thirty (30) years from the scheduled date of completion of the education
4 facility. The lease-back may be structured as an annually renewable lease
5 with a provision for automatic renewals to the extent that pledged revenue
6 under § 58E107 is available. The lease-back *shall not* be construed as a debt
7 under any applicable debt limitation under the Guam Organic Act or Guam
8 law.

9 **§ 58E103. Identification of Projects and Procurement.** Under the
10 Superintendent of Education's direction, the education agency *shall* utilize
11 the Program Study, and the report generated by the Department of Interior
12 (DOI)-funded assessment report by the Army Corps of Engineers, to identify
13 and prioritize potential projects to be completed. The list of projects *shall* be
14 included in a Request for Proposals developed by the education agency.
15 Upon receipt of the Program Study, the Superintendent of Education *shall*
16 solicit Requests for Proposals (RFP) through the Department of Public
17 Works, in compliance with the Guam Procurement Law, for the financing,
18 design, construction and rehabilitation of the education facility, according to
19 the needs of the education agency and consistent with this Chapter. The
20 choice of the contractor *shall* be made by a selection committee comprised
21 of the Superintendent of the Department of Education, serving as Chairman,
22 and including the Director of the Department of Public Works or Deputy
23 Director, the Director of the Department of Land Management or Deputy
24 Director, the Administrator of the Guam Environmental Protection Agency
25 or Deputy Administrator, and the Administrator of the Guam Economic
26 Development Authority or Deputy Administrator. The committee *shall*
27 assess the prior performance of the contractor on similar projects, and *shall*

1 be free to disqualify any contractor that *does not* have a successful record of
2 project completion on Guam.

3 The selection of a contractor *shall* be based upon the proposal that
4 delivers the best value for Guam in meeting the objectives of the education
5 agency.

6 The RFP *shall* be issued within thirty (30) days after the receipt of the
7 Program Study for the design, renovation, rehabilitation, construction or
8 maintenance of the education facility.

9 **§ 58E104. Responsibilities of Developer/Contractor.** The
10 contract *shall* require that the contractor be responsible for all costs,
11 expenses and fees of any kind or nature, associated with the rehabilitation,
12 design, civil improvements, on-site and off-site infrastructure, construction,
13 permits, and financing associated with the completion of an education
14 facility, including the financing of furniture and equipment for the education
15 facility, as and to the extent provided by the education agency in the Request
16 for Proposals. The lease-back may provide that if sufficient funds are not
17 appropriated or otherwise available for the payment of amounts due under
18 the lease, the education agency will have the obligation to vacate the
19 education facility, and the contractor *shall* have the right of use and
20 occupancy of the education facility for the remainder of the term of the
21 lease, *unless* new mutually satisfactory terms are entered into. For this
22 purpose, the lease may provide that its term *shall* be extended for a period
23 *not to exceed* the shorter of ten (10) years beyond the original term of the
24 lease-back, or such period of time as is necessary to repay in full any
25 financing arranged pursuant to § 58E108 of this Chapter. The capital
26 maintenance costs *shall* be paid by the education agency.

1 **§ 58E105. Contractual Safeguards.** Prior to undertaking the work
2 of rehabilitating educational facilities, the Guam Economic Development
3 Authority, the Department of Public Works, the Guam Department of
4 Education, and the developer or contractor, *shall* negotiate and enter into a
5 binding construction contract to build or refurbish the educational facility in
6 accordance with the Guam Building Code (21 G.C.A. Ch. 67), and any other
7 applicable requirements. The construction contract *shall* contain contractual
8 obligations typically found in government of Guam construction contracts,
9 including, but *not* limited to:

- 10 (a) warranties;
- 11 (b) liquidated damages;
- 12 (c) performance and payment bonds;
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- 14 (e) insurance;
- 15 (f) standard specifications;
- 16 (g) technical specifications;
- 17 (h) progress schedule;
- 18 (i) maintenance;
- 19 (j) compliance with Guam labor regulations;
- 20 (k) compliance with Guam prevailing wage rates for
21 employment of temporary alien workers (H2) on Guam;
- 22 (l) compliance with Public Law 29-98: restriction against
23 contractors employing convicted sex offenders to work at government
24 of Guam venues.

25 The contract must be submitted for review and approval to all entities
26 charged by law with the duty to review and approve government contracts,
27 including the Office of the Attorney General.

1 **§ 58E106. Assignments.** To facilitate the purpose of this Act and
2 provide security for the holders of any financing instruments issued pursuant
3 to this Act, the contractor may assign, without the need of the consent of the
4 education agency, the contract, the lease and lease-back to any underwriter,
5 trustee or other party as appropriate to facilitate the contractor financing.

6 **§58E107. Pledge of Revenues.**

7 (a) Rental payments under the lease and the lease-back may
8 be secured by a pledge or other reservation of revenues collected by
9 the government of Guam from the following:

10 (1) Taxes collected under the Business Privilege Tax
11 Law (namely, 11 GCA Chapter 25, excluding the alcoholic
12 beverage taxes, liquid fuel taxes, automotive surcharges,
13 tobacco taxes and real property taxes). The business privilege
14 tax pledged or reserved *shall only* apply to the unpledged
15 portion of the business privilege tax (currently one percentage
16 point of the current four percent business privilege tax rate) so
17 as not to violate the government's covenants to bondholders of
18 the Series A, Series B and Series C Limited Obligation bonds
19 authorized through Public Law 31-76, Public Law 31-196 and
20 Public Law 31-276. The sum of approximately One Million
21 Eight Hundred Eighty-Two Thousand Eighty-Two Dollars
22 (\$1,882,082) *shall* fund interest in Fiscal Year 2015, and the
23 sum of approximately Two Million Five Hundred Sixty Four
24 Thousand One Hundred Sixty-Five Dollars (\$2,564,165) *shall*
25 fund interest payment annually for Fiscal Years 2016 through
26 2018.

1 (2) The sum of One Million Two Hundred Thousand
2 Dollars (\$1,200,000) from the revenues received pursuant to
3 §22425(q)(5) of Article 4, Chapter 22 Division 2, Title 5, Guam
4 Code Annotated will be available annually beginning in Fiscal
5 Year 2016; and

6 (3) The sum of Four Million Eight Hundred Thousand
7 Dollars (\$4,800,000) from the maturity of Business Privilege
8 Tax Bond Series 2013C *shall* be available annually beginning
9 in Fiscal Year 2019.

10 (b) Revenues pledged or reserved *shall* be remitted in the
11 following manner:

12 (1) The Business Privilege Tax *shall* only pay for the
13 interest payments of the lease and the lease-back pending the
14 maturity of the Business Privilege Tax Bond Series 2013C in
15 Fiscal Year 2019, and said interest payments *shall* cease.

16 (2) Revenues received pursuant to §22425 (q)(5) of
17 Article 4, Chapter 22 Division 2, Title 5, Guam Code
18 Annotated, upon availability; and

19 (3) Upon the maturity of the Business Privilege Tax
20 Bond Series 2013C.

21 Any amounts pledged as provided in this Section are hereby
22 continuously appropriated for the purpose of making lease-back payments,
23 but any amounts only reserved as provided in this Section, and not pledged,
24 shall be subject to annual appropriation for the purpose of making lease-back
25 payments. The revenues pledged or reserved and thereafter received by the
26 government of Guam or by any trustee, depository or custodian *shall* be
27 deposited in a separate account and *shall* be immediately subject to such

1 reservation or the lien of such pledge without any physical delivery thereof
2 or further act, and such reservation or the lien of such pledge *shall* be valid
3 and binding against all parties having claims of any kind in tort, contract or
4 otherwise against the government of Guam or such trustee, depository or
5 custodian, irrespective of whether the parties have notice thereof. The
6 instrument by which such pledge or reservation is created need not be
7 recorded.

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9 **Financing Instruments for Financing.** To minimize the financing cost to
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12 education facility *shall* be through tax-exempt obligations, taxable bond
13 obligation, or other financial instruments, provided, such financing is
14 available at interest rates determined by the education agency to be
15 reasonable and competitive. Alternatively, the contractor may use an
16 alternative method of financing, including, but *not* limited to, a short
17 term debt, mortgage, loan, federally guaranteed loan or loan by an
18 instrumentality of the United States of America if such financing will
19 better serve the needs of the people of Guam. Such alternative financing
20 *shall* be approved by *I Liheslaturan Guåhan*. The purpose for the
21 requirements of this Section is to assure the education agency pays the
22 lowest possible interest rate so that the cost to the education agency of
23 financing the design and construction of an education facility,
24 amortized through the lease-back payments from the education
25 agency to the contractor, will be lower than regular commercial rates.

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27 agency *shall* be responsible for the connection and payment of all utilities,

1 including without limitation, power, water, sewer, telephone, and cable, and
2 all maintenance and repair and exterior groundskeeping and landscaping,
3 and upkeep of the education facility.

4 **§ 58E110. Severability.** If any provision of this Act or its
5 application to any person or circumstance is found to be invalid or contrary
6 to law, such invalidity *shall not* affect other provisions or applications of this
7 Act which can be given effect without the invalid provisions or application,
8 and to this end the provisions of this Act are severable.”

LEGISLATIVE SESSION

I MINA'TRENTAI DOS NA LIHESLATURAN

2014 (SECOND) Regular Session

Voting Sheet

Bill No. 226-32 (COR)

As amended by the Author; and further amended on
the Floor

Speaker Antonio R. Unipingo Legislative Session Hall

February 1, 2014

NAME	Yea	Nay	Not Voting/ Abstained	Out During Roll Call	Absent
Senator Thomas "Tom" C. ADA	✓				
Senator V. Anthony "Tony" ADA	✓				
Senator Frank Blas AGUON Jr.	✓				
Vice-Speaker Benjamin J.F. CRUZ		1 ✓			
Senator Christopher M. DUENAS	✓				
Senator Michael LIMTIACO	✓				
Senator Brant McCREADIE	✓				
Senator Thomas "Tommy" MORRISON	✓				
Senator Tina Rose MUÑA BARNES	✓				
Senator Vicente (ben) Cabrera PANGELINAN		✓			
Senator Rory J. RESPICIO	✓				
Senator Dennis G. RODRIGUEZ, Jr.	✓				
Senator Michael F. Q.SAN NICOLAS	✓				
Speaker Judith T. WON PAT, Ed.D.	✓				
Senator Aline A. YAMASHITA, Ph.D.	✓				

TOTAL

13

2

Yea

Nay

Not Voting/
Abstained

Out During
Roll Call

Absent

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

I = Pass



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com

E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Senator
Dennis G. Rodriguez, Jr.
Member

Vice-Speaker
Benjamin J.F. Cruz
Member

Legislative Secretary
Tina Rose Muña Barnes
Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

November 25, 2013

VIA E-MAIL
john.rios@bbmr.guam.gov

John A. Rios
Director
Bureau of Budget & Management Research
P.O. Box 2950
Hagåtña, Guam 96910


RE: Request for Fiscal Notes- Bill Nos. 222-32 (COR) through 227-32(COR)

Hafa Adai Mr. Rios:

Transmitted herewith is a listing of *I Mina'trentai Dos na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

Si Yu'os ma'åse' for your attention to this matter.

Very Truly Yours,


Senator Thomas C. Ada
Acting Chairperson of the Committee on Rules

Attachment (1)

Cc: Clerk of the Legislature

2013 NOV 25 PM 5:29

Bill Nos.	Sponsor	Title
222-32 (COR)	Vicente (ben) C. Pangelinan	AN ACT TO AMEND §89.01(a)(2); TO AMEND §89.01(a)(2)(B); TO ADD A NEW SUBSECTION (C) TO §89.01(a)(2); TO AMEND §89.02(a)(2); TO AMEND §89.02(a)(3); TO AMEND §89.02(b)(2); TO AMEND §89.02(a)(1) AND TO ADD A NEW SUBSECTION (d) TO §89.02 ALL OF CHAPTER 89, 9 GUAM CODE ANNOTATED RELATIVE TO THE CRIMES AGAINST MINORS AND SEX OFFENDER REGISTRY.
223-32 (COR)	Vicente (ben) C. Pangelinan	AN ACT TO APPROPRIATE THE SUM OF FOUR HUNDRED THOUSAND DOLLARS (\$400,000) FOR THE COMPENSATION TO FARMERS FOR CROP DAMAGES PROGRAM ESTABLISHED PURSUANT TO CHAPTER 64A, TITLE 5 OF THE GUAM CODE ANNOTATED.
224-32 (COR)	F.C. Ada, R.J. Respicio	AN ACT TO AMEND §5425, §5426, §5427, §5450, §5452, §5480, §5481 AND §5485 (a) and (b) OF ARTICLE 9, AND §5703, §5705, §5706(b), §5707(a), §5708 OF ARTICLE 12, CHAPTER 5, TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO CLARIFYING LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW
225-32 (COR)	Juan T. Won Pat, Ed.D. T.R. Muna Barnes Aino A. Yamashita, Ph.D.	AN ACT TO ADD A NEW CHAPTER 58C TO TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL AND TO AMEND AND RENUMBER §22425(a) ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO REVALUATION OF REAL PROPERTY TAXES AND TO AMEND §53101 OF TITLE 17 GUAM CODE ANNOTATED, RELATIVE TO EARLY CHILDHOOD PROGRAM FUND
226-32 (COR)	Juan T. Won Pat, Ed.D. T.R. Muna Barnes Aino A. Yamashita, Ph.D.	AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5 GUAM CODE ANNOTATED RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS.
227-32 (COR)	F.C. Ada R.J. Respicio	AN ACT TO AUTHORIZE THE CREATION OF THE GUAM STREETLIGHT AUTHORITY TO ISSUE BONDS TO FINANCE THE PURCHASE AND INSTALLATION OF NEW LED STREETLIGHTS



COMMITTEE ON RULES

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Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

November 22, 2013

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

MEMORANDUM

To: **Rennae Meno**
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
Member

From: **Senator Thomas C. Ada** 
Acting Chairperson of the Committee on Rules

Senator
Dennis G. Rodriguez, Jr.
Member

Subject: **Referral of Bill Nos. 225-32(COR) and 226-32(COR)**

Vice-Speaker
Benjamin J.F. Cruz
Member

As the Acting Chairperson of the Committee on Rules, I am forwarding my referral of **Bill Nos. 225-32(COR) and 226-32(COR)**.

Legislative Secretary
Tina Rose Muña Barnes
Member

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Senator
Frank Blas Aguon, Jr.
Member

Should you have any questions, please feel free to contact our office at 472-7679.

Senator
Michael F.Q. San Nicolas
Member

Si Yu'os Ma'åse!

Senator
V. Anthony Ada
Member
MINORITY LEADER




Attachment

Senator
Aline Yamashita
Member

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 226-32 (1st)

Introduced by:

J. T. Won Pat, Ed.D. 
Aline A. Yamashita, Ph.D. 
Tina Rose Muña Barnes 

**AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5
GUAM CODE ANNOTATED RELATIVE TO THE
FINANCE, DESIGN, RENOVATION, REHABILITATION,
CONSTRUCTION OR MAINTENANCE OF PUBLIC
SCHOOLS.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 58D is hereby *added* to Title 5 Guam Code
Annotated to read as follows:

“Chapter 58D The finance, design, renovation, rehabilitation,
construction *or* maintenance of Public Schools.

§ 58D100. Legislative Findings and Intent.

§ 58D101. Definitions.

§ 58D102. Authorization to Enter into Long-Term Leases.

§ 58D103. Programming Study

§ 58D104. Identification of Projects and Procurement

§ 58D105. Responsibilities of Contractor.

§ 58D106. Contractual Safeguards.

§ 58D107. Assignments.

§ 58D108. Pledge of Revenues.

§ 58D109. Use of Tax-Exempt Bond and Other Financing Instruments
for Financing.

1 § 58D110. Utilities, Maintenance and Repair.

2 § 58D111. Severability.

3 §58D100. **Legislative Findings and Intent.** *I Liheslaturan Guåhan*
4 finds that Guam public schools facilities face deficiencies from roofing,
5 exterior, interiors, structural, mechanical, electrical, plumbing, and school
6 grounds which creates a non conducive environment that hinders learning and
7 the work and production of teachers and students.

8 *I Liheslaturan Guåhan* finds that the Guam Department of Education is
9 about \$90 Million behind on maintenance projects for the island's public
10 schools, according to a report commissioned by the Department of the Interior
11 in 2012, and recently submitted to the Guam Department of Education in
12 August 2013.

13 It is therefore the intent of *I Liheslaturan Guåhan* for the government of
14 Guam to use one quarter of the Business Privilege Tax to pay for the interest
15 payments of the lease and lease-back as a form of bridge financing until the
16 maturity of the Business Privilege Tax bond series 2013C.

17 Further, it is the intent of *I Liheslaturan Guåhan* that moneys allocated to
18 school maintenance and repair be spent most effectively to advance the mission
19 of the Guam Department of Education, and it is the intent herein to allocate
20 funding for and direct to the Guam Department of Education to commission a
21 programming and curriculum study based on the current Final Condition
22 Assessment Summary from U.S. Department of Interior (the "Condition
23 Assessment") to generate a master plan and a prioritized list of the required
24 work to deliver the most productive educational facilities based on near term
25 and future needs using funds allocated by this legislation.

1 *I Liheslatura* finds that after reviewing the summary of outstanding
2 General and Limited Obligation debts as of March 1, 2013 that the debt ceiling
3 assess value is at One Billion One Hundred Thirty Nine Million Four Hundred
4 Sixty Four Thousand Eight hundred Fifty Three Dollars (\$1,139,464,853). It
5 also states that the General Obligation Debt is Four Hundred Forty Six Million
6 Four Hundred Seventy Three Thousand Eight Hundred Fifty Three Dollars
7 (\$446,473,853) and the Limited Obligation Debt is Six Hundred Sixty Three
8 Million Eight Hundred Ninety Six Thousand Eight Hundred Threc Dollars
9 (\$663,896,803) with an accumulated total of One Billion One Hundred Ten
10 Million Three Hundred Seventy Thousand Six Hundred Fifty Six Dollars
11 (\$1,110,370,656). Subtracting the debt ceiling limit less the General and limited
12 Obligation Debts leaves the amount for future debt obligation at Twenty Nine
13 Million Ninety Four Thousand One Hundred Ninety Seven (\$29,094,197).

14 *I Liheslatura* further finds that the cost to fund the rehabilitation
15 of the public Schools will certainly exceed the debt ceiling obligation if a
16 General Obligation Bond is pursued. To circumvent Guam's debt ceiling cap, *I*
17 *Liheslatura* finds that the construction of *Okkodo* High School, *Astumbo* Middle
18 School, *Liguan* Elementary School, *Adacao* Elementary School, John F.
19 Kennedy High School and the expansion of *Okkodo* High School has
20 demonstrated the fundamental soundness of using municipal lease as a vehicle
21 to build new educational facilities. By making the most of municipal leasing to
22 rehabilitate and construct Guam public schools, the remaining future debt
23 obligation may be used to fund other priorities of the government.

24 **§58D101. Definitions.** For purposes of this Chapter and *unless* otherwise
25 specified, the following words and phrases are defined to mean:

1 (a) "Contract" *shall* mean the design, renovation, rehabilitation,
2 construction, and financing contract entered into by and between the
3 Education Agency and the Contractor chosen by the Guam Economic
4 Development Agency and approved by *I Liheslaturan Guåhan*.

5 (b) "Contractor" *shall* mean the authorized entity which *shall* be
6 the signatory on the Contract and *shall* be fully responsible for carrying
7 out the design, renovation, rehabilitation, construction, financing, or
8 maintenance of the Education Facility. The Contractor may cooperate
9 with another entity *or* entities in any manner the Contractor deems
10 appropriate to provide for the financing, design, renovation,
11 rehabilitation, construction *or* maintenance of the public school facilities
12 envisioned by this Act.

13 (c) "Education Agency" *shall* mean the Guam Department of
14 Education.

15 (d) "Education Facility" as used in this Act *shall* mean public
16 elementary and secondary schools on Guam to include its athletic fields
17 and playgrounds, excluding the five leased schools under the Education
18 Agency.

19 (e) "Lease" *shall* mean a lease from an Education Agency to the
20 Contractor entered into at the time of the Contract for the Property.

21 (f) "Lease-Back" *shall* mean the lease from the Contractor to
22 the Education Agency of the rehabilitated, renovated or newly
23 constructed Education Facility.

24 (g) "Lease-Back Period" *shall* mean the term of the lease from
25 the Contractor to the Education Agency.

1 (h) "Programming Study" shall mean that certain study
2 commissioned by GDOE to assist it in prioritizing the work scope for the
3 existing Education Facilities base on the department's mission and
4 Curriculum.

5 (i) "Property" *shall* mean any property on which an Education
6 Facility is located.

7 **§58D102. Authorization to Enter into Long-term Leases.** For the
8 purpose of facilitating the financing, design, construction and rehabilitation and
9 maintenance of an Education Facility encompassed by this Act, the government
10 of Guam *or* an Education Agency, as the case may be, is authorized to lease, if
11 required, to the Contractor sufficient government of Guam real property on
12 which to rehabilitate an Education Facility; provided, such property is in the
13 inventory of the Education Agency *or* the government of Guam. The property
14 may be the site of an existing Education Facility under the control of an
15 Education Agency, which existing facility may be rehabilitated under the
16 provisions of this Act.

17 The Education Agency is also authorized to lease back from the
18 Contractor the property for a period mutually agreed upon between the
19 Education Agency and the Contractor as may be reasonably necessary to
20 amortize over the Lease-Back Period the costs associated with the design,
21 renovation, rehabilitation, construction *or* maintenance of the Education
22 Facility. In no event *shall* the end of such Lease-Back Period be *later than* the
23 date Thirty (30) years from the scheduled date of completion of the Education
24 Facility. The Lease-Back may be structured as an annually renewable lease
25 with provision for automatic renewals to the extent that pledged revenue under

1 Section 58D109 is available. The Lease-Back *shall not* be construed as a debt
2 under any applicable debt limitation under the Guam Organic Act *or* Guam law.

3 **§58D103. Programming Study.** Under the Superintendent of
4 Education's direction, the Education agency shall develop and prepare a
5 Programming Study that shall be completed no later than September 1, 2014. If
6 necessary, the Superintendent of Education may hire consultant(s) to conduct
7 the Programming Study. The study shall consider the Final Condition
8 Assessment dated August 2013 by the Department of Interior in terms of
9 identified issues with facilities, and study the broader Education systems needs
10 and priorities taking into account:

- 11 1) desired curriculum and programs offered or to be offered in addition
12 to basic education, such as S.T.E.M. (science, technology
13 engineering and math) facilities, vocational training, etc;
- 14 2) population densities, student count and population projections
15 relative to location of existing facilities;
- 16 3) transportation, traffic and bussing logistics and associated costs;
17 and
- 18 4) estimated cost of repair based on the Condition Assessment.

19 The Programming Study will provide the Education Agency a master
20 plan for the highest and best use of the existing facilities given the
21 educational priorities. Based on this master plan, the study will then
22 provide a list in order of priority for repairs improvements detailed in the
23 Condition Assessment, based on the master plan for the school system.
24 Five Hundred Thousand Dollars (\$500,000) shall be allocated to conduct
25 the Programming Study, and any monies unexpended shall be spent on
26 school repairs and maintenance as provided herein. The scope of the

1 study shall not include work already completed in the Condition
2 Assessment, but shall rely on the findings of the Condition Assessment to
3 develop the master plan and list of priorities.

4 **§58D104. Programming Study Appropriation.** The sum of Five
5 Hundred Thousand Dollars (\$500,000) is hereby is appropriated from the
6 "Business Privilege Tax" (namely, 11 GCA Chapter 25, excluding the alcoholic
7 beverage taxes, liquid fuel taxes, automotive surcharges, tobacco taxes and real
8 property taxes) The Business Privilege Tax pledged or reserved shall only apply
9 to the unpledged portion of the business privilege tax (currently one percentage
10 point of the current four percent Business Privilege Tax rate) so as not to violate
11 the government's covenants to bondholders of the Series A, Series B and Series
12 C Limited Obligation bonds authorized through Public Law 31-76, Public Law
13 31-196 and Public Law 31-276. The sum of Five Hundred Thousand Dollars
14 (\$500,000) will be used in fiscal year 2014 to fund the Programming Study.

15 **§58D105. Identification of Projects and Procurement.** Under the
16 Superintendent of Education's direction, the Education Agency shall utilize the
17 Program Study and the report generated by the Department of Interior (DOI)-
18 funded assessment report by the Army Corps of Engineers to identify and
19 prioritize potential projects to be completed. The list of projects shall be
20 included in a Request for Proposals developed by the Education Agency. Upon
21 receipt of the Program Study than the Superintendent of Education shall solicit
22 Requests for Proposals ('RFP') through the Department of Public Works, in
23 compliance with the Guam Procurement Law, for the financing, design,
24 Construct and Rehabilitate of the Education Facility, according to the needs
25 of the Education Agency and consistent with this Chapter. The choice of the
26 Contractor shall be made by a selection committee comprised of the

1 Superintendent of the Department of Education serving as Chairman and
2 including the Director of the Department of Public Works or Deputy Director,
3 the Director of the Department of Land Management or Deputy Director, the
4 Administrator of Guam EPA or Deputy Administrator, and the Administrator of
5 the Guam Economic Development Authority or Deputy Administrator. The
6 committee shall access the prior performance of the Contractor on similar
7 projects and shall be free to disqualify any Contractor that does not have a
8 successful record of project completion on Guam.

9 The selection of a Contractor shall be based upon the proposal that
10 delivers the best value for Guam in meeting the objectives of the Education
11 Agency.

12 The RFP shall be issued within thirty (30) days after the receipt of the
13 "Program Study" for the design, renovation, rehabilitation, construction *or*
14 maintenance of the Education Facility.

15 **§58D106. Responsibilities of Developer / Contractor.** The Contract
16 *shall* require that the Contractor be responsible for all costs, expenses and fees
17 of any kind *or* nature, associated with the rehabilitation, design, civil
18 improvements, on-site and off-site infrastructure, construction, permits, and
19 financing associated with the completion of an Education Facility, including the
20 financing of furniture and equipment for the Education Facility, as and to the
21 extent provided by the Education Agency in the Request for Proposals. The
22 Lease-Back may provide that *if* sufficient funds are *not* appropriated *or*
23 otherwise available for the payment of amounts due under the lease, the
24 Education Agency will have the obligation to vacate the Education Facility, and
25 the Contractor *shall* have the right of use and occupancy of the Education
26 Facility for the remainder of the term of the Lease, unless new mutually

1 satisfactory terms are entered into. For this purpose, the Lease may provide that
2 its term *shall* be extended for a period *not to exceed* the shorter of ten (10) years
3 beyond the original term of the Lease-Back *or* such period of time as is
4 necessary to repay in full any financing arranged pursuant to Section 58D110 of
5 this Chapter. The capital maintenance costs *shall* be paid by the Education
6 Agency.

7 **§58D107. Contractual Safeguards.** Prior to undertaking the work of
8 rehabilitating educational facilities, the Guam Economic Development
9 Authority, The Department of Public Works, Guam Department of Education
10 and the Developer or Contractor shall negotiate and enter into a binding
11 construction contract to build or refurbish the educational facility in accordance
12 with Guam Building Code, (21 G.C.A. Ch. 67) and any other applicable
13 requirements. The Construction contract shall contain contractual obligations
14 typically found in Government of Guam construction contracts, including but
15 not limited to:

- 16 1. Warranties;
- 17 2. Liquidated damages;
- 18 3. Performance and payment bonds;
- 19 4. Indemnity;
- 20 5. Insurance;
- 21 6. Standard Specifications;
- 22 7. Technical Specifications;
- 23 8. Progress Schedule;
- 24 9. Maintenance;
- 25 10. Compliance with Guam Labor Regulations;

1 11. Compliance with Guam Prevailing Wage Rates for
2 Employment of Temporary Alien Workers (H2) on Guam;

3 12. Compliance with Public Law 29-98: Restriction Against
4 Contractors Employing Convicted Sex Offenders to Work at
5 Government of Guam Venues.

6 The contract must be submitted for review and approval to all entities
7 charged by law with the duty to review and approve government contracts,
8 including the Office of the Attorney General.

9 **§ 58D108. Assignments.** To facilitate the purpose of this Act and
10 provide security for the holders of any financing instruments issued pursuant to
11 this Act, the Contractor may assign, without the need of the consent of the
12 Education Agency, the Contract, the Lease and Lease-Back to any underwriter,
13 trustee or other party as appropriate to facilitate the Contractor financing.

14 **§58D109. Pledge of Revenues.** (a) Rental payments under the Lease
15 and the Lease-Back may be secured by a pledge or other reservation of
16 revenues collected by the government of Guam from the following:

17 (1) Taxes collected under the "Business Privilege Tax Law"
18 (namely, 11 GCA Chapter 25, excluding the alcoholic beverage taxes, liquid
19 fuel taxes, automotive surcharges, tobacco taxes and real property taxes) The
20 Business Privilege Tax pledged or reserved shall only apply to the unpledged
21 portion of the business privilege tax (currently one percentage point of the
22 current four percent Business Privilege Tax rate) so as not to violate the
23 government's covenants to bondholders of the Series A, Series B and Series C
24 Limited Obligation bonds authorized through Public Law 31-76, Public Law
25 31-196 and Public Law 31-276. The sum of approximately One Million Eight
26 Hundred Eighty-Two Thousand and Eighty-Two Dollars (\$1,882,082) shall

1 fund interest in fiscal year 2015, and the sum of approximately Two Million
2 Five Hundred Sixty Four Thousand One Hundred Sixty-Five Dollars
3 (\$2,564,165) shall fund interest payment annually for fiscal years 2016 through
4 2018.

5 (2) The sum of One Million Two Hundred Thousand Dollars
6 (\$1,200,000) from the revenues received pursuant to §22425 (q)(5) of Article 4,
7 Chapter 22 Division 2, Title 5, Guam Code Annotated will be available
8 annually beginning in fiscal year 2016; and

9 (3) The sum of Four Million Eight Hundred Thousand Dollars
10 (\$4,800,000) from the maturity of Business Privilege Tax bond series 2013C
11 shall be available annually beginning in fiscal year 2019.

12 (b) Revenues pledged or reserved shall be remitted in the following
13 manner:

14 (1) The Business Privilege Tax shall only pay for the interest
15 payments of the Lease and the Lease-Back pending the maturity of the Business
16 Privilege Tax bond series 2013C in Fiscal Year 2019 and said interest payments
17 shall ceased.

18 (2) Revenues received pursuant to §22425 (q)(5) of Article 4,
19 Chapter 22 Division 2, Title 5, Guam Code upon availability; and

20 (3) Upon the maturity of the Business Privilege Tax bond series
21 2013C.

22 Any amounts pledged as provided in this Section are hereby continuously
23 appropriated for the purpose of making Lease-Back payments, but any amounts
24 only reserved as provided in this Section, and not pledged, shall be subject to
25 annual appropriation for the purpose of making Lease-Back payments. The
26 revenues pledged or reserved and thereafter received by the government of

1 Guam or by any trustee, depository or custodian shall be deposited in a separate
2 account and shall be immediately subject to such reservation or the lien of such
3 pledge without any physical delivery thereof or further act, and such reservation
4 or the lien of such pledge shall be valid and binding against all parties having
5 claims of any kind in tort, contract or otherwise against the government of
6 Guam or such trustee, depository or custodian, irrespective of whether the
7 parties have notice thereof. The instrument by which such pledge or reservation
8 is created need not be recorded.

9 **§ 58D110. Use of Tax-Exempt Bond, Taxable Bond and Other**
10 **Financing Instruments for Financing.** To minimize the financing cost to
11 the Education Agency, financing utilized by the Contractor to fund the design,
12 renovation, rehabilitation, construction *or* maintenance of an Education
13 Facility *shall* be through tax-exempt obligations, Taxable Bond Obligation *or*
14 other financial instruments provided such financing is available at interest rates
15 determined by the Education Agency to be reasonable and competitive.
16 Alternatively, the Contractor may use an alternative method of financing,
17 including, but *not limited to*, a short term debt, mortgage, loan, federally
18 guaranteed loan *or* loan by an instrumentality of the United States of America
19 *if* such financing will better serve the needs of the people of Guam. Such
20 alternative financing *shall* be approved by *1 Liheslaturan Guåhan*. The
21 purpose for the requirements of this Section is to assure the Education
22 Agency pays the lowest possible interest rate so that the cost to the Education
23 Agency of financing the design and construction of an Education Facility,
24 amortized through the Lease-Back payments from the Education
25 Agency to the Contractor, will be lower than regular commercial rates.

26 **§58D111. Utilities, Maintenance and Repair.** The Education Agency

1 *shall* be responsible for the connection and payment of all utilities, including
2 without limitation, power, water, sewer, telephone and cable, and all
3 maintenance and repair and exterior grounds keeping and landscaping and
4 upkeep of the Education Facility.

5 **§58C112. Severability.** *If any provision of this Act or its application*
6 *to any person or circumstance is found to be invalid or contrary to law, such*
7 *invalidity shall not affect other provisions or applications of this Act which can*
8 *be given effect without the invalid provisions or application, and to this end the*
9 *provisions of this Act are severable."*

I MINA' TRENTAI KUÁTRO NA LIHESLATURAN GUÁHAN
2017 (FIRST) REGULAR SESSION

Bill No. 70 - 34 (COR)

Introduced by:

Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Telena Cruz Nelson
Tommy Morrison
Fernando Barcinas Esteves

AN ACT TO ADD A NEW CHAPTER 12A TO TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO CONVERTING SIMON A. SANCHEZ HIGH SCHOOL TO A CHARTER SCHOOL AND PROVIDING FOR CONSTRUCTION OF A NEW CAMPUS AT ITS PRESENT LOCATION AND TO MAINTAIN THE NAMESAKE OF SUCH.

BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1. Short Title.** This Act *shall* be cited as the "Simon A. Sanchez High
3 School Charter and Reconstruction Act"

4 **Section 2. Legislative Findings and Intent.** *I Lihestaturan Guáhan* finds that,
5 as previously noted in Public Law No. 32-120, that "Simon Sanchez High School faces
6 the combined challenges of deteriorating conditions, out of date design, and
7 overcrowding. These combined deficiencies impair the quality of teaching and learning
8 and contribute to health and safety problems for staff and students."

9 Previous public laws have authorized the Department of Education and the
10 Government of Guam to issue bonds or enter into lease-back arrangements to build public
11 schools or refurbish them, including Simon A. Sanchez High School. These previous
12 public laws placed a \$100 million cap on the funding for this work. Based on cost
estimates submitted as part of the recently cancelled bid of approximately \$90 million to

1 build Simon A. Sanchez alone, there will be minimal funding remaining for the
2 improvements of other public schools. While this activity to build or refurbish other
3 schools is ongoing, it is imperative that, after years of delay, that the project for the
4 improvement of the learning situation at Simon A. Sanchez High School be carved out
5 from the ongoing program to build and refurbish our island schools, and immediately be
6 undertaken.

7 In addition to funding arrangements for school construction and maintenance,
8 legislation is available to create charter schools associated with the Guam Department of
9 Education. Chapter 12 of Title 17 of the Guam Code Annotated provides both for the
10 establishment of charter schools where the board of trustees of the charter school are
11 empowered to enter into agreements for school premises and for personnel, supplies,
12 equipment and other needs for operating a school under the requirements of the Guam
13 Department of Education. A board of trustees may also be authorized to convert an
14 existing public school into a charter school under Chapter 12 of Title 17, Guam Code
15 Annotated. Such a converted public school would retain the identical school budget
16 appropriated to its conversion prior to the following school year. Also, a charter school's
17 funding from the Department of Education is based on the number of students enrolled,
18 and at the present time the amount per student per year has been fixed at Six Thousand
19 Five Hundred Dollars (\$6,500.00).

20 In order to begin the construction of a new Simon A. Sanchez High School as
21 quickly as possible while preserving most or all of the funding available under previous
22 public laws for the other public schools on island desperately in need of rehabilitation, it
23 is the intent of *I Lihestaturan Guåhan* that the new Simon A. Sanchez High School be the
24 first of the existing Guam public schools to be converted to an Academy Charter School.
25 The Board of Trustees of the new converted Academy Charter School, which is to
26 continue to be known as "Simon A. Sanchez High School", shall undertake both the
27 education of the students and the construction of a new school.

Education, as the case may be, is authorized to lease to the Charter School selected by the Guam Education Policy Board the property upon which now sits the Simon A. Sanchez High School campus and any available adjacent government owned land needed to facilitate the construction of the new school for a period not to exceed Forty (40) years.

§ 12A106. Authorization of Board of Trustees of Simon Sanchez High School to Construct New Educational Facility. Notwithstanding any other provision of law, the board of trustees of Simon A. Sanchez High School is empowered to solicit proposals for the design, finance, and construction of a new educational facility for Simon A. Sanchez High School. This design and construction may be entirely new, or may utilize a portion of the existing buildings. The new educational facility shall occupy the present premises of Simon A. Sanchez High School, including additional government of Guam land adjacent to the current facility in order to facilitate the construction of the new campus while minimizing disruption to the existing school operation. The existing students enrolled at Simon A. Sanchez High School shall be given priority in enrollment into the new facility operated by a Charter School. The proposals solicited shall include the financing, design, renovation or construction of the education facility, demolition of the current facility or portion thereof, together with insurance and maintenance of the education facility over the lease period provided in § 12A105 of this Chapter, according to the needs of Simon A. Sanchez High School. The choice of the contractor shall be made by a selection committee comprised of designated members of the board of trustees of the High School. The committee shall access the prior performance of the contractor on similar projects and may disqualify any contractor that does not have a successful record of project completion on Guam. The selection of a contractor shall be based upon the proposal that delivers the best value for Guam in meeting the objectives of Simon A. Sanchez High School.

The construction contract shall contain contractual obligations typically found in government of Guam construction contracts, including, but not limited to:

1. warranties;
2. performance and payment bonds;
3. indemnity;
4. insurance;
5. standard specifications;
6. technical specifications
7. progress schedule;
8. maintenance;
9. compliance with the Guam Building Code;
10. compliance with Guam labor regulations;
11. compliance with Guam prevailing wage rates for employment of temporary alien workers (H-2) on Guam;
12. compliance with Public Law No. 29-98, restriction against contractors hiring convicted sex offenders to work at government of Guam venues.

§ 12A107. Construction Funding. In developing the contract between the board of trustees of Simon A. Sanchez High School and their selected contractor, the board of trustees of Simon A. Sanchez High School and the contractor *shall* stay within the budget allotment of the current fiscal year and the allotment of Six Thousand Five Hundred Dollars (\$6,500) per student, for the education of Simon A. Sanchez High School students and for the construction of an educational facility over a Forty (40) year period. This undertaking shall be notwithstanding the provisions of Chapter 58D of Division 5, Title 5, Guam Code Annotated (Ma Kahat Act of 2013).

§ 12A108. Assignments. To provide security for the holders of any financing instruments, the contractor may assign, without the need of the consent of the Guam Education Policy Board or the Department of Education, the contract, the lease, and the lease-back to any underwriter, trustee, or other party as appropriate, to facilitate

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1 educational facility. The petitions shall be prepared according to the provisions of § 12104
2 (a) of Chapter 12 of Title 17, Guam Code Annotated. The applicants shall file their
3 petitions with the Guam Education Policy Board who shall act on the petitions.

4 Respondents filing petitions *shall* be advised that the government of Guam will not
5 pay for any information received or administrative costs incurred in responding to the
6 request for applications. All costs will be born solely by the responding parties.

7 **§ 12A103. Process for Filing Charter Petition for Simon Sanchez High School.**

8 Notwithstanding the provisions of § 12104 (b) of Chapter 12 of Title 17, Guam Code
9 Annotated, an eligible applicant seeking to convert Simon A. Sanchez High School into
10 an Academy Charter School shall, after being selected to proceed by the Guam Education
11 Policy Board, disseminate their petition and award by publication or other means, to the
12 parents and guardians of minor students attending the existing school, adult students
13 attending the existing school, employees of the existing school, parents and guardians of
14 minor students who attend the school grade immediately lower than the first school grade
15 which is served by the existing school; and each Mayor who represents an area within the
16 attendance area of the existing school. The petition shall not require their signatures. A
17 process of community information shall be undertaken to inform the parents, guardians,
18 adult students, employees, parents and guardians of students who will enter the high
19 school in the next school year, and the Mayor of the area of attendance, of the proposal
20 intended for the new Simon A. Sanchez High School.

21 **§ 12A104. Name of Simon A. Sanchez Academy Charter School.**

22 Notwithstanding the provisions of §12107(c)(1) of Chapter 12 of Title 17, Guam Code
23 Annotated, the new Academy Charter School established by this Chapter shall remain and
24 be known as: "Simon A. Sanchez High School."

25 **§ 12A105. Authorization to Enter into a Long-Term Lease.** For the purpose of
26 facilitating the financing, design, construction and rehabilitation and maintenance of
27 Simon A. Sanchez High School, the government of Guam, or the Department of

1 the issuance of the tax- exempt obligations, other financial instruments or alternative
2 financing for the High School.

3 **§ 12A109. Utilities and Routine Maintenance and Repair.** The Simon A.
4 Sanchez High School Charter Academy Board of Trustees shall be responsible for the
5 connection and payment of all utilities, including without limitation, power, water, sewer,
6 telephone and cable, and all routine interior maintenance and repair and exterior
7 groundskeeping and landscaping, and upkeep of the education facility.”

8 **Section 4. Severability.** *If* any provision of this Act or its application to any person
9 or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect
10 other provisions or applications of this Act that can be given effect without the invalid
11 provisions or application, and to this end the provisions of this Act are severable.

12 **Section 5. Effective Date.** This act shall become effective immediately upon
13 enactment.

I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN

2018 (SECOND) Regular Session

LEGISLATIVE SESSION VOTING RECORD

Bill No. 204-34 (COR)

As substituted by the Committee on Appropriations and Adjudication; and amended in Committee of the Whole.

Speaker Antonio R. Unpingco Legislative Session Hall

May 1, 2018

NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator Thomas C. ADA	✓					
Senator FRANK B. AGUON, JR.	✓					
Senator William M. CASTRO	✓					
Speaker Benjamin J.F. CRUZ	✓					
Senator James V. ESPALDON	✓					
Senator Fernando Barcinas ESTEVES					✓	✓
Senator Régine Biscoe LEE	✓	I				
Senator Tommy MORRISON	✓					
Senator Louise B. MUÑA	✓					
Senator Telena Cruz NELSON	✓	I				
Senator Dennis G. RODRIGUEZ, JR.	✓					
Senator Joe S. SAN AGUSTIN	✓					
Senator Michael F.Q. SAN NICOLAS	✓					
Vice Speaker Therese M. TERLAJE	✓					
Senator Mary Camacho TORRES	✓					

TOTAL: 14 1 1

Aye Nay Not Voting/ Abstained Out During Roll Call Absent Excused

CERTIFIED TRUE AND CORRECT:


Clerk of the Legislature

I = Pass

I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 204-34 (COR)

As substituted by the Committee on Appropriations
and Adjudication; and amended in
the Committee of the Whole.

*

Introduced by:

FRANK B. AGUON, JR.
Joe S. San Agustin

AN ACT TO *AMEND* §§ 58D103(l), 58D105, 58D109, AND 58D112; AND TO *REPEAL* § 58D103(m)(2), ALL OF CHAPTER 58D, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO DESIGNATING THE GUAM DEPARTMENT OF EDUCATION (GDOE) AS THE PROCURING ENTITY FOR PURPOSES OF ANY SOLICITATION WITH RESPECT TO THE CONSTRUCTION AND/OR RENOVATION OF SIMON SANCHEZ HIGH SCHOOL UNDER A LONG-TERM LEASE-BACK, AMENDING DEFINITIONS WITH RESPECT TO RESPONSIVENESS, AND AUTHORIZING GDOE TO SOLICIT FOR ARCHITECTURAL AND ENGINEERING SERVICES, CONSTRUCTION MANAGEMENT SERVICES, FINANCING SERVICES, RENOVATION AND CONSTRUCTION SERVICES, COLLATERAL EQUIPMENT, AND RELATED SERVICES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. § 58D103(l) of Chapter 58D, Title 5, Guam Code Annotated, is
amended to read:

“(l) Responsive offer *shall* mean an offer that conforms, at opening of the offers in response to the solicitation, in all material respects to the solicitation.”

Section 2. § 58D103(m)(2) of Chapter 58D, Title 5, Guam Code Annotated, is hereby *repealed*.

Section 3. § 58D105 of Chapter 58D, Title 5, Guam Code Annotated, is *amended* to read:

“§ 58D105. Procurement.

(a) In addition to availing of the services of the Department of Public Works, the Guam Department of Education may solicit, in compliance with the Guam procurement law, for the services of an Owner’s Agent Engineer (OAE) to assist the Guam Department of Education in the procurement of architectural and engineering (A&E) services, construction management (CM) services, financing services, renovation and construction services, collateral equipment, and related services consistent with this Chapter.

(1) The solicitation *shall* specifically state the minimum specifications that will be required for a submitted offer to be considered.

(2) The determination of responsible offerors and responsive offers *shall* be made by an evaluation committee comprised of the Superintendent of the Department of Education, serving as Chairman, and including the Director of the Department of Public Works or Deputy Director, the Director of Land Management or Deputy Director, and the Administrator of the Guam Economic Development Authority or Deputy Administrator.

(3) The committee *shall* evaluate offerors and offers received based on the requirements set forth in the solicitation. Upon completion

1 of the committee's evaluation, the Superintendent *shall* issue the award,
2 in accordance with the Guam procurement law.

3 (b) The solicitation for the renovation, construction, or combination
4 thereof for a new fully equipped and functional Simon Sanchez High School
5 as specified in the solicitation, on the existing site, which may include
6 demolition of such portions of the existing facility as necessary, *shall* be
7 issued within forty-five (45) days of completion of the architectural and
8 engineering design for the new Simon Sanchez High School. The award of
9 any lease-back contract *shall* be based upon a responsive offer submitted by a
10 responsible offeror that offers the lowest annual aggregate leaseback payment,
11 inclusive of finance and capital maintenance cost, to the government of Guam
12 for a fixed thirty (30) year term.

13 (c) Notwithstanding any other provision of law, the solicitation *shall*
14 *not* be combined with other procurement pursuant to Public Law 32-121 (the
15 repair and maintenance of 35 other schools)."

16 **Section 4.** § 58D109 of Chapter 58D, Title 5, Guam Code Annotated, is
17 *amended* to read:

18 **"§ 58D109. Pledge of Additional Revenue from the Real Property**
19 **Valuation.**

20 Rental payments under the lease and the lease-back, as well as funding
21 required to support the activities set forth in § 58D105(a) of this Chapter, may
22 be secured by a pledge or other reservation of revenues received by the
23 government of Guam pursuant to 5 GCA §§ 22425(q)(4) and (6). Any
24 amounts pledged as provided in this Section are hereby continuously
25 appropriated for the purpose of making lease-back payments, but any amounts
26 only reserved as provided in this Section, and not pledged, *shall* be subject to
27 an annual appropriation for the purpose of funding the activities set forth in §

1 58D105(a) of this Chapter, and making lease-back payments. Any such
2 pledge or reservation authorized hereunder *shall* be valid and binding from
3 the time the pledge or reservation is made, and *shall* be limited to the sum of
4 Five Million Fifty-one Thousand Nine Hundred Seventy-seven Dollars and
5 Ninety-eight Cents (\$5,051,977.98) per year during the pre-development,
6 construction, and lease-back period, as outlined in 5 GCA §§ 22425(q)(4) and
7 (6). The revenues pledged or reserved and thereafter received by the
8 government of Guam or by any trustee, depository or custodian *shall* be
9 deposited in a separate account and *shall* be immediately subject to such
10 reservation or the lien of such pledge without any physical delivery thereof or
11 further act, and such reservation or the lien of such pledge *shall* be valid and
12 binding against all parties having claims of any kind in tort, contract or
13 otherwise against the government of Guam or such trustee, depository or
14 custodian, irrespective of whether the parties have notice thereof. The
15 instrument by which such pledge or reservation is created need not be
16 recorded.”

17 **Section 5.** The first sentence of the first paragraph of § 58D112 of Chapter
18 58D, Title 5, Guam Code Annotated, is *amended* to read:

19 “Prior to undertaking the work of renovating or constructing a new
20 Simon Sanchez High School, the Guam Economic Development Authority,
21 the Guam Department of Education, and the developer or contractor *shall*
22 enter into a binding construction contract to renovate or construct a new
23 Simon Sanchez High School in accordance with the Guam Building Code (21
24 GCA Chapter 67), and any other applicable requirements.”

25 **Section 6. Severability.** If any provision of this Act or its application to
26 any person or circumstance is found to be invalid or contrary to law, such invalidity
27 *shall not* affect other provisions or applications of this Act that can be given effect

- 1 without the invalid provisions or application, and to this end the provisions of this
- 2 Act are severable.

**I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session**

Bill No. 35-24(COA)

Introduced by:

Michael F.Q. San Nicolas

Helen Cruz Nelson

2017 MAR -3 PM 3:07

AN ACT TO ESTABLISH THE SIMON SANCHEZ HIGH SCHOOL BUILDING FUND, TRANSFER FOUR HUNDRED THIRTY THOUSAND DOLLARS (\$430,000) FROM THE CAPITOL DISTRICT FUND INTO THE SIMON SANCHEZ HIGH SCHOOL BUILDING FUND, AND APPROPRIATE FOUR HUNDRED THIRTY THOUSAND DOLLARS (\$430,000) TO FUND AN ARCHITECTURAL AND ENGINEERING PLAN FOR THE PURPOSE OF CONSTRUCTING A NEW SIMON SANCHEZ HIGH SCHOOL.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Simon Sanchez High School Building Fund. There is hereby created, separate and apart from all other funds of the government of Guam, a special fund known as the Simon Sanchez High School Building Fund ('Fund'), which *shall* be administered by the Director of Administration. The Fund *shall* neither be subject to the transfer authority of *I Maga'lahaen Guåhan* nor be commingled with the General Fund or any other funds of the government of Guam. Amounts deposited, appropriated, allocated, or transferred into the Fund *shall* be used solely for expenses relative to the planning, design, and construction of a new Simon Sanchez High School.

1 **Section 2. Transfer from the Capitol District Fund into the Simon**
2 **Sanchez High School Building Fund.** Upon the establishment of the Simon
3 Sanchez High School Building Fund, authorized in this Act, notwithstanding any
4 other provision of law to the contrary, the unrestricted amount of up to Four
5 Hundred Thirty Thousand Dollars (\$430,000) is hereby transferred from the
6 account balance of the Capitol District Fund into the Simon Sanchez High School
7 Building Fund. Such amount *shall* be held in reserve in the Capitol District Fund
8 until transferred pursuant to this Section.

9 **Section 3. Appropriation to fund an Architectural and Engineering**
10 **Plan.** Upon the transfer of funds authorized in Section 2 of this Act, the sum of
11 such transfer up to Four Hundred Thirty Thousand Dollars (\$430,000) is hereby
12 appropriated from the Simon Sanchez High School Building Fund to fund an
13 architectural and engineering plan for the purpose of constructing a new Simon
14 Sanchez High School. Such plan *shall* meet current facility needs of the school
15 district served by Simon Sanchez High School, inclusive of projected growth for a
16 period of not less than the amortization schedule of the best projected longest-
17 dated financing instrument of the project as advised by the Guam Economic
18 Development Authority, if any, and further conform to specifications as
19 determined by the Department of Public Works and the Guam Department of
20 Education, and *shall* be limited to a total construction cost not to exceed One
21 Hundred Million Dollars (\$100,000,000).

22 **Section 4. Severability.** If Section 3 of this Act or its application to any
23 person or circumstance is found to be invalid, or contrary to law, such invalidity
24 *shall* not affect other provisions or applications of this Act which can be given
25 effect without such invalid provision or application, and to this end the provisions
26 of Section 3 of this Act are severable.

Section 5. Sunset of the Simon Sanchez High School Building Fund.

Following the issuance of an occupancy permit for a new Simon Sanchez High School, The Simon Sanchez High School Building Fund established in Section 1 of this Act shall sunset, its account shall be closed, and, if there is any remaining fund balance, such balance shall be transferred into the Capitol District Fund.

225-32 (COR)
P.L. 32-120

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
	Judith T. Won Pat, Ed.D. T.R. Muna Barnes Aline A. Yamashita, Ph.D.	AN ACT TO ADD A NEW CHAPTER 58C TO TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL AND TO AMEND AND RENUMBER §22425(q) ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO REVALUATION OF REAL PROPERTY TAXES AND TO AMEND §53101 OF TITLE 17 GUAM CODE ANNOTATED, RELATIVE TO EARLY CHILDHOOD PROGRAM FUND.	11/22/13 8:46 a.m.	11/22/13	Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land	1/14/14 2:00 p.m.	1/27/14 4:24 p.m.	Fiscal Note Requested 11/25/13
	DATE PASSED	TITLE	TRANSMITTED		DUE DATE	DATE SIGNED BY 1 MAGALAHEN GUAMAN	PUBLIC LAW NO.	NOTES
	2/1/2014	AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO AMEND AND RENUMBER § 22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO AMEND § 53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND.	2/1/14	10:50 p.m.	2/13/2014	2/10/2014	32-120	As amended by the Author; and further amended on the Floor.

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

FEB 13 2014

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

32-14-1301
Office of the Speaker
Judith T. Won Pat, Ed.D.
Date 2/14/14
Time 4:02 PM
Received by

Dear Madame Speaker:

Transmitted herewith is Bill No. 225-32 (COR) "AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO AMEND AND RENUMBER §22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO AMEND §53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND" which I signed into law on February 10, 2014 as **Public Law 32-120**.

Senseramente,

EDDIE BAZA CALVO

2014 FEB 14 PM 4:49 PM

1301

Ricardo J. Bordallo Governor's Complex • Adelup, Guam 96910
Tel: (671) 472-8931 • Fax: (671) 477-4826 • governor.guam.gov • calendar.guam.gov

Eddie Baza Calvo

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@governorcalvo

governorofguam

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

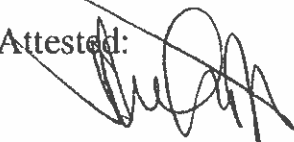
CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that Bill No. 225-32 (COR), "AN ACT TO *ADD* A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO *AMEND* AND *RENUMBER* § 22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO *AMEND* § 53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND," was on the 1st day of February, 2014, duly and regularly passed.



Judith T. Won Pat, Ed.D.
Speaker

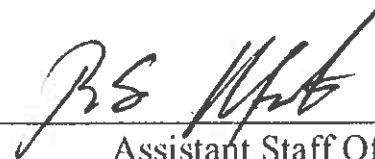
Attested:



Tina Rose Muña Barnes
Legislative Secretary

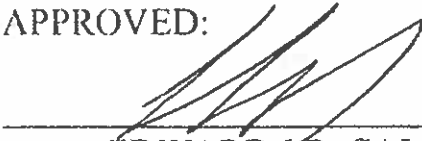
This Act was received by *I Maga'lahaen Guåhan* this 1st day of FEB,
2014, at

10:50 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date: FEB 10 2014

Public Law No. 32-120

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 225-32 (COR)

As amended by the Author; and
further amended on the Floor.

Introduced by:

Judith T. Won Pat, Ed.D
T. R. Muña Barnes
Aline A. Yamashita, Ph.D.
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
B. J.F. Cruz
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreddie
Tommy Morrison
Vicente (ben) C. Pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
Michael F. Q. San Nicolas

AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO AMEND AND RENUMBER § 22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO AMEND § 53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Title. This Act *shall* be cited and referred to as the “*Ma Kåhat* Act of 2013.”

Section 2. A new Chapter 58 D is hereby *added* to Title 5, Guam Code Annotated, to read as follows:

“CHAPTER 58D

MA KÅHAT ACT OF 2013

§ 58D101. Title.

§ 58D102. Legislative Findings and Policies.

§ 58D103. Definitions.

§ 58D104. Authorization to Enter Into Long-Term Leases.

§ 58D105. Procurement.

§ 58D106. Responsibilities of Contractor.

§ 58D107. Assignments.

§ 58D108. Use of Tax-Exempt Bonds for Financing.

§ 58D109. Pledge of Additional Revenue from the Real Property Valuation.

§58D110. Utilities and Routine Maintenance and Repair.

§ 58D111. Maintenance Fund.

§ 58D112. Contractual Safeguards.

§ 58D113. Severability.

§ 58D101. Title. This Act *shall* be known and *shall* be cited as “*Ma Kåhat* Act of 2013.”

§ 58D102. Legislative Findings and Policies. *I Liheslaturan Guåhan* finds that Simon Sanchez High School faces the combined challenges of deteriorating conditions, out of date design, and overcrowding. These combined deficiencies impair the quality of teaching and learning and

1 contribute to health and safety problems for staff and students. It should be
2 noted that it is critical for the Guam Department of Education to develop a
3 comprehensive capital improvement plan to provide a roadmap for
4 prioritizing facility improvements beyond Simon Sanchez.

5 *I Liheslatura* finds that after reviewing the summary of outstanding
6 General and Limited Obligation debts as of March 1, 2013, that the debt
7 ceiling assessed value is at One Billion One Hundred Thirty Nine Million
8 Four Hundred Sixty Four Thousand Eight Hundred Fifty Three Dollars
9 (\$1,139,464,853). It also states that the General Obligation Debt is Four
10 Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight
11 Hundred Fifty Three Dollars (\$446,473,853); and the Limited Obligation
12 Debt is Six Hundred Sixty Three Million Eight Hundred Ninety Six
13 Thousand Eight Hundred Three Dollars (\$663,896,803), with an
14 accumulated total of One Billion One Hundred Ten Million Three Hundred
15 Seventy Thousand Six Hundred Fifty Six Dollars (\$1,110,370,656).
16 Subtracting the debt ceiling limit less the General and Limited Obligation
17 Debts leaves the amount for future debt obligation at Twenty Nine Million
18 Ninety Four Thousand One Hundred Ninety Seven Dollars (\$29,094,197).

19 *I Liheslatura* further finds that the cost for the renovation or
20 construction of a new Simon Sanchez High School would exceed Guam's
21 debt ceiling obligation cap if a General Obligation Bond is pursued. To
22 circumvent the debt ceiling cap, *I Liheslatura* finds that the construction of
23 *Okkodo* High School, *Astumbo* Middle School, *Liguan* Elementary School,
24 *Adacao* Elementary School, John F. Kennedy High School and the
25 expansion of *Okkodo* High School validates the fundamental soundness of
26 using a municipal lease as a vehicle to build new educational facilities. By
27 utilizing municipal leasing to renovate or construct a new Simon Sanchez

1 High School, the remaining future debt obligation may be used to fund other
2 priorities of the government.

3 *I Liheslatura* further intends to authorize *I Maga'lahaen Guåhan* to
4 pledge or reserve the additional proceeds as a source of payment for a
5 municipal lease financing, secured for the purposes stated herein, either to
6 renovate or construct a new Simon Sanchez High School. To overcome the
7 financing hurdles, *I Liheslaturan Guåhan* supports the government of
8 Guam to enter into a contract for the financing, design, renovation or
9 construction and long-term capital maintenance of Simon Sanchez High
10 School with a private sector contractor who can provide long-term
11 financing obtained through tax-exempt obligations or other
12 competitive alternative financing based on long-term lease-backs to
13 the government of Guam. In order to facilitate system-wide
14 improvements, *I Liheslatura shall* authorize the Guam Department of
15 Education to develop a comprehensive capital improvement plan for
16 prioritizing capital improvements to all Guam Department of Education
17 schools. To facilitate the financing, design, renovation or construction
18 and maintenance of an education facility envisioned by this Act, the
19 government of Guam will be authorized to lease, for up to thirty (30)
20 years, government of Guam property on which the facilities will be
21 constructed to the contractor, who will design, renovate or construct a
22 new education facility in accordance with specifications approved by
23 Guam Department of Education. The education facility and land will be
24 leased back to the government of Guam for a period *not to exceed* thirty
25 (30) years or the initial ground lease to the contractor over which time
26 the government of Guam will amortize, as lease payments to the
27 contractor, the cost of the financing, design, renovation or construction

1 and related expenses of the education facility. The contractor will also
2 be responsible for the capital maintenance of the education facility
3 constructed under this Act, which costs *shall* be paid by the government of
4 Guam, as provided for under this Act. At the expiration of the lease-back
5 period, the government of Guam real property and the education facility
6 that is renovated or constructed on the government of Guam real property
7 will revert to the government of Guam with no further obligations to the
8 Contractor.

9 **§ 58D103. Definitions.** For purposes of this Chapter and *unless*
10 otherwise specified, the following words and phrases are defined to mean:

11 (a) *Act* means Chapter 58D of Title 5, Guam Code
12 Annotated, known as the “*Ma Kāhat Act of 2013.*”

13 (b) *Comprehensive capital improvement plan* means a plan
14 that takes into consideration the physical condition of each school,
15 along with attendance area population, enrollment patterns, and
16 bussing logistics. It *shall* also include how each school meets the
17 instructional needs of GDOE and prioritizes repairs of existing
18 schools, and renovation and construction of new school facilities in
19 order to deal with GDOE limited resources.

20 (c) *Contract shall* mean the various design, renovation or
21 construction and financing agreements entered into by and between
22 the education agency and the contractor following negotiations on the
23 response to the Request for Proposal.

24 (d) *Contractor shall* mean the authorized entity which *shall*
25 be the signatory on the Contract and *shall* be fully responsible for
26 carrying out the design, renovation or construction, financing and
27 maintenance of the education facility. The contractor may cooperate

1 with another entity or entities in any manner the contractor deems
2 appropriate to provide for the financing, design, renovation,
3 construction or maintenance of the public school facilities envisioned
4 by this Act.

5 (e) *Education agency shall* mean the Guam Department of
6 Education.

7 (f) *Education facility* as used in this Act, *shall* mean the
8 renovation or construction of a new high school, and to include its
9 athletic facilities to be located on the existing site of Simon Sanchez
10 High School.

11 (g) *Lease shall* mean a lease from an education agency to the
12 contractor entered into at the time of the contract for the property.

13 (h) *Lease-back shall* mean the lease from the contractor to
14 the education agency.

15 (i) *Lease-back period shall* mean the term of the lease from
16 the contractor to the education agency.

17 (j) *Property shall* mean any property on which an education
18 facility is located.

19 **§ 58D104. Authorization to Enter Into Long-Term Leases.** For
20 the purpose of facilitating the financing of the design, renovation
21 or construction and maintenance of an education facility encompassed
22 by this Act, the government of Guam or an education agency, as the case
23 may be, is authorized to lease, if required, to the contractor sufficient
24 government of Guam real property on which to renovate or construct a
25 new education facility; *provided*, such property is in the inventory of the
26 education agency or the government of Guam. The property may be the
27 site of an existing education facility under the control of an education

1 agency, which existing facility may be renovated or demolished and
2 rebuilt under the provisions of this Act. The education agency is also
3 authorized to lease back from the contractor the property for a
4 period mutually agreed upon between the education agency and the
5 contractor as may be reasonably necessary to amortize over the lease-
6 back period the costs associated with the financing, design, renovation or
7 construction of the education facility. In no event shall the end of such
8 lease-back period be later than the date thirty (30) years from the
9 scheduled date of completion of the education facility. The lease-back
10 may be structured as an annually renewable lease with provision for
11 automatic renewals to the extent that pledged or reserved revenue under
12 §22425(q)(4) and (6) of Title 5, Guam Code Annotated, is available. The
13 lease-back *shall not* be construed as a debt under any applicable debt
14 limitation under the Guam Organic Act or Guam law.

15 **§ 58D105. Procurement.** Subject to the approval of *I Liheslaturan*
16 *Guåhan*, the government of Guam or an education agency *shall* solicit
17 Requests for Proposals (RFP) through the Department of Public Works, in
18 compliance with the Guam procurement law, for the development of the
19 comprehensive capital improvement plan, the financing, design, renovation
20 or construction of the education facility, together with insurance and
21 maintenance of the education facility over the lease-back period, according
22 to the needs of the education agency and consistent with this Chapter. The
23 choice of the contractor *shall* be made by a selection committee comprised
24 of the Superintendent of the Department of Education, serving as Chairman,
25 and including the Director of the Department of Public Works or Deputy
26 Director, the Director of the Department of Land Management or Deputy
27 Director, the Administrator of the Guam Environmental Protection Agency

1 or Deputy Administrator, and the Administrator of the Guam Economic
2 Development Authority or Deputy Administrator. The committee *shall*
3 access the prior performance of the contractor on similar projects and may
4 disqualify any Contractor that does not have a successful record of project
5 completion on Guam.

6 The selection of a contractor *shall* be based upon the proposal that
7 delivers the best value for Guam in meeting the objectives of the education
8 agency.

9 The RFP *shall* be issued within thirty (30) days of enactment of this
10 Act for the renovation or construction of a new Simon Sanchez High School
11 on the existing site, which may include demolition of such portions of the
12 existing facility as necessary.

13 **§ 58D106. Responsibilities of Contractor.** The contract *shall*
14 require that the contractor will work with GDOE to develop the
15 comprehensive capital improvement plan in connection with the design of a
16 renovated or construction of a new Simon Sanchez High School. Further,
17 the contractor *shall* be responsible for all costs, expenses and fees of any
18 kind or nature, associated with the design, civil improvements, on-site
19 and off-site infrastructure, construction, permits, and financing
20 associated with the completion of an education facility, including the
21 financing of furniture and equipment for the education facility, as, and
22 to the extent, provided by the education agency in the Request for
23 Proposals. The contract will also require that all major subcontracts be
24 covered by a performance bond; and further, that there be a specific
25 delivery date with liquidated damages for failure to deliver the school by
26 the specified date. The contractor *shall* also be responsible for the capital
27 maintenance of the schools during the lease-back period, but *shall not* be

1 responsible for the capital maintenance of the furniture and equipment.
2 The lease-back may provide that if sufficient funds are *not* appropriated
3 or otherwise available for the payment of amounts due under the lease and
4 any maintenance agreement, the education agency will have the
5 obligation to vacate the education facility, and the contractor *shall* have
6 the right of use and occupancy of the education facility for the remainder
7 of the term of the lease, *unless* new mutually satisfactory terms are entered
8 into. For this purpose, the lease may provide that its term shall be extended
9 for a period *not to exceed* the shorter of ten (10) years beyond the
10 original term of the lease-back or such period of time as is necessary to
11 repay in full any financing arranged pursuant to § 58D108. The capital
12 maintenance costs *shall* be paid by the education agency on a periodic
13 basis as incurred by the contractor on terms to be agreed to in the contract
14 for the education facility.

15 **§ 58D107. Assignments.** To facilitate the purposes of this Act
16 and to provide security for the holders of any financing instruments issued
17 pursuant to this Act, the contractor may assign, without the need of the
18 consent of the education agency, the contract, the lease, and the
19 lease-back to any underwriter, trustee, or other party as appropriate, to
20 facilitate the issuance of the tax-exempt obligations, other financial
21 instruments or alternative financing for the education facility.

22 **§ 58D108. Use of Tax-Exempt Bonds for Financing.** To
23 minimize the financing cost to the education agency, financing utilized by
24 the contractor to fund the design, renovation or construction of an
25 education facility *shall* be through tax-exempt obligations or other
26 financial instruments, provided, such financing is available at interest rates

1 determined by the education agency to be reasonable and competitive.
2 Alternatively, the contractor may use an alternative method of financing,
3 including, but *not* limited to, a short term debt, mortgage, loan, federally
4 guaranteed loan or loan by an instrumentality of the United States of
5 America, if such financing will better serve the needs of the people of
6 Guam. Such alternative financing *shall* be approved by *I Liheslaturan*
7 *Guåhan*. The purpose for the requirements of this Section is to assure the
8 education agency pays the lowest possible interest rate so that the cost to
9 the education agency of financing the design, renovation or construction
10 of an education facility, amortized through the lease-back payments
11 from the education agency to the contractor, will be lower than regular
12 commercial rates.

13 **§ 58D109. Pledge of Additional Revenue from the Real Property**
14 **Valuation.** Rental payments under the lease and the lease-back may be
15 secured by a pledge or other reservation of revenues received by the
16 government of Guam pursuant to §22425(q)(4) and (6) Article 4, Chapter 22
17 Division 2, Title 5, Guam Code Annotated. Any amounts pledged as
18 provided in this Section are hereby continuously appropriated for the
19 purpose of making lease-back payments, but any amounts *only* reserved as
20 provided in this Section, and *not* pledged, *shall* be subject to an annual
21 appropriation for the purpose of making lease-back payments. Any such
22 pledge or reservation authorized hereunder *shall* be valid and binding from
23 the time the pledge or reservation is made, and *shall* be limited to the sum of
24 Five Million Fifty One Thousand Nine Hundred Seventy Seven Dollars and
25 Ninety Eight Cents (\$5,051,977.98) per year during the lease-back period, as
26 outlined in §22425(q)(4) and (6) of Title 5, Guam Code Annotated, hereof.
27 The revenues pledged or reserved and thereafter received by the government

1 of Guam or by any trustee, depository or custodian *shall* be deposited in a
2 separate account and *shall* be immediately subject to such reservation or the
3 lien of such pledge without any physical delivery thereof or further act, and
4 such reservation or the lien of such pledge *shall* be valid and binding against
5 all parties having claims of any kind in tort, contract or otherwise against the
6 government of Guam or such trustee, depository or custodian, irrespective of
7 whether the parties have notice thereof. The instrument by which such
8 pledge or reservation is created need not be recorded.

9 **§ 58D110. Utilities and Routine Maintenance and Repair.** The
10 education agency *shall* be responsible for the connection and payment of all
11 utilities, including without limitation, power, water, sewer, telephone and
12 cable, and all routine interior maintenance and repair and exterior
13 groundskeeping and landscaping, and upkeep of the education facility.

14 **§ 58D111. Maintenance Fund.** The contract or a separate
15 maintenance agreement with the contractor, and the lease-back, *shall*
16 provide that all capital maintenance of the education facility be performed
17 by the contractor as a separate cost, the terms of which, and the manner for
18 establishing the amount of payment, *shall* be determined as a part of the
19 contract; provided, however, that said documents may, at the discretion of
20 the education agency, provide that capital maintenance with respect to
21 equipment (including collateral equipment), onsite utilities, offsite utilities,
22 access roads and other similar improvements need not be performed by the
23 contractor.

24 **§ 58D112. Contractual Safeguards.** Prior to undertaking the work
25 of renovating or constructing a new Simon Sanchez High School, the Guam
26 Economic Development Authority, the Department of Public Works, the
27 Guam Department of Education, and the developer or contractor *shall*

1 negotiate and enter into a binding construction contract to renovate or
2 construct a new Simon Sanchez High School in accordance with the Guam
3 Building Code (21 G.C.A. Ch. 67), and any other applicable requirements.
4 The construction contract *shall* contain contractual obligations typically
5 found in government of Guam construction contracts, including, but *not*
6 limited to:

- 7 (a) warranties;
- 8 (b) liquidated damages;
- 9 (c) performance and payment bonds;
- 10 (d) indemnity;
- 11 (e) insurance;
- 12 (f) standard specifications;
- 13 (f) technical specifications;
- 14 (g) progress schedule;
- 15 (h) maintenance;
- 16 (i) compliance with Guam labor regulations;
- 17 (j) compliance with Guam prevailing wage rates for
18 employment of temporary alien workers (H2) on Guam;
- 19 (k) compliance with Public Law 29-98: restriction against
20 contractors employing convicted sex offenders to work at government
21 of Guam venues.

22 The contract *shall* be submitted for review and approval to all entities
23 charged by law with the duty to review and approve government contracts,
24 including the Office of the Attorney General.

25 **§ 58D113. Severability.** *If* any provision of this Act or its
26 application to any person or circumstance is found to be invalid or contrary
27 to law, such invalidity *shall not* affect other provisions or applications of this

1 Act which can be given effect without the invalid provisions or application,
2 and to this end the provisions of this Act are severable.”

3 **Section 3.** §22425(q) of Article 4, Chapter 22, Division 2, Title 5, Guam
4 Code Annotated, is hereby *amended* to read:

5 “(q) Notwithstanding any other provision of law, any additional real
6 property tax revenues received as a result of the most recent valuation of real
7 property due to commence during the calendar years 2013 and 2014 is
8 hereby continuously appropriated annually, *not to exceed* Eight Million Five
9 Hundred Thousand Dollars (\$8,500,000), from the Territorial Educational
10 Facilities Fund in the amounts and for purposes set forth in this Subsection:

11 (1) The sum of One Million One Hundred Fifty Eight
12 Thousand Two Hundred Eighty Three Dollars (\$1,158,283),
13 beginning in FY 2014, for the construction of the Student Services
14 Center and Engineering Annex at the University of Guam, as a source
15 of payment to the University of Guam Capital Improvements Fund for
16 the purpose of paying rental payments due under the lease-leaseback
17 agreements with the University of Guam Endowment Foundation for
18 a term of forty (40) years;

19 (2) The sum of Two Hundred Seventy-eight Thousand Nine
20 Hundred Twenty-one Dollars and Fifty-two Cents (\$278,921.52),
21 beginning in FY 2014 for forty (40) years, for the construction or
22 renovation of Building 100 and the DNA Laboratory at the Guam
23 Community College;

24 (3) The sum of One Hundred Thirty-two Thousand Fifteen
25 Dollars (\$132,015) to the Guam Public Library System to hire a
26 Territorial Librarian at Ninety-three Thousand Three Hundred

Seventy-seven Dollars (\$93,377), and a Computer Analyst II at Thirty-eight Thousand Six Hundred Thirty-eight Dollars (\$38,638);

(4) The sum of One Million Seven Hundred Seven Thousand Six Hundred Fifty-two Dollars (\$1,707,652) to the Guam Department of Education for the renovation or construction of a new Simon Sanchez High School.

(5) The sum of One Million Two Hundred Thousand Dollars (\$1,200,000) for rental payments under the lease and the lease-back as described in Chapter 58D of Title 5, Guam Code Annotated.

(6) other than the portions designated to be used for in Items (1), (2), (3), (4) and (5) of this Subsection, eighty percent (80%) of the remaining balance for rental payments due under the lease-leaseback agreement with GDOE secured for the renovation or construction of a new Simon Sanchez High School, to include its athletic facilities, and other Guam Department of Education public school facilities requiring new construction, rehabilitation or maintenance;

(7) other than the portions designated to be used for in Items (1), (2), (3), (4) and (5) of this Subsection, 3.5% of the remaining balance for the Early Childhood Program Fund, as described in §53101 of Title 17, Guam Code Annotated;

(8) other than the portions designated to be used for in Items (1), (2), (3), (4) and (5) of this Subsection, 3.5 % of the remaining balance for *I Famagu'on-ta*, Child Adolescent Services Division of the Guam Behavioral Health and Wellness Center, and Project *Karinu*. These funds *shall not* be subject to *I Maga'lahren Guåhan's* transfer authority.

1 (9) other than the portions designated to be used for in Items
2 (1), (2), (3) (4) and (5) of this Subsection, five percent (5%) of the
3 remaining balance to the Department of Revenue and Taxation for the
4 following:

5 (A) for maintenance support and sustainability of real
6 property data and system;

7 (B) for the five (5) year (quinquennial) property tax
8 revaluation as mandated by law;

9 (C) for enhancements, and technological
10 advancements related to software/hardware, and support staff
11 necessary to improve electronic services; and

12 (D) for other costs directly associated with improving
13 the efficiency of the real property tax system.

14 The Director of the Department of Revenue and Taxation *shall*
15 submit a report to *I Maga'lahaen Guåhan* and *I Liheslaturan Guåhan*
16 on a monthly basis as to the expenditures of the funds following the
17 enactment of this Act, detailing all transactions;

18 (10) other than the portions designated to be used for in Items
19 (1), (2), (3), (4) and (5) of this Subsection, five percent (5%) of the
20 remaining balance *shall* be lock boxed for the procurement of a
21 unified financial management information system, as recommended
22 by consensus from the Department of Revenue and Taxation, the
23 Department of Administration, the General Services Agency, the
24 Office of Public Accountability, the Office of Technology, the
25 University of Guam, the Guam Community College, the Guam
26 Department of Education, and Guam Memorial Hospital Authority.
27 This amount shall be subject to legislative appropriation.

(11) Other than the portions designated to be used for in Items (1), (2) (3) (4) and (5) of this Subsection, three percent (3%) of the remaining balance *shall* be a source of funding for island-wide school bus shelters. The Director of the Department of Public Works *shall* submit a report to *I Maga'lahaen Guåhan* and *I Liheslaturan Guåhan* on a monthly basis as to the expenditures of the funds following enactment of this Act, detailing all transactions."

Section 4. §53101 of Title 17, Guam Code Annotated, is hereby *amended* to read as follows:

"§ 53101. Early Childhood Program Fund. There is hereby created, separate and apart from all other funds of the government of Guam, a fund known as the "Early Childhood Program Fund." All monies received by or on behalf of the government of Guam pursuant to §22425(q)(7) of Title 5 GCA, *shall* be deposited in the Fund and used for early childhood programs at the University of Guam, the Guam Community College, or the Guam Department of Education. The Fund *shall not* be commingled with the General Fund or any other funds of the government of Guam, and it *shall* be maintained in a separate bank account. All monies in the Fund *shall* require legislative appropriation, and *shall not* be subject to any transfer authority of *I Maga'lahaen Guåhan*."

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



I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
THIRTY-SECOND GUAM LEGISLATURE
155 Hesler Place, Hagåtña, Guam 96910

February 1, 2014

The Honorable Edward J.B. Calvo
I Maga'láhen Guåhan
Ufisinan I Maga'láhi
Hagåtña, Guam 96910

Dear *Maga'láhi* Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 61-32(COR), 70-32(COR), 71-32(COR), 130-32(COR), 146-32(COR), 169-32(COR), 179-32(COR), 180-32(COR), 190-32(COR), 192-32(COR), 197-32(COR), 201-32(COR), 202-32(COR), 204-32(COR), 206-32(COR), 214-32(COR), 221-32(COR), 225-32(COR), 226-32(COR), 231-32(COR), 232-32(COR), 235-32(COR), 236-32(COR), 237-32(COR), 242-32(COR), 245-32(COR), 247-32(COR), 248-32(COR) and 268-32(LS) which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on February 1, 2014.

Sincerely,

TINA ROSE MUÑA BARNES
Legislative Secretary

FEB 1, 2014
10:50 p.m.
[Handwritten signature]

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

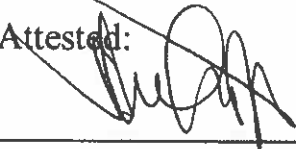
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Bill No. 225-32 (COR), "AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO AMEND AND RENUMBER § 22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO AMEND § 53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND," was on the 1st day of February, 2014, duly and regularly passed.



Judith T. Won Pat, Ed.D.
Speaker

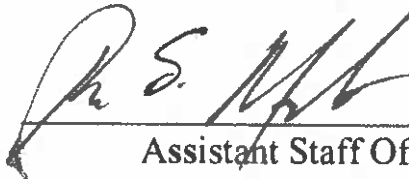
Attested:



Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 1st day of FEB, 2014, at

10:50 o'clock P..M.



Assistant Staff Officer
Maga'laha's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 225-32 (COR)

As amended by the Author; and
further amended on the Floor.

Introduced by:

Judith T. Won Pat, Ed.D
T. R. Muña Barnes
Aline A. Yamashita, Ph.D.
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
B. J.F. Cruz
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreddie
Tommy Morrison
Vicente (ben) C. Pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
Michael F. Q. San Nicolas

AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO AMEND AND RENUMBER § 22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO AMEND § 53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND.

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

2 **Section 1. Title.** This Act *shall* be cited and referred to as the “*Ma Kåhat*
3 Act of 2013.”

4 **Section 2.** A new Chapter 58 D is hereby *added* to Title 5, Guam Code
5 Annotated, to read as follows:

6 **“CHAPTER 58D**

7 ***MA KÅHAT* ACT OF 2013**

8 § 58D101. Title.

9 § 58D102. Legislative Findings and Policies.

10 § 58D103. Definitions.

11 § 58D104. Authorization to Enter Into Long-Term Leases.

12 § 58D105. Procurement.

13 § 58D106. Responsibilities of Contractor.

14 § 58D107. Assignments.

15 § 58D108. Use of Tax-Exempt Bonds for Financing.

16 § 58D109. Pledge of Additional Revenue from the Real Property
17 Valuation.

18 §58D110. Utilities and Routine Maintenance and Repair.

19 § 58D111. Maintenance Fund.

20 § 58D112. Contractual Safeguards.

21 § 58D113. Severability.

22 **§ 58D101. Title.** This Act *shall* be known and *shall* be cited as “*Ma*
23 *Kåhat* Act of 2013.”

24 **§ 58D102. Legislative Findings and Policies.** *I Liheslaturan*
25 *Guåhan* finds that Simon Sanchez High School faces the combined
26 challenges of deteriorating conditions, out of date design, and overcrowding.
27 These combined deficiencies impair the quality of teaching and learning and

1 contribute to health and safety problems for staff and students. It should be
2 noted that it is critical for the Guam Department of Education to develop a
3 comprehensive capital improvement plan to provide a roadmap for
4 prioritizing facility improvements beyond Simon Sanchez.

5 *I Liheslatura* finds that after reviewing the summary of outstanding
6 General and Limited Obligation debts as of March 1, 2013, that the debt
7 ceiling assessed value is at One Billion One Hundred Thirty Nine Million
8 Four Hundred Sixty Four Thousand Eight Hundred Fifty Three Dollars
9 (\$1,139,464,853). It also states that the General Obligation Debt is Four
10 Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight
11 Hundred Fifty Three Dollars (\$446,473,853); and the Limited Obligation
12 Debt is Six Hundred Sixty Three Million Eight Hundred Ninety Six
13 Thousand Eight Hundred Three Dollars (\$663,896,803), with an
14 accumulated total of One Billion One Hundred Ten Million Three Hundred
15 Seventy Thousand Six Hundred Fifty Six Dollars (\$1,110,370,656).
16 Subtracting the debt ceiling limit less the General and Limited Obligation
17 Debts leaves the amount for future debt obligation at Twenty Nine Million
18 Ninety Four Thousand One Hundred Ninety Seven Dollars (\$29,094,197).

19 *I Liheslatura* further finds that the cost for the renovation or
20 construction of a new Simon Sanchez High School would exceed Guam's
21 debt ceiling obligation cap if a General Obligation Bond is pursued. To
22 circumvent the debt ceiling cap, *I Liheslatura* finds that the construction of
23 *Okkodo* High School, *Astumbo* Middle School, *Liguan* Elementary School,
24 *Adacao* Elementary School, John F. Kennedy High School and the
25 expansion of *Okkodo* High School validates the fundamental soundness of
26 using a municipal lease as a vehicle to build new educational facilities. By
27 utilizing municipal leasing to renovate or construct a new Simon Sanchez

1 High School, the remaining future debt obligation may be used to fund other
2 priorities of the government.

3 *I Liheslatura* further intends to authorize *I Maga'lahaen Guåhan* to
4 pledge or reserve the additional proceeds as a source of payment for a
5 municipal lease financing, secured for the purposes stated herein, either to
6 renovate or construct a new Simon Sanchez High School. To overcome the
7 financing hurdles, *I Liheslaturan Guåhan* supports the government of
8 Guam to enter into a contract for the financing, design, renovation or
9 construction and long-term capital maintenance of Simon Sanchez High
10 School with a private sector contractor who can provide long-term
11 financing obtained through tax-exempt obligations or other
12 competitive alternative financing based on long-term lease-backs to
13 the government of Guam. In order to facilitate system-wide
14 improvements, *I Liheslatura shall* authorize the Guam Department of
15 Education to develop a comprehensive capital improvement plan for
16 prioritizing capital improvements to all Guam Department of Education
17 schools. To facilitate the financing, design, renovation or construction
18 and maintenance of an education facility envisioned by this Act, the
19 government of Guam will be authorized to lease, for up to thirty (30)
20 years, government of Guam property on which the facilities will be
21 constructed to the contractor, who will design, renovate or construct a
22 new education facility in accordance with specifications approved by
23 Guam Department of Education. The education facility and land will be
24 leased back to the government of Guam for a period *not to exceed* thirty
25 (30) years or the initial ground lease to the contractor over which time
26 the government of Guam will amortize, as lease payments to the
27 contractor, the cost of the financing, design, renovation or construction

1 and related expenses of the education facility. The contractor will also
2 be responsible for the capital maintenance of the education facility
3 constructed under this Act, which costs *shall* be paid by the government of
4 Guam, as provided for under this Act. At the expiration of the lease-back
5 period, the government of Guam real property and the education facility
6 that is renovated or constructed on the government of Guam real property
7 will revert to the government of Guam with no further obligations to the
8 Contractor.

9 **§ 58D103. Definitions.** For purposes of this Chapter and *unless*
10 otherwise specified, the following words and phrases are defined to mean:

11 (a) *Act* means Chapter 58D of Title 5, Guam Code
12 Annotated, known as the “*Ma Kâhat* Act of 2013.”

13 (b) *Comprehensive capital improvement plan* means a plan
14 that takes into consideration the physical condition of each school,
15 along with attendance area population, enrollment patterns, and
16 bussing logistics. It *shall* also include how each school meets the
17 instructional needs of GDOE and prioritizes repairs of existing
18 schools, and renovation and construction of new school facilities in
19 order to deal with GDOE limited resources.

20 (c) *Contract* *shall* mean the various design, renovation or
21 construction and financing agreements entered into by and between
22 the education agency and the contractor following negotiations on the
23 response to the Request for Proposal.

24 (d) *Contractor* *shall* mean the authorized entity which *shall*
25 be the signatory on the Contract and *shall* be fully responsible for
26 carrying out the design, renovation or construction, financing and
27 maintenance of the education facility. The contractor may cooperate

1 with another entity or entities in any manner the contractor deems
2 appropriate to provide for the financing, design, renovation,
3 construction or maintenance of the public school facilities envisioned
4 by this Act.

5 (e) *Education agency shall* mean the Guam Department of
6 Education.

7 (f) *Education facility* as used in this Act, *shall* mean the
8 renovation or construction of a new high school, and to include its
9 athletic facilities to be located on the existing site of Simon Sanchez
10 High School.

11 (g) *Lease shall* mean a lease from an education agency to the
12 contractor entered into at the time of the contract for the property.

13 (h) *Lease-back shall* mean the lease from the contractor to
14 the education agency.

15 (i) *Lease-back period shall* mean the term of the lease from
16 the contractor to the education agency.

17 (j) *Property shall* mean any property on which an education
18 facility is located.

19 **§ 58D104. Authorization to Enter Into Long-Term Leases.** For
20 the purpose of facilitating the financing of the design, renovation
21 or construction and maintenance of an education facility encompassed
22 by this Act, the government of Guam or an education agency, as the case
23 may be, is authorized to lease, if required, to the contractor sufficient
24 government of Guam real property on which to renovate or construct a
25 new education facility; *provided*, such property is in the inventory of the
26 education agency or the government of Guam. The property may be the
27 site of an existing education facility under the control of an education

1 agency, which existing facility may be renovated or demolished and
2 rebuilt under the provisions of this Act. The education agency is also
3 authorized to lease back from the contractor the property for a
4 period mutually agreed upon between the education agency and the
5 contractor as may be reasonably necessary to amortize over the lease-
6 back period the costs associated with the financing, design, renovation or
7 construction of the education facility. In no event shall the end of such
8 lease-back period be later than the date thirty (30) years from the
9 scheduled date of completion of the education facility. The lease-back
10 may be structured as an annually renewable lease with provision for
11 automatic renewals to the extent that pledged or reserved revenue under
12 §22425(q)(4) and (6) of Title 5, Guam Code Annotated, is available. The
13 lease-back *shall not* be construed as a debt under any applicable debt
14 limitation under the Guam Organic Act or Guam law.

15 **§ 58D105. Procurement.** Subject to the approval of *I Liheslaturan*
16 *Guåhan*, the government of Guam or an education agency *shall* solicit
17 Requests for Proposals (RFP) through the Department of Public Works, in
18 compliance with the Guam procurement law, for the development of the
19 comprehensive capital improvement plan, the financing, design, renovation
20 or construction of the education facility, together with insurance and
21 maintenance of the education facility over the lease-back period, according
22 to the needs of the education agency and consistent with this Chapter. The
23 choice of the contractor *shall* be made by a selection committee comprised
24 of the Superintendent of the Department of Education, serving as Chairman,
25 and including the Director of the Department of Public Works or Deputy
26 Director, the Director of the Department of Land Management or Deputy
27 Director, the Administrator of the Guam Environmental Protection Agency

1 or Deputy Administrator, and the Administrator of the Guam Economic
2 Development Authority or Deputy Administrator. The committee *shall*
3 access the prior performance of the contractor on similar projects and may
4 disqualify any Contractor that does not have a successful record of project
5 completion on Guam.

6 The selection of a contractor *shall* be based upon the proposal that
7 delivers the best value for Guam in meeting the objectives of the education
8 agency.

9 The RFP *shall* be issued within thirty (30) days of enactment of this
10 Act for the renovation or construction of a new Simon Sanchez High School
11 on the existing site, which may include demolition of such portions of the
12 existing facility as necessary.

13 **§ 58D106. Responsibilities of Contractor.** The contract *shall*
14 require that the contractor will work with GDOE to develop the
15 comprehensive capital improvement plan in connection with the design of a
16 renovated or construction of a new Simon Sanchez High School. Further,
17 the contractor *shall* be responsible for all costs, expenses and fees of any
18 kind or nature, associated with the design, civil improvements, on-site
19 and off-site infrastructure, construction, permits, and financing
20 associated with the completion of an education facility, including the
21 financing of furniture and equipment for the education facility, as, and
22 to the extent, provided by the education agency in the Request for
23 Proposals. The contract will also require that all major subcontracts be
24 covered by a performance bond; and further, that there be a specific
25 delivery date with liquidated damages for failure to deliver the school by
26 the specified date. The contractor *shall* also be responsible for the capital
27 maintenance of the schools during the lease-back period, but *shall not* be

1 responsible for the capital maintenance of the furniture and equipment.
2 The lease-back may provide that if sufficient funds are *not* appropriated
3 or otherwise available for the payment of amounts due under the lease and
4 any maintenance agreement, the education agency will have the
5 obligation to vacate the education facility, and the contractor *shall* have
6 the right of use and occupancy of the education facility for the remainder
7 of the term of the lease, *unless* new mutually satisfactory terms are entered
8 into. For this purpose, the lease may provide that its term shall be extended
9 for a period *not to exceed* the shorter of ten (10) years beyond the
10 original term of the lease-back or such period of time as is necessary to
11 repay in full any financing arranged pursuant to § 58D108. The capital
12 maintenance costs *shall* be paid by the education agency on a periodic
13 basis as incurred by the contractor on terms to be agreed to in the contract
14 for the education facility.

15 **§ 58D107. Assignments.** To facilitate the purposes of this Act
16 and to provide security for the holders of any financing instruments issued
17 pursuant to this Act, the contractor may assign, without the need of the
18 consent of the education agency, the contract, the lease, and the
19 lease-back to any underwriter, trustee, or other party as appropriate, to
20 facilitate the issuance of the tax-exempt obligations, other financial
21 instruments or alternative financing for the education facility.

22 **§ 58D108. Use of Tax-Exempt Bonds for Financing.** To
23 minimize the financing cost to the education agency, financing utilized by
24 the contractor to fund the design, renovation or construction of an
25 education facility *shall* be through tax-exempt obligations or other
26 financial instruments, provided, such financing is available at interest rates

1 determined by the education agency to be reasonable and competitive.
2 Alternatively, the contractor may use an alternative method of financing,
3 including, but *not* limited to, a short term debt, mortgage, loan, federally
4 guaranteed loan or loan by an instrumentality of the United States of
5 America, if such financing will better serve the needs of the people of
6 Guam. Such alternative financing *shall* be approved by *I Liheslaturan*
7 *Guåhan*. The purpose for the requirements of this Section is to assure the
8 education agency pays the lowest possible interest rate so that the cost to
9 the education agency of financing the design, renovation or construction
10 of an education facility, amortized through the lease-back payments
11 from the education agency to the contractor, will be lower than regular
12 commercial rates.

13 **§ 58D109. Pledge of Additional Revenue from the Real Property**
14 **Valuation.** Rental payments under the lease and the lease-back may be
15 secured by a pledge or other reservation of revenues received by the
16 government of Guam pursuant to §22425(q)(4) and (6) Article 4, Chapter 22
17 Division 2, Title 5, Guam Code Annotated. Any amounts pledged as
18 provided in this Section are hereby continuously appropriated for the
19 purpose of making lease-back payments, but any amounts *only* reserved as
20 provided in this Section, and *not* pledged, *shall* be subject to an annual
21 appropriation for the purpose of making lease-back payments. Any such
22 pledge or reservation authorized hereunder *shall* be valid and binding from
23 the time the pledge or reservation is made, and *shall* be limited to the sum of
24 Five Million Fifty One Thousand Nine Hundred Seventy Seven Dollars and
25 Ninety Eight Cents (\$5,051,977.98) per year during the lease-back period, as
26 outlined in §22425(q)(4) and (6) of Title 5, Guam Code Annotated, hereof.
27 The revenues pledged or reserved and thereafter received by the government

1 of Guam or by any trustee, depository or custodian *shall* be deposited in a
2 separate account and *shall* be immediately subject to such reservation or the
3 lien of such pledge without any physical delivery thereof or further act, and
4 such reservation or the lien of such pledge *shall* be valid and binding against
5 all parties having claims of any kind in tort, contract or otherwise against the
6 government of Guam or such trustee, depository or custodian, irrespective of
7 whether the parties have notice thereof. The instrument by which such
8 pledge or reservation is created need not be recorded.

9 **§ 58D110. Utilities and Routine Maintenance and Repair.** The
10 education agency *shall* be responsible for the connection and payment of all
11 utilities, including without limitation, power, water, sewer, telephone and
12 cable, and all routine interior maintenance and repair and exterior
13 groundskeeping and landscaping, and upkeep of the education facility.

14 **§ 58D111. Maintenance Fund.** The contract or a separate
15 maintenance agreement with the contractor, and the lease-back, *shall*
16 provide that all capital maintenance of the education facility be performed
17 by the contractor as a separate cost, the terms of which, and the manner for
18 establishing the amount of payment, *shall* be determined as a part of the
19 contract; provided, however, that said documents may, at the discretion of
20 the education agency, provide that capital maintenance with respect to
21 equipment (including collateral equipment), onsite utilities, offsite utilities,
22 access roads and other similar improvements need not be performed by the
23 contractor.

24 **§ 58D112. Contractual Safeguards.** Prior to undertaking the work
25 of renovating or constructing a new Simon Sanchez High School, the Guam
26 Economic Development Authority, the Department of Public Works, the
27 Guam Department of Education, and the developer or contractor *shall*

1 negotiate and enter into a binding construction contract to renovate or
2 construct a new Simon Sanchez High School in accordance with the Guam
3 Building Code (21 G.C.A. Ch. 67), and any other applicable requirements.
4 The construction contract *shall* contain contractual obligations typically
5 found in government of Guam construction contracts, including, but *not*
6 limited to:

- 7 (a) warranties;
- 8 (b) liquidated damages;
- 9 (c) performance and payment bonds;
- 10 (d) indemnity;
- 11 (e) insurance;
- 12 (f) standard specifications;
- 13 (f) technical specifications;
- 14 (g) progress schedule;
- 15 (h) maintenance;
- 16 (i) compliance with Guam labor regulations;
- 17 (j) compliance with Guam prevailing wage rates for
18 employment of temporary alien workers (H2) on Guam;
- 19 (k) compliance with Public Law 29-98: restriction against
20 contractors employing convicted sex offenders to work at government
21 of Guam venues.

22 The contract *shall* be submitted for review and approval to all entities
23 charged by law with the duty to review and approve government contracts,
24 including the Office of the Attorney General.

25 **§ 58D113. Severability.** *If* any provision of this Act or its
26 application to any person or circumstance is found to be invalid or contrary
27 to law, such invalidity *shall not* affect other provisions or applications of this

1 Act which can be given effect without the invalid provisions or application,
2 and to this end the provisions of this Act are severable.”

3 **Section 3.** §22425(q) of Article 4, Chapter 22, Division 2, Title 5, Guam
4 Code Annotated, is hereby *amended* to read:

5 “(q) Notwithstanding any other provision of law, any additional real
6 property tax revenues received as a result of the most recent valuation of real
7 property due to commence during the calendar years 2013 and 2014 is
8 hereby continuously appropriated annually, *not to exceed* Eight Million Five
9 Hundred Thousand Dollars (\$8,500,000), from the Territorial Educational
10 Facilities Fund in the amounts and for purposes set forth in this Subsection:

11 (1) The sum of One Million One Hundred Fifty Eight
12 Thousand Two Hundred Eighty Three Dollars (\$1,158,283),
13 beginning in FY 2014, for the construction of the Student Services
14 Center and Engineering Annex at the University of Guam, as a source
15 of payment to the University of Guam Capital Improvements Fund for
16 the purpose of paying rental payments due under the lease-leaseback
17 agreements with the University of Guam Endowment Foundation for
18 a term of forty (40) years;

19 (2) The sum of Two Hundred Seventy-eight Thousand Nine
20 Hundred Twenty-one Dollars and Fifty-two Cents (\$278,921.52),
21 beginning in FY 2014 for forty (40) years, for the construction or
22 renovation of Building 100 and the DNA Laboratory at the Guam
23 Community College;

24 (3) The sum of One Hundred Thirty-two Thousand Fifteen
25 Dollars (\$132,015) to the Guam Public Library System to hire a
26 Territorial Librarian at Ninety-three Thousand Three Hundred

Seventy-seven Dollars (\$93,377), and a Computer Analyst II at Thirty-eight Thousand Six Hundred Thirty-eight Dollars (\$38,638);

(4) The sum of One Million Seven Hundred Seven Thousand Six Hundred Fifty-two Dollars (\$1,707,652) to the Guam Department of Education for the renovation or construction of a new Simon Sanchez High School.

(5) The sum of One Million Two Hundred Thousand Dollars (\$1,200,000) for rental payments under the lease and the lease-back as described in Chapter 58D of Title 5, Guam Code Annotated.

(6) other than the portions designated to be used for in Items (1), (2), (3), (4) and (5) of this Subsection, eighty percent (80%) of the remaining balance for rental payments due under the lease-leaseback agreement with GDOE secured for the renovation or construction of a new Simon Sanchez High School, to include its athletic facilities, and other Guam Department of Education public school facilities requiring new construction, rehabilitation or maintenance;

(7) other than the portions designated to be used for in Items (1), (2), (3), (4) and (5) of this Subsection, 3.5% of the remaining balance for the Early Childhood Program Fund, as described in §53101 of Title 17, Guam Code Annotated;

(8) other than the portions designated to be used for in Items (1), (2), (3), (4) and (5) of this Subsection, 3.5 % of the remaining balance for *I Famagu'on-ta*, Child Adolescent Services Division of the Guam Behavioral Health and Wellness Center, and Project *Karinu*. These funds *shall not* be subject to *I Maga'lahaen Guåhan's* transfer authority.

LEGISLATIVE SESSION

I MINA'TRENTAI DOS NA LIHESLATURAN

2014 (SECOND) Regular Session

Voting Sheet

Speaker Antonio R. Unipingo Legislative Session Hall
February 1, 2014

Bill No. 225-32 (COR)

As amended by the Author and further amended on the Floor.

NAME	Yea	Nay	Not Voting/ Abstained	Out During Roll Call	Absent
Senator Thomas "Tom" C. ADA	✓				
Senator V. Anthony "Tony" ADA	✓				
Senator Frank Blas AGUON Jr.	✓				
Vice-Speaker Benjamin J.F. CRUZ		✓			
Senator Christopher M. DUENAS	✓				
Senator Michael LIMTIACO	✓				
Senator Brant McCREADIE	✓				
Senator Thomas "Tommy" MORRISON	✓				
Senator Tina Rose MUÑA BARNES	✓				
Senator Vicente (ben) Cabrera PANGELINAN		✓			
Senator Rory J. RESPICIO	✓				
Senator Dennis G. RODRIGUEZ, Jr.	✓				
Senator Michael F. Q.SAN NICOLAS	✓	1			
Speaker Judith T. WON PAT, Ed.D.	✓				
Senator Aline A. YAMASHITA, Ph.D.	✓				

TOTAL

13

2

Yea

Nay

Not Voting/
Abstained

Out During
Roll Call

Absent

CERTIFIED TRUE AND CORRECT:


Clerk of the Legislature

I = Pass



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com

E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Senator
Dennis G. Rodriguez, Jr.
Member

Vice-Speaker
Benjamin J.F. Cruz
Member

Legislative Secretary
Tina Rose Muña Barnes
Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

November 25, 2013

VIA E-MAIL
john.rios@bbmr.guam.gov

John A. Rios
Director
Bureau of Budget & Management Research
P.O. Box 2950
Hagåtña, Guam 96910


RE: Request for Fiscal Notes– Bill Nos. 222-32 (COR) through 227-32(COR)

Hafa Adai Mr. Rios:

Transmitted herewith is a listing of *I Mina'trentai Dos na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

Si Yu'os ma'åse' for your attention to this matter.

Very Truly Yours,


Senator Thomas C. Ada
Acting Chairperson of the Committee on Rules

Attachment (1)

Cc: Clerk of the Legislature

2013 NOV 25 PM 5:29

Bill Nos.	Sponsor	Title
222-32 (COR)	Vicente (hon) C Pascasio	AN ACT TO AMEND §89-01(a)(2); TO AMEND §89-01(a)(2)(B); TO ADD A NEW SUBSECTION (C) TO §89-01(a)(2); TO AMEND §89-02(a)(2); TO AMEND §89-02(a)(3); TO AMEND §89-02(a)(2); TO AMEND §89-02(a)(1); AND TO ADD A NEW SUBSECTION (a) TO §89-02 ALL OF CHAPTER 89-9 GUAM CODE ANNOTATED RELATIVE TO THE CRIMES AGAINST MINORS AND SEX OFFENDER REGISTRY
223-32 (COR)	Vicente (hon) C Pascasio	AN ACT TO APPROPRIATE THE SUM OF FOUR HUNDRED THOUSAND DOLLARS (\$400,000) FOR THE COMPENSATION TO FARMERS FOR CROP DAMAGES PROGRAM ESTABLISHED PURSUANT TO CHAPTER 64A, TITLE 5 OF THE GUAM CODE ANNOTATED
224-32 (COR)	T.C. Ana, R.J. Respicio	AN ACT TO AMEND §5425, §5426, §5427, §5450, §5452, §5480, §5481 AND §5485 (a) and (c) OF ARTICLE 9 AND §5703, §5705, §5706(a), §5707(a), §5708 OF ARTICLE 12, CHAPTER 5, TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO CLARIFYING LEGAL AND CONTRACTUAL REMEDIES IN GUAM PROCUREMENT LAW
225-32 (COR)	Joann T. Wan-Pai Ed.D. T.R. Maria Baines Alicia A. Yamasaki Ph.D.	AN ACT TO ADD A NEW CHAPTER 58C TO TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL AND TO AMEND AND RENUMBER §274-56, ARTICLE 4, CHAPTER 27, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED RELATIVE TO REVALUATION OF REAL PROPERTY TAXES AND TO AMEND §55101 OF TITLE 17, GUAM CODE ANNOTATED RELATIVE TO EARLY CHILDHOOD PROGRAM FUND
226-32 (COR)	Joann T. Wan-Pai Ed.D. T.R. Maria Baines Alicia A. Yamasaki Ph.D.	AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5 GUAM CODE ANNOTATED RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS
227-32 (COR)	T.C. Ana R.J. Respicio	AN ACT TO AUTHORIZE THE CREATION OF THE GUAM STREET LIGHT AUTHORITY TO ISSUE BONDS TO FINANCE THE PURCHASE AND INSTALLATION OF NEW LED STREET LIGHTS



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
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MAJORITY LEADER

November 22, 2013

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VICE CHAIRPERSON
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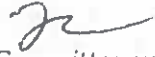
Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

MEMORANDUM

To: **Rennae Meno**
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: **Senator Thomas C. Ada** 
Acting Chairperson of the Committee on Rules

Subject: **Referral of Bill Nos. 225-32(COR) and 226-32(COR)**

As the Acting Chairperson of the Committee on Rules, I am forwarding my referral of **Bill Nos. 225-32(COR) and 226-32(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Attachment

TRENTA, 11
I MINA' BENTE DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 125-32 (WR)

Introduced by:

J. T. Won Pat, Ed.D.
Tina Rose Muña Barnes
Aline A. Yamashita, Ph.D.

AN ACT TO ADD A NEW CHAPTER 58C TO TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL AND TO AMEND AND RENUMBER §22425(q) ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO REVALUATION OF REAL PROPERTY TAXES AND TO AMEND §53101 OF TITLE 17 GUAM CODE ANNOTATED, RELATIVE TO EARLY CHILDHOOD PROGRAM FUND.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Title. This Act *shall* be cited and referred to as the "*Ma Kåhat Act of 2013*".

Section 2. Chapter 58C is hereby added to Title 5 of the Guam Code Annotated to read as follows:

"CHAPTER 58C

Ma Kåhat Act of 2013

§58C101. Title.

§58C102. Legislative Findings and Policies.

§58C103. Definitions.

§58C104. Authorization to Enter into Long-term Leases.

§58C105. Procurement.

§58C106. Responsibilities of Contractor.

§58C107. Assignments.

§58C108. Use of Tax-Exempt Bonds for Financing.

§58C109. Pledge of Additional Revenue from the Real Property
Valuation.

§58C110. Utilities and Routine Maintenance.

§58C111. Maintenance Fund.

§58C112. Contractual Safeguards

§58C113. Severability.

§58C101. Title. This Act *shall* be known and *shall* be cited as “*Ma
kâhat Act of 2013*”.

§58C102. Legislative Findings and Policies. *I Liheslaturan
Guâhan* finds that Simon Sanchez High School faces the combined
challenges of deteriorating conditions, out-of date design and overcrowding.
These combined deficiencies impair the quality of teaching and learning and
contribute to health and safety problems for staff and students.

I Liheslatura finds that after reviewing the summary of outstanding
General and Limited Obligation debts as of March 1, 2013, that the debt
ceiling assessed value is at One Billion One Hundred Thirty Nine Million
Four Hundred Sixty Four Thousand Eight hundred Fifty Three Dollars
(\$1,139,464,853). It also states that the General Obligation Debt is Four
Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight
Hundred Fifty Three Dollars (\$446,473,853), and the Limited Obligation
Debt is Six Hundred Sixty Three Million Eight Hundred Ninety Six
Thousand Eight Hundred Three Dollars (\$663,896,803) with an accumulated
total of One Billion One Hundred Ten Million Three Hundred Seventy
Thousand Six Hundred Fifty Six Dollars (\$1,110,370,656). Subtracting the
debt ceiling limit less the General and Limited Obligation Debts leaves the

1 amount for future debt obligation at Twenty Nine Million Ninety Four
2 Thousand One Hundred Ninety Seven (\$29,094,197).

3 *I Liheslatura* further finds that the cost for the renovation or
4 construction of a new Simon Sanchez High School would exceed Guam's
5 debt ceiling obligation cap if a General Obligation Bond is pursued. To
6 circumvent the debt ceiling cap, *I Liheslatura* finds that the construction of
7 Okkodo High School, Astumbo Middle School, Liguán Elementary School,
8 Adacao Elementary School, John F. Kennedy High School and the
9 expansion of Okkodo High School validates the fundamental soundness of
10 using municipal lease as a vehicle to build new educational facilities. By
11 utilizing municipal leasing to renovate or construct a new Simon Sanchez
12 High School, the remaining future debt obligation may be used to fund other
13 priorities of the government.

14 *I Liheslatura* further intends to authorize *I Maga'láhen Guåhan* to
15 pledge or reserve the additional proceeds as a source of payment for a
16 municipal lease financing, secured for the purposes stated herein, either to
17 renovate or construct a new Simon Sanchez High School. To overcome the
18 financing hurdles *I Liheslaturan Guåhan* supports the government of
19 Guam to enter into a contract for the financing, design, renovation or
20 construction and long-term capital maintenance of Simon Sanchez High
21 School with a private sector contractor who can provide long-term
22 financing obtained through tax-exempt obligations *or* other
23 competitive alternative financing based on long-term lease-backs to
24 the government of Guam. To facilitate the financing, design, renovation
25 or construction and maintenance of the Education Facility envisioned by
26 this Act, the government of Guam will be authorized to lease for up to
27 thirty (30) years government of Guam property on which the

1 facilities will be constructed. The lease of the government property to
2 the contractor, who will design, renovate or construct a new Education
3 Facility in accordance with specifications approved by Guam Department
4 of Education. The Education Facility and land will be leased back to the
5 government of Guam for a period *not to exceed* thirty years or the initial
6 ground lease to the contractor over which time the government of Guam
7 will amortize, as lease payments to the contractor, the cost of the
8 financing, design, renovation or construction and related expenses of the
9 Education Facility. The contractor will also be responsible for the capital
10 maintenance of the Education Facility constructed under this Act, which
11 costs *shall* be paid by the government of Guam as provided for under this
12 Act. At the expiration of the Lease-Back Period, the government of Guam
13 real property and the Education Facility renovated or constructed on the
14 government of Guam real property will revert to the government of Guam
15 with *no* further obligations to the Contractor.

16 **§58C103. Definitions.** For purposes of this Chapter and *unless*
17 otherwise specified, the following words and phrases are defined to mean:

18 (a) "*Act*" means Chapter 58C of Title of the Guam Code
19 Annotated, known as the "*Ma Kåhat* Act of 2013."

20 (b) "*Contract*" shall mean the various design, renovation or
21 construction and financing agreements entered into by and between
22 the Education Agency and the Contractor following negotiations on
23 the response to the Request for Proposal.

24 (c) "*Contractor*" shall mean the authorized entity which shall
25 be the signatory on the Contract and shall be fully responsible for
26 carrying out the design, renovation or construction, financing and
27 maintenance of the Education Facility. The Contractor may cooperate

1 with another entity or entities in any manner the Contractor deems
2 appropriate to provide for the financing, design, renovation,
3 construction or maintenance of the public school facilities envisioned
4 by this Act.

5 (d) "*Education Agency*" shall mean the Guam Department of
6 Education

7 (e) "*Education Facility*" as used in this Act shall mean the
8 renovation or construction of a new high school and to include its
9 athletic facilities to be located on the existing site of Simon Sanchez
10 High School.

11 (f) "*Lease*" shall mean a lease from an Education Agency to
12 the Contractor entered into at the time of the Contract for the
13 Property.

14 (g) "*Lease-Back*" shall mean the lease from the Contractor to
15 the Education Agency.

16 (h) "*Lease-Back Period*" shall mean the term of the lease from
17 the Contractor to the Education Agency.

18 (i) "*Property*" shall mean any property on which an Education
19 Facility is located.

20 **§58C104. Authorization to Enter into Long-term Leases.** For the
21 purpose of facilitating the financing of the design, renovation or
22 construction and maintenance of an Education Facility encompassed by
23 this Act, the government of Guam *or* an Education Agency, as the case
24 may be, is authorized to lease, if required, to the Contractor sufficient
25 government of Guam real property on which to renovate or construct a
26 new Education Facility; provided, such property is in the inventory of the
27 Education Agency *or* the government of Guam. The property may be the

1 site of an existing Education Facility under the control of an Education
2 Agency, which existing facility may be renovated *or* demolished and
3 rebuilt under the provisions of this Act. The Education Agency is also
4 authorized to Lease Back from the Contractor the property for a
5 period mutually agreed upon between the Education Agency and the
6 Contractor as may be reasonably necessary to amortize over the Lease-
7 Back Period the costs associated with the financing, design, renovation or
8 construction of the Education Facility. In no event *shall* the end of such
9 Lease-Back Period be *later than* the date thirty (30) years from the
10 scheduled date of completion of the Education Facility. The Lease-Back
11 may be structured as an annually renewable lease with provision for
12 automatic renewals to the extent that pledged or reserved revenue under
13 Section 22425 (q)(4) and (6) of Title 5 Guam Code Annotated is available.
14 The Lease-Back *shall not* be construed as a debt under any applicable
15 debt limitation under the Guam Organic Act *or* Guam law.

16 **§58C105. Procurement.** Subject to the approval of *I Liheslaturan*
17 *Guåhan*, the government of Guam or an Education Agency shall solicit
18 Requests for Proposals ('RFP') through the Department of Public Works, in
19 compliance with the Guam Procurement Law, for the financing, design,
20 renovation or construction of the Education Facility, together with insurance
21 and maintenance of the Education Facility over the Lease-Back Period,
22 according to the needs of the Education Agency and consistent with this
23 Chapter. The choice of the Contractor shall be made by a selection
24 committee comprised of the Superintendent of the Department of Education
25 serving as Chairman and including the Director of the Department of Public
26 Works or Deputy Director, the Director of the Department of Land
27 Management or Deputy Director, the Administrator of Guam EPA or Deputy

1 Administrator, and the Administrator of the Guam Economic Development
2 Authority or Deputy Administrator. The committee shall access the prior
3 performance of the Contractor on similar projects and may disqualify any
4 Contractor that does not have a successful record of project completion on
5 Guam.

6 The selection of a Contractor shall be based upon the proposal that
7 delivers the best value for Guam in meeting the objectives of the Education
8 Agency.

9 The RFP shall be issued within thirty (30) days of enactment of this
10 Act for the renovation or construction of a new Simon Sanchez High School
11 on the existing site, which may include demolition of such portions of the
12 existing facility as necessary.

13 **§58C106. Responsibilities of Contractor.** The Contract *shall* require
14 that the Contractor be responsible for all costs, expenses and fees of any
15 kind *or* nature, associated with the design, civil improvements, on-site
16 and off-site infrastructure, construction, permits, and financing
17 associated with the completion of an Education Facility, including the
18 financing of furniture and equipment for the Education Facility, as and
19 to the extent provided by the Education Agency in the Request for
20 Proposals. The Contract will also require that all major subcontracts be
21 covered by a Performance Bond and further that there be a specific
22 delivery date with liquidated damages for failure to deliver the school by
23 the specified date. The Contractor *shall* also be responsible for the capital
24 maintenance of the schools during the Lease-Back Period, but *shall not* be
25 responsible for the capital maintenance of the furniture and equipment.
26 The Lease-Back may provide that *if* sufficient funds are *not* appropriated
27 *or* otherwise available for the payment of amounts due under the lease and

1 any maintenance agreement, the Education Agency will have the
2 obligation to vacate the Education Facility, and the Contractor *shall* have
3 the right of use and occupancy of the Education Facility for the
4 remainder of the term of the Lease, unless new mutually satisfactory terms
5 are entered into. For this purpose, the Lease may provide that its term *shall*
6 be extended for a period *not to exceed* the shorter of ten (10) years
7 beyond the original term of the Lease-Back *or* such period of time as is
8 necessary to repay in full any financing arranged pursuant to Section
9 58C108. The capital maintenance costs *shall* be paid by the Education
10 Agency on a periodic basis as incurred by the Contractor on terms to be
11 agreed to in the Contract for the Education Facility.

12 **§58C107. Assignments.** To facilitate the purposes of this Act
13 and to provide security for the holders of any financing instruments issued
14 pursuant to this Act, the Contractor may assign, without the need of the
15 consent of the Education Agency, the Contract, the Lease and the
16 Lease-Back to any underwriter, trustee *or* other party as appropriate to
17 facilitate the issuance of the tax-exempt obligations, other financial
18 instruments *or* alternative financing for the Education Facility.

19 **§58C108. Use of Tax-Exempt Bonds for Financing.** To
20 minimize the financing cost to the Education Agency, financing utilized by
21 the Contractor to fund the design, renovation or construction of an
22 Education Facility *shall* be through tax-exempt obligations *or* other
23 financial instruments provided such financing is available at interest rates
24 determined by the Education Agency to be reasonable and competitive.
25 Alternatively, the Contractor may use an alternative method of financing,
26 including, but *not limited to*, a short term debt, mortgage, loan, federally
27 guaranteed loan *or* loan by an instrumentality of the United States of

1 America *if* such financing will better serve the needs of the people of
2 Guam. Such alternative financing *shall* be approved by *I Liheslaturan*
3 *Guahan*. The purpose for the requirements of this Section is to assure the
4 Education Agency pays the lowest possible interest rate so that the cost to
5 the Education Agency of financing the design, renovation or
6 construction of an Education Facility, amortized through the Lease-
7 Back payments from the Education Agency to the Contractor, will
8 be lower than regular commercial rates.

9 **§58C109. Pledge of Additional Revenue from Real Property**
10 **Valuation.** Rental payments under the Lease and the Lease-Back may be
11 secured by a pledge or other reservation of revenues received by the
12 government of Guam pursuant to §22425 (q)(4) and (6) Article 4, Chapter
13 22 Division 2, Title 5, Guam Code Annotated. Any amounts pledged as
14 provided in this Section are hereby continuously appropriated for the
15 purpose of making Lease-Back payments, but any amounts only reserved as
16 provided in this Section, and not pledged, shall be subject to annual
17 appropriation for the purpose of making Lease-Back payments. Any such
18 pledge or reservation authorized hereunder shall be valid and binding from
19 the time the pledge or reservation is made and shall be limited to the sum of
20 Five Million Fifty One Thousand Nine Hundred Seventy Seven Dollars and
21 Ninety Eight Cents (\$5,051,977.98) per year during the Lease-Back Period
22 as outlined in §22425 (q)(4) and (6) of Title 5 Guam Code Annotated hereof.
23 The revenues pledged or reserved and thereafter received by the government
24 of Guam or by any trustee, depository or custodian shall be deposited in a
25 separate account and shall be immediately subject to such reservation or the
26 lien of such pledge without any physical delivery thereof or further act, and
27 such reservation or the lien of such pledge shall be valid and binding against

1 all parties having claims of any kind in tort, contract or otherwise against the
2 government of Guam or such trustee, depository or custodian, irrespective of
3 whether the parties have notice thereof. The instrument by which such
4 pledge or reservation is created need not be recorded.

5 **§58C110. Utilities and Routine Maintenance and Repair.** The
6 Education Agency *shall* be responsible for the connection and payment of all
7 utilities, including without limitation, power, water, sewer, telephone and
8 cable, and all routine interior maintenance and repair and exterior grounds
9 keeping and landscaping and upkeep of the Education Facility.

10 **§58C111. Maintenance Fund.** The Contract or a separate
11 maintenance agreement with the Contractor, and the Lease-Back, shall
12 provide that all capital maintenance of the Education Facility be performed
13 by the Contractor as a separate cost, the terms of which, and the manner for
14 establishing the amount of payment, shall be determined as a part of the
15 Contract; provided, however, that said documents may, at the discretion of
16 the Education Agency, provide that capital maintenance with respect to
17 equipment (including collateral equipment), onsite utilities, offsite utilities,
18 access roads and other similar improvements need not be performed by the
19 Contractor.

20 **§58C112. Contractual Safeguards.** Prior to undertaking the work
21 of renovating or constructing a new Simon Sanchez High School, the Guam
22 Economic Development Authority, The Department of Public Works, Guam
23 Department of Education and the Developer or Contractor shall negotiate
24 and enter into a binding construction contract to renovate or construct a new
25 Simon Sanchez High School in accordance with Guam Building Code, (21
26 G.C.A. Ch. 67) and any other applicable requirements. The Construction

1 contract shall contain contractual obligations typically found in Government
2 of Guam construction contracts, including but not limited to:

- 3 1. Warranties;
- 4 2. Liquidated damages;
- 5 3. Performance and payment bonds;
- 6 4. Indemnity;
- 7 5. Insurance;
- 8 6. Standard Specifications;
- 9 7. Technical Specifications;
- 10 8. Progress Schedule;
- 11 9. Maintenance;
- 12 10. Compliance with Guam Labor Regulations;
- 13 11. Compliance with Guam Prevailing Wage Rates for
14 Employment of Temporary Alien Workers (H2) on Guam;
- 15 12. Compliance with Public Law 29-98: Restriction Against
16 Contractors Employing Convicted Sex Offenders to Work at
17 Government of Guam Venues.

18 The contract shall be submitted for review and approval to all entities
19 charged by law with the duty to review and approve government contracts,
20 including the Office of the Attorney General.

21 **§58C113. Severability.** *If any provision of this Act or its*
22 *application to any person or circumstance is found to be invalid or contrary*
23 *to law, such invalidity shall not affect other provisions or applications of this*
24 *Act which can be given effect without the invalid provisions or application,*
25 *and to this end the provisions of this Act are severable."*

26 **Section 3. §22425(q) Article 4, Chapter 22, Division 2, Title 5, Guam**
27 **Code Annotated is hereby amended and renumbered:**

1 §22425(q) of Article 4, Chapter 22, Division 2, Title 5, Guam Code
2 Annotated, is hereby *amended* to read:

3 “(q) Notwithstanding any other provision of law, any additional real
4 property tax revenues received as a result of the most recent valuation of real
5 property due to commence during the calendar years 2013 and 2014 is
6 hereby continuously appropriated, *not to exceed* Seven Eight Million Five
7 Hundred Thousand Dollars (\$78,0500,000), from the Territorial Educational
8 Facilities Fund in the amounts and for purposes set forth in this Subsection:

9 (1) The sum of One Million Dollars (\$1,000,000), beginning
10 in FY 2014, for the construction of the Student Services Center and
11 Engineering Annex at the University of Guam, as a source of payment
12 to the University of Guam Capital Improvements Fund for the purpose
13 of paying rental payments due under the lease-leaseback agreements
14 with the University of Guam Endowment Foundation;

15 (2) The sum of Two Hundred Seventy-eight Thousand Nine
16 Hundred Twenty-one Dollars and Fifty-two Cents (\$278,921.52),
17 beginning in FY 2014 for forty (40) years, for the construction or
18 renovation of Building 100 and the DNA Laboratory at the Guam
19 Community College;

20 (3) The sum of One Hundred Thirty-two Thousand Fifteen
21 Dollars (\$132,015) to the Guam Public Library System to hire a
22 Territorial Librarian at Ninety-three Thousand Three Hundred
23 Seventy-seven Dollars (\$93,377), and a Computer Analyst II at
24 Thirty-eight Thousand Six Hundred Thirty-eight Dollars (\$38,638);

25 (4) The sum of One Million Seven Hundred Seven Thousand
26 Six Hundred Fifty-two Dollars (\$1,707,652) to the Guam Department
27 of Education for ~~the Okkodo High School Expansion to included~~

1 ~~rental, prorated insurance, maintenance and utilities~~ for the renovation
2 or construction of a new Simon Sanchez High School.

3 (5) The sum of One Million Two Hundred Thousand Dollars
4 (\$1,200,000) for rental payments under the Lease and the Lease-Back
5 as described in Chapter 58D of Title 5 Guam Code Annotated.

6 ~~(5)(6)~~ other than the portions designated to be used for in Items
7 (1), (2), (3) ~~and (4)~~ and (5) of this Subsection, eighty percent (80%) of
8 the remaining balance *shall* be appropriated as a source of payment
9 for a ~~General Obligation bond paying rental payments due under the~~
10 ~~lease-leaseback agreement with GDOE~~ secured for the replacement or
11 renovation or construction of a new Simon Sanchez High School, to
12 include its athletic facilities, and other Guam Department of
13 Education public school facilities requiring new construction,
14 rehabilitation or maintenance;

15 ~~(6)(7)~~ other than the portions designated to be used for in Items
16 (1), (2), (3) ~~and (4)~~ and (5) of this Subsection, seven percent (7%) of
17 the remaining balance *shall* be deposited in the Early Childhood
18 Program Fund, as described in §53101 of Title 17, Guam Code
19 Annotated;

20 ~~(7)(8)~~ other than the portions designated to be used for in Items
21 (1), (2), (3) ~~and (4)~~ and (5) of this Subsection, ten percent (10%) of
22 the remaining balance *shall* be appropriated as a source of funding to
23 the Department of Revenue and Taxation for the following:

24 (A) for maintenance support and sustainability of real
25 property data and system;

26 (B) for the five (5) year (quinquennial) property tax
27 revaluation as mandated by law;

1 (C) for enhancements, and technological
2 advancements related to software/hardware, and support staff
3 necessary to improve electronic services; and

4 (D) for other costs directly associated with improving
5 the efficiency of the real property tax system.

6 The Director of the Department of Revenue and Taxation *shall*
7 submit a report to *I Maga'lahaen Guåhan* and *I Liheslaturan Guåhan*
8 on a monthly basis as to the expenditures of the funds following the
9 enactment of this Act, detailing all transactions; and

10 (8)(9) Other than the portions designated to be used for in Items
11 (1), (2) (3) ~~and~~ (4) and (5) of this Subsection, three percent (3%) of
12 the remaining balance *shall* be a source of funding for island-wide
13 school bus shelters. The Director of the Department of Public Works
14 *shall* submit a report to *I Maga'lahaen Guåhan* and *I Liheslaturan*
15 *Guåhan* on a monthly basis as to the expenditures of the funds
16 following enactment of this Act, detailing all transactions; and

17 ~~(9) — In the event the purposes set forth in this Subsection are~~
18 ~~affected by the debt ceiling, the Guam Economic Development~~
19 ~~Authority may pursue municipal lease financing for any or all of the~~
20 ~~above-related items.”~~

21 **Section 4. §53101 of Title 17 Guam Code Annotate is hereby**
22 **amended to read as follow:**

23 “§ 53101. **Early Childhood Program Fund.** There is hereby
24 created, separate and apart from all other funds of the government of Guam,
25 a fund known as the “Early Childhood Program Fund.” All monies received
26 by or on behalf of the government of Guam pursuant to §22425(q)(6)(7) of
27 Title 5 GCA, *shall* be deposited in the Fund and used for early childhood

1 programs at the University of Guam, the Guam Community College, or the
2 Guam Department of Education. The Fund *shall not* be commingled with the
3 General Fund or any other funds of the government of Guam, and it *shall* be
4 maintained in a separate bank account. All monies in the Fund *shall* require
5 legislative appropriation, and *shall not* be subject to any transfer authority of
6 *I Maga'lahaen Guåhan.*”

7 **Section 5. Severability.** *If* any provision of this Act *or* its
8 application to any person *or* circumstance is found to be invalid *or* contrary
9 to law, such invalidity *shall not* affect other provisions *or* applications of this
10 Act which can be given effect without the invalid provisions *or* application,
11 and to this end the provisions of this Act are severable.”

BILL NO	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	DATE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORTED	FISCAL NOTES	NOTES
204-34 [COR] is substituted by the Committee on Appropriations and Adjudication, and amended in the Committee of the Whole.	FRANK B. AGUON, JR. Joe S. San Agustin	AN ACT TO AMEND §§ 580103(i), 580105, 580109, AND 580112; AND TO REPEAL 580103(m). ALL OF CHAPTER 580, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO DESIGNATING THE GUAM DEPARTMENT OF EDUCATION (GDOE) AS THE PROCURING ENTITY FOR PURPOSES OF ANY SOLICITATION RESPECTING THE CONSTRUCTION AND/OR RENOVATION OF SIMON SANCHEZ HIGH SCHOOL UNDER A LONG-TERM LEASE-BACK, CHANGING DEFINITIONS RESPECTING RESPONSIVENESS, AND AUTHORIZING GDOE TO SOLICIT FOR ARCHITECTURAL AND ENGINEERING DESIGN, DEVELOPMENT OF A COMPREHENSIVE CAPITAL IMPROVEMENT PLAN, CONSTRUCTION MANAGEMENT, PURCHASE OF COLLATERAL EQUIPMENT, AND LONG-TERM CAPITAL MAINTENANCE PLANNING.	11/7/17 10:09 a.m.	11/8/17	Committee on Appropriations and Adjudication	12/5/17 2:30 p.m. & 6:00 p.m. 2/14/18 9:00 a.m.	4/13/18 3:02 p.m. As substituted by the Committee on Appropriations and Adjudication	Fiscal Note Request 11/3/17 Fiscal Note 12/1/17	
	SESSION DATE 4/23/18	TITLE AN ACT TO AMEND §§ 580103(i), 580105, 580109, AND 580112; AND TO REPEAL 580103(m)(2). ALL OF CHAPTER 580, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO DESIGNATING THE GUAM DEPARTMENT OF EDUCATION (GDOE) AS THE PROCURING ENTITY FOR PURPOSES OF ANY SOLICITATION WITH RESPECT TO THE CONSTRUCTION AND/OR RENOVATION OF SIMON SANCHEZ HIGH SCHOOL UNDER A LONG-TERM LEASE-BACK, AMENDING DEFINITIONS WITH RESPECT TO RESPONSIVENESS, AND AUTHORIZING GDOE TO SOLICIT FOR ARCHITECTURAL AND ENGINEERING SERVICES, CONSTRUCTION MANAGEMENT SERVICES, FINANCING SERVICES, RENOVATION AND CONSTRUCTION SERVICES, COLLATERAL EQUIPMENT, AND RELATED SERVICES	5/01/18	5/03/2018 11:50 a.m.	5/15/18	34-101	5/16/18	Received: 5/17/18 Mess and Comm. Doc. No. 34GL-18-1899	



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

MAY 17 2018

The Honorable Benjamin J.F. Cruz
Speaker

I Mina'trentai Kuàttro Na
Lihselaturan Guåhan

Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

GLH 34-18-1899
Speaker Benjamin J.F. Cruz

MAY 17 2018
Time: *2:46* PM File No: *34-1945*
Received By: *[Signature]*

Dear Mr. Speaker:

Transmitted herewith is Bill No. 204-34 (COR), "AN ACT TO AMEND §§ 58D103(l), 58D105, 58D109, AND 58D112; AND TO REPEAL § 58D103(m)(2), ALL OF CHAPTER 58D, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO DESIGNATING THE GUAM DEPARTMENT OF EDUCATION (GDOE) AS THE PROCURING ENTITY FOR PURPOSES OF ANY SOLICITATION WITH RESPECT TO THE CONSTRUCTION AND/OR RENOVATION OF SIMON SANCHEZ HIGH SCHOOL UNDER A LONG-TERM LEASE-BACK, AMENDING DEFINITIONS WITH RESPECT TO RESPONSIVENESS, AND AUTHORIZING GDOE TO SOLICIT FOR ARCHITECTURAL AND ENGINEERING SERVICES, CONSTRUCTION MANAGEMENT SERVICES, FINANCING SERVICES, RENOVATION AND CONSTRUCTION SERVICES, COLLATERAL EQUIPMENT, AND RELATED SERVICES," which lapsed into law on May 16, 2018, as Public Law 34-101.

2018 MAY 17 PM 3:32

Senseramente,

[Signature]
EDDIE BAZA CALVO
Governor of Guam

1899


I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN
2018 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÁHEN GUÁHAN*

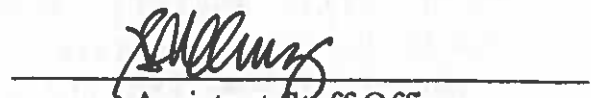
This is to certify that Substitute Bill No. 204-34 (COR), "AN ACT TO *AMEND* §§ 58D103(l), 58D105, 58D109, AND 58D112; AND TO *REPEAL* § 58D103(m)(2), ALL OF CHAPTER 58D, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO DESIGNATING THE GUAM DEPARTMENT OF EDUCATION (GDOE) AS THE PROCURING ENTITY FOR PURPOSES OF ANY SOLICITATION WITH RESPECT TO THE CONSTRUCTION AND/OR RENOVATION OF SIMON SANCHEZ HIGH SCHOOL UNDER A LONG-TERM LEASE-BACK, AMENDING DEFINITIONS WITH RESPECT TO RESPONSIVENESS, AND AUTHORIZING GDOE TO SOLICIT FOR ARCHITECTURAL AND ENGINEERING SERVICES, CONSTRUCTION MANAGEMENT SERVICES, FINANCING SERVICES, RENOVATION AND CONSTRUCTION SERVICES, COLLATERAL EQUIPMENT, AND RELATED SERVICES," was on the 1st day of May 2018, duly and regularly passed.


Benjamin J.F. Cruz
Speaker

Attested:


Régine Biscoe Lee
Legislative Secretary

.....
This Act was received by *I Maga'låhen Guåhan* this 2nd day of May, 2018,
at 11:50 o'clock A.M.


Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: MAY 16 2018

Public Law No. 34-101

I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN
2017 (FIRST) Regular Session

Bill No. 204-34 (COR)

As substituted by the Committee on Appropriations
and Adjudication; and amended in
the Committee of the Whole.

Introduced by:

FRANK B. AGUON, JR.
Joe S. San Agustin
Thomas C. Ada
William M. Castro
B. J.F. Cruz
James V. Espaldon
Fernando Barcinas Esteves
Régine Biscoe Lee
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Michael F.Q. San Nicolas
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *AMEND* §§ 58D103(l), 58D105, 58D109, AND 58D112; AND TO *REPEAL* § 58D103(m)(2), ALL OF CHAPTER 58D, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO DESIGNATING THE GUAM DEPARTMENT OF EDUCATION (GDOE) AS THE PROCURING ENTITY FOR PURPOSES OF ANY SOLICITATION WITH RESPECT TO THE CONSTRUCTION AND/OR RENOVATION OF SIMON SANCHEZ HIGH SCHOOL UNDER A LONG-TERM LEASE-BACK, AMENDING DEFINITIONS WITH RESPECT TO RESPONSIVENESS, AND AUTHORIZING GDOE TO SOLICIT FOR ARCHITECTURAL AND ENGINEERING SERVICES, CONSTRUCTION MANAGEMENT SERVICES, FINANCING SERVICES, RENOVATION AND CONSTRUCTION SERVICES, COLLATERAL EQUIPMENT, AND RELATED SERVICES.

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

2 **Section 1.** § 58D103(l) of Chapter 58D, Title 5, Guam Code Annotated, is
3 *amended* to read:

4 “(l) Responsive offer *shall* mean an offer that conforms, at opening
5 of the offers in response to the solicitation, in all material respects to the
6 solicitation.”

7 **Section 2.** § 58D103(m)(2) of Chapter 58D, Title 5, Guam Code Annotated,
8 is hereby *repealed*.

9 **Section 3.** § 58D105 of Chapter 58D, Title 5, Guam Code Annotated, is
10 *amended* to read:

11 **“§ 58D105. Procurement.**

12 (a) In addition to availing of the services of the Department of Public
13 Works, the Guam Department of Education may solicit, in compliance with
14 the Guam procurement law, for the services of an Owner’s Agent Engineer
15 (OAE) to assist the Guam Department of Education in the procurement of
16 architectural and engineering (A&E) services, construction management
17 (CM) services, financing services, renovation and construction services,
18 collateral equipment, and related services consistent with this Chapter.

19 (1) The solicitation *shall* specifically state the minimum
20 specifications that will be required for a submitted offer to be
21 considered.

22 (2) The determination of responsible offerors and responsive
23 offers *shall* be made by an evaluation committee comprised of the
24 Superintendent of the Department of Education, serving as Chairman,
25 and including the Director of the Department of Public Works or
26 Deputy Director, the Director of Land Management or Deputy Director,

1 and the Administrator of the Guam Economic Development Authority
2 or Deputy Administrator.

3 (3) The committee *shall* evaluate offerors and offers received
4 based on the requirements set forth in the solicitation. Upon completion
5 of the committee's evaluation, the Superintendent *shall* issue the award,
6 in accordance with the Guam procurement law.

7 (b) The solicitation for the renovation, construction, or combination
8 thereof for a new fully equipped and functional Simon Sanchez High School
9 as specified in the solicitation, on the existing site, which may include
10 demolition of such portions of the existing facility as necessary, *shall* be
11 issued within forty-five (45) days of completion of the architectural and
12 engineering design for the new Simon Sanchez High School. The award of
13 any lease-back contract *shall* be based upon a responsive offer submitted by a
14 responsible offeror that offers the lowest annual aggregate leaseback payment,
15 inclusive of finance and capital maintenance cost, to the government of Guam
16 for a fixed thirty (30) year term.

17 (c) Notwithstanding any other provision of law, the solicitation *shall*
18 *not* be combined with other procurement pursuant to Public Law 32-121 (the
19 repair and maintenance of 35 other schools)."

20 **Section 4.** § 58D109 of Chapter 58D, Title 5, Guam Code Annotated, is
21 *amended* to read:

22 **"§ 58D109. Pledge of Additional Revenue from the Real Property**
23 **Valuation.**

24 Rental payments under the lease and the lease-back, as well as funding
25 required to support the activities set forth in § 58D105(a) of this Chapter, may
26 be secured by a pledge or other reservation of revenues received by the
27 government of Guam pursuant to 5 GCA §§ 22425(q)(4) and (6). Any

1 amounts pledged as provided in this Section are hereby continuously
2 appropriated for the purpose of making lease-back payments, but any amounts
3 only reserved as provided in this Section, and not pledged, *shall* be subject to
4 an annual appropriation for the purpose of funding the activities set forth in §
5 58D105(a) of this Chapter, and making lease-back payments. Any such
6 pledge or reservation authorized hereunder *shall* be valid and binding from
7 the time the pledge or reservation is made, and *shall* be limited to the sum of
8 Five Million Fifty-one Thousand Nine Hundred Seventy-seven Dollars and
9 Ninety-eight Cents (\$5,051,977.98) per year during the pre-development,
10 construction, and lease-back period, as outlined in 5 GCA §§ 22425(q)(4) and
11 (6). The revenues pledged or reserved and thereafter received by the
12 government of Guam or by any trustee, depository or custodian *shall* be
13 deposited in a separate account and *shall* be immediately subject to such
14 reservation or the lien of such pledge without any physical delivery thereof or
15 further act, and such reservation or the lien of such pledge *shall* be valid and
16 binding against all parties having claims of any kind in tort, contract or
17 otherwise against the government of Guam or such trustee, depository or
18 custodian, irrespective of whether the parties have notice thereof. The
19 instrument by which such pledge or reservation is created need not be
20 recorded.”

21 **Section 5.** The first sentence of the first paragraph of § 58D112 of Chapter
22 58D, Title 5, Guam Code Annotated, is *amended* to read:

23 “Prior to undertaking the work of renovating or constructing a new
24 Simon Sanchez High School, the Guam Economic Development Authority,
25 the Guam Department of Education, and the developer or contractor *shall*
26 enter into a binding construction contract to renovate or construct a new

1 Simon Sanchez High School in accordance with the Guam Building Code (21
2 GCA Chapter 67), and any other applicable requirements.”

3 **Section 6. Severability.** If any provision of this Act or its application to
4 any person or circumstance is found to be invalid or contrary to law, such invalidity
5 *shall not* affect other provisions or applications of this Act that can be given effect
6 without the invalid provisions or application, and to this end the provisions of this
7 Act are severable.



Vince Arriola <vince.arriola@dpw.guam.gov>

Draft 1 - SSHS Financing and Construction IFB**Jon Fernandez (Superintendent)** <jonfernandez@gdoe.net>

Mon, Mar 28, 2022 at 2:40 PM

To: "Joseph L.M. Sanchez" <jsanchez@gdoe.net>, "Philip A. Toves" <patoves@gdoe.net>, Melanie Mendiola <mel.mendiola@investguam.com>, Tina Garcia <tina.garcia@investguam.com>, Sabino Flores <sabino.flores@guam.gov>, vince.arriola@dpw.guam.gov, "James L.G. Stake" <jlgstake@gdoe.net>, Jesse Nasis <jnnasis@gdoe.net>, "Joseph M. Borja" <joseph.borja@land.guam.gov>, "Franklin J.T. Cooper-Nurse" <fjtcooper-nurse@gdoe.net>, "Carmen T. Taitano" <ctcharfauros@gdoe.net>

Please see the attached initial draft for your review. I am off-island but I hope you can begin your initial review prior to our first sit-down meeting to go over the solicitation and make any changes needed to finalize the document. I will schedule a meeting for when I return next week (I get back to office Apr 5). This is a rough draft that will require careful reading and modification. Thanks in advance for your review!

GDOE Legal -- please review for legal sufficiency and ensure compliance with any updated laws and required forms

Carmen -- please review for compliance with procurement rules and for any improvements to the process for review and evaluation of submissions.

Phil/Sabino -- please review scope of work and qualification of bidders (I don't have Zenon's email -- Sabino, can you forward?)

GEDA -- please take a look at the submission of priced bids

Everyone -- please review and be prepared with any comments or questions (Did I miss anyone)

Thanks!

Jon Fernandez
Superintendent
Guam Department of Education
501 Mariner Avenue
Barrigada, GU 96913-1608

Email: superintendent@gdoe.net
Office: (671) 300-1547
Fax: (671) 472-5009

Guam Department of Education



Lease Financing for Construction and Maintenance of New SSHS IFB DRAFT V1 (03282022).docx
2966K

**LEASE FINANCING FOR CONSTRUCTION AND MAINTENANCE OF
SIMON SANCHEZ HIGH SCHOOL**

PROJECT NUMBER

THE HONORABLE LOURDES LEON GUERRERO
Governor of Guam

PREPARED BY:

Guam Department of Education



GUAM DEPARTMENT OF EDUCATION
GOVERNMENT OF GUAM

<p align="center">LEASE FINANCING FOR CONSTRUCTION AND MAINTENANCE OF SIMON SANCHEZ HIGH SCHOOL</p> <p align="center">PROJECT NUMBER</p>	
IFB Issue Date:	Number of Pages:
<p align="center">Proposal Date and Time:</p> <p align="center">Chamorro Standard Time</p>	

ISSUING AGENCY INFORMATION
Guam Department of Education
Jon J.P. Fernandez, Superintendent
 501 Mariner Avenue
 Barrigada, Guam 96913
jonfernandez@gdoe.net
 Phone: (671) 300-1547

GDOE-CIP Point of Contact:

Philip A. Toves
Acting Capital Improvement Project Administrator
patoves@gdoe.net
Phone: (671) 300-1636

INSTRUCTION TO OFFERORS	
Return Proposal to:	Mark Face Envelope/Package: IFB No.: IFB Title: Lease Financing for Construction and Maintenance of Simon Sanchez High School Bid Due Date: June 10, 2022, @ 4 p.m. (Chamorro Standard Time)

OFFERORS MUST COMPLETE THE FOLLOWING	
Offeror Name /Point of Contact/Address:	Authorized Offeror Signatory: _____
Offeror Phone Number:	(Please print and sign) Offeror Fax Number:
Offeror Federal I.D. Number	Offeror e-mail address:
OFFERORS MUST RETURN THIS COVER SHEET WITH THEIR PROPOSALS	

Lease Financing for Construction and Maintenance of Simon Sanchez High School
Project No.

PROJECT NO.
TABLE OF CONTENTS

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Section 7: Evaluation Criteria	
Section 8: GDOE Requirements	
Section 9: Legal Documents and Attachments	

BIDDERS CHECKLIST

Checklist is provided for assistance only and should not be submitted with Bidders Packet

1. **Read the *entire* document.** Note critical items such as: mandatory requirements; supplies/services required; Schedule of Events; form of proposals; public laws cited; contract requirements (i.e., contract performance security, insurance requirements, performance and/or reporting requirements, etc.).
2. **Note the procurement officer's name, address, phone numbers and e-mail address.** This is the only person you are allowed to communicate with regarding the IFB and is an excellent source of information for any questions you may have.
3. **Attend the pre-proposal conference** if one is offered. These conferences provide an opportunity to ask clarifying questions, obtain a better understanding of the project, or to notify DPW of any ambiguities, inconsistencies, or errors in the IFB.
4. **Take advantage of the "question and answer" period.** Submit your questions to the procurement officer by the due date listed in the Schedule of Events and review the answers given, which will be in the form of an addendum to the IFB.
5. **Follow the format required in the IFB** when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.
6. **Provide complete answers/descriptions.** Read and answer **all** questions and requirements. Don't assume GDOE will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with GDOE. The proposals are evaluated based solely on the information and materials provided in your proposal.
7. **Use the forms provided**, i.e., cover page, Non-collusion Affidavit form, etc.
8. **Check GDOE's website for IFB addenda.** Before submitting your proposal, check DPW's website at <http://www.gdoe.net> to see whether any addenda were issued for the RFP. If so, you must submit a signed copy of the addendum for each addendum issued along with your offer.
9. **Review and read the IFB document again** to make sure that you have addressed all requirements. Your original response and the requested copies must be identical and be complete. The copies are provided to the evaluation committee members and will be used to score your response.
10. **Submit your response on time.** Note all the dates and times listed in the Schedule of Events and within the document, and be sure to submit all required items on time. Late proposal responses are *never* accepted.

**SECTION 1:
SCHEDULE OF EVENTS**

EVENT	DATE
IFB Issue Date:	April 18, 2022
Pre-proposal Conference & Simon Sanchez High School Site Inspection:	April 25, 2022
Deadline for Receipt of Written Questions:	May 13, 2022
Issuance of Answers to Written Questions:	May 27, 2022
IFB Due Date and Time:	@ P.M.
Anticipated Discussions with offerors:	
Anticipated Award of Contract:	
Anticipated Leaseback Execution:	

SECTION 2:

GENERAL INFORMATION AND PROJECT OVERVIEW

2.0 INTRODUCTION

The Guam Department of Education (GDOE) is inviting all interested and qualified parties to participate in a Multi-Step Invitation for Bid (IFB) to finance, construct, and maintain a new Simon Sanchez High School, and to provide collateral equipment, maintenance and insurance, at its existing location in Yigo, Guam. Simon Sanchez High School is one of GDOE's six traditional public high schools and serves the villages of Yigo. The facility was constructed in 1973 and currently serves 1,673 high school students.

This IFB is an effort to comply with Public Laws 32-120, 32-121, 34-19 and 34-101, which require GDOE to enter into a leaseback agreement with a contractor for up to thirty (30) years as a method for financing and constructing a new Simon Sanchez High School. In preparation, GDOE has contracted with Duenas, Camacho and Associates to complete the land survey and geotechnical assessment of the site and with Tanaguchi Ruth Makio Architects (TRMA) to complete the architectural design of the new Simon Sanchez High School campus. The goal is to break ground on a new facility in 2022 with completion and opening of a new school on or before 2024. Construction will take place on the current site of Simon Sanchez High School, and the approach to construction should reflect the continuing operation of the existing school during the construction phase with transition of students to the new facility once completed.

2.1 AUTHORITY

This IFB is issued under the authority of Public Laws 32-120, 32-121, 34-19 and 34-101, as well as the Guam Procurement Act and the Guam Procurement Regulations. The Multi-Step IFB process is a procurement option allowing the award to be based on the required qualifications of offerors and ultimately on the lowest annual aggregate lease payment being offered.

2.2 SINGLE POINT OF CONTACT

From the date this IFB is issued until final award, **Bidders shall not communicate with any GDOE staff, or other government of Guam officials regarding this procurement**, except at the direction of the procurement officer in charge of this solicitation. Any unauthorized contact may disqualify the Bidder from further consideration. Contact information for the single point of contact is as follows:

Carmen Charfauros
Guam Department of Education
501 Mariner Avenue
Barrigada, Guam 96913
ctcharfauros@gdoe.net
Phone: (671) 300-_____

2.3 IFB PROCESS

This is a multi-step bid procurement consisting of two steps. Bidders must submit both part of their bids: the technical qualification proposal and the priced proposal by the bid submittal closing date indicated in the bid schedule. During Step One, only the submitted Technical Qualification Proposals will be evaluated. GDOE will determine which bidders qualify to submit their priced proposals.

In Step Two, the Priced Proposals based upon Technical Qualification Proposals will be considered for award. Only the Technical Qualification Proposals that are deemed acceptable, either initially or as a result of further discussions with prospective Bidders, will be considered for award during Step Two.

An Evaluation Committee comprised of the GDOE Superintendent, serving as Chairman, the Director of the Department of Public Works (or Deputy Director), the Director of Land Management (or Deputy Director), and the Administrator of the Guam Economic Development Administration (or the Deputy Administrator), will participate in the determination of qualified bidders as well as the evaluation of bids.

Prospective Bidders are directed to read Public Laws 31-14, 31-101, 32-120, 32-121, and P.L. 20-27 as amended by P.L. 31-118 amending subsections 850, 852 & 853 of Title I of the Guam Code Annotated. These laws are available on the Internet at www.guamlegislature.com. All offerors are to understand that in the event of conflict between representations made in this solicitation and a public law, the public law controls.

2.3.1 AVAILABILITY OF IFB

This Invitation for Bid ("IFB") is available for download from GDOE's website at www.gdoe.net and for public inspection at GDOE's office located at 501 Mariner Avenue, Barrigada, Guam 96913, Monday through Friday, excluding holidays, between 8:00 a.m. and 5:00 p.m. A copy of the IFB may be picked up at the GDOE office or mailed or e-mailed to a prospective Offeror by GDOE upon receipt of payment of a non-refundable fee of Two Hundred U.S. Dollars (\$200.00) payable in cash, or by cashier's or certified check payable to the Treasurer of Guam / GDOE. Upon obtaining this IFB, prospective Offerors must complete the Acknowledgement of Receipt Form set forth as **Attachment ____** to this IFB and return the completed form to GDOE in order to receive any addenda or other notices related to this IFB. Failure by prospective Offerors to submit the Acknowledgement of Receipt Form to GDOE may result in the prospective Offeror not receiving notices from GDOE regarding this IFB, including addenda, point deductions during the proposal evaluation process, or submittals that may be deemed non-responsive.

2.3.2 EXAMINATION OF IFB DOCUMENTS AND REQUIREMENTS

Before submitting their bid, Bidders must familiarize themselves with the nature and extent of the work, duly noting any local conditions that may affect the work to be done and the labor, materials, and equipment required. Bidders are also required to carefully examine all IFB documents inclusive of all technical and functional requirements and to inform themselves of all conditions and requirements for the execution of the proposed work in accordance with the laws and regulations of the Territory of Guam. Ignorance on the part of Bidders of any part of the IFB documents and Technical Requirements will in no way relieve them of the obligations and responsibilities assumed under the contract.

2.4 RIGHT TO AMEND

GDOE reserves all rights to revise or amend this IFB prior to the date set for opening bids. Such revisions and amendments, if any, will be announced by an amendment or addendum to this IFB and shall be identified as such. Any amendment shall refer to the portions of the IFB it amends. Any amendment, modification or addendum issued by the Guam Department of Education, prior to the opening of the bids, for the purpose of changing the intent of the Technical Requirements, clarifying the meaning or changing any of the provisions of this IFB, shall be binding to the same extent as if written in the originally-issued IFB documents. Amendments and addenda shall be sent to all prospective Bidders who have submitted the Acknowledgement of Receipt Form to GDOE and shall also be made available on GDOE's website. All prospective Bidders who have submitted the Acknowledgement of Receipt Form to GDOE must acknowledge receipt of all amendments or addenda issued.

2.5 FAMILIARITY WITH LAWS

Bidders shall be familiar with all U.S. Federal and local laws, ordinances, rules and regulations of Guam that in any manner affect the work. Ignorance of law on the part of the Bidders will not relieve the Bidder from responsibility.

2.6 COST OF BIDDING

Bidders shall bear all costs associated with the preparation and submission of their bids. GDOE will not be responsible or liable for those costs, regardless of the outcome of the IFB process.

2.7 DOCUMENTS EXECUTED OUTSIDE OF GUAM

The Power of Attorney, performance bond guarantee, and documents defining the constitution of the joint venture, consortium, company or firm, if executed outside Guam, whether required to be submitted with the bids or after the award of the contract, must be authenticated by a Notary Public or other official authorized to witness sworn statements.

SECTION 3: INSTRUCTIONS FOR BIDDERS

3.0 INSTRUCTIONS TO BIDDERS

These instructions to bidders are intended to provide guidance in the preparation of bids and do not constitute part of the bid or of the contract document.

3.1 BIDS

3.1.1 General. Bids must be in writing, signed in ink, and prepared as described in **Section ___**. Bidders must clearly mark one bid proposal as "ORIGINAL" and provide seven (7) copies and three (3) CDs. The original and copies must be placed in a sealed envelope clearly labeled with the IFB Number, IFB Title, and Due Date. The original should be unbound and each hard copy must be separately bound. Erasures or other changes in a proposal must be explained or noted over the signature of the Bidder. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the IFB, or irregularities of any kind may be rejected by GDOE as being non-compliant.

3.1.2. Modification or Withdrawal of Bids. Bids may be modified or withdrawn in accordance with Guam Procurement Law.

3.1.3. No Late Proposals. Proposals must be received at the Office of Procurement at GDOE by the Bid Due Date set forth in the Schedule of Events. Email or facsimile proposals will not be accepted. Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration. It shall be the Bidder's sole risk to assure delivery at the designated office by the designated time. Late proposals will not be opened and may be returned to the Bidder at the expense of the Bidder or destroyed if requested.

3.1.4. All Timely Submitted Materials Become the Property of GDOE. All materials submitted in response to this IFB become the property of GDOE and shall be appended to any formal documentation, which would further define or expand any contractual/lease relationship between the government of Guam and/or the GDOE and the Offeror resulting from this IFB process.

3.1.5. Rejection of Bid. Any bid submitted in response to this IFB may be rejected in whole or in part when it is in the best interests of GDOE or the government of Guam in accordance with Guam Procurement Regulations § 3115(e).

3.2 PRE-BID QUESTIONS AND CONFERENCE

3.2.1 Pre-Bid Questions. Bidders with questions or requiring clarification or interpretation of any section within this IFB must address their questions in writing or via e-mail to the procurement officer referenced below on or before the deadline set forth in the Schedule of Events. Each question must provide clear reference to the section, page, and item of this IFB in question. Questions received after the deadline may not be considered.

3.2.2 GDOE Answers. GDOE will provide an official written answer by the date set forth in the Schedule of Events to all questions received by the stated due date. GDOE's response will be by written addendum. Any other form of interpretation, correction, or change to this IFB will not be binding upon the GDOE. Any written addendum will be forwarded to all entities or individuals who have picked-up an IFB and submitted an Acknowledgement of Receipt Form by the close of business on the date of issuance of GDOE's answers. Bidders must sign and return all addenda with their proposals.

3.2.3 Pre-Bid Conferences. Pre-Bid conferences and site inspections may be permitted prior to the deadline for submission of bids. The conferences will be conducted only to explain the procurement requirements for this IFB. Notice of any pre-proposal conference and site inspections will be provided to all entities or individuals who have picked-up an IFB and submitted an Acknowledgement of Receipt Form. GDOE will notify all Bidders in writing via an addendum to this IFB of any substantive clarification provided in response to any inquiry raised during the pre-bid conference.

SECTION 4: SCOPE OF WORK

4.1 Leaseback agreement. Bidder ("Lessor") shall enter into a leaseback agreement with the Government of Guam during which the Government of Guam shall lease the Simon Sanchez High School property (defined as ...) to Bidder for a period of thirty (30) years at a cost of one dollar (\$1) per year and Bidder shall lease back said property to the Government of Guam at the lease payment offered and accepted through this IFB for use as an educational facility.

4.1.1. Key Lease Terms

4.1.1.1. The Government of Guam through the Guam Department of Education shall pay the Lessor, on an annual basis for all lease payments due in accordance with the terms of the contract.

4.1.1.2. All payments shall be made in accordance with, subject to applicable provisions of § 22425(q)(4) and (6) Article 4, Chapter 22 Division 2, Title 5, Guam Code Annotated. The Lessor shall submit one (1) annual invoice in **original** form, for lease payments due.

4.1.1.3. Non-Appropriation Clause: In event that sufficient funds are not appropriated by the Government prior to the beginning of any Renewal Term for the payment of the Base Rentals on the Base Rental Payment Dates and reasonably estimated Additional Rental Payment Dates and reasonably estimated Additional Rentals payable during such Renewal Term, or (b) are otherwise not legally available for such purpose, then an Event of Non-appropriation shall be deemed to have occurred.

4.1.1.4. If an Event of Non-appropriation, the Government shall not be obligated to make payment of the Base Rentals or Additional Rentals provided for herein beyond the last day of the Renewal Term during which such Event of Non-appropriation occurs, except for the Government's obligation to pay Rentals which are payable prior to the termination of the Lease.

4.1.1.5. If the Government fails to perform as Lessee under the lease or decides not to appropriate lease payments, Lessor will be permitted to operate the financed facility for a period of time as specified in the ground lease. However, once the term of the ground lease expires, the Government is entitled to repossession of the site together with all improvements on the site free and clear of any interest.

4.1.1.6. If the Government loses the use of the leased facility under certain circumstances, lease payments will be made only during the times GDOE has

full use of the leased facility. This will result in partial lease payments for the entire contract period.

4.1.1.7. Lessor must be able to provide capital maintenance for the new Simon Sanchez High School and must also provide fire, earthquake and vandalism insurance. Funding shall be by annual legislative appropriation.

4.1.1.8. Lessor must obtain all required property, liability and workmen's compensation insurance.

4.1.1.9. Liquidated Damages: Lessor agrees to pay to the Government the amount of one fourth of one percent of the contract value per calendar day, not as a penalty but as a reasonable liquidated damages for breach of this contract by the by his failing, neglecting or refusing to complete the work within the time herein specified and said sums shall be paid for each consecutive calendar day thereafter that the Lessor shall be in default after the time stipulated in the contract for completing the work ready for use and/or operation.

4.2 Construction Services. The Bidder shall be responsible for constructing the new Simon Sanchez High School based on the design contained herein and further must be able to provide the following:

4.2.1. Codes, Standards, Regulations and Permits. The Bidder will abide by applicable building, electrical and safety codes and all applicable legislation with regard to the work. All permits, visas, certifications and authorizations required for execution of the work shall be obtained by the Bidder at its own cost.

4.2.2. Safety Program. The Bidder shall provide a safety program appropriate for the project prior to work commencing. A description of the safety program is to be provided with the priced bid. The Bidder, its employees and subcontractors must be trained in the requirements of the safety program.

4.2.3. Quality Control Program. The Bidder shall provide a quality control program appropriate for the project. A description of the quality control program is to be provided with the technical offer.

4.2.4. Coordination of the Work. The Bidder shall designate a single point of contact to act as a liaison with the committee representative. The Bidder shall review the Basis of Design for the project. Project tracking is to be accomplished utilizing scheduling software acceptable to GDOE. Regular status meetings shall be conducted by the Bidder to update project status, work open issues and review change orders. Participation in these meetings by the Bidder and its liaison is mandatory.

4.2.5. Testing. Depending on the design requirements, the Bidder may be required to conduct a geotechnical analysis and other additional testing. Testing shall be conducted by an approved independent laboratory. Results of all testing shall be made directly available to GDOE.

4.2.6. Jobsite Criteria and Requirements.

4.2.6.1. The Bidder shall provide licensed surveys, as necessary, for the purpose of precisely locating all work to be performed.

4.2.6.2. The construction site boundary will be defined by GDOE and DPW and agreed upon by the Bidder. The Bidder may, as necessary, erect and maintain a safety/security fence around the boundary of the construction site. Construction boundaries at individual structures shall be erected and maintained by the Bidder as needed during various phases of the work for safety and security. The construction boundary shall be established such that access into the construction zone is controlled by the Bidder.

4.2.6.3. The Bidder shall maintain appropriate and safe traffic control during construction phase. All traffic control during school hours shall be reviewed and approved by GDOE and DPW.

4.2.6.4. All fencing shall meet GDOE and DPW requirements.

4.2.6.5. Any construction vehicles within the construction site boundary shall have a company placard clearly visible on the vehicle. Parking for Bidder's personal vehicles shall be as directed by GDOE and DPW.

4.2.6.6. The Bidder shall install and maintain proper erosion control measures to prevent run-off during construction.

4.2.6.7. Temporary Utilities. The Bidder shall be responsible for connecting and disconnecting all temporary utilities at the construction site.

4.2.6.8. Record Documents. The Bidder shall be responsible for maintaining specifications and as-built drawings during the construction phase. At the substantial completion of the construction, the as-built drawings shall be converted into recorded documents by the Offeror. The record documents shall be in a CADD format acceptable to GDOE and DPW.

4.2.7. Operation and Maintenance. The Bidder shall be responsible for collecting, organizing, verifying accuracy and submitting an Operations and Maintenance manual to GDOE and DPW for approval. This manual shall be Comprehensive in identifying all operational and maintenance requirements to maintain applicable warranties. It shall also be instructive for maintenance personnel to operate and maintain the completed work for the expected lifetime of the material and equipment utilized in the work.

4.2.8. Period of Performance. Bidder shall have seven hundred and twenty (720) days from date of award to complete construction of new Simon Sanchez High School.

4.3. Financing. Bidder must be able to fully finance the construction of the new Simon Sanchez High School. Bidder will work with the Guam Economic Development Authority to finance the construction of a new Simon Sanchez High School at the most favorable terms available to the

Government. Financing proposals will be evaluated based on the lowest annual aggregate lease payment.

SECTION 5:

STEP ONE – TECHNICAL QUALIFICATION OF BIDDERS

5.0 Step One Procedures

The following outlines the requirements for technical (non-price) bid submittals.

Bidders must organize their submittal into the sections delineated below, with tabs separating each section. The submittal should be prepared simply and economically, providing straightforward, concise description of the Bidder's ability to fulfill requirements of the IFB. In order to insure a uniform review process and to obtain the maximum degree of comparability, it is required that submittals be organized in the following manner:

The first page of the submittal must show the coversheet that is required to be returned with their offer.

5.1. Introduction.

- a. Cover letter (must be on Bidder's letterhead) with the name and address, email address, telephone number and facsimile number of the Bidder. The Bidder shall use the exact legal name, as registered or to be registered with the Department of Revenue and Taxation.
 - i. Point of Contact. The individual executing the letter shall be identified by name and position and shall be authorized to bind the Bidder contractually. Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.
 - ii. Contact Information. Include the Bidder's name, address, principal place of business, telephone and facsimile numbers, and email address. Also include the names, titles, email addresses, and telephone and facsimile numbers of persons authorized to represent the Bidder with the Government in connection with this IFB; and
- b. A statement specifying the extent of agreement with all terms, conditions, and provisions included in the IFB including amendments. A point-by-point response to all numbered sections, subsections, and attachments to the IFB is required. If no explanation or clarification is required in the Bidder's response to a specific subsection, the Bidder shall so indicate in the point-by-point response or utilize a blanket response for the entire section with the following statement:

"(Bidder's Name)" understands and will comply.

5.2. Company Overview.

- a. Type of firm. State whether Bidder is a corporation, partnership, sole proprietorship, joint venture, etc. Provide the organizational documents for Bidder and a certificate of good standing from the state or territory of formation. Provide a brief overview of the company and key team members with a brief background of their experience and education. Include any pertinent or applicable awards, commendations and publications by team members.
- b. Year firm established. Indicate the number of years the Bidder has been in business under its present business name and the number of full-time personnel employed by Bidder in the last twelve (12) months.
- c. Other firm names. Indicate all other names by which Bidder has been known and the length of time known by each name.
- d. Participating branch offices. If applicable, state the branch offices that participated in the development of the proposal, will participate in the evaluation phase, and will participate in the conduct of any services provided (office name and address).
- e. Financial condition. Financial resources report shall be dated not more than six (6) months prior to bid opening, must be prepared by a certified accountant and shall contain at least the following information:
 - i. Total Assets
 - ii. Total Liabilities
 - iii. Total Current Assets
 - iv. Total Current Liabilities
 - v. Bonding Capability
- f. Financial Statements. Submit annual financial statements for the last three (3) fiscal years, including company financial statement summaries, cash flow, certified by a Certified Public Accountant. If the organization has been in business for a period of less than three (3) years, Bidders are required to submit a detailed business plan, a list of its key team players (with their experience and education), and any other pertinent information that would allow the Government of Guam to evaluate the sufficiency of financial resources and the ability of the business to successfully perform the scope of work described herein.

5.3. Experience of Bidder.

- a. Primary project coordinator/manager. Identify the overall project coordinator/ manager who will serve as the primary project liaison between GDOE and the Bidder for all work being performed under the contract. The coordinator/manager may be subject to the approval of GDOE.

- i. Provide his/her resume and describe his/her qualifications
 - ii. Explain why this person has been selected as the overall project coordinator/manager.
- b. Key personnel. Provide the name(s), education, qualifications, experience, and the role of each key personnel assigned to perform the services under this IFB. Present an organizational chart identifying the relationships and duties of both the corporate staff and all proposed management and staff to be assigned to assist with the services under this IFB. At a minimum, if the Bidder is an individual, the proposal should include a complete resume of the individual. If the Bidder is a company, the proposal should include a resume of all the individuals who will be working on any aspect of the project.
- c. Ability, capacity and skill of the Bidder to perform the scope of work for construction as described in _____.
 - i. Experience of the Bidder's in accomplishing similar construction for the past 10 years on Guam, and/or in a remote, resource constrained environment with logistical challenges. The contractor must have at least 10 years of actual and direct experience in construction of minimum \$5,000,000 of schools or other similar facilities/structures.
 - ii. Possession of Government of Guam appropriate licenses to perform the scope of work herein.
 - iii. Experience in accomplishing government project on time and on budget.
 - iv. Availability of plant, machinery and other equipment necessary for work
 - v. Quality of work performed for Government of Guam or other government entities
 - vi. Listing of current and former clients and a description of the type of work performed
 - vii. References of at least three entities for which Bidder has provided similar work.
 - viii. Any supplementary information that may be required or useful in assessing Bidder's ability to complete performance of the contract.

- ix. Any Bidder who, at the time of bidding, is determined liable to pay liquidated damages for delay in completion of a project with the Government of Guam will be automatically rejected.
- d. Ability, capacity, and skill of the Bidder to perform financing as described in _____.
 - i. Bidder's organizational financial and legal structure, including any general and limited partners, involvement of subsidiaries, providers of capital, credit ratings and percentage interest of each party
 - ii. Documentation illustrating experience of the project sponsor in securing financing for projects of similar size and scope. For each project, provided the following information:
 - 1. Project name and location
 - 2. Project type and size
 - 3. Date of construction and permanent financing
 - iii. Familiarity and experience with municipal leases including municipal leases for schools or similar facilities
 - iv. Documentation demonstrating the capacity of the Bidder to structure municipal leases over \$10 million and examples of municipal leases financed.
 - v. Experience in managing service and maintenance contracts in order to support the upkeep and service of leased facilities
 - vi. Documentation demonstrating the ability of Bidder to provide 100% financing for the construction and maintenance of the new SSHS as described herein.
 - vii. Listing of current and former clients and a description of the type of financing work performed
 - viii. References of at least three entities for which Bidder has provided similar financing work.
 - ix. Any supplementary information describing the Bidder's experience in financing, providing and managing similar services. If the Bidder does not possess an experience similar to the services required, Bidder shall provide any pertinent information or experience that should be reviewed in consideration of award.

e. Debarment

The Bidder must certify, by submitting its offer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency. If a Bidder cannot certify this statement, attach a written explanation for review by the GDOE.

f. Conflict of Interest

Bidder shall disclose any current or historical engagement or relationships with any public or private party that could create an actual or perceived conflict of interest with GDOE, DPW, or GEDA.

SECTION 6: STEP TWO – PRICED BIDS

6.0 Step Two Procedures

The following outlines the requirements for priced bid submittals.

Bidders must organize their submittal into the sections delineated below, with tabs separating each section. Upon a determination that Bidder meets the requirements for inclusion on the Qualified Bidders List, only then shall all Bidders priced submittals be opened.

In order to insure a uniform review process and to obtain the maximum degree of comparability, it is required that submittals be organized in the following manner:

6.1 General Information

- 6.1.1. Bidder shall work with Guam Economic Development Authority (GEDA) to finance the construction of the new Simon Sanchez High School and to provide the necessary collateral equipment for the school
- 6.1.2. Bidder must be able to enter into a leaseback agreement for a term of thirty (30) years with the Government of Guam for the purpose of constructing and financing the new Simon Sanchez High School.
- 6.1.3. Bidder must be able to construct the new Simon Sanchez High School based on the design completed by TRMA and approved by GDOE within a period not to exceed 720 days from date of award
- 6.1.4. Bidder must be able to provide capital maintenance for the school for the duration of the lease agreement, subject to funding by annual legislative appropriation.
- 6.1.5. Priced Bids must be submitted in an sealed envelope labeled "SEALED BID".

6.2 Bidder shall submit the following:

- 6.2.1. Narrative description of the approach for constructing the project, including a work plan to sequence construction work to avoid closure of the existing campus, double session, and utility service disruption. Plan must insure that GDOE is able to fulfill its instructional day mandate as set forth in Public Law 28-45.
- 6.2.2. Narrative description of the work plan for operating and maintaining the facility throughout the duration of the leaseback agreement.

- 6.2.3. Narrative description of the approach for financing the project, including construction and term financing to include the project's projected financial structure, expected source of debt and equity financing, and estimated capital cost.
- 6.2.4. Narrative description outlining the method of operation, operational structure, and services to be provided by the Bidder to finance and operate the lease.
- 6.2.5. Term Sheet to include all interest charges, fees, expenses and conditions.
- 6.2.6. Description of estimated time line for the issuance of this lease and Bidder's ability to conduct transaction in a timely matter. Please feel free to outline certain variables that may have an impact on this financing.
- 6.2.7. Bid Bond. GDOE requires that all Bidders include a Bid Bond of not less than 15% of the Bid Amount as a requirement of this IFB. The Bid Bond shall be enclosed in the SEALED BID envelope and will be considered as a companion document to the SEALED BID.

6.3. Supplemental Information

6.3.1. Pledge of Real Property Tax Revenues and Business Privilege Tax Revenues

Rental payments under the lease and the lease-back may be secured by a pledge from the Territorial Educational Facilities Fund (TEFF) or other reservation of revenues by the government of Guam pursuant to § 22425(q)(4) and (6) Article 4, Chapter 22 Division 2, Title 5, Guam Code Annotated. These statutes are available on the World Wide Web at <http://www.guamcourts.org/CompilerofLaws/GCA/11gca/11gc022.PDF> and the attached Public Law 32-120 Section 58D109 **Attachment A-11**

The Territorial Educational Facilities Fund was created by Public Law 22-19 (as amended by Public Law 23-14) to account for all real property tax revenues received by or on behalf of government of Guam.

The government of Guam levies taxes on all real property at a fix rate of seven-eighths percent (7/80%) of the assessed value and levies taxes on improvements to real property at a fix rate of seven-twentieths percent (7/20%) of the assessed value of the improvements. By statute, all real property and improvements are assessed at ninety percent (90%) of appraised value. The first half of all property taxes is due December 15th of each year. The second half of all property taxes is due February 20th of each year. The entire tax on property may be paid when the first installment is due (<http://www.guamcourts.org/CompilerofLaws/GCA/11gca/11gc024.PDF>).

Schedule of Real Property Tax Revenues Fiscal Years 2009-2013

<i>Fiscal Year</i>	<i>Audited Revenues</i>
2009	20,310,866
2010	19,452,108
2011	20,147,143
2012	19,225,091
2013	21,263,267

Source: Government of Guam Audited Financial Statement

In accordance to Public Law 32-121 (Attachment A-12), rental payments under the lease and the lease-back for the public elementary and secondary schools on Guam, to include its athletic fields and playgrounds, excluding the five leased schools under the Guam Department of Education may be secured by a pledge or other reservation of revenues collected by the government from the following:

1. Taxes collected under the Business Privilege Tax Law (namely, Title 11 Guam Code Annotated Chapter 26, excluding the alcoholic beverage taxes, liquid fuel taxes, automotive surcharges, tobacco taxes and real property taxes). The unpledged portion of the business privilege tax (currently one percentage point of the current four percent business privilege tax rate) the sum of approximately One Million Eight Hundred Eighty-Two Thousand Eighty-Two Dollars (\$1,882,082) shall fund interest in Fiscal Year 2015, and the sum of approximately Two Million Five Hundred Sixty Four Thousand One Hundred Sixty-Five Dollars (\$2,564,165) shall fund interest payment annually for Fiscal Years 2016 through 2018.
2. The sum of One Million Two Hundred Thousand Dollars (\$1,200,000) from revenues received pursuant to Section 22425 (q)(5) of Article 4, Chapter 22, Division 2, Title 5, Guam Code Annotated will be available annually beginning in Fiscal Year 2016. This statute is available on the World Wide Web at <http://www.guamcourts.org/CompilerofLaws/GCA/11gca/11gc022.PDF> and the attached Public Law 32-121 Chapter 58E. Please also refer to Section 4.5.1 of this RFP for description of the revenues and collections.
3. The sum of Four Million Eight Hundred Thousand Dollars (\$4,800,000) from the maturity of Business Privilege Tax Bonds Series 2013C shall be available annually beginning in fiscal year 2019.

6.3.2. Revenues pledge or reserved shall be remitted in the following manner:

1. The Business Privilege Tax shall only pay for the interest payments of the lease and the lease-back pending the maturity of the Business Privilege Tax Bond Series 2013C in Fiscal Year 2019, and said

interest payments shall cease.

2. Revenues received pursuant to § 22425 (q)(5) of Article 4, Chapter 22 Division 2, Title 5, Guam Code Annotated, upon availability; and
3. Upon the maturity of the Business Privilege Tax Bond Series 2013C.

Business Privilege Tax Revenues are assessed and collected monthly against persons on account of their businesses operating within Guam measured by the application of the business privilege tax rate against values, gross proceeds of sales or gross income, as applicable, pursuant to Article 2 of Chapter 26 of Title 11 of the Guam Code Annotated. The Legislature is responsible for setting business privilege tax rates. Business privilege taxes consist of five categories: the general business privilege tax (formerly known as the gross receipts tax), the alcoholic beverage tax, the liquid fuel tax, the tobacco tax and automotive surcharges. Other than the general business privilege tax, which has remained at the current level of 4.0% for more than ten years (with the exception of a period of time between April 1, 2003 and March 31, 2004 when the rate was increased from 4.0% to 6.0% under P.L. 27-05 and then reduced again to 4.0% under P.L. 27-76), the other categories are taxed at varying rates on the basis of volume of fuel, or the amount of beverage or tobacco purchased.

The Business Privilege Tax Revenues derived from the levy of three percentage points, out of the total percentage points of the Government's general business privilege tax levied from time to time (currently four percentage points) are pledged to secure the payment of the Government of Guam Business Privilege Tax Bonds, Series A, Series B and Series C. From the one percentage point that is not pledged to secure the repayment of the Bonds, 0.16 percentage points is currently required by statute to be deposited in the Guam Memorial Hospital Authority Pharmaceuticals Fund for appropriation by the Legislature to fund pharmaceutical, drug, medical supplies, medical equipment, blood and blood products, and medicine requirements for Guam Memorial Hospital. No portion of the alcoholic beverage tax, the liquid fuel tax, the tobacco tax and automotive surcharges is pledged to secure payment of the 2013C Bonds.

The Government levies the business privilege tax on a broad base of services and goods, including the sale of tangible personal property and the provision of professional services; however, certain entities or sales, including most wholesale businesses, governmental entities, charitable and community organizations, hospitals, most agricultural producers and fisheries, home industries, licensed child care facilities and certain fuel sales, are exempt from the business privilege tax. In addition, under P.L. 24-12, as amended by P.L. 29-02, certain small businesses with gross annual income under \$50,000 are granted exemption from the business privilege tax on the first \$40,000 of annual revenues. Banks, banking institutions, small lenders, building and loan associations, and other

lending institutions are taxed annually at the business privilege tax rate on their net income. There are no limitations on business privilege tax rates,

Business Privilege Tax Collections. The Government has levied, collected and enforced the collection of business privilege taxes since 1953. Business privilege taxes are payable on a monthly basis, no later than the 20th day of the month following the taxable activity, except that banks and other lending institutions are required to pay business privilege taxes annually, no later than 90 days following the close of the taxpayer's tax year.

Enforcement of Collection of Business Privilege Taxes

Any business privilege taxes levied, due and uncollected become a debt due the Government and a lien upon any property of the debtor for the amount of the unpaid balance plus all penalties and interest. The office of the Commissioner of Revenue and Taxation (the "Tax Commissioner") may also collect delinquent business privilege taxes through suit, issuance of a warrant for collection, or injunction to restrain the delinquent taxpayer from continuing to carry on its business until the delinquent tax liability is paid. The statute of limitations for collections of unpaid business privilege taxes is seven years after the return is filed. There is no statute of limitation for revenue not reported.

Unless it is shown that the taxpayer's failure to timely remit business privilege taxes is due to reasonable cause and not due to willful neglect, there will be imposed a specific penalty to be added to the tax in the amount of 5% of the amount of such tax if the failure is not more than 30 days, with an additional 5% for each additional 30 days, or fraction thereof, not to exceed 25% in the aggregate. Penalties are also imposed on fraudulent and false returns. Interest at the prime rate (as determined and adjusted from time to time by the Tax Commissioner) is collected on past due business privilege taxes and on any penalties related thereto. In the case of corporations, officers, directors and employees are personally liable for unpaid gross receipts taxes in the same manner such persons may be liable for failure to withhold taxes on wages under applicable provisions of the Internal Revenue Code.

Criminal penalties are also available for failure to pay business privilege taxes, submission of false or fraudulent returns and aiding another's tax evasion.

In addition, after exhausting administrative remedies, a taxpayer may file an action in the Superior Court of Guam, irrespective of the amount involved, for the refund of any business privilege tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been illegally or erroneously collected, or of any sum collected alleged to have been excessive.

TABLE 1

**Government of Guam Business Privilege Tax Collections
Fiscal Years 1991 – 2013**

<u>Fiscal Year</u>	<u>Business Privilege Tax Collections</u>
1991	\$144,453,058
1992	155,936,253
1993	147,772,341
1994	151,150,400
1995	172,475,799
1996	180,377,835
1997	184,500,199
1998	172,063,088
1999	148,963,676
2000	146,488,599
2001	137,394,940
2002 ⁽¹⁾	119,345,725
2003 ⁽²⁾	156,095,935
2004 ⁽²⁾	170,610,706
2005	149,081,382
2006	155,386,098
2007	172,745,349
2008	185,795,875
2009	182,583,996
2010	188,621,364
2011	200,047,641
2012	221,443,640
2013	221,672,983

⁽¹⁾ Decrease is a result, in part, of the economic effects of super typhoon Pongsona, typhoon Chataan and the "9/11" attacks on the U.S. mainland, all of which occurred or had material effects in Fiscal Year 2002.

⁽²⁾ Reflects temporary increase in the business privilege tax rate from 4% to 6% from April 2003 through April 2004.

Sources: Government of Guam Audited Financial Statements for Fiscal Years 1991- 2013

6.3.3. Special Provisions

Indebtedness Limitation. Section 11 of the Organic Act of Guam provides that no public indebtedness of the Government shall be authorized or allowed in excess of ten percent of the aggregate tax valuation of the property in Guam.

On March 27, 2007, the Supreme Court of the United States issued its decision in the case of *Limtiaco v. Camacho*, which, among other things, interpreted "aggregate tax valuation" to mean the assessed valuation (i.e., the amount upon which the property tax rate is levied, as opposed to appraised value). At the time, the assessed valuation of property in Guam was defined by Guam statutes to mean 35% of the property's appraised value, as ascertained by the Guam assessor. Guam's property taxation

statutes have since been amended so that assessed value is now defined as 90% of appraised value, with related amendments to property tax rates so that revenue impacts were neutral.

The Certificates will not be treated as public indebtedness of the Government for purposes of Section 11 of the Organic Act of Guam.

SECTION 7: EVALUATION

7.0 Evaluation Committee

7.1. An evaluation committee (5GCA 58D105) comprised of the Superintendent of Guam Department of Education (GDOE), serving as Chairman and including the Director of Department of Public Works (DPW) or Deputy Director, the Director of the Department of Land Management (DLM) or Deputy Director, and the Administrator of the Guam Economic Development Authority (GEDA) or Deputy Administrator shall meet to (1) determine and approve the list of responsive, responsible and qualified bidders and (2) determine which bid submitted by qualified bidders provides the lowest annual aggregate lease payment to the Government of Guam.

7.2. In accordance with the Guam Procurement Regulations, the evaluation committee may conduct discussions with any Bidder at anticipated date and time as stated in **Section 1**. The purposes of such discussions shall be to (1) determine in greater detail the Bidder's qualifications; and (2) explore with the Bidder the scope and nature of the required services, the Bidder's proposed method of performance, and the relative utility of alternative methods of approach. The discussions may be video or tape-recorded. At least one key Bidder representative must be present for such discussions. In conducting discussions there shall be no disclosure of any information derived from bids submitted by competing Bidders.

7.3. Qualification of Bidders. The evaluation committee will review and approved qualified bidders based on the Evaluation Criteria identified in this section. The evaluation committee will determine whether a Bidder has met the standards of responsibility. Such a determination may be made at any time during the evaluation process and through contract negotiation if information surfaces that would result in a determination of non-responsibility. If a Bidder is found non-responsible, the determination must be in writing, made a part of the procurement file and mailed to the affected Bidder.

7.4. Selection of Bid with Lowest Annual Aggregate Lease Payment. Bid submissions shall be opened in public and in the presence of two or more procurement officials as well as the evaluation committee. The evaluation committee will open sealed bids and will determine if submissions are either "responsive" or "non-responsive". Bid submissions may be found non-responsive any time during the evaluation process or contract negotiation if any of the required information is not provided or the proposal is not within the plans and specifications described and required in the IFB. If a proposal is found to be non-responsive, it will not be considered further.

For all responsive bids, the evaluation committee will determine which bid provides the lowest annual aggregate lease payment for the Government of Guam. Once a bid is determined to meet the criteria for award, GDOE will finalize a contract with the selected Bidder. If compensation, contract requirements or contract documents cannot be agreed upon, GDOE may enter into negotiations with the Bidder who submitted the next lowest bid.

All proposals submitted will be evaluated by the Evaluation Committee and will be rated using the criteria and form provided in this RFP including the following:

[INSERT EVALUATION FRAMEWORK]

SECTION 8: GDOE REQUIREMENTS

8.1 PROHIBITION AGAINST EMPLOYMENT OF SEX OFFENDERS

Pursuant to 5 G.C.A. § 5253:

(a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway.

(b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

8.2 EQUAL OPPORTUNITY

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color, age, economic status, or national origin. The Contractor will take affirmative action to insure that qualified applicants are employed and that employees are treated during employment without regard to their race, religion, sex, color, age, economic status, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, age, economic status, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

8.3 HIRING APPRENTICES

The Contractor shall hire for performance of work under this contract apprentice(s) to be employed in the performance of work under this contract if H2 workers are employed in accordance with Executive Order No. 2014-06 and 2014-09.

8.4 MINIMUM WAGE RATE

All temporary alien workers (H2) employed on this project shall be paid not less than minimum wage applicable to the corresponding skill or craft as determined by the Department of Labor, Government of Guam. Prevailing wage rates of Department of Labor, Government of Guam are attached herewith and shall be deemed a part of the contract documents. (See Attachment A-7: PREVAILING WAGE RATE FOR TEMPORARY ALIEN).

For the latest U.S. Department of Labor Wage Determination: Guam, Northern Marianas Islands, visit <http://www.wdol.gov/wdol/scafiles/std/05-2147.txt>

8.5 WAGE AND BENEFITS DETERMINATION FOR SERVICES

Bidders submitting offers must pay employees providing services procured through this IFB in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam. 5 GCA § 5801 and § 5802, as applicable. A copy of the most recent wage determination is included herein (See Attachment A-8: THE WAGE DETERMINATION FOR SERVICE CONTRACT ACT).

The Wage Determination for Guam and the Northern Mariana Islands also can be found on the U.S. Department of Labor's website: <http://www.wdol.gov>.

Bidders submitting offers must provide health and similar benefits for employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by U.S. Department of Labor and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee. 5 GCA § 5802.

8.6 PRIME CONTRACTOR/SUBCONTRACTORS PARTNERSHIP

The Bidder awarded a contract under this IFB will be the Prime Contractor and shall be responsible, in total, for all work of any subcontractors. All subcontractors, if known at the time of proposal submission, must be listed in the proposal. GDOE reserves the right

to approve all subcontractors. Subcontractors should be capable of submitting performance bond and to comply with 5 GCA 58D106 requirements. The Prime contractor shall be responsible to GDOE for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the contractor. Further, nothing contained within this document or any contract created as a result of any award derived from this IFB shall create any contractual relationship(s) between any subcontractor and GDOE.

8.7 TAXES

Bidders are cautioned that they are subject to Guam Business Privilege Taxes and Guam Income Taxes. Specific information regarding taxes may be obtained from the Director of Revenue and Taxation.

8.8 LICENSING

Bidders are cautioned that they are subject to Guam Licensing laws. Specific information on licenses may be obtained from the Director of Revenue and Taxation.

8.9 GDOE RIGHTS RESERVED

While GDOE and the government of Guam have every intention to issue an award as a result of this IFB, issuance of the IFB in no way constitutes a commitment by GDOE or the government of Guam to award and execute a contract. Upon a determination such actions would be in its best interest, GDOE, in its sole discretion, reserves the right to:

- Cancel or terminate this IFB as provided in the Guam Procurement Regulations;
- Reject any or all proposals received in response to this IFB in the best interests of GDOE or the government of Guam as provided in the Guam Procurement Regulations;
- Waive any undesirable, inconsequential, or inconsistent provisions of this IFB which would not have significant impact on any proposal;
- Waive any minor informalities in proposals received, or have them corrected by the Offeror in accordance with applicable regulations;
- Not award if it is in the best interest of GDOE or the government of Guam not to proceed with contract execution; or
- If awarded, terminate any contract if GDOE determines adequate funds are not available.

8.10 NONDISCLOSURE OF DATA

In accordance with Guam Procurement Regulations § 3114(h) (2), Bidders may identify trade secrets and other proprietary data contained in their offers. If the Bidder selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, GDOE shall examine the request to determine its validity prior to entering into negotiations. If the parties do not agree as to the disclosure of data, GDOE shall inform the Bidder in writing what portion of the proposal will be disclosed and that,

unless the Bidder withdraws the offer or protests under 5 G.C.A. Chapter 5 Article 9 the offer will be so disclosed.

SECTION 9: LEGAL DOCUMENTS AND ATTACHMENTS

9.1 LEGAL REQUIREMENTS

Each Bidder is required to submit the affidavits and assurances attached as **Attachments ____ through ____**. Failure to include said affidavits and assurances shall render a proposal non-responsive.

- Affidavit Disclosing Ownership and Commissions per 5 G.C.A. § 5233 (Attachment ____). As a condition of this IFB, any partnership, sole proprietorship, joint venture, association or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any persons, companies, partners, or joint ventures who have held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship joint venture, association or corporation at any time during the 365 days immediately preceding the submission date of a proposal. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship joint venture, association or corporation which have been held by each such person during the 365 day period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to this IFB for the Bidder and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying.
- Affidavit re Non-Collusion per 2 GAR Division 4 § 3126(b) (Attachment ____). By submitting an offer, the Bidder certifies that the price submitted was independently arrived at without collusion.
- Affidavit Re No Gratuities or Kickbacks per 2 GAR Division 4 § 11107(e) (Attachment ____). The Bidder represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in §11206 (Gratuities and Kickbacks) of the Guam Procurement Regulations. **Gratuities.** It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract; or to any solicitation or proposal therefor. **Kickbacks.** It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

- Affidavit re Contingent Fees per 2 GAR § 11108 (Attachment ____). It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
- Affidavit RE Ethical Standards per 2 GAR § 11103 (Attachment ____). The Bidder represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.
- Attachment ____: Local Procurement Preference Application

ATTACHMENT A-1 :

AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS

CITY OF _____)
) ss.
ISLAND OF GUAM)

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the Offeror and that *[please check only one]*:

☐ The Offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.

☐ The Offeror is a corporation, partnership, joint venture, or association known as _____ *[please state name of Offeror company]*, and the persons, companies, partners, or joint ventures who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
_____	_____	_____

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.

Signature of one of the following:
Offeror, if the Offeror is an individual;
Partner, if the Offeror is a partnership;
Officer, if the Offeror is a corporation.

Subscribed and sworn to before me
This ____ day of _____, 201__.

NOTARY PUBLIC

My commission expires: _____

AG Procurement Form 002 (Rev. Nov. 17, 2005)

ATTACHMENT A-2:

AFFIDAVIT NON-COLLUSION

CITY OF _____)
) ss.
ISLAND OF GUAM)

I, _____ [state name of affiant signing below], being first
duly sworn deposes and says that:

1. The name of the offering company or individual is [state name of company]
_____.

2. The proposal for the solicitation identified above is genuine and not collusive or a sham. The Offeror has not colluded, conspired, connived or agreed, directly or indirectly, with any other Offeror or person, to put in a sham proposal or to refrain from making an offer. The Offeror has not in any manner, directly or indirectly, sought by an agreement or collusion, or communication or conference, with any person to fix the proposal price of Offeror or of any other Offeror, or to fix any overhead, profit or cost element of said proposal price, or of that of any other Offeror, or to secure any advantage against the government of Guam or any other Offeror, or to secure any advantage against the government of Guam or any person interested in the proposed contract. All statements in this affidavit and in the proposal are true to the best of the knowledge of the undersigned. This statement is made in pursuant to 2 GAR Division 4 § 3126(b).

3. I make this statement on behalf of myself as a representative of the Offeror, and on behalf of the Offeror's officers, representatives, agents, subcontractors, and employees.

Signature of one of the following:
Offeror, if the Offeror is an individual;
Partner, if the Offeror is a partnership;
Officer, if the Offeror is a corporation.

Subscribed and sworn to before me

This ____ day of _____, 201 ____.

NOTARY PUBLIC
My commission expires: _____.

**ATTACHMENT A-3:
AFFIDAVIT NO GRATUITIES OR KICKBACKS**

CITY OF _____)
) ss.
ISLAND OF GUAM)

I, _____ [state name of affiant signing below], being first duly sworn, deposes and says that:

1. The name of the offering firm or individual is [state name of Offeror company] _____ . Affiant is _____ [state one of the following: the Offeror, a partner of the Offeror, and officer of the Offeror] making the foregoing identified bid or proposal.

2. To the best of affiant's knowledge, neither affiant, nor any of the Offeror's officers, representatives, agents, subcontractors, or employees have violated, are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(e). Further, affiant promises, on behalf of Offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4§ 11107(e).

3. To the best of affiant's knowledge, neither affiant, nor any of the Offeror's offices, representatives, agents, subcontractors, or employees have offered, given or agreed to give, any government of Guam employee or former government employee, any payment, gift, kickback, gratuity or offer of employment in connection with the Offeror's proposal.

4. I make these statements on behalf of myself as a representative of the Offeror, and on behalf of the Offeror's officers, representatives, agents, subcontractors, and employees.

Signature of one of the following:
Offeror, if the Offeror is an individual;
Partner, if the Offeror is a partnership;
Officer, if the Offeror is a corporation.

Subscribed and sworn to before me

This ____ day of _____, 201__.

NOTARY PUBLIC

My commission expires: _____, _____.

AG Procurement **Form 004** (March 9, 2011)

ATTACHMENT A-4

AFFIDAVIT CONTINGENT FEES

CITY OF _____)
) ss.
ISLAND OF GUAM)

I, _____ [state name of affiant signing below], being first
duly sworn, deposes and says that:

1. The name of the offering company or individual is [state name of company]
_____.

2. As a part of the offering company's bid or proposal, to the best of my knowledge,
the offering company has not retained any person or agency on a percentage, commission, or
other contingent arrangement to secure this contract. This statement is made in pursuant to 2
GAR Division 4 11108(f).

3. As a part of the offering company's bid or proposal, to the best of my knowledge,
the offering company has not retained a person to solicit or secure a contract with the
government of Guam upon an agreement or understanding for a commission, percentage,
brokerage, or contingent fee, except for retention of bona fide employees or bona fide established
commercial selling agencies for the purpose of securing business. This statement is made
pursuant to 2 GAR Division 4 11108(h).

4. I make these statements on behalf of myself as a representative of the Offeror, and
on behalf of the Offeror's officers, representatives, agents, subcontractors, and employees.

Signature of one of the following:
Offeror, if the Offeror is an individual;
Partner, if the Offeror is a partnership;
Officer, if the Offeror is a corporation.

Subscribed and sworn to before me

This ____ day of _____, 201 ____.

NOTARY PUBLIC
My commission expires: _____, _____.

AG Procurement Form 007 (March 9, 201)

ATTACHMENT A-5:

AFFIDAVIT ETHICAL STANDARDS

CITY OF _____)
) ss.
ISLAND OF GUAM)

I, _____ [state name of affiant signing below], being first duly sworn, deposes and says that:

The affiant is _____ [state one of the following: the Offeror, a partner of the Offeror, an officer of the Offeror] making the foregoing identified bid or proposal. To the best of affiant's knowledge, neither affiant nor any officers, representatives, agents, subcontractors or employees of Offeror have knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5, Article 11. Further, affiant promises that neither he or she, nor any officer, representative, agent, subcontractor, or employee of Offeror will knowingly influence any government of Guam employee to breach any ethical standards set forth in 5 GCA Chapter 5, Article 11. These statements are made pursuant to 2 GAR Division 4 § 11103(b).

Signature of one of the following:
Offeror, if the Offeror is an individual;
Partner, if the Offeror is a partnership;
Officer, if the Offeror is a corporation.

Subscribed and sworn to before me

This ____ day of _____, 201__.

NOTARY PUBLIC

My commission expires: _____, _____.

AG Procurement Form 005 (Jul. 12, 2010)

ATTACHMENT A-6:

LOCAL PROCUREMENT PREFERENCE

Please place a "x" on the block indicating the item that applies to your business:

Five G.C.A. § 5008, Policy in Favor of Local Procurement, states:

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be contractor is:

- ☐ (a) a licensed bonafide manufacturing business that adds at least twenty-five percent of the value of an item, not to include administrative overhead, using workers who are U.S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory for the Pacific Islands, or
- ☐ (b) a business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured, or
- ☐ (c) a business that has a bona fide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or One Hundred Fifty Thousand Dollars (US\$150,000) whichever is less, of supplies and items of a similar nature to those being sought, or
- ☐ (d) a service business actually in business, doing a substantial portion of its business on Guam, and hiring at least 95% U.S. Citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

*Bidders indicating qualification under (d) may be considered QUALIFIED for the Local Procurement Preference only if the Government's requirement is for service. "Service" is defined in 5 G.C.A. § 5030.

I, _____, representative for _____ ("offeror"), have read the requirements of the law cited above and do hereby qualify and elect to be given the Local Procurement Preference for RFP No. _____. I understand that GEDA will review this application and provide me with a determination whether or not the 15% preference will be applied to this bid. I agree to provide such information or evidence as may be requested by GEDA to substantiate the offeror's qualification for the local procurement preference.

I, _____, representative for _____, have read the requirements of the law cited above, and do not wish to apply for the Local Procurement Preference for RFP No. _____.

Date

Note: Offerors that do not complete this form will not be considered for the local procurement preference. Non-completion of this form is not a basis for rejection of the Bid.

ATTACHMENT A-7:

PREVAILING WAGE RATE FOR TEMPORARY ALIEN

<p>Prevailing Wage Rates for Temporary Alien Employment Certification Government of Guam EFFECTIVE SEPTEMBER 29, 2008</p>
--

OCCUPATION	HOURLY RATE
Bricklayer	\$14.02
Carpenter	\$13.56
Cement Mason	\$12.87
Construction Equipment Mechanic	\$14.14
Cook, CAMP	\$11.85
Construction Helper	\$9.34
Construction Labor	\$8.50
Electrician	\$15.45
Heating Air conditioning & Refrigeration Mechanic	\$15.73
Heavy Equipment Mechanic	\$14.14
Heavy Equipment Operator	\$13.77
Iron Worker	\$10.38
Painter	\$14.60
Pipe Fitter	\$16.80
Plasterer	\$10.98
Plumber	\$14.96
Refrigeration Mechanic	\$16.24
Roofer	\$10.96
Sheet-Metal Worker	\$15.17

ATTACHMENT A-8

WD 05-2147 (Rev.-17) was first posted on www.wdol.gov on 12/30/2014

REGISTER OF WAGE DETERMINATIONS UNDER
THE SERVICE CONTRACT ACT
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON D.C. 20210

Diane C. Koplewski
Director

Division of
Wage Determinations

Wage Determination No.: 2005-2147
Revision No.: 17
Date Of Revision: 12/22/2014

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Service Contract Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

States: Guam, Northern Marianas, Wake Island

Area: Guam Statewide
Northern Marianas Statewide
Wake Island Statewide

****Fringe Benefits Required Follow the Occupational Listing****

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		12.50
01012 - Accounting Clerk II		13.53
01013 - Accounting Clerk III		15.59
01020 - Administrative Assistant		17.67
01040 - Court Reporter		15.38
01051 - Data Entry Operator I		10.48
01052 - Data Entry Operator II		11.99
01060 - Dispatcher, Motor Vehicle		13.06
01070 - Document Preparation Clerk		12.25
01090 - Duplicating Machine Operator		12.25
01111 - General Clerk I		10.29
01112 - General Clerk II		11.28
01113 - General Clerk III		12.32
01120 - Housing Referral Assistant		17.15
01141 - Messenger Courier		10.12
01191 - Order Clerk I		11.23
01192 - Order Clerk II		12.25
01261 - Personnel Assistant (Employment) I		14.33
01262 - Personnel Assistant (Employment) II		14.90
01263 - Personnel Assistant (Employment) III		16.48
01270 - Production Control Clerk		18.34
01280 - Receptionist		9.67
01290 - Rental Clerk		11.10

01300 - Scheduler, Maintenance	13.75
01311 - Secretary I	13.75
01312 - Secretary II	15.38
01313 - Secretary III	17.15
01320 - Service Order Dispatcher	11.57
01410 - Supply Technician	17.67
01420 - Survey Worker	15.26
01531 - Travel Clerk I	11.61
01532 - Travel Clerk II	12.57
01533 - Travel Clerk III	13.44
01611 - Word Processor I	12.25
01612 - Word Processor II	13.75
01613 - Word Processor III	15.38
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer, Fiberglass	13.34
05010 - Automotive Electrician	13.06
05040 - Automotive Glass Installer	12.10
05070 - Automotive Worker	12.10
05110 - Mobile Equipment Servicer	8.59
05130 - Motor Equipment Metal Mechanic	13.06
05160 - Motor Equipment Metal Worker	12.10
05190 - Motor Vehicle Mechanic	13.06
05220 - Motor Vehicle Mechanic Helper	10.12
05250 - Motor Vehicle Upholstery Worker	12.10
05280 - Motor Vehicle Wrecker	12.10
05310 - Painter, Automotive	12.37
05340 - Radiator Repair Specialist	12.10
05370 - Tire Repairer	7.81
05400 - Transmission Repair Specialist	12.10
07000 - Food Preparation And Service Occupations	
07010 - Baker	10.47
07041 - Cook I	9.54
07042 - Cook II	11.78
07070 - Dishwasher	7.25
07130 - Food Service Worker	7.78
07210 - Meat Cutter	11.86
07260 - Waiter/Waitress	7.59
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	14.38
09040 - Furniture Handler	8.85
09080 - Furniture Refinisher	14.38
09090 - Furniture Refinisher Helper	10.66
09110 - Furniture Repairer, Minor	12.51
09130 - Upholsterer	14.38
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	8.23
11060 - Elevator Operator	8.23
11090 - Gardener	10.99
11122 - Housekeeping Aide	8.33

11150 - Janitor	8.23
11210 - Laborer, Grounds Maintenance	9.14
11240 - Maid or Houseman	7.25
11260 - Pruner	8.23
11270 - Tractor Operator	10.33
11330 - Trail Maintenance Worker	9.14
11360 - Window Cleaner	9.14
12000 - Health Occupations	
12010 - Ambulance Driver	15.81
12011 - Breath Alcohol Technician	15.81
12012 - Certified Occupational Therapist Assistant	21.70
12015 - Certified Physical Therapist Assistant	21.70
12020 - Dental Assistant	13.20
12025 - Dental Hygienist	29.85
12030 - EKG Technician	23.96
12035 - Electroneurodiagnostic Technologist	23.96
12040 - Emergency Medical Technician	15.81
12071 - Licensed Practical Nurse I	14.14
12072 - Licensed Practical Nurse II	15.81
12073 - Licensed Practical Nurse III	17.63
12100 - Medical Assistant	11.54
12130 - Medical Laboratory Technician	14.14
12160 - Medical Record Clerk	11.82
12190 - Medical Record Technician	13.59
12195 - Medical Transcriptionist	14.14
12210 - Nuclear Medicine Technologist	34.75
12221 - Nursing Assistant I	10.03
12222 - Nursing Assistant II	11.30
12223 - Nursing Assistant III	12.31
12224 - Nursing Assistant IV	13.84
12235 - Optical Dispenser	15.81
12236 - Optical Technician	14.14
12250 - Pharmacy Technician	13.41
12280 - Phlebotomist	13.84
12305 - Radiologic Technologist	22.64
12311 - Registered Nurse I	20.70
12312 - Registered Nurse II	25.32
12313 - Registered Nurse II, Specialist	25.32
12314 - Registered Nurse III	30.64
12315 - Registered Nurse III, Anesthetist	30.64
12316 - Registered Nurse IV	36.72
12317 - Scheduler (Drug and Alcohol Testing)	19.59
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	15.06
13012 - Exhibits Specialist II	18.66
13013 - Exhibits Specialist III	22.83
13041 - Illustrator I	15.06
13042 - Illustrator II	18.66
13043 - Illustrator III	22.83

13047 - Librarian		20.66
13050 - Library Aide/Clerk		12.00
13054 - Library Information Technology Systems Administrator		18.66
13058 - Library Technician		15.06
13061 - Media Specialist I		13.46
13062 - Media Specialist II		15.06
13063 - Media Specialist III		16.80
13071 - Photographer I		12.82
13072 - Photographer II		14.32
13073 - Photographer III		17.75
13074 - Photographer IV		21.73
13075 - Photographer V		26.30
13110 - Video Teleconference Technician		12.91
14000 - Information Technology Occupations		
14041 - Computer Operator I		13.65
14042 - Computer Operator II		15.76
14043 - Computer Operator III		17.56
14044 - Computer Operator IV		19.50
14045 - Computer Operator V		21.81
14071 - Computer Programmer I	(see 1)	15.73
14072 - Computer Programmer II	(see 1)	19.50
14073 - Computer Programmer III	(see 1)	23.84
14074 - Computer Programmer IV	(see 1)	
14101 - Computer Systems Analyst I	(see 1)	24.23
14102 - Computer Systems Analyst II	(see 1)	
14103 - Computer Systems Analyst III	(see 1)	
14150 - Peripheral Equipment Operator		13.65
14160 - Personal Computer Support Technician		19.50
15000 - Instructional Occupations		
15010 - Aircrew Training Devices Instructor (Non-Rated)		24.23
15020 - Aircrew Training Devices Instructor (Rated)		29.32
15030 - Air Crew Training Devices Instructor (Pilot)		33.30
15050 - Computer Based Training Specialist / Instructor		24.23
15060 - Educational Technologist		22.82
15070 - Flight Instructor (Pilot)		33.30
15080 - Graphic Artist		20.47
15090 - Technical Instructor		17.65
15095 - Technical Instructor/Course Developer		21.58
15110 - Test Proctor		13.87
15120 - Tutor		13.87
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations		
16010 - Assembler		8.08
16030 - Counter Attendant		8.08
16040 - Dry Cleaner		9.34
16070 - Finisher, Flatwork, Machine		8.08
16090 - Presser, Hand		8.08
16110 - Presser, Machine, Drycleaning		8.08
16130 - Presser, Machine, Shirts		8.08

16160 - Presser, Machine, Wearing Apparel, Laundry	8.08
16190 - Sewing Machine Operator	9.86
16220 - Tailor	10.33
16250 - Washer, Machine	8.46
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	14.49
19040 - Tool And Die Maker	18.20
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	12.49
21030 - Material Coordinator	18.34
21040 - Material Expediter	18.34
21050 - Material Handling Laborer	10.65
21071 - Order Filler	9.66
21080 - Production Line Worker (Food Processing)	12.49
21110 - Shipping Packer	13.33
21130 - Shipping/Receiving Clerk	13.33
21140 - Store Worker I	13.23
21150 - Stock Clerk	18.58
21210 - Tools And Parts Attendant	12.49
21410 - Warehouse Specialist	12.49
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	20.69
23021 - Aircraft Mechanic I	19.70
23022 - Aircraft Mechanic II	20.69
23023 - Aircraft Mechanic III	21.74
23040 - Aircraft Mechanic Helper	13.70
23050 - Aircraft, Painter	18.50
23060 - Aircraft Servicer	16.09
23080 - Aircraft Worker	17.38
23110 - Appliance Mechanic	14.49
23120 - Bicycle Repairer	9.74
23125 - Cable Splicer	15.43
23130 - Carpenter, Maintenance	13.00
23140 - Carpet Layer	13.55
23160 - Electrician, Maintenance	14.99
23181 - Electronics Technician Maintenance I	14.72
23182 - Electronics Technician Maintenance II	15.05
23183 - Electronics Technician Maintenance III	18.31
23260 - Fabric Worker	12.60
23290 - Fire Alarm System Mechanic	15.43
23310 - Fire Extinguisher Repairer	11.67
23311 - Fuel Distribution System Mechanic	15.43
23312 - Fuel Distribution System Operator	13.01
23370 - General Maintenance Worker	11.95
23380 - Ground Support Equipment Mechanic	19.70
23381 - Ground Support Equipment Servicer	16.09
23382 - Ground Support Equipment Worker	17.38
23391 - Gunsmith I	11.67
23392 - Gunsmith II	13.55

23393 - Gunsmith III	15.43
23410 - Heating, Ventilation And Air-Conditioning Mechanic	15.76
23411 - Heating, Ventilation And Air Conditioning Mechanic (Research Facility)	16.55
23430 - Heavy Equipment Mechanic	15.15
23440 - Heavy Equipment Operator	13.73
23460 - Instrument Mechanic	15.43
23465 - Laboratory/Shelter Mechanic	14.49
23470 - Laborer	10.65
23510 - Locksmith	14.49
23530 - Machinery Maintenance Mechanic	17.38
23550 - Machinist, Maintenance	15.43
23580 - Maintenance Trades Helper	9.92
23591 - Metrology Technician I	15.43
23592 - Metrology Technician II	16.41
23593 - Metrology Technician III	17.37
23640 - Millwright	15.43
23710 - Office Appliance Repairer	14.38
23760 - Painter, Maintenance	13.55
23790 - Pipefitter, Maintenance	15.32
23810 - Plumber, Maintenance	14.38
23820 - Pneudraulic Systems Mechanic	15.43
23850 - Rigger	15.43
23870 - Scale Mechanic	13.55
23890 - Sheet-Metal Worker, Maintenance	15.21
23910 - Small Engine Mechanic	13.55
23931 - Telecommunications Mechanic I	19.01
23932 - Telecommunications Mechanic II	19.76
23950 - Telephone Lineman	18.24
23960 - Welder, Combination, Maintenance	14.66
23965 - Well Driller	15.43
23970 - Woodcraft Worker	15.43
23980 - Woodworker	11.67
24000 - Personal Needs Occupations	
24570 - Child Care Attendant	10.09
24580 - Child Care Center Clerk	12.58
24610 - Chore Aide	12.43
24620 - Family Readiness And Support Services Coordinator	12.44
24630 - Homemaker	16.12
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	15.43
25040 - Sewage Plant Operator	14.49
25070 - Stationary Engineer	15.43
25190 - Ventilation Equipment Tender	10.73
25210 - Water Treatment Plant Operator	14.49
27000 - Protective Service Occupations	
27004 - Alarm Monitor	10.90

27007 - Baggage Inspector	7.35
27008 - Corrections Officer	12.05
27010 - Court Security Officer	12.05
27030 - Detection Dog Handler	10.90
27040 - Detention Officer	12.05
27070 - Firefighter	12.05
27101 - Guard I	7.37
27102 - Guard II	10.90
27131 - Police Officer I	12.05
27132 - Police Officer II	13.40
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	9.53
28042 - Carnival Equipment Repairer	10.08
28043 - Carnival Equipment Worker	7.78
28210 - Gate Attendant/Gate Tender	13.18
28310 - Lifeguard	11.01
28350 - Park Attendant (Aide)	14.74
28510 - Recreation Aide/Health Facility Attendant	10.76
28515 - Recreation Specialist	18.26
28630 - Sports Official	11.74
28690 - Swimming Pool Operator	17.71
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	15.20
29020 - Hatch Tender	15.20
29030 - Line Handler	15.20
29041 - Stevedore I	14.22
29042 - Stevedore II	16.25
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	35.77
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	24.66
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	27.16
30021 - Archeological Technician I	17.49
30022 - Archeological Technician II	19.56
30023 - Archeological Technician III	24.21
30030 - Cartographic Technician	23.18
30040 - Civil Engineering Technician	21.93
30061 - Drafter/CAD Operator I	17.49
30062 - Drafter/CAD Operator II	19.56
30063 - Drafter/CAD Operator III	20.74
30064 - Drafter/CAD Operator IV	24.21
30081 - Engineering Technician I	14.62
30082 - Engineering Technician II	16.41
30083 - Engineering Technician III	18.36
30084 - Engineering Technician IV	22.34
30085 - Engineering Technician V	27.83
30086 - Engineering Technician VI	33.66
30090 - Environmental Technician	21.10
30210 - Laboratory Technician	20.74
30240 - Mathematical Technician	23.34

30361 - Paralegal/Legal Assistant I	19.06
30362 - Paralegal/Legal Assistant II	21.53
30363 - Paralegal/Legal Assistant III	26.35
30364 - Paralegal/Legal Assistant IV	30.80
30390 - Photo-Optics Technician	21.93
30461 - Technical Writer I	22.17
30462 - Technical Writer II	27.10
30463 - Technical Writer III	32.79
30491 - Unexploded Ordnance (UXO) Technician I	22.74
30492 - Unexploded Ordnance (UXO) Technician II	27.51
30493 - Unexploded Ordnance (UXO) Technician III	32.97
30494 - Unexploded (UXO) Safety Escort	22.74
30495 - Unexploded (UXO) Sweep Personnel	22.74
30620 - Weather Observer, Combined Upper Air Or Surface Programs	(see 2) 20.74
30621 - Weather Observer, Senior	(see 2) 23.00
31000 - Transportation/Mobile Equipment Operation Occupations	
31020 - Bus Aide	8.15
31030 - Bus Driver	9.69
31043 - Driver Courier	8.97
31260 - Parking and Lot Attendant	7.25
31290 - Shuttle Bus Driver	9.99
31310 - Taxi Driver	8.21
31361 - Truckdriver, Light	8.97
31362 - Truckdriver, Medium	11.61
31363 - Truckdriver, Heavy	12.48
31364 - Truckdriver, Tractor-Trailer	12.48
99000 - Miscellaneous Occupations	
99030 - Cashier	7.46
99050 - Desk Clerk	9.70
99095 - Embalmer	22.74
99251 - Laboratory Animal Caretaker I	16.24
99252 - Laboratory Animal Caretaker II	17.04
99310 - Mortician	22.74
99410 - Pest Controller	13.28
99510 - Photofinishing Worker	11.95
99710 - Recycling Laborer	10.76
99711 - Recycling Specialist	16.27
99730 - Refuse Collector	10.24
99810 - Sales Clerk	8.95
99820 - School Crossing Guard	15.03
99830 - Survey Party Chief	20.30
99831 - Surveying Aide	11.54
99832 - Surveying Technician	15.00
99840 - Vending Machine Attendant	20.19
99841 - Vending Machine Repairer	23.57
99842 - Vending Machine Repairer Helper	20.19

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.02 per hour or \$160.80 per week or \$696.79 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; and 4 weeks after 3 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) **COMPUTER EMPLOYEES:** Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

- (1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- (2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- (3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you

work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am.

If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives.

Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**** UNIFORM ALLOWANCE ****

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining

agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A links to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6 (C)(vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the

contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.

3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).

4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.

5) The contracting officer transmits the Wage and Hour decision to the contractor.

6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

ATTACHMENT A-8A

DECLARATION re COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

Procurement No.: _____

Name of Offeror Company: _____

I, _____ hereby certify under penalty of perjury:

(1) That I am _____ *[please select one. the offeror, a partner of the offeror, an officer of the offeror]* making the bid or proposal in the foregoing identified procurement;

(2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

§ 5801. Wage Determination Established.

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ("contractor") for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the US Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the US Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S Department of Labor on a date most recent to the renewal date shall apply.

§ 5802. Benefits.

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the US Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

(3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;

(4) That I have attached the most recent wage determination applicable to Guam issued by the US Department of Labor. *[INSTRUCTIONS - Please attach!]*

Signature

THIS MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE PROPOSAL

AG Procurement Form 006 (Feb 16, 2010)

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

FEB 13 2014

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Minutrenai Dos Na Liheslaturan Guahan
155 Hesler Street
Hagåtña, Guam 96910

32-14-1301
Office of the Speaker
Judith T. Won Pat, Ed.D.
Date: 2/14/14
Time: 4:01 PM
Re: [Signature]

Dear Madame Speaker:

Transmitted herewith is Bill No. 225-32 (COR) "AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO AMEND AND RENUMBER §22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO AMEND §53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND" which I signed into law on February 10, 2014 as **Public Law 32-120**.

2014 FEB 14 PM 4:49 PM

Senseramente.

EDDIE BAZA CALVO

1301 Ricardo J. Bordallo Governor's Complex • Adelup, Guam 96910
Tel: (671) 472-8931 • Fax: (671) 471-4826 • governor.guam.gov • calendar.guam.gov
Eddie Baza Calvo @eddiebazacalvo @governorguam governorofguam

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

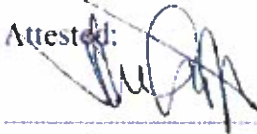
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Bill No. 225-32 (COR), "AN ACT TO *ADD* A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO *AMEND* AND *RENUMBER* § 22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO *AMEND* § 53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND," was on the 1st day of February, 2014, 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'lahen Guåhan* this 1st day of FEB,
2014, at
10:50 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: FEB 10 2014

Public Law No. 52-120

IMINATRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 225-32 (COR)

As amended by the Author; and
further amended on the Floor.

Introduced by:

Judith T. Won Pat, Ed.D
T. R. Muña Barnes
Aline A. Yamashita, Ph.D.
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
B. J.F. Cruz
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreadie
Tommy Morrison
Vicente (ben) C. Pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
Michael F. Q. San Nicolas

AN ACT TO ADD A NEW CHAPTER 58D TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE RENOVATION OR CONSTRUCTION OF A NEW SIMON SANCHEZ HIGH SCHOOL; AND TO AMEND AND RENUMBER § 22425(q) OF ARTICLE 4, CHAPTER 22, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE APPROPRIATION OF ADDITIONAL REAL PROPERTY TAX REVENUES FROM THE REVALUATION OF REAL PROPERTY TAXES; AND TO AMEND § 53101 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY CHILDHOOD PROGRAM FUND.

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

2 **Section 1. Title.** This Act *shall* be cited and referred to as the “*Ma Kåhat*
3 Act of 2013.”

4 **Section 2.** A new Chapter 58 D is hereby *added* to Title 5, Guam Code
5 Annotated, to read as follows:

6 **“CHAPTER 58D**

7 ***MA KÅHAT* ACT OF 2013**

8 § 58D101. Title.

9 § 58D102. Legislative Findings and Policies.

10 § 58D103. Definitions.

11 § 58D104. Authorization to Enter Into Long-Term Leases.

12 § 58D105. Procurement.

13 § 58D106. Responsibilities of Contractor.

14 § 58D107. Assignments.

15 § 58D108. Use of Tax-Exempt Bonds for Financing.

16 § 58D109. Pledge of Additional Revenue from the Real Property
17 Valuation.

18 § 58D110. Utilities and Routine Maintenance and Repair.

19 § 58D111. Maintenance Fund.

20 § 58D112. Contractual Safeguards.

21 § 58D113. Severability.

22 **§ 58D101. Title.** This Act *shall* be known and *shall* be cited as “*Ma*
23 *Kåhat* Act of 2013.”

24 **§ 58D102. Legislative Findings and Policies.** *I Liheslaturan*
25 *Guahan* finds that Simon Sanchez High School faces the combined
26 challenges of deteriorating conditions, out of date design, and overcrowding.
27 These combined deficiencies impair the quality of teaching and learning and

1 contribute to health and safety problems for staff and students. It should be
2 noted that it is critical for the Guam Department of Education to develop a
3 comprehensive capital improvement plan to provide a roadmap for
4 prioritizing facility improvements beyond Simon Sanchez.

5 *I Liheslatura* finds that after reviewing the summary of outstanding
6 General and Limited Obligation debts as of March 1, 2013, that the debt
7 ceiling assessed value is at One Billion One Hundred Thirty Nine Million
8 Four Hundred Sixty Four Thousand Eight Hundred Fifty Three Dollars
9 (\$1,139,464,853). It also states that the General Obligation Debt is Four
10 Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight
11 Hundred Fifty Three Dollars (\$446,473,853); and the Limited Obligation
12 Debt is Six Hundred Sixty Three Million Eight Hundred Ninety Six
13 Thousand Eight Hundred Three Dollars (\$663,896,803), with an
14 accumulated total of One Billion One Hundred Ten Million Three Hundred
15 Seventy Thousand Six Hundred Fifty Six Dollars (\$1,110,370,656).
16 Subtracting the debt ceiling limit less the General and Limited Obligation
17 Debts leaves the amount for future debt obligation at Twenty Nine Million
18 Ninety Four Thousand One Hundred Ninety Seven Dollars (\$29,094,197).

19 *I Liheslatura* further finds that the cost for the renovation or
20 construction of a new Simon Sanchez High School would exceed Guam's
21 debt ceiling obligation cap if a General Obligation Bond is pursued. To
22 circumvent the debt ceiling cap, *I Liheslatura* finds that the construction of
23 *Okkodo* High School, *Astumbo* Middle School, *Liguan* Elementary School,
24 *Adacao* Elementary School, John F. Kennedy High School and the
25 expansion of *Okkodo* High School validates the fundamental soundness of
26 using a municipal lease as a vehicle to build new educational facilities. By
27 utilizing municipal leasing to renovate or construct a new Simon Sanchez

1 High School, the remaining future debt obligation may be used to fund other
2 priorities of the government.

3 *I Liheslatura* further intends to authorize *I Maga'laken Guåhan* to
4 pledge or reserve the additional proceeds as a source of payment for a
5 municipal lease financing, secured for the purposes stated herein, either to
6 renovate or construct a new Simon Sanchez High School. To overcome the
7 financing hurdles, *I Liheslaturan Guåhan* supports the government of
8 Guam to enter into a contract for the financing, design, renovation or
9 construction and long-term capital maintenance of Simon Sanchez High
10 School with a private sector contractor who can provide long-term
11 financing obtained through tax-exempt obligations or other
12 competitive alternative financing based on long-term lease-backs to
13 the government of Guam. In order to facilitate system-wide
14 improvements, *I Liheslatura shall* authorize the Guam Department of
15 Education to develop a comprehensive capital improvement plan for
16 prioritizing capital improvements to all Guam Department of Education
17 schools. To facilitate the financing, design, renovation or construction
18 and maintenance of an education facility envisioned by this Act, the
19 government of Guam will be authorized to lease, for up to thirty (30)
20 years, government of Guam property on which the facilities will be
21 constructed to the contractor, who will design, renovate or construct a
22 new education facility in accordance with specifications approved by
23 Guam Department of Education. The education facility and land will be
24 leased back to the government of Guam for a period *not to exceed* thirty
25 (30) years or the initial ground lease to the contractor over which time
26 the government of Guam will amortize, as lease payments to the
27 contractor, the cost of the financing, design, renovation or construction

1 and related expenses of the education facility. The contractor will also
2 be responsible for the capital maintenance of the education facility
3 constructed under this Act, which costs *shall* be paid by the government of
4 Guam, as provided for under this Act. At the expiration of the lease-back
5 period, the government of Guam real property and the education facility
6 that is renovated or constructed on the government of Guam real property
7 will revert to the government of Guam with no further obligations to the
8 Contractor.

9 **§ 58D103. Definitions.** For purposes of this Chapter and *unless*
10 otherwise specified, the following words and phrases are defined to mean:

11 (a) *Act* means Chapter 58D of Title 5, Guam Code
12 Annotated, known as the “*Ma Kāhat Act of 2013*.”

13 (b) *Comprehensive capital improvement plan* means a plan
14 that takes into consideration the physical condition of each school,
15 along with attendance area population, enrollment patterns, and
16 bussing logistics. It *shall* also include how each school meets the
17 instructional needs of GDOE and prioritizes repairs of existing
18 schools, and renovation and construction of new school facilities in
19 order to deal with GDOE limited resources.

20 (c) *Contract* *shall* mean the various design, renovation or
21 construction and financing agreements entered into by and between
22 the education agency and the contractor following negotiations on the
23 response to the Request for Proposal.

24 (d) *Contractor* *shall* mean the authorized entity which *shall*
25 be the signatory on the Contract and *shall* be fully responsible for
26 carrying out the design, renovation or construction, financing and
27 maintenance of the education facility. The contractor may cooperate

1 with another entity or entities in any manner the contractor deems
2 appropriate to provide for the financing, design, renovation,
3 construction or maintenance of the public school facilities envisioned
4 by this Act.

5 (e) *Education agency shall mean the Guam Department of*
6 *Education.*

7 (f) *Education facility as used in this Act, shall mean the*
8 *renovation or construction of a new high school, and to include its*
9 *athletic facilities to be located on the existing site of Simon Sanchez*
10 *High School.*

11 (g) *Lease shall mean a lease from an education agency to the*
12 *contractor entered into at the time of the contract for the property.*

13 (h) *Lease-back shall mean the lease from the contractor to*
14 *the education agency.*

15 (i) *Lease-back period shall mean the term of the lease from*
16 *the contractor to the education agency.*

17 (j) *Property shall mean any property on which an education*
18 *facility is located.*

19 **§ 58D104. Authorization to Enter Into Long-Term Leases.** For
20 the purpose of facilitating the financing of the design, renovation
21 or construction and maintenance of an education facility encompassed
22 by this Act, the government of Guam or an education agency, as the case
23 may be, is authorized to lease, if required, to the contractor sufficient
24 government of Guam real property on which to renovate or construct a
25 new education facility; *provided*, such property is in the inventory of the
26 education agency or the government of Guam. The property may be the
27 site of an existing education facility under the control of an education

1 agency, which existing facility may be renovated or demolished and
2 rebuilt under the provisions of this Act. The education agency is also
3 authorized to lease back from the contractor the property for a
4 period mutually agreed upon between the education agency and the
5 contractor as may be reasonably necessary to amortize over the lease-
6 back period the costs associated with the financing, design, renovation or
7 construction of the education facility. In no event shall the end of such
8 lease-back period be later than the date thirty (30) years from the
9 scheduled date of completion of the education facility. The lease-back
10 may be structured as an annually renewable lease with provision for
11 automatic renewals to the extent that pledged or reserved revenue under
12 §22425(q)(4) and (6) of Title 5, Guam Code Annotated, is available. The
13 lease-back *shall not* be construed as a debt under any applicable debt
14 limitation under the Guam Organic Act or Guam law.

15 **§ 58D105. Procurement.** Subject to the approval of *I Liheslaturan*
16 *Guåhan*, the government of Guam or an education agency *shall* solicit
17 Requests for Proposals (RFP) through the Department of Public Works, in
18 compliance with the Guam procurement law, for the development of the
19 comprehensive capital improvement plan, the financing, design, renovation
20 or construction of the education facility, together with insurance and
21 maintenance of the education facility over the lease-back period, according
22 to the needs of the education agency and consistent with this Chapter. The
23 choice of the contractor *shall* be made by a selection committee comprised
24 of the Superintendent of the Department of Education, serving as Chairman,
25 and including the Director of the Department of Public Works or Deputy
26 Director, the Director of the Department of Land Management or Deputy
27 Director, the Administrator of the Guam Environmental Protection Agency

1 or Deputy Administrator, and the Administrator of the Guam Economic
2 Development Authority or Deputy Administrator. The committee *shall*
3 access the prior performance of the contractor on similar projects and may
4 disqualify any Contractor that does not have a successful record of project
5 completion on Guam.

6 The selection of a contractor *shall* be based upon the proposal that
7 delivers the best value for Guam in meeting the objectives of the education
8 agency.

9 The RFP *shall* be issued within thirty (30) days of enactment of this
10 Act for the renovation or construction of a new Simon Sanchez High School
11 on the existing site, which may include demolition of such portions of the
12 existing facility as necessary.

13 **§ 58D106. Responsibilities of Contractor.** The contract *shall*
14 require that the contractor will work with GDOE to develop the
15 comprehensive capital improvement plan in connection with the design of a
16 renovated or construction of a new Simon Sanchez High School. Further,
17 the contractor *shall* be responsible for all costs, expenses and fees of any
18 kind or nature, associated with the design, civil improvements, on-site
19 and off-site infrastructure, construction, permits, and financing
20 associated with the completion of an education facility, including the
21 financing of furniture and equipment for the education facility, as, and
22 to the extent, provided by the education agency in the Request for
23 Proposals. The contract will also require that all major subcontracts be
24 covered by a performance bond; and further, that there be a specific
25 delivery date with liquidated damages for failure to deliver the school by
26 the specified date. The contractor *shall* also be responsible for the capital
27 maintenance of the schools during the lease-back period, but *shall not* be

1 responsible for the capital maintenance of the furniture and equipment.
2 The lease-back may provide that if sufficient funds are *not* appropriated
3 or otherwise available for the payment of amounts due under the lease and
4 any maintenance agreement, the education agency will have the
5 obligation to vacate the education facility, and the contractor *shall* have
6 the right of use and occupancy of the education facility for the remainder
7 of the term of the lease, *unless* new mutually satisfactory terms are entered
8 into. For this purpose, the lease may provide that its term shall be extended
9 for a period *not to exceed* the shorter of ten (10) years beyond the
10 original term of the lease-back or such period of time as is necessary to
11 repay in full any financing arranged pursuant to § 58D108. The capital
12 maintenance costs *shall* be paid by the education agency on a periodic
13 basis as incurred by the contractor on terms to be agreed to in the contract
14 for the education facility.

15 **§ 58D107. Assignments.** To facilitate the purposes of this Act
16 and to provide security for the holders of any financing instruments issued
17 pursuant to this Act, the contractor may assign, without the need of the
18 consent of the education agency, the contract, the lease, and the
19 lease-back to any underwriter, trustee, or other party as appropriate, to
20 facilitate the issuance of the tax-exempt obligations, other financial
21 instruments or alternative financing for the education facility.

22 **§ 58D108. Use of Tax-Exempt Bonds for Financing.** To
23 minimize the financing cost to the education agency, financing utilized by
24 the contractor to fund the design, renovation or construction of an
25 education facility *shall* be through tax-exempt obligations or other
26 financial instruments, provided, such financing is available at interest rates

1 determined by the education agency to be reasonable and competitive.
2 Alternatively, the contractor may use an alternative method of financing,
3 including, but *not* limited to, a short term debt, mortgage, loan, federally
4 guaranteed loan or loan by an instrumentality of the United States of
5 America, if such financing will better serve the needs of the people of
6 Guam. Such alternative financing *shall* be approved by *I Liheslaturan*
7 *Gudhan*. The purpose for the requirements of this Section is to assure the
8 education agency pays the lowest possible interest rate so that the cost to
9 the education agency of financing the design, renovation or construction
10 of an education facility, amortized through the lease-back payments
11 from the education agency to the contractor, will be lower than regular
12 commercial rates.

13 **§ 58D109. Pledge of Additional Revenue from the Real Property**
14 **Valuation.** Rental payments under the lease and the lease back may be
15 secured by a pledge or other reservation of revenues received by the
16 government of Guam pursuant to §22425(q)(4) and (6) Article 4, Chapter 22
17 Division 2, Title 5, Guam Code Annotated. Any amounts pledged as
18 provided in this Section are hereby continuously appropriated for the
19 purpose of making lease-back payments, but any amounts *only* reserved as
20 provided in this Section, and *not* pledged, *shall* be subject to an annual
21 appropriation for the purpose of making lease-back payments. Any such
22 pledge or reservation authorized hereunder *shall* be valid and binding from
23 the time the pledge or reservation is made, and *shall* be limited to the sum of
24 Five Million Fifty One Thousand Nine Hundred Seventy Seven Dollars and
25 Ninety Eight Cents (\$5,051,977.98) per year during the lease-back period, as
26 outlined in §22425(q)(4) and (6) of Title 5, Guam Code Annotated, hereof.
27 The revenues pledged or reserved and thereafter received by the government

1 determined by the education agency to be reasonable and competitive.
2 Alternatively, the contractor may use an alternative method of financing,
3 including, but *not* limited to, a short term debt, mortgage, loan, federally
4 guaranteed loan or loan by an instrumentality of the United States of
5 America, if such financing will better serve the needs of the people of
6 Guam. Such alternative financing *shall* be approved by *I Liheslaturan*
7 *Guåhan*. The purpose for the requirements of this Section is to assure the
8 education agency pays the lowest possible interest rate so that the cost to
9 the education agency of financing the design, renovation or construction
10 of an education facility, amortized through the lease-back payments
11 from the education agency to the contractor, will be lower than regular
12 commercial rates.

13 **§ 58D109. Pledge of Additional Revenue from the Real Property**
14 **Valuation.** Rental payments under the lease and the lease-back may be
15 secured by a pledge or other reservation of revenues received by the
16 government of Guam pursuant to §22425(q)(4) and (6) Article 4, Chapter 22
17 Division 2, Title 5, Guam Code Annotated. Any amounts pledged as
18 provided in this Section are hereby continuously appropriated for the
19 purpose of making lease-back payments, but any amounts *only* reserved as
20 provided in this Section, and *not* pledged, *shall* be subject to an annual
21 appropriation for the purpose of making lease-back payments. Any such
22 pledge or reservation authorized hereunder *shall* be valid and binding from
23 the time the pledge or reservation is made, and *shall* be limited to the sum of
24 Five Million Fifty One Thousand Nine Hundred Seventy Seven Dollars and
25 Ninety Eight Cents (\$5,051,977.98) per year during the lease-back period, as
26 outlined in §22425(q)(4) and (6) of Title 5, Guam Code Annotated, hereof.
27 The revenues pledged or reserved and thereafter received by the government

1 of Guam or by any trustee, depository or custodian *shall* be deposited in a
2 separate account and *shall* be immediately subject to such reservation or the
3 lien of such pledge without any physical delivery thereof or further act, and
4 such reservation or the lien of such pledge *shall* be valid and binding against
5 all parties having claims of any kind in tort, contract or otherwise against the
6 government of Guam or such trustee, depository or custodian, irrespective of
7 whether the parties have notice thereof. The instrument by which such
8 pledge or reservation is created need not be recorded.

9 **§ 58D110. Utilities and Routine Maintenance and Repair.** The
10 education agency *shall* be responsible for the connection and payment of all
11 utilities, including without limitation, power, water, sewer, telephone and
12 cable, and all routine interior maintenance and repair and exterior
13 groundskeeping and landscaping, and upkeep of the education facility.

14 **§ 58D111. Maintenance Fund.** The contract or a separate
15 maintenance agreement with the contractor, and the lease-back, *shall*
16 provide that all capital maintenance of the education facility be performed
17 by the contractor as a separate cost, the terms of which, and the manner for
18 establishing the amount of payment, *shall* be determined as a part of the
19 contract; provided, however, that said documents may, at the discretion of
20 the education agency, provide that capital maintenance with respect to
21 equipment (including collateral equipment), onsite utilities, offsite utilities,
22 access roads and other similar improvements need not be performed by the
23 contractor.

24 **§ 58D112. Contractual Safeguards.** Prior to undertaking the work
25 of renovating or constructing a new Simon Sanchez High School, the Guam
26 Economic Development Authority, the Department of Public Works, the
27 Guam Department of Education, and the developer or contractor *shall*

1 negotiate and enter into a binding construction contract to renovate or
2 construct a new Simon Sanchez High School in accordance with the Guam
3 Building Code (21 G.C.A. Ch. 67), and any other applicable requirements.
4 The construction contract *shall* contain contractual obligations typically
5 found in government of Guam construction contracts, including, but *not*
6 limited to:

- 7 (a) warranties;
- 8 (b) liquidated damages;
- 9 (c) performance and payment bonds;
- 10 (d) indemnity;
- 11 (e) insurance;
- 12 (f) standard specifications;
- 13 (f) technical specifications;
- 14 (g) progress schedule;
- 15 (h) maintenance;
- 16 (i) compliance with Guam labor regulations;
- 17 (j) compliance with Guam prevailing wage rates for
18 employment of temporary alien workers (H2) on Guam;
- 19 (k) compliance with Public Law 29-98: restriction against
20 contractors employing convicted sex offenders to work at government
21 of Guam venues.

22 The contract *shall* be submitted for review and approval to all entities
23 charged by law with the duty to review and approve government contracts,
24 including the Office of the Attorney General.

25 **§ 58D113. Severability.** *If* any provision of this Act or its
26 application to any person or circumstance is found to be invalid or contrary
27 to law, such invalidity *shall not* affect other provisions or applications of this

1 Act which can be given effect without the invalid provisions or application,
2 and to this end the provisions of this Act are severable.”

3 **Section 3.** §22425(q) of Article 4, Chapter 22, Division 2, Title 5, Guam
4 Code Annotated, is hereby *amended* to read:

5 “(q) Notwithstanding any other provision of law, any additional real
6 property tax revenues received as a result of the most recent valuation of real
7 property due to commence during the calendar years 2013 and 2014 is
8 hereby continuously appropriated annually, *not to exceed* Eight Million Five
9 Hundred Thousand Dollars (\$8,500,000), from the Territorial Educational
10 Facilities Fund in the amounts and for purposes set forth in this Subsection:

11 (1) The sum of One Million One Hundred Fifty Eight
12 Thousand Two Hundred Eighty Three Dollars (\$1,158,283),
13 beginning in FY 2014, for the construction of the Student Services
14 Center and Engineering Annex at the University of Guam, as a source
15 of payment to the University of Guam Capital Improvements Fund for
16 the purpose of paying rental payments due under the lease-leaseback
17 agreements with the University of Guam Endowment Foundation for
18 a term of forty (40) years;

19 (2) The sum of Two Hundred Seventy-eight Thousand Nine
20 Hundred Twenty-one Dollars and Fifty-two Cents (\$278,921.52),
21 beginning in FY 2014 for forty (40) years, for the construction or
22 renovation of Building 100 and the DNA Laboratory at the Guam
23 Community College;

24 (3) The sum of One Hundred Thirty-two Thousand Fifteen
25 Dollars (\$132,015) to the Guam Public Library System to hire a
26 Territorial Librarian at Ninety-three Thousand Three Hundred

1 Seventy-seven Dollars (\$93,377), and a Computer Analyst II at
2 Thirty-eight Thousand Six Hundred Thirty-eight Dollars (\$38,638);

3 (4) The sum of One Million Seven Hundred Seven Thousand
4 Six Hundred Fifty-two Dollars (\$1,707,652) to the Guam Department
5 of Education for the renovation or construction of a new Simon
6 Sanchez High School.

7 (5) The sum of One Million Two Hundred Thousand Dollars
8 (\$1,200,000) for rental payments under the lease and the lease-back as
9 described in Chapter 58D of Title 5, Guam Code Annotated.

10 (6) other than the portions designated to be used for in Items
11 (1), (2), (3), (4) and (5) of this Subsection, eighty percent (80%) of the
12 remaining balance for rental payments due under the lease-leaseback
13 agreement with GDOE secured for the renovation or construction of a
14 new Simon Sanchez High School, to include its athletic facilities, and
15 other Guam Department of Education public school facilities
16 requiring new construction, rehabilitation or maintenance;

17 (7) other than the portions designated to be used for in Items
18 (1), (2), (3), (4) and (5) of this Subsection, 3.5% of the remaining
19 balance for the Early Childhood Program Fund, as described in
20 §53101 of Title 17, Guam Code Annotated;

21 (8) other than the portions designated to be used for in Items
22 (1), (2), (3), (4) and (5) of this Subsection, 3.5 % of the remaining
23 balance for *I Famagu'on-ta*, Child Adolescent Services Division of
24 the Guam Behavioral Health and Wellness Center, and Project
25 *Karimu*. These funds *shall not* be subject to *I Maga'lahaen Guåhan's*
26 transfer authority.

1 (9) other than the portions designated to be used for in Items
2 (1), (2), (3) (4) and (5) of this Subsection, five percent (5%) of the
3 remaining balance to the Department of Revenue and Taxation for the
4 following:

5 (A) for maintenance support and sustainability of real
6 property data and system;

7 (B) for the five (5) year (quinquennial) property tax
8 revaluation as mandated by law;

9 (C) for enhancements, and technological
10 advancements related to software/hardware, and support staff
11 necessary to improve electronic services; and

12 (D) for other costs directly associated with improving
13 the efficiency of the real property tax system.

14 The Director of the Department of Revenue and Taxation *shall*
15 submit a report to *I Muga'lalen Guåhan* and *I Liheslaturan Guåhan*
16 on a monthly basis as to the expenditures of the funds following the
17 enactment of this Act, detailing all transactions;

18 (10) other than the portions designated to be used for in Items
19 (1), (2), (3), (4) and (5) of this Subsection, five percent (5%) of the
20 remaining balance *shall* be lock boxed for the procurement of a
21 unified financial management information system, as recommended
22 by consensus from the Department of Revenue and Taxation, the
23 Department of Administration, the General Services Agency, the
24 Office of Public Accountability, the Office of Technology, the
25 University of Guam, the Guam Community College, the Guam
26 Department of Education, and Guam Memorial Hospital Authority.
27 This amount shall be subject to legislative appropriation.

(11) Other than the portions designated to be used for in Items (1), (2) (3) (4) and (5) of this Subsection, three percent (3%) of the remaining balance *shall* be a source of funding for island-wide school bus shelters. The Director of the Department of Public Works *shall* submit a report to *I Muga'lalen Gudhan* and *I Liheslaturan Gudhan* on a monthly basis as to the expenditures of the funds following enactment of this Act, detailing all transactions."

Section 4. §53101 of Title 17, Guam Code Annotated, is hereby *amended* to read as follows:

"§ 53101. Early Childhood Program Fund. There is hereby created, separate and apart from all other funds of the government of Guam, a fund known as the "Early Childhood Program Fund." All monies received by or on behalf of the government of Guam pursuant to §22425(q)(7) of Title 5 GCA, *shall* be deposited in the Fund and used for early childhood programs at the University of Guam, the Guam Community College, or the Guam Department of Education. The Fund *shall not* be commingled with the General Fund or any other funds of the government of Guam, and it *shall* be maintained in a separate bank account. All monies in the Fund *shall* require legislative appropriation, and *shall not* be subject to any transfer authority of *I Muga'lalen Gudhan*."

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

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

FEB 13 2014

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

32-14-1302
Office of the Speaker
Judith T. Won Pat, Ed.D.
Date: 2/14/14
Time: 4:49 PM
Received by: [Signature]

Dear Madame Speaker:

Transmitted herewith is Bill No. 226-32 (COR) "AN ACT TO ADD A NEW CHAPTER 58E TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS" which I signed into law on February 10, 2014 as Public Law 32-121.

Senseramente,

EDDIE BAZA CALVO

2014 FEB 14 PM 4:49 W

1302

Ricardo J. Bordallo Governor's Complex • Adelup, Guam 96910
Tel: (671) 472-8931 • Fax: (671) 477-4826 • governor.guam.gov • calendar.guam.gov
 Eddie Baza Calvo @eddiebazacalvo @governorcalvo governorofguam

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

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

This is to certify that Bill No. 226-32 (COR), "AN ACT TO ADD A NEW CHAPTER 58E TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE FINANCE, DESIGN, RENOVATION, REHABILITATION, CONSTRUCTION OR MAINTENANCE OF PUBLIC SCHOOLS," was on the 1st day of February, 2014, duly and regularly passed.

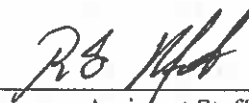


Judith T. Won Pat, Ed.D.
Speaker

Attested:



Tina Rose Mufia Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 1st day of FEB,
2014, at
10:50 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:


EDWARD L.B. CALVO
I Maga'lahen Guåhan
FEB 10 2014

Date:

Public Law No. 32-121

1 **THE FINANCE, DESIGN, RENOVATION,**
2 **REHABILITATION, CONSTRUCTION OR MAINTENANCE OF**
3 **PUBLIC SCHOOLS**

- 4 § 58E100. Legislative Findings and Intent.
5 § 58E101. Definitions.
6 § 58E102. Authorization to Enter into Long-Term Leases.
7 § 58E103. Identification of Projects and Procurement.
8 § 58E104. Responsibilities of Developer/Contractor.
9 § 58E105. Contractual Safeguards.
10 § 58E106. Assignments.
11 § 58E107. Pledge of Revenues.
12 § 58E108. Use of Tax-Exempt Bond and Other Financing
13 Instruments for Financing.
14 § 58E109. Utilities, Maintenance and Repair.
15 § 58E110. Severability.

16 **§ 58E100. Legislative Findings and Intent.** *I Liheslaturan*
17 *Guåhan* finds that Guam public school facilities face deficiencies in its
18 roofing, exterior, interior, structural, mechanical, electrical, plumbing, and
19 school grounds, which create a non-conducive environment that hinders
20 learning and the work and production of teachers and students.

21 *I Liheslaturan Guåhan* finds that the Guam Department of Education
22 is about \$90 Million behind on maintenance projects for the island's public
23 schools, according to a report commissioned by the Department of the
24 Interior in 2012, and recently submitted to the Guam Department of
25 Education in August 2013.

26 It is, therefore, the intent of *I Liheslaturan Guåhan* for the
27 government of Guam to use one quarter of the business privilege tax to pay

1 for the interest payments of the lease and lease-back as a form of bridge
2 financing until the maturity of the Business Privilege Tax bond series
3 2013C.

4 *I Liheslatura* finds that after reviewing the summary of outstanding
5 General and Limited Obligation debts as of March 1, 2013, that the debt
6 ceiling assessed value is at One Billion One Hundred Thirty Nine Million
7 Four Hundred Sixty Four Thousand Eight Hundred Fifty Three Dollars
8 (\$1,139,464,853). It also states that the General Obligation Debt is Four
9 Hundred Forty Six Million Four Hundred Seventy Three Thousand Eight
10 Hundred Fifty Three Dollars (\$446,473,853), and the Limited Obligation
11 Debt is Six Hundred Sixty Three Million Eight Hundred Ninety Six
12 Thousand Eight Hundred Three Dollars (\$663,896,803), with an
13 accumulated total of One Billion One Hundred Ten Million Three Hundred
14 Seventy Thousand Six Hundred Fifty Six Dollars (\$1,110,370,656).
15 Subtracting the debt ceiling limit less the General and Limited Obligation
16 Debts leaves the amount for future debt obligation at Twenty Nine Million
17 Ninety Four Thousand One Hundred Ninety Seven Dollars (\$29,094,197).

18 *I Liheslatura* further finds that the cost to fund the rehabilitation of
19 the public schools will certainly exceed the debt ceiling obligation if a
20 general obligation bond is pursued. To circumvent Guam's debt ceiling cap,
21 *I Liheslatura* finds that the construction of *Okkodo* High School, *Astumbo*
22 Middle School, *Liguan* Elementary School, *Aducao* Elementary School,
23 John F. Kennedy High School, and the expansion of *Okkodo* High School,
24 has demonstrated the fundamental soundness of using municipal lease as a
25 vehicle to build new educational facilities. By making the most of municipal
26 leasing to rehabilitate and construct Guam public schools, the remaining

1 future debt obligation may be used to fund other priorities of the
2 government.

3 § 58E101. **Definitions.** For purposes of this Chapter and *unless*
4 otherwise specified, the following words and phrases are defined to mean:

5 (a) *Comprehensive capital improvement plan* means a plan
6 that takes into consideration the physical condition of each school
7 along with attendance area population, enrollment patterns, and
8 bussing logistics. It *shall* also include how each school meets the
9 instructional needs of GDOE, and prioritizes repairs of existing
10 schools and renovation and construction of new school facilities in
11 order to deal with GDOE limited resources.

12 (b) *Contract shall* mean the design, renovation,
13 rehabilitation, construction, and financing contract entered into by and
14 between the education agency and the contractor chosen by the Guam
15 Economic Development Agency and approved by *I Liheslaturan*
16 *Guåhan*.

17 (c) *Contractor shall* mean the authorized entity which *shall*
18 be the signatory on the contract and *shall* be fully responsible for
19 carrying out the design, renovation, rehabilitation, construction,
20 financing, or maintenance of the education facility. The contractor
21 may cooperate with another entity or entities in any manner the
22 contractor deems appropriate to provide for the financing, design,
23 renovation, rehabilitation, construction or maintenance of the public
24 school facilities envisioned by this Act.

25 (d) *Education agency shall* mean the Guam Department of
26 Education.

1 (e) *Education facility* as used in this Act *shall* mean public
2 elementary and secondary schools on Guam, to include its athletic
3 fields and playgrounds, excluding the five leased schools under the
4 education agency.

5 (f) *Lease shall* mean a lease from an education agency to the
6 contractor entered into at the time of the contract for the property.

7 (g) *Lease-back shall* mean the lease from the contractor to
8 the education agency of the rehabilitated, renovated or newly
9 constructed education facility.

10 (h) *Lease-back period shall* mean the term of the lease from
11 the contractor to the education agency.

12 (i) *Property shall* mean any property on which an education
13 facility is located.

14 **§ 58E102. Authorization to Enter into Long-term Leases.** For
15 the purpose of facilitating the financing, design, construction and
16 rehabilitation and maintenance of an education facility encompassed by this
17 Act, the government of Guam or an education agency, as the case may be, is
18 authorized to lease, if required, to the contractor sufficient government of
19 Guam real property on which to rehabilitate an education facility; provided,
20 such property is in the inventory of the education agency or the government
21 of Guam. The property may be the site of an existing education facility
22 under the control of an education agency, which existing facility may be
23 rehabilitated under the provisions of this Act.

24 The education agency is also authorized to lease back from the
25 contractor the property for a period mutually agreed upon between the
26 education agency and the contractor as may be reasonably necessary to
27 amortize over the lease-back period the costs associated with the design,

1 renovation, rehabilitation, construction or maintenance of the education
2 facility. In no event shall the end of such lease-back period be later than the
3 date thirty (30) years from the scheduled date of completion of the education
4 facility. The lease-back may be structured as an annually renewable lease
5 with a provision for automatic renewals to the extent that pledged revenue
6 under § 58E107 is available. The lease-back *shall not* be construed as a debt
7 under any applicable debt limitation under the Guam Organic Act or Guam
8 law.

9 **§ 58E103. Identification of Projects and Procurement.** Under the
10 Superintendent of Education's direction, the education agency *shall* utilize
11 the Program Study, and the report generated by the Department of Interior
12 (DOI)-funded assessment report by the Army Corps of Engineers, to identify
13 and prioritize potential projects to be completed. The list of projects *shall* be
14 included in a Request for Proposals developed by the education agency.
15 Upon receipt of the Program Study, the Superintendent of Education *shall*
16 solicit Requests for Proposals (RFP) through the Department of Public
17 Works, in compliance with the Guam Procurement Law, for the financing,
18 design, construction and rehabilitation of the education facility, according to
19 the needs of the education agency and consistent with this Chapter. The
20 choice of the contractor *shall* be made by a selection committee comprised
21 of the Superintendent of the Department of Education, serving as Chairman,
22 and including the Director of the Department of Public Works or Deputy
23 Director, the Director of the Department of Land Management or Deputy
24 Director, the Administrator of the Guam Environmental Protection Agency
25 or Deputy Administrator, and the Administrator of the Guam Economic
26 Development Authority or Deputy Administrator. The committee *shall*
27 assess the prior performance of the contractor on similar projects, and *shall*

1 be free to disqualify any contractor that *does not* have a successful record of
2 project completion on Guam.

3 The selection of a contractor *shall* be based upon the proposal that
4 delivers the best value for Guam in meeting the objectives of the education
5 agency.

6 The RFP *shall* be issued within thirty (30) days after the receipt of the
7 Program Study for the design, renovation, rehabilitation, construction or
8 maintenance of the education facility.

9 **§ 58E104. Responsibilities of Developer/Contractor.** The
10 contract *shall* require that the contractor be responsible for all costs,
11 expenses and fees of any kind or nature, associated with the rehabilitation,
12 design, civil improvements, on-site and off-site infrastructure, construction,
13 permits, and financing associated with the completion of an education
14 facility, including the financing of furniture and equipment for the education
15 facility, as and to the extent provided by the education agency in the Request
16 for Proposals. The lease-back may provide that if sufficient funds are not
17 appropriated or otherwise available for the payment of amounts due under
18 the lease, the education agency will have the obligation to vacate the
19 education facility, and the contractor *shall* have the right of use and
20 occupancy of the education facility for the remainder of the term of the
21 lease, *unless* new mutually satisfactory terms are entered into. For this
22 purpose, the lease may provide that its term *shall* be extended for a period
23 *not to exceed* the shorter of ten (10) years beyond the original term of the
24 lease-back, or such period of time as is necessary to repay in full any
25 financing arranged pursuant to § 58E108 of this Chapter. The capital
26 maintenance costs *shall* be paid by the education agency.

1 **§ 58E105. Contractual Safeguards.** Prior to undertaking the work
2 of rehabilitating educational facilities, the Guam Economic Development
3 Authority, the Department of Public Works, the Guam Department of
4 Education, and the developer or contractor, *shall* negotiate and enter into a
5 binding construction contract to build or refurbish the educational facility in
6 accordance with the Guam Building Code (21 G.C.A. Ch. 67), and any other
7 applicable requirements. The construction contract *shall* contain contractual
8 obligations typically found in government of Guam construction contracts,
9 including, but *not* limited to:

- 10 (a) warranties;
- 11 (b) liquidated damages;
- 12 (c) performance and payment bonds;
- 13 (d) indemnity;
- 14 (e) insurance;
- 15 (f) standard specifications;
- 16 (g) technical specifications;
- 17 (h) progress schedule;
- 18 (i) maintenance;
- 19 (j) compliance with Guam labor regulations;
- 20 (k) compliance with Guam prevailing wage rates for
21 employment of temporary alien workers (H2) on Guam;
- 22 (l) compliance with Public Law 29-98: restriction against
23 contractors employing convicted sex offenders to work at government
24 of Guam venues.

25 The contract must be submitted for review and approval to all entities
26 charged by law with the duty to review and approve government contracts,
27 including the Office of the Attorney General.

1 **§ 58E106. Assignments.** To facilitate the purpose of this Act and
2 provide security for the holders of any financing instruments issued pursuant
3 to this Act, the contractor may assign, without the need of the consent of the
4 education agency, the contract, the lease and lease-back to any underwriter,
5 trustee or other party as appropriate to facilitate the contractor financing.

6 **§58E107. Pledge of Revenues.**

7 (a) Rental payments under the lease and the lease-back may
8 be secured by a pledge or other reservation of revenues collected by
9 the government of Guam from the following:

10 (1) Taxes collected under the Business Privilege Tax
11 Law (namely, 11 GCA Chapter 25, excluding the alcoholic
12 beverage taxes, liquid fuel taxes, automotive surcharges,
13 tobacco taxes and real property taxes). The business privilege
14 tax pledged or reserved *shall only* apply to the unpledged
15 portion of the business privilege tax (currently one percentage
16 point of the current four percent business privilege tax rate) so
17 as not to violate the government's covenants to bondholders of
18 the Series A, Series B and Series C Limited Obligation bonds
19 authorized through Public Law 31-76, Public Law 31-196 and
20 Public Law 31-276. The sum of approximately One Million
21 Eight Hundred Eighty-Two Thousand Eighty-Two Dollars
22 (\$1,882,082) *shall* fund interest in Fiscal Year 2015, and the
23 sum of approximately Two Million Five Hundred Sixty Four
24 Thousand One Hundred Sixty-Five Dollars (\$2,564,165) *shall*
25 fund interest payment annually for Fiscal Years 2016 through
26 2018.

1 (2) The sum of One Million Two Hundred Thousand
2 Dollars (\$1,200,000) from the revenues received pursuant to
3 §22425(q)(5) of Article 4, Chapter 22 Division 2, Title 5, Guam
4 Code Annotated will be available annually beginning in Fiscal
5 Year 2016; and

6 (3) The sum of Four Million Eight Hundred Thousand
7 Dollars (\$4,800,000) from the maturity of Business Privilege
8 Tax Bond Series 2013C *shall* be available annually beginning
9 in Fiscal Year 2019.

10 (b) Revenues pledged or reserved *shall* be remitted in the
11 following manner:

12 (1) The Business Privilege Tax *shall* only pay for the
13 interest payments of the lease and the lease-back pending the
14 maturity of the Business Privilege Tax Bond Series 2013C in
15 Fiscal Year 2019, and said interest payments *shall* cease.

16 (2) Revenues received pursuant to §22425 (q)(5) of
17 Article 4, Chapter 22 Division 2, Title 5, Guam Code
18 Annotated, upon availability; and

19 (3) Upon the maturity of the Business Privilege Tax
20 Bond Series 2013C.

21 Any amounts pledged as provided in this Section are hereby
22 continuously appropriated for the purpose of making lease-back payments,
23 but any amounts only reserved as provided in this Section, and not pledged,
24 shall be subject to annual appropriation for the purpose of making lease-back
25 payments. The revenues pledged or reserved and thereafter received by the
26 government of Guam or by any trustee, depository or custodian *shall* be
27 deposited in a separate account and *shall* be immediately subject to such

1 reservation or the lien of such pledge without any physical delivery thereof
2 or further act, and such reservation or the lien of such pledge *shall* be valid
3 and binding against all parties having claims of any kind in tort, contract or
4 otherwise against the government of Guam or such trustee, depository or
5 custodian, irrespective of whether the parties have notice thereof. The
6 instrument by which such pledge or reservation is created need not be
7 recorded.

8 **§ 58E108. Use of Tax-Exempt Bond, Taxable Bond and Other**
9 **Financing Instruments for Financing.** To minimize the financing cost to
10 the education agency, financing utilized by the contractor to fund the
11 design, renovation, rehabilitation, construction or maintenance of an
12 education facility *shall* be through tax-exempt obligations, taxable bond
13 obligation, or other financial instruments, provided, such financing is
14 available at interest rates determined by the education agency to be
15 reasonable and competitive. Alternatively, the contractor may use an
16 alternative method of financing, including, but *not* limited to, a short
17 term debt, mortgage, loan, federally guaranteed loan or loan by an
18 instrumentality of the United States of America if such financing will
19 better serve the needs of the people of Guam. Such alternative financing
20 *shall* be approved by *I Liheslaturan Guåhan*. The purpose for the
21 requirements of this Section is to assure the education agency pays the
22 lowest possible interest rate so that the cost to the education agency of
23 financing the design and construction of an education facility,
24 amortized through the lease-back payments from the education
25 agency to the contractor, will be lower than regular commercial rates.

26 **§ 58E109. Utilities, Maintenance and Repair.** The education
27 agency *shall* be responsible for the connection and payment of all utilities,

1 including without limitation, power, water, sewer, telephone, and cable, and
2 all maintenance and repair and exterior groundskeeping and landscaping,
3 and upkeep of the education facility.

4 **§ 58E110. Severability.** If any provision of this Act or its
5 application to any person or circumstance is found to be invalid or contrary
6 to law, such invalidity *shall not* affect other provisions or applications of this
7 Act which can be given effect without the invalid provisions or application,
8 and to this end the provisions of this Act are severable.”

ACKNOWLEDGEMENT OF RECEIPT FORM

GUAM DEPARTMENT OF EDUCATION

Please acknowledge receipt of

Lease Financing for Construction and Maintenance of a New Simon Sanchez High School

Name of Prospective Bidder

Name of person receiving IFB

Signature

Date

Time

Contact Person regarding IFB

Company/Firm

Title

E-mail Address

Contact Number

Fax Number

Address

11-485