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LEGAL MEMORANDUM

Ref: GSA 10-0335

TO: Chief Procurement Officer, General Services Administration

FROM: Attorney General *John Weisenberger*

RE: Procurement and Disposal Authority of the Guam Power Authority

Buenas yan Saluda!

In response to your memorandum requesting legal information and guidance, we submit the following conclusion and supporting reasons.

You ask two questions. In light of 5 G.C.A. § 5116 what authority exists for the Guam Power Authority ("GPA") to procure? Two, under § 5116 does the GPA have authority to dispose of supplies independently of GSA?

Both questions pertain to the validity of 5 G.C.A. § 5116, which provides as follows:

Notwithstanding any other provision of Guam Procurement Law, the authority to procure supplies and services for the Guam Power Authority may be delegated by the Chief Procurement Officer only to the Guam Power Authority Board of Directors.

We conclude that the procurement authority for GPA resides in the Chief Procurement Officer, but if delegated, must be delegated to the Consolidated Commission on Utilities ("CCU") rather than GPA. Under 2 G.A.R. § 8102(e) control of the disposition of supplies of GPA resides in the Chief Procurement Officer.

Procurement Authority of Guam Power Authority

Section 5116 was enacted in October 2000 at a time when GPA was governed by a Board and managed by a General Manager. Guam Pub. L. No. 25-168:2 (Oct. 19, 2000). The purpose of this law was to clarify the identity of the officer or body within GPA who approves procurement requests. Guam Pub. L. No. 25-168:1. The Guam Power Authority Board of Directors no longer exists. By virtue of Guam Public Law No. 26-76:7 (effective March 12, 2002) the Guam Power Authority Board of Directors was abolished and the Consolidated Commission on Utilities ("CCU") became the governing authority of GPA. 8 G.C.A. § 8107. The law transferred all the powers of the GPA Board to the CCU. "All powers vested in the [Guam Power] Authority, except as provided herein, shall be exercised by the

Consolidated Commission on Utilities, as established in Chapter 79 of Title 12 of the Guam Code Annotated.” 8 G.C.A. § 8107.

Section 5116 assumes that GPA is part of centralized procurement system and expressly states that the authority to approve all procurement resides in the GPA Board of Directors. As noted, under § 8107 this power devolved upon the CCU. Since Public Law No. 26-76 or other public law has not expressly vested the CCU with such authority, if your office has never delegated procurement authority to the GPA Board of Directors, then CCU remains within the centralized procurement scheme and the CCU must procure through your office until it, by request, has been delegated authority from your office for conducting its own procurement.

Disposition of Supplies

Upon the enactment of the Procurement Code the Policy Office was authorized to promulgate regulations for the disposition of supplies of using agencies:

The Policy Office shall promulgate regulations governing: (a) the management of supplies during their entire life cycle; (b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by regulation, provided, that no employee of the owning or disposing agency shall be entitled to purchase any such supplies.

5 G.C.A. § 5402.

By regulation the Policy Office provided that the Chief Procurement Officer would control the disposition of supplies by using agencies:

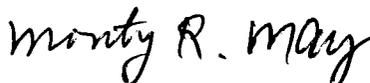
No using agency shall transfer, sell, trade-in, or otherwise dispose of supplies owned by the territory without written authorization of the Chief Procurement Officer.

2 G.A.R. § 8102(e).

From the foregoing we conclude that the CCU must procure its supplies by means of a delegation of authority from the Chief Procurement Office. It has been vested with all the powers of the formerly extant GPA Board of Directors. Finally, CCU must dispose of surplus assets with the written approval of the Chief Procurement Officer.

Dangkolo na Si Yu'os Ma'åse.

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