

**5 GCA GOVERNMENT OPERATIONS  
CH. 58D MA KĀHAT ACT OF 2013**

**CHAPTER 58D  
MA KĀHATACT OF 2013**

**SOURCE:** Entire chapter added by P.L. 32-120:2 (Feb. 10, 2014).  
Repealed and reenacted by P.L. 37-022:1 (July 5, 2023).

**2023 NOTE:** As originally enacted by P.L. 32-120:2 (Feb. 10, 2014), this chapter included 58D101-58D113.

- § 58D101. Title.
- § 58D102. Definitions.
- § 58D103. Authorization to Enter Into Long-Term Leases.
- § 58D104. Procurement.
- § 58D105. Responsibilities of Contractor.
- § 58D106. Contractual Safeguards.
- § 58D107. Assignments.
- § 58D108. Financing.
- § 58D109. Leaseback Payments Under the Lease Payable from Lawfully Available Monies.
- § 58D110. Utilities and Routine Maintenance and Repair.
- § 58D111. Maintenance Fund.
- § 58D112. Severability.

**§ 58D101. Title.**

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

**§ 58D102. Definitions.**

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

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

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

**5 GCA GOVERNMENT OPERATIONS  
CH. 58D MA KĀHAT ACT OF 2013**

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

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

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

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

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

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

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

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

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

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

**5 GCA GOVERNMENT OPERATIONS  
CH. 58D MA KĀHAT ACT OF 2013**

revenue under § 58D109 is available. The leaseback shall not be construed as “public indebtedness,” as that term is defined in 48 USC § 1423a, §11 of the Organic Act of Guam, or Guam law.

**§ 58D104. Procurement.**

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

(b) 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 the Chairman, and including the Director of Public Works or Deputy Director and the Building Permits Administrator; the Director of Land Management or Guam Chief Planner; the Administrator of the Guam Economic Development Authority or Deputy Administrator; and the Principal of Simon Sanchez High School or his/her designee.

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

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

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

The Contractor shall be responsible for all costs, expenses, and fees of any kind or nature, associated with civil improvements, on-site and off-site infrastructure, construction, demolition of the existing facility, permits, FF&E services, and financing associated with the completion of the new Simon Sanchez 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

**5 GCA GOVERNMENT OPERATIONS**  
**CH. 58D MA KĀHAT ACT OF 2013**

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

**5 GCA GOVERNMENT OPERATIONS  
CH. 58D MA KĀHAT ACT OF 2013**

(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).

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

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

(b) Any amounts pledged or reserved as provided in this Section and subsequently appropriated for the purpose of making

**5 GCA GOVERNMENT OPERATIONS**  
**CH. 58D MA KĀHAT ACT OF 2013**

leaseback payments may thereafter be pledged toward making leaseback payments; provided, however, that any amounts reserved as provided in this Section shall be subject to an annual appropriation by the Guam Legislature for the purpose of funding the activities set forth in § 58D104 of this Chapter, and making leaseback payments.

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

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

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

**§ 58D111. Maintenance Fund.**

The contract and the leaseback shall provide that all maintenance of the new Simon Sanchez High School not described in § 58D110 be performed by the Contractor as a separate cost, the terms of which, and the manner for establishing the amount of payment, shall be determined as a part of the contract; provided, however, that the contract may, at the discretion of the GDOE, provide that maintenance with respect to

**5 GCA GOVERNMENT OPERATIONS  
CH. 58D MA KĀHĀT ACT OF 2013**

equipment (including collateral equipment), onsite utilities, offsite utilities, access roads and other similar improvements need not be performed by the Contractor.

**§ 58D112. Severability.**

If any provision of this Act or its application to any person or circumstance is found to be invalid or inorganic, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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