

CHAPTER 58B
Expansion of *Okkodo* High School

SOURCE: This entire chapter was added by P.L. 30-182:2 (Aug. 25, 2010) as §§ 58B100-58B108. Renumbered by Compiler to maintain numbering scheme of this title.

2010 NOTE: P.L. 28-045:10 (June 6, 2005) changed the name of the Department of Education to the Guam Public School System. P.L. 30-050:2 (July 14, 2009) reverted the name of the Guam Public School System to the Department of Education.

- § 58B101. Definitions.
- § 58B102. Authorization to Enter into Long-Term Leases.
- § 58B103. Responsibilities of Contractor.
- § 58B104. Assignments.
- § 58B105. Use of Qualified School Construction Bonds.
- § 58B106. Pledge of Section 30 Revenues.
- § 58B107. Utilities and Routine Maintenance and Repair.
- § 58B108. Maintenance Fund.
- § 58B109. Severability.
- § 58B110. Authorization of Subsidy Payments.

§ 58B101. Definitions.

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

(a) Contract shall mean the design, construction and financing contract entered into by and between the Education Agency and the Contractor.

(b) Contractor shall mean the contractor to the government of Guam on *Okkodo* High School, or a separate non-profit affiliated entity of the Contractor, which shall be the signatory on the Contract and shall be fully responsible for carrying out the design, construction, financing and maintenance of the Education Facility. The Contractor may cooperate with another entity or entities in any manner the Contractor deems appropriate to provide for the financing, design, construction or maintenance of the public school facilities envisioned by this Act.

5 GCA GOVERNMENT OPERATIONS
CH. 58B – EXPANSION OF *OKKODO* HIGH SCHOOL

(c) Education Agency shall mean the Guam Department of Education.

(d) Education Facility as used in this Act shall mean the additions and improvements to be located at *Okkodo* High School on Tract No. 11406 as prescribed in Section 3 of Public Law 30-178, with the total cost of such project not to exceed Twenty-One Million Eight Hundred Eighteen Thousand Dollars (\$21,818,000).

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

(f) Lease-Back shall mean the lease from the Contractor to the Education Agency.

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

(h) Property shall mean any property on which an Education Facility is located.

SOURCE: Added by P.L. 30-182:2 (Aug. 25, 2010) as § 58B100. Renumbered by Compiler to maintain numbering scheme of this title.

§ 58B102. Authorization to Enter into Long-Term Leases.

(a) For the purpose of facilitating the financing of the design, construction and maintenance of an Education Facility encompassed by this Act, the government of Guam or an Education Agency, as the case may be, is authorized to lease, if required, to the Contractor sufficient government of Guam real property on which to construct, convert or rehabilitate an Education Facility and to extend an existing lease of real estate to the Contractor.

(b) The Education Agency is also authorized to lease back from the Contractor the property for a period mutually agreed upon between the Education Agency and the Contractor as may be reasonably necessary to amortize over the Lease-Back Period the costs associated with the financing, design and construction of the Education Facility. In no event shall the end of such Lease-Back Period be later than seventeen (17) years from the scheduled date of completion of the Education Facility. The Lease-Back shall be structured as an annually renewable lease with a provision for automatic renewals to the extent that pledged revenue under § 58B105 is available.

5 GCA GOVERNMENT OPERATIONS
CH. 58B – EXPANSION OF *OKKODO* HIGH SCHOOL

(c) The additions and improvements to *Okkodo* High School shall include the expansion of classrooms to accommodate the overcrowding, restroom facilities at all outdoor sports fields, additional restrooms required by public health due to the increase in student population, solar panels, the culinary arts building, signalization, the track and field track with proper turf, collateral equipment, and other projects needed to facilitate the expansion to accommodate the increase in student population.

SOURCE: Added by P.L. 30-182:2 (Aug. 25, 2010) as § 58B101. Renumbered by Compiler to maintain numbering scheme of this title. Amended by P.L. 31-074:V:8(a) (June 6, 2011).

§ 58B103. Responsibilities of Contractor.

The Contract shall require that the Contractor be responsible for all costs, expenses and fees of any kind or nature, associated with the design, civil improvements, on-site and off-site infrastructure, construction, permits, and financing associated with the completion of an Education Facility, including the financing of furniture and equipment of the Education Facility, as and to the extent agreed to by the Education Agency. The Contractor shall also be responsible for the capital maintenance of the schools during the Lease-Back Period, but shall not be responsible for the capital maintenance of the furniture and equipment. The Lease-Back 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 Education Agency will have the obligation to vacate the Education Facility, and the Contractor shall have the right of use and occupancy of the Education Facility for the remainder of the term of the Lease, unless new mutually satisfactory terms are entered into. 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 Lease-Back or such period of time as is necessary to repay in full any financing arranged pursuant to § 58B105. The capital maintenance costs shall be paid by the Education Agency on a periodic basis as incurred by the Contractor on terms to be agreed to in the Contract for the Education Facility.

SOURCE: Added by P.L. 30-182:2 (Aug. 25, 2010) as § 58B102. Renumbered by Compiler to maintain numbering scheme of this title.

§ 58B104. Assignments.

5 GCA GOVERNMENT OPERATIONS
CH. 58B – EXPANSION OF *OKKODO* HIGH SCHOOL

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, without the need of the consent of the Education Agency, the Contract, the Lease and the Lease-Back to any underwriter, trustee or other party as appropriate to facilitate the Contractor financing.

SOURCE: Added by P.L. 30-182:2 (Aug. 25, 2010) as § 58B103. Renumbered by Compiler to maintain numbering scheme of this title.

§ 58B105. Use of Qualified School Construction Bonds.

To minimize the financing cost to the Education Agency, financing utilized by the Contractor to fund the design and construction of the Education Facility shall be through the use of Qualified School Construction Bonds in an amount not to exceed Twenty-One Million Eight Hundred Eighteen Thousand Dollars (\$21,818,000) as authorized under Section 1521 of P.L. 111-5 (The American Recovery and Reinvestment Act of 2009) and the issuance of tax exempt bonds or lease certificates, provided such financing is available at an interest rate of no more than eight and a half percent (8.5%). Alternatively, 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. Such alternative financing shall be approved by *I Liheslaturan Guåhan*. The purpose for the requirements of this Section is to assure the Education Agency pays the lowest possible net interest rate so that the cost to the Education Agency of financing the design and construction of an Education Facility, amortized through the Lease-Back payments from the Education Agency to the Contractor, will be lower than regular commercial rates.

SOURCE: Added by P.L. 30-182:2 (Aug. 25, 2010) as § 58B104. Renumbered by Compiler to maintain numbering scheme of this title. Amended by P.L. 31-074:V:8(b) (June 6, 2011).

§ 58B106. Pledge of Section 30 Revenues.

Rental payments under the Lease and the Lease-Back shall be secured by a pledge or other reservation of revenues received by or on behalf of the government of Guam from the United States of America pursuant to Section 30 of the Guam Organic Act (48 U.S.C.A. Section 1421h). Any amounts pledged as provided in this Section are hereby continuously appropriated for the purpose of making Lease-Back

5 GCA GOVERNMENT OPERATIONS
CH. 58B – EXPANSION OF *OKKODO* HIGH SCHOOL

payments, but any amounts only reserved as provided in this Section, and not pledged, shall be subject to annual appropriation for the purpose of making Lease-Back payments.

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 Two Million Nine Hundred Thousand Dollars (\$2,900,000) per year during the Lease-Back Period, as prescribed in Section 3 of Public Law 30-178. The Section 30 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 pledge or reservation is created need not be recorded. The remainder of the funds from the existing lien, *supra*, not utilized for this project shall be subject to legislative appropriation.

SOURCE: Added by P.L. 30-182:2 (Aug. 25, 2010) as § 58B105. Renumbered by Compiler to maintain numbering scheme of this title. Amended by P.L. 31-031:3 (Apr. 18, 2011), P.L. 31-074:V:8(c) (June 6, 2011).

§ 58B107. Utilities and Routine Maintenance and Repair.

The Education Agency shall be responsible for the connection and payment of all utilities, including without limitation, power, water, sewer, telephone and cable, and all routine interior maintenance and repair and exterior grounds keeping and landscaping and upkeep of the Education Facility.

SOURCE: Added by P.L. 30-182:2 (Aug. 25, 2010) as § 58B106. Renumbered by Compiler to maintain numbering scheme of this title.

§ 58B108. Maintenance Fund.

The Contract or a separate maintenance agreement with the Contractor, and the Lease-Back, shall provide that all capital maintenance of the Education Facility 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 said documents may, at the discretion of the

5 GCA GOVERNMENT OPERATIONS
CH. 58B – EXPANSION OF *OKKODO* HIGH SCHOOL

Education Agency, provide that capital maintenance with respect to equipment (including collateral equipment), onsite utilities, offsite utilities, access roads and other similar improvements need not be performed by the Contractor.

SOURCE: Added by P.L. 30-182:2 (Aug. 25, 2010) as § 58B107. Renumbered by Compiler to maintain numbering scheme of this title.

§ 58B109. Severability.

If any provision of this Chapter 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 Chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this Chapter are severable.

SOURCE: Added by P.L. 30-182:2 (Aug. 25, 2010) as § 58B108. Renumbered by Compiler to maintain numbering scheme of this title.

§ 58B110. Authorization of Subsidy Payment.

(a) Definitions. Words and phrases used in this Section have the respective meanings assigned to them in § 58B101 of this Chapter.

(b) Authorization. Subsidy payments received from the federal government with respect to the Qualified School Construction Bonds issued pursuant to this Chapter are hereby continuously authorized without regard to a fiscal year for the purpose of making Lease-Back payments.

SOURCE: Added by P.L. 32-025:2 (May 31, 2013).
