



DEPARTMENT OF EDUCATION OFFICE OF THE SUPERINTENDENT



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JON J.P. FERNANDEZ
Superintendent of Education

May 29, 2018

Christine Jackson
Risk Management Service
Office of the Deputy Secretary
U.S. Department of Education
550 12th Street, SW
PCP, Room 11064
Washington, DC 20202

Subject: Reconsideration of Special Conditions Imposed on Guam Department of Education

Hafa Adai, Ms. Jackson:

In accordance with the U.S. Department of Education (“USED”) Federal Fiscal Year (“FFY”) 2017 Special Conditions, Section III, Subsection C, issued on June 21, 2017, I am hereby requesting, on behalf of the Guam Department of Education (“GDOE”), reconsideration of the special conditions that have been imposed on GDOE. As you are well aware, GDOE has been designated a high risk grantee subject to special conditions for nearly fifteen years. Over this period of time, and even more so over the past six years of my tenure as superintendent, GDOE has worked diligently to address the issues that led to the high-risk designation, and we believe that we have made sufficient progress to demonstrate that the imposed special conditions are no longer valid as applied to GDOE’s current situation. For this reason, we believe that USED will, upon exercising reconsideration of our progress, act favorably on this request.

I also want to thank you for meeting with us last month while we were in Washington, DC. We appreciated the opportunity to summarize our progress, not just with Mr. Phil Maestri and Risk Management Services, but also with Secretary Betsy DeVos; Deputy Secretary Jason Botel; Deputy General Counsel Phil Rosenfelt; and Dr. Lisa Ramirez, Assistant Secretary. We recognize the role and involvement that each of these individuals may play in addressing our request for reconsideration of special conditions.

A Brief History of GDOE’s Progress in Responding to High-Risk Status

In September 2003, under the former Title 34 of the Code of Federal Regulations (CFR) §80.12, USED designated GDOE a “high-risk” grantee subject to special conditions for all federal education programs it administers. USED determined that GDOE lacked fiscal and programmatic accountability by its failure to provide timely and complete single audits, as required by the Single Audit Act, and due to GDOE’s un-auditable Federal Fiscal Years (FFY) 1998-2000 records.

In the FFY 2007 special conditions for USEd grants awarded to GDOE, USEd required GDOE to develop a Comprehensive Corrective Action Plan (CCAP) to address underlying problems associated with GDOE's high-risk designation. Such problems included:

1. Accounting and reconciling financial records for the Department's grant funds in accordance with federal requirements;
2. Implementing and monitoring to ensure grant and sub-grant supported activities are carried out in accordance with federal program statutes, regulations, and other requirements;
3. Instituting procurement and property management processes that comply with federal requirements; and
4. Implementing appropriate cash management procedures.

GDOE developed a CCAP to address these issues. However, in November 2009, USEd determined that GDOE failed to make substantial progress over the prior two years under the CCAP. USEd emphasized areas where GDOE needed to make progress, including (a) implementing a financial management information system (FMIS); (b) developing and implementing its Management Internal Controls (MIC) program to institute necessary internal controls to enable GDOE to engage in effective financial management and procurement operations; and (c) implementing policies and procedures to validate and reconcile fixed-asset property. Consequently, USEd issued amended special conditions to GDOE and required GDOE to procure the services of a third party fiduciary agent (TPFA), acceptable to USEd, to perform the financial management duties required under federal regulations for all USEd grant awards made to GDOE. Subsequently, in the FFY 2015 special conditions letter, USEd required GDOE to (a) secure necessary human resources within GDOE to ensure effective business operations and accountability and (b) complete and test all new Standard Operating Procedures (SOP).

Over the last fifteen years, GDOE has demonstrated significant improvement and has specifically addressed the concerns related to high risk deficiencies. We disagree with the assessment that the "special conditions are *in continued response to GDOE's failure to successfully address significant problems in fiscal accountability* for Department grant funds" (italics added). During my tenure as superintendent, it is clear that improvements have been made to address the overall accountability and performance of federal funds and special conditions imposed on GDOE, to include timely and clean audit audits, establishment and assessment of internal controls, implementation of a new FMIS, creation, adoption and testing of critical SOPs, and a new accountability system for time and effort. The description of the current state of affairs at GDOE is not one of continued failure, but rather of steady progress, demonstrating the ability for GDOE to operate in line with the expectations set for all other states and territories.

Specific Reasons for Reconsideration of Special Conditions

GDOE has addressed the factors which have contributed to its high risk designation and is working to implement continued and ongoing operational improvements. Despite this progress, the special conditions letter has remained unchanged since FFY 2012 and continues to set forth unequivocally

that “GDOE has not made substantial progress in improving its financial management and administration of Department funds.” This characterization ignores the fact that GDOE successfully implemented a new, modernized financial management system in 2012; ignores the progress made to train managers and employees as well as develop standard operating procedures that describe the improved financial management processes, responsibilities and controls; ignores the widespread improvements in all areas, especially in fixed assets management, procurement, and internal audit; and ignores GDOE’s improved audit performance, with four consecutive unmodified audits and two consecutive unmodified audit with zero material weaknesses and zero questioned costs. Our request for reconsideration leans heavily on this performance record as well as on the regulatory requirement under Title 2 CFR, Section 200.207, Subsection (c), that “any special conditions must be promptly removed once the conditions that prompted them have been corrected.”

There are currently six special conditions that apply to USEd federal grant awards to GDOE, including the following:

1. Requirement for a Third Party Fiduciary Agent
2. Comprehensive Corrective Action Plan (CCAP)
3. Single Audits
4. Prompt Access
5. Program-Specific Conditions
6. Compliance with Program Requirements

1. Requirement for a TPFA

GDOE contracted its TPFA, Alvarez & Marsal, LLC (A&M), in 2010 as required by the FFY 2009 Amended Special Conditions. GDOE has maintained this contract for seven years and is currently in negotiations for a new TPFA contract. Total payments to the TPFA have amounted to \$20.2 million, of which \$7.8 million was paid with federal funds and \$12.4 million has been paid by local funds.

In FFY 2015, USEd acknowledged GDOE’s Transition Plan, developed in conjunction with A&M, for a gradual transition that will result in the removal of the TPFA requirement. GDOE has fulfilled its commitment to secure the necessary human resources needed to meet objectives and milestones indicated in the Transition Plan, in order to continue the momentum of progress initiated with the revised CCAP. Currently, the GDOE team manages the inventory of its fixed assets and procurement of federally funded goods and services. Additionally, we have successfully managed indirect costs, assessment of internal controls, and management of the CCAP and Transition Plan, independent of the TPFA, but with their input. GDOE remains dedicated to meeting all objectives in its Transition Plan and initiatives in the CCAP.

It is our expectation that the scope of work required of the TPFA, going forward, will be adjusted accordingly based on progress in implementing our CCAP.

2. CCAP

GDOE submitted a revised CCAP, within the 60 day requirement by the Department, which the Department approved in its FFY 2012 special conditions letter. In 2012, GDOE went live with its FMIS, Tyler Munis. In 2014, GDOE reconstituted its Internal Audit Office (IAO), strengthened its fixed assets and procurement divisions, and implemented its MIC Program resulting in the best audit performance experienced by GDOE. In 2016, as required by the FFY 2015 special conditions letter, IAO began testing the SOPs deemed critical in addressing GDOE's high risk designation.

As agreed to in the special conditions, GDOE obtained IAO's assistance to review and validate the quarterly CCAP reports for accuracy prior to submission to the Department. As of November 2017, six years since GDOE's utilization of its latest revised CCAP, GDOE reported completing 95% of its required actions. A separate validation report of GDOE's CCAP from IAO has been completed. For the remaining actions, GDOE's Deputy Superintendent of Finance and Administrative Services anticipates completing all CCAP requirements by the end of 2018.

The validation report issued by the IAO is attached for your review.

3. Single Audits

Section III (D) of the letter states the following:

"GDOE must continue to ensure that its single audits are conducted, and audit reports submitted, annually and in a timely and complete manner. All single audits must be completed and reports published within nine months after the end of each fiscal year, as required by the Single Audit Act, as amended. If GDOE expects an audit or report to be submitted late, it must promptly notify the Department's contact person of the reason and extent of the delay.

"[Furthermore,]...both GDOE and the Agent are required to provide the auditors with access to all records necessary to facilitate an effective audit of the Department grant and matching funds made available to GDOE."

GDOE has addressed the accountability problems and concerns noted in the FFY 2003 special conditions letter. In 2004, GDOE first issued its complete and audited Fiscal Years (FY) 2002 and 2003 financial statement reports and Single Audit reports. Since FY 2002, GDOE has reduced its number of findings from 28 to 2 and questioned costs from \$894,428 to \$0 in FY 2016. GDOE has also received unqualified financial audit reports since FY 2005 and unmodified financial and Single Audit reports since FY 2013. As a result of the improved audit performance, GDOE qualifies for designation as a "low-risk auditee", but because of our continued USEd high risk designation, we remain status quo. For fourteen fiscal years, GDOE has complied with the local law for financial audits and Single Audit Act, which is the principal oversight mechanism for the federal funds administered by GDOE.

It should be clear to USEd, based on our recent audit history and performance, that the special condition that requires GDOE to ensure that its single audit is conducted and submitted in a timely and complete manner has been met repeatedly.

4. Prompt Access

GDOE cooperatively and promptly provides USEd, its representatives, and TPFA personnel with access to any requested staff, locations, records, and information associated with Federal and matching funds related to programs administered in accordance with special conditions. In the spirit of this section, GDOE has worked to improve communication protocols and transparency for both outside agency and with GDOE's partners.

In my tenure as superintendent, no issues or incidents have been brought to my attention by USEd risk management or program offices regarding any failure to be provided prompt access to information related to federal and matching funds. In fact, we maintain a highly collaborative relationship with USEd and our federal programs offices, which raises a question regarding continued justification for this special condition. Also, upon review of 2 CFR Section 200.207, Subsection (a), the requirement for prompt access does not appear to be of similar nature as the "additional Federal award conditions" contemplated in the regulations; prompt access, by contrast, appears to be a general requirement applicable to all grantees.

5. Program Specific Conditions

GDOE demonstrated compliance with program specific conditions through application of fiscal control and accounting procedures that meet the requirements imposed on non-Federal entity grantees in accordance with 2 CFR §§200.302, 200.303, and 200.305(b), allowing for proper management of federal funds. This is further evidenced by GDOE's continuous clean audit opinions since FY 2013. Going forward, we will continue compliance with program-specific conditions in order to ensure access to those grant funds. These conditions do not merit being included as "special conditions" as they apply generally to all grant recipients. As stated in above, because of the broad and general nature of this particular condition, upon review of 2 CFR Section 200.207, Subsection (a), the requirement for GDOE to comply with program-specific conditions does not appear to be of similar nature as the "additional Federal award conditions" contemplated in the regulations.

6. Compliance with Program Requirements

GDOE SOPs have been updated allowing for efficient, effective, and proper administration of the grant. Through comprehensive planning, GDOE implemented sound management principles, including regular communication between the appropriate program and fiscal personnel to ensure grant activities are carried out as described in approved grant applications. Systemic improvements within our organization has resulted in greater accountability for all federal funds. Again, these conditions apply generally to all grant recipients and do not merit being continued as a "special condition" relative to GDOE.

Transition of Services

We believe that we have met, in large part, the conditions set forth in this letter. However, in our discussions regarding GDOE's progress in addressing the CCAP and in achieving consecutive

clean and improved audits, it has been the position of your office that, at this juncture, it is not possible or easy to separate GDOE's contributions from those of the TPFA. That is, your office has indicated that it cannot attribute GDOE's recent progress to the work of our department and staff, given that the TPFA has ultimate oversight and responsibility over the management of GDOE's federal funds. While we disagree with that assessment, we recognize that, until such time that we can make clear distinctions between GDOE's work and the TPFA's contributions, your office may continue to assert the same difficulty in assigning credit for progress.

Therefore, we hereby seek USEd's approval for GDOE to collaborate with the TPFA to create a transition structure that will help to clarify the operational relationship between GDOE and the TPFA. This is an idea proposed by the TPFA with the notion that such a structure would permit GDOE the opportunity to execute financial management functions under the oversight and monitoring of TPFA. GDOE would create an internal unit mirroring the functions of the TPFA; for instance, we envision that this could require the local hiring of a five member unit consisting of a Director, Project Manager, and three Analysts who could assume the responsibilities of the TPFA. The TPFA would provide technical assistance and training in addition to moving into a monitoring position as agreed by USEd.

We are eager to move in this direction and appreciate the proposed transition path set forth by the TPFA. We also believe that moving in this direction requires explicit acknowledgement and approval by USEd in order for us to proceed. This approach would allow GDOE to save money on what it currently spends for the TPFA while also building much needed internal capacity.

Sustainability of GDOE's Progress and Operations

Over the past six years, GDOE has taken major steps forward to address its staffing and management needs relative to improving financial management of federal funds. This includes hiring staff in critical positions, bringing strong leadership and focus to the procurement, fixed assets and internal audit offices, completion of standard operating procedures, extensive training for employees, and development and testing of internal controls. Key to this support has been improved negotiation and drawdown of indirect costs to support critical hiring. We are considering additional improvements needed to transition the functions of the TPFA to GDOE, which may require further restructuring of GDOE in the near future.

GDOE has also established strong relationships with external stakeholders to include the Governor's Office, the Guam Legislature, and Office of Public Accountability. While GDOE has internal measures and staff fully capable of implementing the organizations mission and objectives, it has resources available through the independent reviews of Private Auditing Firms, the Office of Public Accountability, and the Education Financial Supervisory Commission, to monitor and assist GDOE in meeting its financial and operational objectives. Consequently, these partnerships ensure proper accountability and help minimize significant deviations or delays in GDOE's progress.

Finally, GDOE is also currently in the process of contracting a High Risk Transition Consultant to ensure the stability and sustainability of operations should there be any change to our special conditions. This consultant could be tasked specifically to guide the department through a

restructuring focused on sustaining the improvements brought about by GDOE's work in recent years.

Regarding transition of the TPFA's 22 responsibilities, attached in USEd's FFY 2017 Special Conditions letter, it has already been determined that three responsibilities do not require transition, and eight are primarily performed by GDOE staff. Transition is not required for cooperation with GDOE, maintaining insurance, and compliance to EDGAR and Uniform Guidance. GDOE staff have already transitioned at least half of the TPFA's responsibilities relative to: (1) uploading budgets for programs funded by USEd, (2) valuation of property or services donated to or provided by GDOE, (3) monitoring and reporting time and effort, (4) application submission and negotiations of indirect costs, (5) management of USEd-funded assets, (6) reporting federal grant awards and expenditures, (7) accounting of federal awards, and (8) implementation of GDOE's FMIS. We will continue to work with the TPFA on transitioning remaining functions and responsibilities subject to USEd's concurrence as part of reconsideration of the special conditions.

Conclusion

Collaborative efforts with the TPFA have ensured effective implementation of a credible financial and data management system and improved fiscal management and accountability of USEd grant funds. GDOE has implemented corrective actions to address issues identified by the TPFA, Single Audits, prompt access, program specific conditions, and compliance with program requirements. Additionally, requirements have been met under the CCAP in the areas of Employee Time Tracking, FMIS, intergovernmental agency arrangements, internal controls and procedures, and procurement.

However, for the past fifteen years, GDOE has remained a high-risk grantee and its special conditions have largely remained unchanged. Upon further examination of the imposed special conditions, we found that they are no longer valid as applied to GDOE's current conditions. For this reason, and in accordance with the Department's FFY 2017 Special Conditions, Section III, Sub-section C, GDOE requests USEd's reconsideration to remove the special conditions imposed on GDOE.

As reconsideration is being contemplated, please note our request, per 2 CFR §200.207(b), that the Federal awarding agency or pass-through entity must notify the applicant or non-Federal entity as to:

1. The nature of the action needed to remove the additional requirement, if applicable; and
2. The time allowed for completing the actions, if applicable.

We would like to request technical assistance or guidance on the metrics for the required actions and time allowed for completing the actions prior to any initiation of the Department's review.

Thank you for consideration of this request. It is important to GDOE that USEd recognize the progress already made by GDOE in addressing the concerns that gave rise to our high risk

*Letter to Christine Jackson, Risk Management Services
Request to Remove Special Conditions
May 29, 2018*

designation and special conditions. We look forward to operating under the same standards and expectations of all other state departments of education, and we believe that we are entitled to relief from these special conditions based on the progress we have demonstrated to date.

Thank you again for your attention to this matter, and we look forward to a favorable response.

Sincerely,



JON J.P. FERNANDEZ
Superintendent of Education

Cc: Phil Maestri, Risk Management Service
Mark Robinson, Risk Management Service
Congresswoman Madeleine Z. Bordallo
Governor of Guam
Speaker and Senators, 34th Guam Legislature
Public Auditor, Office of Public Accountability
Chairman and Members, Guam Education Board

Attachment