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## Office of the Attorney General

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June 16, 2008

### LEGAL MEMORANDUM

Ref: GSA 07-1084

TO: Chief Procurement Officer, General Services Agency

FROM: Attorney General *ALC*

SUBJECT: **Legality of Purchasing through Federal GSA Contracts**

You have requested an opinion regarding the following question:

**ISSUE:** When supplies needed by the government of Guam are available under a Federal General Services Administration (Federal GSA) contract, may the government of Guam General Services Agency (local GSA) use the Federal GSA contract to make the purchase without first going through a competitive sealed bid process?

**ANSWER:** See discussion and conclusion.

### STATEMENT OF FACTS:

The local GSA has been using Federal GSA contracts for many years to acquire supplies when supplies needed by a government of Guam agency are available under a Federal GSA contract. This practice has been called into question by the government's external auditors Deloitte & Touche LLP ("Deloitte") in the Government of Guam Single Audit Reports for the Year Ended September 30, 2006 ("FY06 Audit").

For example, in the FY06 Audit's Schedule of Findings and Questioned Costs for grant money from the U.S. Department of Homeland Security, Finding No. 06-30 indicated that of 34 procurement transactions audited, the local GSA used informal quotes for nine of them even though the nine transactions "did not meet the small purchase threshold of \$14,999". However, according to the local GSA, these nine transactions were undertaken as Federal GSA contract purchases and not put out to bid, and were documented accordingly. The transaction amounts ranged from \$25,695 to \$313,562.

The criteria against which Deloitte measured the nine transactions was indicated in the FY06 Audit on page 67 as: