


I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

Bill No. 160 (LS)

Introduced by:

J.A. Lujan 

AN ACT TO EXPEDITE PORT DEVELOPMENT TO MEET THE NEEDS OF GUAM'S ECONOMY, BY AUTHORIZING AND DIRECTING THE JOSE D. LEON GUERRERO COMMERCIAL PORT TO ISSUE A "REQUEST FOR INFORMATION", AND FOR OTHER PURPOSES, TO BE KNOWN AS THE "PORT OF GUAM INVESTMENT ACT"

FILED IN THE OFFICE OF THE CLERK OF THE LEGISLATURE
JAN 11 2007



1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. This Act shall be known as the "Port of Guam Investment
3 Act".

4 Section 2. Legislative Intent. Various approaches to improving the
5 Commercial Port have been encouraged and authorized by laws and updates
6 over the years. These have ranged from management contracts, requests for
7 proposals, suggestions for modernization and user investments, and ad-hoc,
8 piecemeal replacement of critical equipment. Each has foundered for reasons

1 reportedly attributed to execution of approved powers: specifications,
2 communication, visioning, leadership. By contrast, there have been no
3 requests for improvements to legal authority, or to remove statutory
4 impediments.

5 Concerns have been expressed that that Guam's seaport may become a
6 bottleneck in the development process. Projections for massive defense-
7 related construction and increased population base served by the commercial
8 port should be a catalyst for immediate progress on installing port upgrades.

9 Notwithstanding the issuance of a Request For Proposal for consultant
10 services to upgrade the port's Master Plan, access to the broader strategic
11 visioning perspectives of port industry leaders is needed. To avoid continued
12 confusion and costly delay, the Legislature must prioritize port
13 improvements, by extending "fast track" authority to port officials to act. We
14 assist the Jose D. Leon Guerrero Commercial Port by helping to perfect its
15 vision, obtain answers to its open questions, detail its specifications, overcome
16 its procurement issues, and identify willing investors, and thereby advance
17 the interests of our community.

1 The Legislature’s approach contained in this Act is to authorize and
2 direct responsible Port officials to issue a general “Request For Information”,
3 as the procurement concept is used by federal agencies as preliminary
4 “Exchanges with industry before receipt of proposals” (Federal Acquisition
5 Regulations Subpart 15.201). Such “Request For Information” shall solicit
6 from government agencies, industries and organizations experienced in port
7 development, their vision of the Port of Guam, describing in conceptual terms
8 the range of port services, capital improvements, and financing required to
9 implement this vision, and to effectively meet projected demand in the near
10 term, as well as over the next twenty (20) years. Submittals will inform Port
11 managers on the immediate feasibility of various improvements, in the
12 opinion of port developers worldwide.

13 **Section 3.** A new §10110 is added to Title 12 Guam Code Annotated,
14 Chapter 10, to read as follows:

15 **“§10110. Special Procurement Authority.**

16 **(a)** The Jose D. Leon Guerrero Commercial Port is hereby authorized to
17 exchange information with port industry entities, for the purpose of refining

1 requests for proposal to be issued pursuant to this Act and Article 3 of this
2 Chapter. The process herein authorized adopts "Request for Information"
3 procedures contained in Federal Acquisition Regulation Part 15, "Contracting
4 by Negotiation", which do not appear within Guam Procurement Law.

5 **(b) Exchanges with industry before receipt of proposals.**

6 (1) Exchanges of information among all interested parties, from the
7 earliest identification of a requirement through receipt of proposals, are
8 encouraged. Any exchange of information must be consistent with
9 procurement integrity requirements contained in Title 5 Guam Code
10 Annotated, Article 11, regarding Ethics in Public Contracting. Interested
11 parties include potential offerors, end users, Port acquisition and supporting
12 personnel, and others involved in the conduct or outcome of the acquisition.

13 (2) The purpose of exchanging information is to improve the
14 understanding of Port requirements and industry capabilities, thereby
15 allowing potential offerors to judge whether or how they can satisfy the Port's
16 requirements, and enhancing Port's ability to obtain quality supplies and
17 services, including construction, at reasonable prices, and increase efficiency

1 in proposal preparation, proposal evaluation, negotiation, and contract
2 award.

3 (3) The Jose D. Leon Guerrero Commercial Port shall exchange
4 information about future acquisitions without delay. An early exchange of
5 information among industry and the program manager, contracting officer,
6 and other participants in the acquisition process can identify and resolve
7 concerns regarding the acquisition strategy, including proposed contract type,
8 terms and conditions, and acquisition planning schedules; the feasibility of
9 the requirement, including performance requirements, statements of work,
10 and data requirements; the suitability of the proposal instructions and
11 evaluation criteria, including the approach for assessing past performance
12 information; the availability of reference documents; and any other industry
13 concerns or questions. For the purposes of this Section, one technique
14 specifically authorized to promote early exchanges of information is "Request
15 For Information".

1 (4) The Port's contracting officer may transmit special notices via
2 electronic means to publicize the Port of Guam's requirements or solicit
3 information from industry.

4 (5) A Request For Information is to be used when the Jose D. Leon
5 Guerrero Commercial Port does not presently intend to award a contract, but
6 wants to obtain price, delivery, other market information, or capabilities for
7 planning purposes. Responses to these notices are not offers and cannot be
8 accepted by the Government to form a binding contract. There is no required
9 format for a Request For Information, however, each request and subsidiary
10 communication must include the following statements in prominent position:
11 "The Jose D. Leon Guerrero Commercial Port does not presently intend to
12 award a contract on the basis of this solicitation, but wants to obtain price,
13 delivery, other market information, or capabilities for planning purposes.
14 Responses to these notices are not offers and cannot be accepted by the
15 Authority to form a binding contract. Although "proposal" and "offeror" are
16 used in this Request For Information, your response will be treated as
17 information only. It shall not be used as a proposal. All information received

1 in response to this solicitation that is marked "Proprietary" will be handled
2 accordingly. Interested parties are solely responsible for all expenses
3 associated with responding to this Request For Information."

4 (6) General information about the Port of Guam, its mission needs and
5 future requirements shall be disclosed upon request without delay. After
6 release of the solicitation, the contracting officer must be the focal point of any
7 exchange with potential offerors. When specific information about a proposed
8 acquisition that would be necessary for the preparation of proposals is
9 disclosed to one or more potential offerors, that information must be made
10 available to the public as soon as practicable, but no later than the next
11 general release of information, in order to avoid creating an unfair
12 competitive advantage. Information provided to a potential offeror in
13 response to its request must not be disclosed if doing so would reveal the
14 potential offeror's confidential business strategy, and is protected under 5
15 GCA §5230(b), and 5 GCA subsections 10103(a) and 10108(i).

16 (c) **Advisory multi-step process.**

1 (1) The Jose D. Leon Guerrero Commercial Port is authorized to publish
2 a presolicitation notice that provides a general description of the scope or
3 purpose of the acquisition, and invites potential offerors to submit
4 information that allows the Jose D. Leon Guerrero Commercial Port to advise
5 the offerors about their potential to be viable competitors. The presolicitation
6 notice should identify the information that must be submitted and the criteria
7 that will be used in making the initial evaluation. Information sought may be
8 limited to a statement of qualifications and other appropriate information
9 (*e.g.*, proposed technical concept, past performance, and limited pricing
10 information). At a minimum, the notice shall contain sufficient information to
11 permit a potential offeror to make an informed decision about whether to
12 participate in the acquisition. This process should not be used for multi-step
13 acquisitions where it would result in offerors being required to submit
14 identical information in response to the notice and in response to the initial
15 step of the acquisition.

16 (2) The Jose D. Leon Guerrero Commercial Port shall evaluate all
17 responses in accordance with the criteria stated in the notice, and shall advise

1 each respondent in writing either that it will be invited to participate in the
2 resultant acquisition or, based on the information submitted, that it is unlikely
3 to be a viable competitor. The Port shall advise respondents considered not to
4 be viable competitors of the general basis for that opinion. The Jose D. Leon
5 Guerrero Commercial Port shall inform all respondents that, notwithstanding
6 the advice provided by the Port in response to their submissions, they may
7 participate in the resultant acquisition.”

8 **Section 4. Issuance of Request for Information.**

9 (a) Within thirty (30) calendar days of enactment of this Act, the Jose D.
10 Leon Guerrero Commercial Port shall issue a Request for Information as
11 prescribed in 5 GCA §10110.

12 (b) This request shall solicit the following information from entities
13 experienced in port development:

14 (1) The respondent’s vision of the Port of Guam in the near term and
15 in 2025,

16 (2) the range of port services, capital improvements, and financing
17 required to implement this vision,

1 (3) the capability of the respondent to contribute to accomplishing
2 their vision, and

3 (4) the immediate feasibility of various improvements.

4 (c) Respondents must explicitly acknowledge the value of maintaining
5 and training a local resident skilled port workforce, and recognize the
6 applicability of public policies as contained in Guam and federal law.

7 (d) Responses to the specific Request for Information required by this
8 Section shall be due within forty- five (45) calendar days of date of issuance.

9 **Section 5. Use of Information obtained through Request for**
10 **Information process.**

11 The Jose D. Leon Guerrero Commercial Port shall use information
12 submitted by respondents to the Request For Information required in Section
13 4 of this Act, as the basis for specifications and terms for a Request For
14 Proposal (“RFP”). This particular RFP must meet the projected demand for
15 port services as jointly forecast by competent Port and US military planners,
16 and be consistent with the purposes of Article 3 of 12 GCA Chapter 10. Such
17 RFP shall be issued no later than one hundred twenty (120) calendar days

1 after enactment of this Act. If the Port determines that an Advisory Multi-
2 Step Process, as authorized in Section 3 of this Act, would be advantageous, it
3 may publish a presolicitation notice based on the same specifications and
4 terms prepared for the RFP in lieu of the RFP within 120 days of enactment of
5 this Act, and issue the RFP no later than sixty (60) days thereafter.

6 **Section 6. Severability.** *If any provision of this Law or its application*
7 *to any person or circumstance is found to be invalid or contrary to law, such*
8 *invalidity shall not affect other provisions or applications of this Law which*
9 *can be given effect without the invalid provisions or application, and to this*
10 *end the provisions of this Law are severable.*