

**MINA' BENTE NUEBI NA LIHESLATURAN GUAHAN
2007 (FIRST) Regular Session**

Bill No. 165(EC)

Introduced by:

A. R. Unpingco

AN ACT TO ADD A NEW ARTICLE 4 TO CHAPTER 10 OF TITLE 12 OF THE GUAM CODE ANNOTATED, TO AUTHORIZE THE BOARD OF DIRECTORS OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT TO ENTER INTO A PUBLIC-PRIVATE PARTNERSHIP THROUGH A PERFORMANCE MANAGEMENT CONTRACT FOR THE MANAGEMENT, OPERATION AND MAINTENANCE OF THE PORT CARGO HANDLING EQUIPMENT AND/OR FACILITIES ASSOCIATED WITH SUCH EQUIPMENT AND/OR OTHER ASPECTS OF THE PORT OPERATIONS.

JULY 11, 2007
2:10 PM
EOM

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** A new Article 4 is hereby added to Chapter 10 of Title 12
3 of the Guam Code Annotated to read as follows:

4 **“ARTICLE 4.**

5 **PUBLIC-PRIVATE PARTNERSHIP THROUGH**
6 **A PERFORMANCE MANAGEMENT CONTRACT**

7 **Section 10401. Public-Private Partnership Authorization through**
8 **a Performance Management Contract.** The Board of Directors of the
9 Jose D. Leon Guerrero Commercial Port (“Port”) is authorized to issue a
10 Request for Proposal (“RFP”) soliciting bids or proposals from qualified
11 parties for the management, operation and maintenance of its cargo handling
12 equipment through a performance management contract, subject to the

1 procurement laws of Guam. The scope of work required through this RFP
2 shall include the daily operation and maintenance of its cargo handling
3 equipment; any repairs required, inclusive of all parts and labor;
4 performance monitoring requirements; and preventive maintenance of all
5 equipment and/or facilities directly associated with the equipment,
6 including, but not limited to, the acquisition for replacement of such
7 equipment.

8 The RFP shall include performance standards that will provide
9 operating criteria, guidelines and requirements to minimize costly downtime
10 and maximize cargo handling equipment availability and its life span.
11 Parties interested in submitting proposals shall have sixty (60) days to
12 prepare and submit a response to the Port. The Public Auditor shall be an
13 observer throughout the RFP process as specified in this Section, shall
14 receive copies of all documents involved and shall be invited to any
15 meetings regarding the public-private partnership process specified in this
16 Section.

17 The Port shall award a performance management contract subject to
18 the RFP detailed in this Section within ninety (90) days of the date of
19 issuance of the RFP; provided, that qualified offerors have submitted
20 proposals in compliance with the procurement laws of Guam and the
21 provisions of this Section.

22 **Section 10402. Contract Limits.** The awarded contract, which is
23 subject to the provisions of this Act, may be awarded for periods of not less
24 than five (5) years, with options to renew every five (5) years and not to
25 exceed a total of twenty (20) years. The awarded contract, subject to the
26 provisions of this Act, must contain performance reviews at least annually,
27 and provisions for contract termination and penalty based upon such review.

1 **Section 10403. Conflicts.** No contract awarded subject to the
2 provisions of this Act shall be awarded to any party who has a blood or
3 marital relationship to the third degree of consanguinity with the General
4 Manager of Port, a Board member of Port, *I Maga'lahaen Guahan* or member
5 of *I Liheslaturan Guahan*.

6 **Section 10404. Other Public-Private Partnership through**
7 **Performance Management Contract.** Notwithstanding any other
8 provisions of the law, the Board of Directors is authorized to enter into a
9 public-private partnership through a performance management contract for
10 other aspects of the Port operations it deems necessary, provided that the
11 processes outlined in the above sections are complied with.

12 **Section 10405. Termination of Contract for Reasons Unrelated to**
13 **Performance.** Should at some point in the future, a determination be made
14 by *I Liheslaturan Guahan*, in law, that a broad-scale public-private
15 partnership for the Port operations be advisable, subject to legislative
16 approval, and if any agreements entered into pursuant to this Act are viewed
17 as impeding, such provisions may be included in each contract for the
18 purchase of such contract, except that no contract shall be purchased in any
19 circumstance where a Contractor's performance has been deemed to be
20 unacceptable in accordance with the provisions of this Act.

21 **Section 10406. Severability.** If any provisions of this Act or its
22 application to any person or circumstances is found to be invalid or contrary
23 to law, such invalidity shall *not* affect other provisions or applications of this
24 Act which can be given effect without the invalid provisions or applications,
25 and to this end the provisions of this Act are severable.