

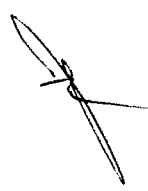
I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

BILL NO. 164 -31 (Cob)

Introduced by:

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AN ACT TO *ADD* § 7112.1 TO CHAPTER 7, DIVISION 2, TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GUAM DEPARTMENT OF EDUCATION TO ENTER INTO A PUBLIC-PRIVATE PARTNERSHIP THROUGH A PERFORMANCE MANAGEMENT CONTRACT FOR THE MANAGEMENT, OPERATION AND MAINTENANCE OF ITS STRUCTURAL AND GROUNDS FACILITIES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guahan*

finds that the Department of Education continues to be plagued with issues throughout its facilities. Instructional time has been disrupted as students have been dismissed because of structural and environmental problems that include issues involving plumbing and electrical infrastructure, structural integrity, sewage overflows, pest infestation and other sanitation concerns. For the past few years, after various inspections, schools were shut down until corrective measures were taken. Since, School Year 2008-2009, the students, faculty and staff of John F. Kennedy High School have been displaced due to the disrepair and history of maintenance and structural dilemmas of the Tamuning campus. Southern High School students have been unable to use all of the Santa Rita campus facilities – including its fine

1 arts auditorium, gymnasium, Olympic-size pool, sports fields – and have
2 continually dealt with air conditioning and plumbing issues. Many of the
3 forty-one (41) public schools in the Guam Department of Education
4 inventory face similar circumstances. While many are well aware of the
5 state of disrepair of our schools, many may not be aware that the state of
6 affairs of the classrooms and the school facilities have a significant impact
7 on the educational experience of our students. Additionally, the routine
8 deferral of maintenance until the facility is no longer functional often results
9 in greater maintenance costs, and on many occasions the loss of instructional
10 time.

11 *I Liheslatura* intends to provide a means to ensure that all facilities are
12 properly maintained at high standards and employees are afforded the
13 training, skills and resources to effectively perform their duties, so students
14 can learn and teachers can continue to educate in facilities that are safe,
15 secure and sanitary.

16 *I Liheslatura* intends to provide a proven model that will ensure the
17 procurement, training, and support of employees is implemented. *I*
18 *Liheslatura* finds that previously established Performance Management
19 Contracts (hereinafter referred to as “PMCs”) within the government of
20 Guam such as the Guam Power Authority and the Guam Waterworks
21 Authority. The PMCs have yielded outstanding cost savings generally
22 realized through preventative maintenance measures, enhanced reliability,
23 enhanced employee training opportunities and ultimately have resulted in
24 improved services.

25 **Section 2. A new 17 GCA § 7112.1 is hereby *added* to read:**
26 **“§ 7112.1. Public-Private Partnership Authorization through a**
27 **Performance Management Contract.** The Department of Education

1 (hereinafter “Department”) is authorized to issue a Multi-Step Bid (MSB) or
2 an Invitation for Bid (IFB) that solicits proposals from qualified parties for
3 the management, operation and maintenance of its structural and grounds
4 facilities through a performance management contract. The PMC
5 procurement process shall be subject to the procurement laws of the
6 Government of Guam. The scope of work required *shall* include the daily
7 operation and maintenance of its facilities and equipment, initiating repairs
8 to the facilities inclusive of all parts and labor, minimum performance
9 standards and conducting all preventive maintenance on DOE facilities,
10 including the acquisition for replacement of such equipment.

11 The procurement *shall* include minimum performance standards that
12 will provide operating criteria, guidelines and requirements to provide for
13 cost savings, quality improvement and efficiency of services, performance of
14 employees and equipment life span.

15 The Guam Department of Education shall issue a Multi-step Bid or
16 Bid within sixty (60) days after this bill has been enacted into law. Bidders
17 shall be provided a reasonable period of time to provide a response to
18 procurement given the complexities associated with preparing a bid. To
19 ensure that services provided by the General Services Agency Chief
20 Procurement Officer (hereinafter “CPO”) to other government of Guam
21 departments and agencies are not jeopardized, *I Liheslaturan Guahan* finds
22 and intends that the participation of the CPO in the PMC procurement
23 process is an administrative obligation of the CPO’s office and not a
24 condition that affects the method of source selection, solicitation, or award
25 of a contract. The CPO *shall* receive copies of all documents involved and
26 *shall* be invited to any meetings regarding the public-private partnership
27 process specified in this Section.

1 The Department *shall* review all proposals that have been properly
2 submitted and in compliance with the procurement laws of Guam and the
3 provisions of this Section within one hundred and eighty (180) days of
4 enactment and may award a performance management contract if it remains
5 in the best interest of the Department to do so. The procurement process
6 *shall* adhere to the mandates of Public Law 30-157 relative to the duties of
7 the Attorney General.

8 (a). Notwithstanding any other provision of law or regulation, the
9 Department may enter into a Performance Management Contract pursuant to
10 this section §7112.1 for a period up to and not to exceed fifteen (15) years.
11 The Initial Term of such a management contract shall be for a period of at
12 least five (5) years. The Department shall also have the option renew the
13 contract for two separate terms of (five) 5 years each.

14 Nothing herein shall repeal, limit, or otherwise prohibit any law or
15 regulation authorizing the Department to enter into any contract for a longer
16 period. In addition, the Department is authorized to set aside reasonable
17 amounts of its budget to cover the expenses associated with this obligation.

18 (b). **Powers and Duties.** The Department may contract with a
19 business entity to perform the duties, including rendering expert technical
20 and financial assistance in the operation and maintenance of Department
21 facilities.

22 (c). **Special Terms.**

23 (1) The contracted business entity pursuant to this Section must have a
24 minimum of ten (10) years of proven experience in management and
25 operation of educational facilities.

26 (2) The entity must be licensed on Guam to perform the requisite
27 services at the time the contract is entered into. Licensure shall not be a

1 required submission for the bids.

2 (3) All facilities and maintenance employees of the Facilities and
3 Maintenance Division of the Guam Department of Education shall be
4 managed by the PMC. These employees, however, shall continue to be
5 employees of the government of Guam, and the contracted business entity
6 *shall* report to the Department superintendent.

7 (4) Notwithstanding any other provision of law, the PMC is
8 authorized to reorganize the facilities and maintenance employees of the
9 Department in a manner that provides the best cost benefit to DOE while
10 ensure that services are improved. Any plan to reorganize such employees
11 shall receive the approval of the Guam Board of Education prior to being
12 implemented.

13 (5) The PMC shall be entitled to occupy a portion of the Department's
14 facilities approved by the Guam Board of Education for the purpose of
15 providing the services specified in the procurement rent free, as long as this
16 does not interfere with any school operation.

17 (6) The PMC shall provide specific plans and targets for training of
18 the Department's facilities and maintenance personnel in all relevant
19 aspects. The PMC shall develop a training plan for each year it is under
20 contract on how it intends to train Department personnel. The Department
21 may reassign any qualified persons, displaced as a result of the provisions of
22 this section to other areas within the Department where they will receive the
23 appropriate training to effectively carry out the mission of the Department.

24 (7) The PMC shall provide annual facilities O&M and Capital budgets
25 to the Department not later than a date specified by the Department for the
26 delivery of such in the procurement.

27 (8) The PMC shall be required to carry the following types and

1 amounts of insurance from an insurance company licensed on Guam to
2 provide insurance in the types specified below:

3 A. General business liability insurance of at least one million
4 dollars (\$1,000,000) from a surety licensed on Guam;

5 B. Fidelity insurance on all personnel who directly work for the
6 PMC in the amount of five-hundred thousand dollars (\$500,000).

7 C. Other insurance as the Department may require.

8 (9) The PMC shall be required to maintain a certain number of key
9 personnel on Guam at all times, aside from vacation, medical treatment and
10 training, who shall manage the contract as specified in the procurement. The
11 PMC shall provide the full-time on Guam personnel specified below to assist
12 the Department with the implementation of the PMC contract.

13 Administrative personnel do not count towards this figure. The PMC shall
14 at a minimum provide the following personnel who shall be located on
15 Guam at all times:

16 A. Financial Planner - who is proficient in capital and O&M
17 planning as required under the procurement and has at least ten (10)
18 years demonstrable experience in planning O&M and capital budgets
19 for facilities repair and maintenance of the scope required under the
20 procurement.

21 B. Maintenance Supervisor - who has at least ten (10) years
22 demonstrable experience in managing facilities maintenance and
23 repair on schools.

24 C. Engineer - who has at least ten (10) years demonstrable
25 experience in working on facilities planning and facilities
26 maintenance and capital planning for public schools or the
27 equivalent.

1 D.Planner/Scheduler - who has at least ten (10) years of
2 experience in planning and scheduling facilities maintenance
3 and repair.

4 E. Office Manager / Budget Officer - who has at least seven (7)
5 years experience in developing and managing O&M budgets of
6 the type required for this procurement.

7 F. General Manager – this position will require at least ten (10)
8 years experience in running an organization of similar scope
9 and size to what is required under the scope of work for the
10 PMC.

11 **(d). Contract Performance Reviews.** All contracts awarded subject
12 to the provisions of this Act must contain performance reviews at least
13 annually, and provisions for contract termination *or* penalty based
14 upon such review."

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