



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

OFFICE OF THE LEGISLATIVE SECRETARY  
 ACKNOWLEDGMENT RECEIPT  
 Received By D-T-F  
 Time 9:50am  
 Date 3/20/97

MAR 20 1997

The Honorable Antonio R. Unpingco  
 Speaker  
 Twenty-Fourth Guam Legislature  
 Guam Legislature Temporary Building  
 155 Hesler Street  
 Agana, Guam 96910

Refer to  
 Legislative Secretary

Dear Speaker Unpingco:

Enclosed please find a copy of Substitute Bill No. 3 (LS), "AN ACT TO ESTABLISH THE PROCEDURE AND CRITERIA TO BE USED BY THE GOVERNMENT OF GUAM IN PRIVATIZING THE FUNDING, DESIGN, CONSTRUCTION AND OPERATION OF A NEW MUNICIPAL SOLID WASTE LANDFILL FACILITY.", which I have **signed** into law today as **Public Law No. 24-06**.

This legislation allows the government to enter into another contract for a municipal solid waste landfill facility to be operated by the private sector. Currently, the government has already contracted for a landfill as an adjunct to the operation of an incinerator, after many years of study and approval actions taken by previous administrations. The existing project was approved through the granting of an exclusive license to operate an incinerator 15 years ago in 1982 by the Calvo-Ada Administration.

The Guam Attorney General, now Senator Elizabeth Barrett-Anderson, issued an opinion in 1989 stating that Guam Economic Development Authority (GEDA) and the government of Guam were bound by the issuance of the exclusive license. The original licensee, International Energy Enterprises, Inc. (IEEI), transferred the license to Guam Resource Recovery Partners (GRRP) in 1990.

The Guam Economic Development Authority, under former Administrator, Mr. Charles Crisostomo, amended the license in 1990 to state the name of the transferee, the current license holder. The incinerator and landfill project was put in place in prior years, starting in 1982 with the approval of then-Governor Calvo, continuing through the Bordallo-Reyes Administration, and through the 2 Ada-Blas Administrations.

Office of the Speaker  
 ANTONIO R. UNPINGCO  
 Date: 3/20/97  
 Time: 8:15 am  
 Rec'd by: Dr  
 Print Name: \_\_\_\_\_

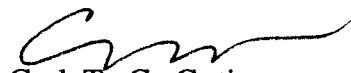
In 1995, another Guam Attorney General opinion was issued by Calvin E. Holloway, Sr., stating that the government was bound by the term sheet of the GEDA agreement, and that there was no violation of the procurement process.

The Guam Attorney General's office submitted a review of Bill No. 3. It is consistently the opinion of government attorneys that the government is committed under the GRRP contract to deliver a minimum tonnage of waste per day to the GRRP incinerator. A failure to live up to the terms of the contract could potentially subject the government of Guam to a claim of several million dollars.

The contract entered into between the government of Guam and GRRP in 1996 fulfills specifically the licenses, agreements, and approvals previously made. Just as the government is bound by the Department of Defense (DoD) contract with the Ada Administration for funding for Department of Education, the government is still bound by the past 4 Administrations regarding the incinerator and landfill project.

The landfill already under contract as a part of the incinerator and landfill project is a required element of the operation of the incinerator. The current contract guarantees the number of tons of waste necessary to operate the incinerator, up to 330 tons per day, will be processed there. Whatever waste is generated on Guam in addition to this amount remains available for other processing.

Very truly yours,

  
Carl T. C. Gutierrez  
Governor of Guam

Attachments: 1) Public Law No. 24-06  
00104 2) Attorney General Opinion, 1989  
3) Amended License Agreement 1990  
4) Attorney General Opinion, 1995  
5) Attorney General review of Bill No. 3,  
now P. L. 24-06

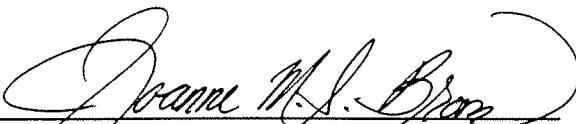
TWENTY-FOURTH GUAM LEGISLATURE  
1997 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

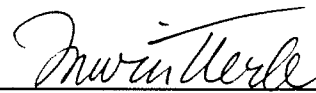
This is to certify that Substitute Bill No. 3 (LS), "AN ACT TO ESTABLISH THE PROCEDURE AND CRITERIA TO BE USED BY THE GOVERNMENT OF GUAM IN PRIVATIZING THE FUNDING, DESIGN, CONSTRUCTION AND OPERATION OF A NEW MUNICIPAL SOLID WASTE LANDFILL FACILITY," was on the 8th day of March, 1997, duly and regularly passed.

  
ANTONIO R. UNPINGCO  
Speaker


Attested:

  
JOANNE M.S. BROWN  
Senator and Legislative Secretary

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This Act was received by the Governor this 12th day of March,  
1997, at 8:40 o'clock 9 .M.

  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
CARL T. C. GUTIERREZ  
Governor of Guam

Date: 3/20/97

Public Law No. 24-06

TWENTY-FOURTH GUAM LEGISLATURE  
1997 (FIRST) Regular Session

**Bill No. 3 (LS)**

As substituted by the Author  
and amended on the floor.

Introduced by:

J.M.S. Brown  
A. C. Blaz  
A. C. Lamorena V  
E. Barrett-Anderson  
L. F. Kasperbauer  
C. M. Leon Guerrero  
A. R. Unpingco  
J. C. Salas  
E. J. Cruz  
T. C. Ada  
F. B. Aguon, Jr.  
Francisco P. Camacho  
Felix P. Camacho  
M. C. Charfauros  
Mark Forbes  
L. Leon Guerrero  
V. C. Pangelinan  
A. L. G. Santos  
F. E. Santos  
J. WonPat-Borja

AN ACT TO ESTABLISH THE PROCEDURE AND CRITERIA  
TO BE USED BY THE GOVERNMENT OF GUAM IN  
PRIVATIZING THE FUNDING, DESIGN, CONSTRUCTION  
AND OPERATION OF A NEW MUNICIPAL SOLID WASTE  
LANDFILL FACILITY.

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

2           **Section 1. Legislative Intent.**       The purpose of this Act is to establish  
3 policy and legal authority for the privatization of a Municipal Solid Waste Landfill  
4 Facility (MSWLF) for Guam by means of a long-term contract for the development,  
5 construction and operation of a MSWLF at a site to be determined by the  
6 government of Guam. Such an agreement should be entered into only after a  
7 thorough contractual process, including solicitation of applications and competitive  
8 proposals.

9           The Guam Legislature finds that the Ordot Landfill has reached its full  
10 capacity, that the United States Environmental Protection Agency has notified  
11 government of Guam that it must either substantially modify the existing landfill or  
12 establish a new one, that the existing landfill has never conformed to established  
13 design and operational criteria for a solid waste landfill, and that the Department of  
14 Public Works is the appropriate government agency for the development of a new  
15 landfill.

16           In response to Public Law 22-115, the Department of Public Works has  
17 created a Draft Environmental Impact Statement dated November 1995, which  
18 identifies MSWLF alternatives. The Guam Legislature further finds that lateral  
19 expansion of the Ordot Landfill, as proposed in a Feasibility Study for the Expansion  
20 of the Ordot Landfill dated September 1993, would provide only a temporary  
21 solution for solid waste disposal.

22           The privatization of a newly created MSWLF is the best solution for Guam's  
23 problems in the disposal of solid waste.

24           **Section 2. Short Title.**       This Act shall be known as the Solid Waste  
25 Landfill Authorization Act of 1997.

1       **Section 3.     Definitions.**

As used in this Act, the following terms shall

2 have the following meanings:

3       (a)   **Disposal:** The discharge, deposit, injecting, dumping, spilling,  
4 leaking or placing of any solid waste or hazardous waste or any constituent thereof  
5 that may enter the environment or be emitted into the air or discharged into any  
6 water, including ground waters.

7       (b)   **Facility:** All contiguous land and structures, other appurtenances,  
8 and improvements on the land used for the disposal of solid waste.

9       (c)   **Landfill:** An area of land or an excavation in which wastes are  
10 placed for permanent disposal, and that is not a land application unit, surface  
11 impoundment, injection well or waste pile.

12       (d)   **Municipal Solid Waste Landfill Facility (MSWLF):**     A  
13 discrete area of land or an excavation that receives household waste, and that is not a  
14 land application unit, surface impoundment, injection well or waste pile. A  
15 MSWLF unit also may receive other of RCRA Subtitle D wastes, such as  
16 commercial solid waste, non-hazardous sludge and industrial solid waste.

17       (e)   **Solid Waste:** Any garbage; refuse; sludge from a waste treatment  
18 plant, water supply treatment plant or air pollution control facility; other discarded  
19 material, including solid, liquid, semisolid or contained gaseous material resulting  
20 from industrial, commercial, mining or agricultural operations; and from community  
21 activities, but does not include solid or dissolved materials in domestic sewage, or  
22 solid or dissolved material in irrigation return flows or industrial discharges.

23       **Section 4.     Requirements of the Contract to Privatize MSWLF.**

24       The Department of Public Works shall immediately contract with a single,

1 private entity for the financing, design, development, construction and operation of a  
2 new MSWLF facility.

3 (a) Such contracting shall be done in accordance with the procurement  
4 procedures created by Chapter 5 of Title 5 of the Guam Code Annotated.

5 (b) The contract entered into shall require that the contractor comply with  
6 the Environmental Impact Study created by Juan C. Tenorio and Associates dated  
7 November 20, 1995 and commissioned by the Department of Public Works,  
8 Environmental Protection Agency (EPA) Subtitle D Regulations, Title 40 of the  
9 Code of Federal Regulations Parts 257 and 258 and any other relevant portions of  
10 Federal law.

11 (c) The process used by the Governor in awarding the contract shall include  
12 pre-qualification of bidders and a solicitation of bids from those deemed qualified.

13 To pre-qualify, a bidder must demonstrate competence and financial strength and  
14 shall submit a statement of qualifications required by Title 5 GCA Section 5216,  
15 which shall include the following:

16 (1) A minimum of five (5) years experience with sanitary landfill  
17 development and operations, including at least seven (7) successfully operated  
18 sanitary landfills under EPA Subtitle D, Title 40 CFR, Parts 257 and 258;

19 (2) An established record of formulating closure plans and  
20 conducting post-closure monitoring under EPA Subtitle D Regulations, Title  
21 40 CFR, Parts 257 and 258;

22 (3) A proven record of developing and implementing source  
23 reduction and recycling programs;

24 (4) Demonstrate sufficient credit worthiness and financial resources  
25 to complete the development of the entire project lien free;

1 (5) Audited financial statements indicating a minimum current net  
2 worth of One Hundred Million Dollars (\$100,000,000);

3 (6) A Guam business license, and all relevant licenses necessary to  
4 carry out the project;

5 (7) Such other criteria as determined by the Governor through the  
6 Department of Public Works.

7 (d) The contract entered into pursuant to this Section shall require that the  
8 contractor shall indemnify, save and hold harmless the government of Guam and all  
9 of its employees, agents and servants from any and all liability resulting from the  
10 design, construction and operation of the landfill, including violations of Federal  
11 environmental law.

12 (e) The MSWLF shall be located at either Guatali or Malaa, or both, as  
13 prescribed in Public Law 22-115 and described in the Environmental Impact  
14 Statement of November 1995.

15 (f) Ownership of the land used for the MSWLF shall remain with the  
16 government of Guam, which shall lease the land to the contractor. After closure the  
17 land shall return to the government of Guam to be used in its discretion.

18 (g) The operational term of the MSWLF contract shall be for a term of  
19 thirty (30) years, not including closure and post-closure requirements.

20 (h) The contract shall be awarded to the feasible bid with the lowest cost of  
21 design, construction and operation of the landfill during the contract's terms, and  
22 which meets all applicable EPA, Federal and government of Guam regulations.

23 (i) In assessing the qualifications of the bidders, the Governor shall not  
24 consider the experience and financial condition of subsidiaries, parent companies or  
25 other affiliated companies, unless such affiliated companies agree irrevocably in



1 writing to be fully liable to the government of Guam for performance of the contract  
2 and any breach thereof.

3 (j) The contractor must attain full operating capacity ten (10) months after  
4 the issuance of all required permits.

5 (k) The contractor shall operate the scale house and scale operations at the  
6 MSWLF. The Department of Public Works shall verify on a daily basis the weight  
7 of the daily intake of waste at the landfill. The Department of Revenue and  
8 Taxation shall audit the scale operations on a quarterly basis.

9 (l) The Guam Environmental Protection Agency must approve the Requests  
10 for Proposals before they are sent out.

11 (m) The contract shall not be assigned by the contractor.

12 (n) The contract shall require that arbitration in accordance with the Rules  
13 of the American Arbitration Association be conducted as a prerequisite to filing suit  
14 to enforce, interpret, cancel or rescind the contract.

15 (o) Rights and remedies of the government of Guam, should the contractor  
16 go into bankruptcy proceedings, shall be specified in the contract.

17 (p) No sale, lease or removal of fixed assets without the government  
18 approval.

19 (q) The contractor shall purchase liability insurance in the amount of Ten  
20 Million Dollars (\$10,000,000) to cover liability for environmental violations and  
21 other forms of liability incurred at the MSWLF: liability insurance in the amount of  
22 Three Million Dollars (\$3,000,000) for automotive liability; and Seven Million  
23 Dollars (\$7,000,000) for general liability.

24 (r) If the contractor undergoes a change in ownership or management, its  
25 obligations under the contract shall continue.

1 (s) The contractor shall dismantle operation and close it at the end of the  
2 term of the contract and shall be responsible for fulfilling all of the environmental  
3 requirements for termination of the contract and closure of the MSWLF.

4 (t) The contract shall require the contractor to operate the landfill in  
5 accordance with all applicable Federal and local EPA regulations.

6 (u) The Guam Environmental Protection Agency and the Department of  
7 Public Works shall monitor the performance of the contractor for compliance with  
8 all of the above requirements.

9 (v) The contract shall specify that the contractor shall ensure compliance  
10 with the applicable Federal and local regulations relating to closure and post-closure  
11 monitoring.

12 **Section 5. Implementation Plan.** Before soliciting proposals, the  
13 Governor shall submit to the Guam Legislature, for approval by statute, a plan for  
14 implementation which shall include, but not be limited to:

15 (a) A complete description of the methodology of privatization for the new  
16 MSWLF;

17 (b) Identification of participating agencies;

18 (c) A timetable for proposed implementation;

19 (d) Selection criteria for applicants;

20 (e) Proposed performance and reliability standards;

21 (f) Scope and method of search to identify qualified bidders to submit  
22 proposals;

23 (g) Plans and timetable for organizing, restructuring and other actions to be  
24 taken before privatization;

25 (h) Financial obligation of the government of Guam to the contractor;

- 1 (i) Other obligations of the government of Guam and the contractor to each
- 2 other;
- 3 (j) Penalties for breach of contract by the contractor;
- 4 (k) Regulation of rates;
- 5 (l) Pricing concerns;
- 6 (m) An analysis of the social and economic effect of the plan on the
- 7 community; and
- 8 (n) The necessity of additional legislation.

9 **Section 6. Classified Employees.** The twelve (12) classified  
10 employees of the Department of Public Works currently working at the Ordot  
11 Landfill shall be retained by the Department as its employees and may, at the  
12 discretion of the Director, be used in other portions of the Department of Public  
13 Works. None of said employees shall suffer a reduction in pay or benefits nor the  
14 loss of any rights or privileges contained in Title 4 Guam Code Annotated as a result  
15 of the privatization of the MSWLF.

16 **Section 7. Time Deadlines.** The Department of Public Works shall  
17 release the Requests for Proposals within ninety (90) days after this Act is enacted.  
18 Beginning with the month after enactment of this Law, and continuing in every  
19 month thereafter, the Department of Public Works shall submit a progress report to  
20 the Guam Legislature for public review.