

JUAN C. TENORIO & ASSOCIATES (SAIPAN), INC.,
a Trust Territory Corporation, Plaintiff

v.

HIGH COMMISSIONER EDWARD E. JOHNSTON, DIRECTOR
OF RESOURCES & DEVELOPMENT EUSEBIO RECHURER, &
KOZO YAMADA, CHIEF, LAND & SURVEYS, Trust Territory
of the Pacific Islands, Defendants

Civil Action No. 56-74

Trial Division of the High Court

Mariana Islands District

June 21, 1974

Action to enjoin granting of government contract. The Trial Division of the High Court, Burnett, Chief Justice, denied the injunction.

Injunctions—Particular Cases

Injunction against grant of government contract would not be granted where evidence showed no illegality in the process of asking for and accepting proposals for the contract and selecting the successful bidder. (31 TTC Ch. 1)

Counsel for Plaintiff:

JAMES BROOKS, ESQ.

Co-Counsel:

EDWARD PANGELINAN, ESQ.

Counsel for Defendants:

ALLAN NICHOLSON, ESQ., *Assistant Attorney General*

Co-Counsel:

WILLIAM AMSBARY, ESQ., *District Attorney*

BURNETT, Chief Justice

Plaintiff brought this action to enjoin defendants from entering into contracts for the surveying and mapping of public lands of the Trust Territory, and to compel the award of such contracts to plaintiff as the "lowest responsible and fully qualified bidder." I denied application for a temporary restraining order without notice; hearing on motion for a preliminary injunction followed. Jurisdiction is asserted under 6 TTC 251 (1) (b).

Initially, the defendants moved to dismiss on the grounds that court has not jurisdiction, by reason of the exception contained in 6 TTC 252(2). In pertinent part, that section reads as follows:

“252. Exceptions. The Trial Division of the High Court shall not have jurisdiction under the foregoing Section 251 of:

(2) Any claim based on an act or omission of an employee of the Government, exercising due care, . . . or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of any agency or employee of the Government, whether or not the discretion involved be abused.”

I denied the motion, on the basis of plaintiff's contention that defendants had acted in violation of the law (31 TTC Ch.1), and that there was consequently no room for either an exercise or abuse of discretion.

On hearing, it developed that plaintiff's principal contention was that none of the other companies who submitted proposals for the surveying projects had employees who were registered land surveyors under Title 31, that, in submitting proposals they were in violation of the law and that defendants had no discretion to consider them.

Plaintiffs were unable to present independent evidence that other companies who had submitted proposals were not licensed, or did not have employees licensed, under the provisions of Title 31. Defendants concede, however, that they did not consider such licensing to be a pre-requisite for submission of a proposal to be used as a basis of selection and subsequent contract negotiation.

Defendant's testimony establishes that, while licensing is not required as a pre-requisite to the proposal-negotiation stage, one who is selected must meet all licensing requirements before entering into contract performance. In point of fact, one of the selected companies, Asia Mapping, Inc., has performed under a prior survey contract with the government, was required to meet qualification standards

and, in the absence of evidence to the contrary, is presumed to be still so qualified.

I conclude that defendants did not violate the law in accepting proposals from companies other than plaintiff, and that plaintiff's challenge on such grounds cannot stand.

There remains only the question whether plaintiff was so misled in the process as to evidence failure of defendants to exercise their discretion in the selection process. I conclude that he was not.

It is not reasonably possible, in my view, to read the initial request for proposals in the manner contended for by plaintiff. While requesting a fee schedule for review, and referring to customs as *one* of the various factors leading to establishment of four contract areas, I cannot accept plaintiff's view that these were to be either the sole, or determining factors in selection. The final paragraph of defendant Yamada's letter of invitation made clear that a contractor would be selected "for negotiation of a contract based on technical qualification, experience, organization, availability and reputation." Plaintiff's testimony as to other conflicting assurances falls far short of establishing that selection was not made in accord with established criteria. Also, I find no substantial, or fatal, variance between criteria, set out in the invitation for proposals, and the instructions given to the Selection Board by the High Commissioner.

I find that the selection of Asia Mapping, Inc., and Hawaiian Architects and Engineers, Inc., for negotiation of contracts for survey and mapping of public lands, was made in the due care exercise of discretion vested in employees of the Government, and that this court has no jurisdiction to interfere with the exercise of that discretion.

As a final consideration, though not raised by counsel, I have serious doubts of the standing of plaintiff to bring this action. See 64 Am. Jur. 2d Public Works and Contracts, Sec. 88.

“Competitive bidding is not intended to benefit bidders. It is designed to benefit the taxpaying public The incidental benefit received by bidders from competitive bidding does not allow an unsuccessful bidder to bring a private action.” *Malon Construction Corporation v. Board of County Road Commissioners*, 187 F.Supp. 937 (1960).

“Of course, as a mere disappointed bidder, plaintiff had no standing whatever.” *Contel Construction Corporation v. Parker*, 261 F.Supp. 428 (1966).

As noted, however, notwithstanding question as to plaintiff's standing, I find no merit in his cause.

It is, therefore, ordered:

1. Plaintiff's motion for temporary injunction is denied.
2. Defendants' motion to dismiss is granted.