

TRUST TERRITORY OF THE PACIFIC ISLANDS
OFFICE OF THE HIGH COMMISSIONER

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<p>FROM HICO TERRACIS SAIPAN MARSHALL ISLANDS TO RFBUC/SWGSTATE WASHDC PRECEDENCE PRIORITY</p>	<p>INFORMATION PRECEDENCE</p>	<p>CLASSIFICATION DATE TIME GROUP</p>	<p>ORIGINATOR OFFICE: Wg 6/22/74 CLEARANCES</p> <table border="1"> <tr><td>HC</td><td></td></tr> <tr><td>DHC</td><td></td></tr> <tr><td>AD</td><td></td></tr> <tr><td>CS</td><td></td></tr> <tr><td>PA</td><td></td></tr> <tr><td>R&D</td><td>3</td></tr> <tr><td>AG</td><td></td></tr> <tr><td>AGR</td><td></td></tr> <tr><td>ASU</td><td></td></tr> <tr><td>AUD</td><td></td></tr> <tr><td>B&F</td><td></td></tr> <tr><td>COM</td><td></td></tr> <tr><td>CDO</td><td></td></tr> <tr><td>EC</td><td></td></tr> <tr><td>E&C</td><td></td></tr> <tr><td>ED</td><td></td></tr> <tr><td>IC</td><td></td></tr> <tr><td>LPC</td><td></td></tr> <tr><td>MIO</td><td></td></tr> <tr><td>MS</td><td></td></tr> <tr><td>PAO</td><td></td></tr> <tr><td>PER</td><td></td></tr> <tr><td>P&S</td><td></td></tr> <tr><td>PW</td><td></td></tr> <tr><td>SPU</td><td></td></tr> <tr><td>TS</td><td></td></tr> <tr><td>ACLS</td><td>1</td></tr> <tr><td>CLS</td><td>2</td></tr> <tr><td>RELEASE</td><td></td></tr> <tr><td>HC</td><td></td></tr> <tr><td>DHC</td><td>4</td></tr> <tr><td>AD</td><td></td></tr> <tr><td>CS</td><td></td></tr> <tr><td>PA</td><td></td></tr> <tr><td>R&D</td><td></td></tr> <tr><td>AG</td><td></td></tr> </table>	HC		DHC		AD		CS		PA		R&D	3	AG		AGR		ASU		AUD		B&F		COM		CDO		EC		E&C		ED		IC		LPC		MIO		MS		PAO		PER		P&S		PW		SPU		TS		ACLS	1	CLS	2	RELEASE		HC		DHC	4	AD		CS		PA		R&D		AG	
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FOLLOWING YOUR VERBAL REQUEST TO L&S PERSONNEL FOR INFORMATION ON SURVEYING CONTRACT LAWSUITS THE FOLLOWING INFORMATION IS SUBMITTED.

TENORIO FIRM SUED T.T. PRAYING FOR RESTRAINING ORDER TO STOP CONTRACT EXECUTION WITH SUCCESSFUL PROPOSERS AND MANDAMUS TO COMPEL T.T. TO EXECUTE CONTRACT WITH TENORIO FIRM.

DECISION OF HIGH COURT JUSTICE BURNETT ISSUED 21 JUNE 74 DISMISSED SUIT AND FOUND SELECTION BOARD ACTED WITH DUE CARE AND NO ABUSE OF DISCRETION.

THE GUAM BASED TENORIO FIRM WHICH IS COMPOSED OF JUAN TENORIO (U.S.), FORLAN TENORIO (U.S.), PEDRO TENORIO (T.T.), AND JOSE TENORIO (T.T.) HAD BASED ITS CLAIM ON PARTIAL MICRONESIAN OWNERSHIP (38%), AND

LOW PRICES IN SOME AREAS. THE SELECTION BOARD USED ORGANIZATION, CAPABILITY, REPUTATION, AVAILABILITY, TECHNICAL QUALIFICATIONS AND OTHER MISCELLANEOUS CRITERIA IN REACHING ITS DECISION TO AWARD THREE

CONTRACT AREAS TO ASIA MAPPING, INC., AND ONE CONTRACT AREA TO HAWAII ARCHITECTS AND ENGINEERS, INC. DETAILED REPORT AND PERTINENT OTHER DOCUMENTATION FOLLOWS BY MAIL. PETER T. COLEMAN SENDS.

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TRUST TERRITORY OF THE PACIFIC ISLANDS
TRIAL DIVISION OF THE HIGH COURT

MARIANA ISLANDS DISTRICT

CIVIL ACTION NO. 56-74

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

Plaintiff,

vs.

ORDER

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

Defendants.

Counsel for Plaintiff: James Brooks, Esquire
Co-counsel : Edward Pangelinan, Esquire

Counsel for Defendants: Allen Nicholson, Esquire
Assistant Attorney General
Co-counsel : William Amsbary, Esquire
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 no 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 Engineering, 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. 83.

"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 vs. Board of County Road Commissioners. 187 F. Supp. 937 (1960).

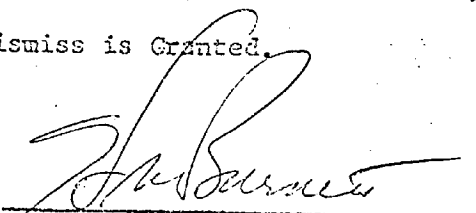
"Of course, as a mere disappointed bidder, plaintiff had no standing whatever." Contel Construction Corporation vs. Parker. 261 F. Supp. 428 (1966).

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.

Entered: 21 June 1974


Harold W. Burnett
Chief Justice