

THIRD DIVISION

**FIRST UNITED CONSTRUCTORS
CORPORATION,**

Petitioner,

- versus -

**PORO POINT MANAGEMENT
CORPORATION (PPMC), THE
SPECIAL BIDS & AWARDS
COMMITTEE (SBAC) of PPMC,
ATTY. FELIX S. RACADIO, and
SATRAP CONSTRUCTION
COMPANY, INC.,**

Respondents.

G.R. No. 178799

Present:

YNARES-SANTIAGO, J.,
Chairperson,
AUSTRIA-MARTINEZ,
CHICO-NAZARIO,
NACHURA, and
LEONARDO-DE CASTRO,^{*}JJ.

Promulgated:

January 19, 2009

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DECISION

NACHURA, J.:

First United Constructors Corporation (FUCC) filed this special civil action for *certiorari* and prohibition with prayer for the issuance of a temporary restraining order, seeking to annul (i) the re-bidding of the contract for the Upgrading of the San Fernando Airport Project, Phase I, held on May 8, 2007; (ii) the Notice of Award^[1] dated May 23, 2007 to Satrap Construction Company, Inc. (SCCI); and (iii) Notice to Proceed^[2] dated May 29, 2007 also to SCCI. FUCC also seeks to permanently enjoin the Special Bids and Awards Committee (SBAC) and Poro Point Management Corporation (PPMC) from implementing the Contract^[3] in favor of SCCI.

The factual antecedents are as follows:

On January 26, 2007, PPMC approved the Contract for the Upgrading of the San Fernando Airport Phase I. The SBAC then issued invitations to reputable contractors to pre-qualify for the project.

FUCC and two (2) other contractors - C.M. Pancho Construction, Inc. (C.M. Pancho) and EEI-New Kanlaon Construction, Inc. Joint Venture (EEI-New Kanlaon JV) responded to the invitation and were pre-qualified to bid for the project. However, upon evaluation, none of the pre-qualified bidders was chosen. C.M. Pancho was disqualified because it did not possess the required minimum years of experience in airport projects, while EEI New Kanlaon JV was disqualified because it did not submit a special license to bid as joint venture. FUCC's technical proposal, on the other hand, obtained a failing mark because it failed to submit the automated weather observation system (AWOS) and its authorized representative did not sign some pages of the narrative construction method and the tax returns. FUCC sought reconsideration of the SBAC decision, but it was denied.^[4]

FUCC then filed a protest^[5] with the PPMC. On March 26, 2007, Atty. Felix S. Racadio, PPMC Head, resolved FUCC's protest, *viz.*:

In sum, based on the issues raised and [the] arguments presented by FUCC, this OFFICE finds **NO REVERSIBLE ERROR committed by SBAC, both on its findings of 06 March 2007 (giving FUCC the FAILED rating) and 12 March 2007 (denial of FUCC's Motion for Reconsideration).**

In addition to the "NO REVERSIBLE ERROR FINDING," there exists a **PRESUMPTION OF REGULARITY OF OFFICIAL ACTION OF A PUBLIC OFFICER.** In the case at bar, such presumption applies. The burden of proof lies with the FUCC. On this score, FUCC failed to even just scratch the surface of the same.

The proceedings and findings of SBAC, in the Pre-Qualification stage not having been put into issue by the PROTEST, then, FUCC had opted to leave them as they were, thus, let them remain **UNDISTURBED.**

WHEREFORE, in view of the foregoing, the PROTEST filed by FUCC which is under consideration is hereby **DISMISSED** for lack of merit.

The **FILING FEE** paid by FUCC, the protestant, via Metro Bank Cashier's Check No. 0600018513, dated March 19, 2007, in the amount of **Four Million Seven Hundred Twenty-One Thousand Pesos (₱4,721,000.00), Philippine Currency**, which is equivalent to one [percent] (%) of the ABC being **NON-REFUNDABLE** (Sec. 55.1, IRR-A, RA 1984), the same is hereby ordered **FORFEITED in favor of PPMC**.

SO ORDERED.^[6]

SBAC then scheduled a re-bidding and issued new invitations to bid for the project. To enjoin the re-bidding set on May 8, 2007, FUCC filed a petition for injunction with prayer for the issuance of a preliminary injunction or temporary restraining order (TRO) with the Regional Trial Court (RTC) of La Union, docketed as Civil Case No. 7274.

On May 2, 2007, the RTC issued a TRO which, however, was lifted on May 4, 2007 because under Section 3 of Republic Act No. 8975,^[7] no court, except the Supreme Court, shall issue a TRO or injunction or prohibit the bidding or award of a government infrastructure project. SBAC thus proceeded with the re-bidding of the project on May 8, 2007 and awarded the project to SCCI as the lowest qualified bidder.^[8] The Contract^[9] for the project was signed, and a notice to proceed^[10] was served on SCCI on May 29, 2007.

FUCC filed an amended petition with the RTC to enjoin the implementation of the project. The Office of the Government Corporate Counsel (OGCC) moved to dismiss the petition for lack of jurisdiction.

Pending resolution of OGCC's motion to dismiss, FUCC moved for the dismissal of its amended petition, which was granted by the RTC on July 4, 2007, to wit:

Acting on the above-stated notice of dismissal, this Court hereby confirms the dismissal of the amended petition, in effect the dismissal of the whole action, without prejudice, pursuant to Sec. 1, Rule 17 of the Rules of Court.

WHEREFORE, this case is hereby DISMISSED.

SO ORDERED.^[11]

Claiming that there is no appeal, or any speedy and adequate remedy in the ordinary course of law, FUCC comes to us *via* this petition. It also asks for the issuance of a TRO to enjoin the implementation of the project, asserting that SCCI is not qualified to undertake the project and the award clearly poses a real threat to the public welfare and safety. In its November 12, 2007 Resolution, this Court denied FUCC's application for the issuance of a TRO for lack of merit.

FUCC filed this petition praying for the following relief, *viz.*:

(a) That upon receipt of this Petition, a Temporary Restraining Order (TRO) be issued enjoining the implementation of the contract for the Upgrading of the San Fernando Airport Project, Phase I with respondent [SCCI] as the contractor;

(b) That after proper proceeding, judgment be rendered: (1) permanently enjoining the implementation of the contract for the Upgrading of the San Fernando Airport Project, Phase I with respondent [SCCI] as the contractor; (2) declaring the re-bidding of the contract for the Upgrading of the San Fernando Airport Project, Phase I on 08 May 2007 illegal and nullifying the results thereof; (3) annulling the Notice of Award dated 23 May 2007, the Contract for the Upgrading of the San Fernando Airport, Phase I entered into, by and between respondent PPMC and respondent [SCCI] on 29 May 2007, and the Notice to Proceed dated 29 May 2007; and (4) directing respondent SBAC and/or respondent PPMC and/or respondent Atty. Recadio to reconsider the "Failed" rating of the bid of FUCC, open the Financial Proposal Envelope submitted by FUCC during the original bidding, declare FUCC as the winning bidder, and forthwith award the contract to FUCC, as the winning bidder and being the only qualified contractor for the project.^[12]

It asserts that SBAC and PPMC committed grave abuse of discretion in disqualifying its bid, in denying its protest, in conducting a re-bidding and in awarding the project to SCCI. It insists that it is the only qualified contractor for the project and prays that it be declared the winning bidder.

We dismiss the petition.

Republic Act (RA) No. 9184, or the *Government Procurement Reform Act*, outlines the procedure to assail decisions of the SBAC in this wise:

SEC. 55. *Protests on Decisions of the BAC.* – Decisions of BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a nonrefundable protest fee. The amount of protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR.

SEC. 56. *Resolution of Protests.* - The protests shall be resolved strictly on the basis of records of the BAC. Up to a certain amount specified in the IRR, the decisions of the Head of the Procuring Entity shall be final.

SEC. 57. *Non-interruption of the Bidding Process.* – In no case shall any protest taken from any decision treated in this Article stay or delay the bidding process. Protests must first be resolved before any award is made.

SEC. 58. *Resort to Regular Courts; Certiorari.* – Court action may be resorted only after the protest contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The regional trial court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.

FUCC challenged the decision of SBAC in a protest filed with Atty. Racadio of the PPMC who affirmed the SBAC decision. Instead of filing a petition for *certiorari*, as provided in Section 58, FUCC filed a petition for

injunction with prayer for the issuance of a temporary restraining order and/or preliminary injunction with the RTC. FUCC, however, later moved for its dismissal theorizing that the RTC had no jurisdiction over petitions for injunction. Thereafter, it filed this petition for *certiorari* with this Court.

Section 4, Rule 65 of the 1997 Rules of Civil Procedure provides that a special civil action for *certiorari* shall be filed not later than sixty (60) days from the notice of the judgment, order or resolution.^[13] FUCC admitted that it received the PPMC decision on March 27, 2007.^[14] However, it filed this petition assailing the said decision only on July 30, 2007. It is, therefore, too late in the day for FUCC, via this petition, to assail the PPMC decision which rated its bid as failed.

Besides, FUCC violated the doctrine of judicial hierarchy in filing this petition for *certiorari* directly with this Court. Section 58 is clear that petitions for the issuance of a writ of *certiorari* against the decision of the head of the procuring agency, like PPMC, should be filed with the Regional Trial Court. Indeed, the jurisdiction of the RTC over petitions for *certiorari* is concurrent with this Court. However, such concurrence does not allow unrestricted freedom of choice of the court forum. A direct invocation of the Supreme Court's original jurisdiction to issue this writ should be allowed only when there are special and important reasons, clearly and specifically set out in the petition.^[15]

In the present case, FUCC adduced no special and important reason why direct recourse to this Court should be allowed. Thus, we reaffirm the judicial policy that this Court will not entertain a direct invocation of its jurisdiction unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances justify the resort to the extraordinary remedy of a writ of *certiorari*.

Similarly, the RTC is the proper venue to hear FUCC's prayer for permanent injunction. Unquestionably, RA No. 8975^[16] enjoins all courts, except the Supreme Court, from issuing any temporary restraining order, preliminary injunction, or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity to

restrain, prohibit or compel the bidding or awarding of a contract or project of the national government. The proscription, however, covers only temporary restraining orders or writs but not decisions on the merits granting permanent injunction. Therefore, while courts below are prohibited by RA No. 8795 from issuing TROs or preliminary restraining orders pending the adjudication of the case, said statute, however, does not explicitly proscribe the issuance of a permanent injunction granted by a court of law arising from an adjudication of a case on the merits.^[17]

As we explained in *Alvarez v. PICOP Resources, Inc.*:^[18]

x x x Republic Act No. 8975 merely proscribes the issuance of temporary restraining orders and writs of preliminary injunction and preliminary mandatory injunction. [It] cannot, under pain of violating the Constitution, deprive the courts of authority to take cognizance of the issues raised in the principal action, as long as such action and the relief sought are within their jurisdiction.

Clearly, except for the prayer for the issuance of a TRO or preliminary injunction, the issues raised by FUCC and the relief it sought are within the jurisdiction of the RTC. It is a procedural *faux pas* for FUCC to invoke the original jurisdiction of this Court over the issuance of a writ of *certiorari* and permanent injunction.

In any event, the invitation to bid contains a reservation for PPMC to reject any bid. It has been held that where the right to reject is so reserved, the lowest bid, or any bid for that matter, may be rejected on a mere technicality.^[19] The discretion to accept or reject bid and award contracts is vested in the government agencies entrusted with that function. This discretion is of such wide latitude that the Courts will not interfere therewith or direct the committee on bids to do a particular act or to enjoin such act within its prerogatives unless it is apparent that it is used as a shield to a fraudulent award,^[20] or an unfairness or injustice is shown,^[21] or when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction. Thus, where PPMC as advertiser, availing itself of that right, opts to reject any or all bids, the losing bidder has no cause to complain or right to dispute that

choice, unless fraudulent acts, injustice, unfairness or grave abuse of discretion is shown.

FUCC alleges that SBAC and PPMC, along with the SCCI and five (5) other bidders, colluded *to rig the results of the re-bidding* so that SCCI would emerge as the so-called lowest bidder. The record, however, is bereft of any proof to substantiate the allegation. Neither is there any evidence offered to establish unfairness, injustice, caprice or arbitrariness on the part of the SBAC or the PPMC in awarding the contract to SCCI, the lowest bidder. The presumption of regularity of the bidding must thus be upheld.

As we explained in *JG Summit Holdings, Inc. v. Court of Appeals*:^[22]

The discretion to accept or reject a bid and award contracts is vested in the Government agencies entrusted with that function. The discretion given to the authorities on this matter is of such wide latitude that the Courts will not interfere therewith, unless it is apparent that it is used as a shield to a fraudulent award (*Jalandoni v. NARRA*, 108 Phil. 486 [1960]). x x x The exercise of this discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation. This task can best be discharged by the Government agencies concerned, not by the Courts. The role of the Courts is to ascertain whether a branch or instrumentality of the Government has transgressed its constitutional boundaries. But the Courts will not interfere with executive or legislative discretion exercised within those boundaries. Otherwise, it strays into the realm of policy decision-making.

It is only upon a clear showing of grave abuse of discretion that the Courts will set aside the award of a contract made by a government entity. Grave abuse of discretion implies a capricious, arbitrary and whimsical exercise of power (*Filinvest Credit Corp. v. Intermediate Appellate Court*, No. 65935, 30 September 1988, 166 SCRA 155). The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as to act at all in contemplation of law, where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility (*Litton Mills, Inc. v. Galleon Trader, Inc., et al.*), L-40867, 26 July 1988, 163 SCRA 489).

Accordingly, there being no showing of grave abuse of discretion, FUCC has no valid ground to demand annulment of the contract between PPMC and SCCI.

WHEREFORE, the petition is **DISMISSED**. The assailed Decision of the PPMC is **AFFIRMED**.

SO ORDERED.

ANTONIO EDUARDO B. NACHURA
Associate Justice

WE CONCUR:

CONSUELO YNARES-SANTIAGO
Associate Justice
Chairperson

MA. ALICIA AUSTRIA-MARTINEZ **MINITA V. CHICO-NAZARIO**
Associate Justice Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CONSUELO YNARES-SANTIAGO
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

REYNATO S. PUNO
Chief Justice

* Additional member per Special Order No. 546 dated January 5, 2009.

[\[1\]](#) *Rollo*, p. 68.

[\[2\]](#) *Id.* at 75.

[\[3\]](#) *Id.* at 69-74.

[\[4\]](#) *Id.* at 98-101.

[\[5\]](#) *Id.* at 102.

[\[6\]](#) *Id.* at 135-136.

[\[7\]](#) An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes.

[\[8\]](#) *Rollo*, p. 68.

[\[9\]](#) *Id.* at 69-74.

[\[10\]](#) *Id.* at 75.

[\[11\]](#) *Id.* at 78.

[\[12\]](#) *Id.* at 62-63.

[\[13\]](#) Sec. 4. *When and where to file petition.* – The petition shall be filed not later than sixty (60) days from notice of judgment, order or resolution. In case a motion for reconsideration or new trial is filed, whether such, motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

[\[14\]](#) See Petition, *rollo*, p. 20.

[\[15\]](#) *Page-Tenorio v. Tenorio*, G.R. No. 138490, November 24, 2004, 443 SCRA 560, 568.

[\[16\]](#) SEC. 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions, Preliminary Mandatory Injunctions.* – No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government direction, to restrain, prohibit or compel the following acts:

(a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;

(b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;

(c) Commencement, prosecution, execution, implementation, [or] operation of any such contract or project;

(d) Termination or rescission of any such contract/project; and

(e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

^[17] *Bases Conversion and Development Authority v. Uy*, G.R. No. 144062, November 2, 2006, 506 SCRA 524, 540.

^[18] G.R. Nos. 162243, 164516 and 171875, November 29, 2006, 508 SCRA 498, 531.

^[19] *National Power Corporation v. Philipp Brothers Oceanic, Inc.*, 421 Phil. 532, 545.

^[20] *Bureau Veritas v. Office of the President*, G.R. No. 101678, February 3, 1992, 205 SCRA 705, 717-718.

^[21] *JG Summit Holdings, Inc. v. Court of Appeals*, 458 Phil. 581, 615 (2003).

^[22] G.R. No. 124293, January 31, 2005, 450 SCRA 169, citing *Bureau Veritas v. Office of the President*, 205 SCRA 705, 717-719 (1992).