

Puerto Rico Supreme Court Clarifies Jurisdiction of Public Bid Reviewing Board of the General Services Administration

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PRACTICE AREAS

- Bids & Government Procurement

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On December 7, 2016, the Puerto Rico Supreme Court held that the jurisdiction of the Public Bid Reviewing Board of the General Services Administration ("GSA Board") only extends to the government entities defined in the Reorganization Plan No. 3 of November 21, 2011, of the General Services Administration ("the Plan") and to the government entities, public corporations and municipalities that voluntarily decide to use the services provided by the General Services Administration ("GSA") through agreements.

In June 2015, the University of Puerto Rico's Permanent Improvement Bid Board ("UPR Board") invited three pre-qualified proponents to participate in a Request for Proposals ("RFP") for the development and construction of two laboratories and other facilities in the Molecular Sciences Building of the University of Puerto Rico ("UPR").

After several procedural incidents, the committee in charge of the proposal's evaluation ("Committee") selected CIC Construction Group, S.E. ("CIC") as the winning proponent. CIC obtained the highest technical score, followed by Aireko Construction Corp. ("Aireko") and F&R Construction Group, Inc. ("F&R"). Further, the Committee noted that CIC was the only proponent with the reputation and commercial integrity required to carry out a project with the magnitude required in the RFP, as it involved the use of federal funds from a grant from the National Institute of Health. It further noted that both Aireko and F&R, were confronting federal proceedings for violations of federal environmental statutes.

Both Aireko and F&R sought reconsideration of the RFP adjudication before the UPR Board Reconsideration Panel. Simultaneously, Aireko filed a motion for reconsideration before the GSA Board. On January 15, 2016, the UPR Board Reconsideration Panel denied Aireko's and F&R's motions for reconsideration. Subsequently, Aireko and F&R filed their respective petitions for judicial reviews before the Puerto Rico Court of Appeals.

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On February 17, 2016, while the petitions for judicial review still pending before the Court of Appeals, the GSA Board issued a Resolution concluding that it had jurisdiction to entertain Aireko's motion for reconsideration. The GSA Board reasoned that, although the UPR is excluded from the provisions of the Plan, it had voluntarily submitted to its jurisdiction under Article 22 of the Plan, which allows excluded entities to use GSA's services to purchase non-professional goods and services, because the UPR Board used the Exclusive Register of Bidders, administered by the GSA, to pre-qualify the RFP's proponents.

On March 10, 2016, the Court of Appeals issued a judgment adopting GSA Board's expressions and, consequently, dismissed the petitions of judicial review for lack of jurisdiction. Subsequently, CIC filed an Inter-jurisdictional Certification before the Puerto Rico Supreme Court, challenging GSA Board's jurisdiction.

The Puerto Rico Supreme Court reversed the Court of Appeals judgment holding that the GSA Board lacks jurisdiction to entertain a motion for reconsideration challenging an adjudication by the UPR Board. The Supreme Court reasoned that the UPR is not an entity expressly covered by the Plan and, absent an agreement between the GSA and the UPR, as required by Article 22, the GSA Board had no authority over the entity, as it cannot exceed its delegated powers.

According to the Supreme Court, even assuming that Article 22 applies, the use of the Exclusive Register of Bidders does not imply that the UPR Board had consented to be subject to the review procedures provided in the Plan. Moreover, the Supreme Court noted that the RFP was exclusively conducted by the UPR Board through the process provided in its internal regulations, without GAS's intervention.

The Supreme Court remanded the case to the Court of Appeals for further proceedings.

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