

THIRD DIVISION

[G.R. NO. 167919, February 14, 2007]

PLARIDEL M. ABAYA, COMMODORE PLARIDEL C. GARCIA (RETIRED) AND PMA '59 FOUNDATION, INC., REP. BY ITS PRESIDENT, COMMODORE CARLOS L. AGUSTIN (RETIRED), PETITIONERS, VS. HON. SECRETARY HERMOGENES E. EBDANE, JR., IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, HON. SECRETARY EMILIA T. BONCODIN, IN HER CAPACITY AS SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, HON. SECRETARY CESAR V. PURISIMA, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF FINANCE, HON. TREASURER NORMA L. LASALA, IN HER CAPACITY AS TREASURER OF THE BUREAU OF TREASURY, AND CHINA ROAD AND BRIDGE CORPORATION, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is the petition for *certiorari* and prohibition under Rule 65 of the Rules of Court seeking to set aside and nullify Resolution No. PJHL-A-04-012 dated May 7, 2004 issued by the Bids and Awards Committee (BAC) of the Department of Public Works and Highways (DPWH) and approved by then DPWH Acting Secretary Florante Soriquez. The assailed resolution recommended the award to private respondent China Road & Bridge Corporation of the contract for the implementation of civil works for Contract Package No. I (CP I), which consists of the improvement/rehabilitation of the San Andres (Codon)-Virac-Jct. Bago-Viga road, with the length of 79.818 kilometers, in the island province of Catanduanes.

The CP I project is one of the four packages comprising the project for the improvement/rehabilitation of the Catanduanes Circumferential Road, covering a total length of about 204.515 kilometers, which is the main highway in Catanduanes Province. The road section (Catanduanes Circumferential Road) is part of the Arterial Road Links Development Project (Phase IV) funded under Loan Agreement No. PH-P204 dated December 28, 1999 between the Japan Bank for International Cooperation (JBIC) and the Government of the Republic of the Philippines.

Background

Based on the Exchange of Notes dated December 27, 1999,^[1] the Government of Japan and the Government of the Philippines, through their respective representatives, namely, Mr. Yoshihisa Ara, Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of the Philippines, and then Secretary of Foreign Affairs Domingo L. Siazon, have reached an understanding concerning Japanese loans to be extended to the Philippines. These loans were aimed at

promoting our country's economic stabilization and development efforts.

The Exchange of Notes consisted of two documents: (1) a Letter from the Government of Japan, signed by Ambassador Ara, addressed to then Secretary of Foreign Affairs Siazon, confirming the understanding reached between the two governments concerning the loans to be extended by the Government of Japan to the Philippines; and (2) a document denominated as Records of Discussion where the salient terms of the loans as set forth by the Government of Japan, through the Japanese delegation, were reiterated and the said terms were accepted by the Philippine delegation. Both Ambassador Ara and then Secretary Siazon signed the Records of Discussion as representatives of the Government of Japan and Philippine Government, respectively.

The Exchange of Notes provided that the loans to be extended by the Government of Japan to the Philippines consisted of two loans: Loan I and Loan II. The Exchange of Notes stated in part:

I

1. A loan in Japanese yen up to the amount of seventy-nine billion eight hundred and sixty-one million yen (Y79,861,000,000) (hereinafter referred to as "the Loan I") will be extended, in accordance with the relevant laws and regulations of Japan, to the Government of the Republic of the Philippines (hereinafter referred to as "the Borrower I") by the Japan Bank for International Cooperation (hereinafter referred to as "the Bank") to implement the projects enumerated in the List A attached hereto (hereinafter referred to as "the List A") according to the allocation for each project as specified in the List A.

2. (1) The Loan I will be made available by loan agreements to be concluded between the Borrower I and the Bank. The terms and conditions of the Loan I as well as the procedure for its utilization will be governed by said loan agreements which will contain, inter alia, the following principles:

. . .

(2) Each of the loan agreements mentioned in sub-paragraph (1) above will be concluded after the Bank is satisfied of the feasibility, including environmental consideration, of the project to which such loan agreement relates.

3. (1) The Loan I will be made available to cover payments to be made by the Philippine executing agencies to suppliers, contractors and/or consultants of eligible source countries under such contracts as may be entered into between them for purchases of products and/or services required for the implementation of the projects enumerated in the List A, provided that such purchases are made in such eligible source countries for products produced in and/or services supplied from those countries.

(2) The scope of eligible source countries mentioned in sub-paragraph (1) above will be agreed upon between the authorities

concerned of the two Governments.

(3) A part of the Loan I may be used to cover eligible local currency requirements for the implementation of the projects enumerated in the List A.

4. With regard to the shipping and marine insurance of the products purchased under the Loan I, the Government of the Republic of the Philippines will refrain from imposing any restrictions that may hinder fair and free competition among the shipping and marine insurance companies.

x x x x^[2]

Pertinently, List A, which specified the projects to be financed under the Loan I, includes the Arterial Road Links Development Project (Phase IV), to wit:

LIST A

	Maximum amount in million yen)
1. Secondary Education Development and Improvement Project	7,210
2. Rural Water Supply Project (Phase V)	951
3. Bohol Irrigation Project (Phase II)	6,078
4. Agrarian Reform Infrastructure Support Project (Phase II)	16,990
5. Arterial Road Links Development Project(Phase IV)	15,384
6. Cordillera Road Improvement Project	5,852
7. Philippines-Japan Friendship Highway Mindanao Section Rehabilitation Project (Phase II)	7,434
8. Rehabilitation and Maintenance of Bridges Along Arterial Roads Project (Phase IV)	5,068
9. Maritime Safety Improvement Project (Phase C)	4,714
10. Pinatubo Hazard Urgent Mitigation Project (Phase II)	9,013
11. Pasig-Marikina River Channel	1,167

Improvement Project (Phase I)	
Total	79,861 ^[3]

The Exchange of Notes further provided that:

III

x x x x

3. The Government of the Republic of the Philippines will ensure that the products and/or services mentioned in sub-paragraph (1) of paragraph 3 of Part I and sub-paragraph (1) of paragraph 4 of Part II are procured in accordance with the guidelines for procurement of the Bank, which set forth, inter alia, the procedures of international tendering to be followed except where such procedures are inapplicable or inappropriate.

x x x x^[4] The Records of Discussion, which formed part of the Exchange of Notes, also stated in part, thus:

x x x x

1. With reference to sub-paragraph (3) of paragraph 3 of Part I of the Exchange of Notes concerning the financing of eligible local currency requirements for the implementation of the projects mentioned in the said sub-paragraph, the representative of the Japanese delegation stated that:

(1) such requirement of local currency as general administrative expenses, interest during construction, taxes and duties, expenses concerning office, remuneration to employees of the executing agencies and housing, not directly related to the implementation of the said projects, as well as purchase of land properties, compensation and the like, however, will not be considered as eligible for financing under the Loan I; and

(2) the procurement of products and/or services will be made in accordance with the procedures of international competitive tendering except where such procedures are inapplicable and inappropriate.

x x x x^[5]

Thus, in accordance with the agreement reached by the Government of Japan and the Philippine Government, as expressed in the Exchange of Notes between the representatives of the two governments, the Philippines obtained from and was granted a loan by the JBIC. Loan Agreement No. PH-P204 dated December 28, 1999, in particular, stated as follows:

Loan Agreement No. PH-P204, dated December 28, 1999, between
JAPAN BANK FOR INTERNATIONAL COOPERATION and the GOVERNMENT

OF THE REPUBLIC OF THE PHILIPPINES.

In the light of the contents of the Exchange of Notes between the Government of Japan and the Government of the Republic of the Philippines dated December 27, 1999, concerning Japanese loans to be extended with a view to promoting the economic stabilization and development efforts of the Republic of the Philippines.

JAPAN BANK FOR INTERNATIONAL COOPERATION (hereinafter referred to as "the BANK") and THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES (hereinafter referred to as "the Borrower") herewith conclude the following Loan Agreement (hereinafter referred to as "the Loan Agreement", which includes all agreements supplemental hereto).

x x x x^[6]

Under the terms and conditions of Loan Agreement No. PH-P204, JBIC agreed to lend the Philippine Government an amount not exceeding FIFTEEN BILLION THREE HUNDRED EIGHTY-FOUR MILLION Japanese Yen (Y 15,384,000,000) as principal for the implementation of the Arterial Road Links Development Project (Phase IV) on the terms and conditions set forth in the Loan Agreement and in accordance with the relevant laws and regulations of Japan.^[7] The said amount shall be used for the purchase of eligible goods and services necessary for the implementation of the above-mentioned project from suppliers, contractors or consultants.^[8]

Further, it was provided under the said loan agreement that other terms and conditions generally applicable thereto shall be set forth in the General Terms and Conditions, dated November 1987, issued by the Overseas Economic Cooperation Fund (OECF) and for the purpose, reference to "the OECF" and "Fund" therein (General Terms and Conditions) shall be substituted by "the JBIC" and "Bank," respectively.^[9] Specifically, the guidelines for procurement of all goods and services to be financed out of the proceeds of the said loan shall be as stipulated in the Guidelines for Procurement under OECF Loans dated December 1997 (herein referred to as JBIC Procurement Guidelines).^[10]

As mentioned earlier, the proceeds of Loan Agreement No. PH-P204 was to be used to finance the Arterial Road Links Development Project (Phase IV), of which the Catanduanes Circumferential Road was a part. This road section, in turn, was divided into four contract packages (CP):

CP I: San Andres (Codon)-Virac-Jct. Bato - Viga Road	- 79.818 kms
CP II: Viga-Bagamanoc Road	- 10.40 kms
CP III: Bagamanoc-Pandan Road	- 47.50 kms.
CP IV: Pandan-Caramoran-Codon Road	- 66.40 kms. ^[11]

Subsequently, the DPWH, as the government agency tasked to implement the project, caused the publication of the "Invitation to Prequalify and to Bid" for the implementation of the CP I project in two leading national newspapers, namely, the Manila Times and Manila Standard on November 22 and 29, and December 5, 2002.