For Publication

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

KAUTZ GLASS COMPANY, Petitioner, vs. **CNMI PUBLIC SCHOOL SYSTEM**, Respondent.	**CIVIL ACTION NOS. 05-0508(C) and 05-0391(A)** **ORDER AFFIRMING DECISION OF THE OFFICE OF THE PUBLIC AUDITOR ON PETITION FOR JUDICIAL REVIEW**

I. Introduction

THIS MATTER came before the Court for a hearing on July 31, 2006, at 9:00 a.m. in courtroom 220A for consideration of Petitioner Kautz Glass Company's petition for judicial review of the decision of the CNMI Office of Public Auditor denying its administrative appeal (DECISION, *In re Kautz Glass Co.*, Appeal No. BP-A047, Oct. 27, 2005). Petitioner was represented by Brien Sers Nicholas, Esq. Respondent CNMI Public School System was represented by Karen M. Klaver, Esq. Having carefully considered the arguments of counsel, the materials submitted and the applicable laws, the Court now issues its decision affirming the decision of the Public Auditor in this matter.

II. Factual and Procedural Background

On December 29, 2004, the CNMI Public School System ("PSS") issued a solicitation for bids for the construction of typhoon shutters for the public schools. The solicitation was labeled "Invitation for Bid,"("IFB") with the caption "PSS IFB 05-044." Although it was not included in the published

notice, the bid package also cited to PSS regulation PR 3-102 (NMIAC § 60-40-205), which governs competitive sealed bidding.[1]

On February 9, 2005, PSS issued notice to prospective bidders that it would employ certain "selection criteria" to evaluate the bids for the project. This is essentially a term of art meaning that the contract would be awarded not only on the basis of price, but also according to weighted factors of experience, timeliness, warranty and means of performance. The change appears to have been motivated by PSS' realization that the installation would involve the relocation of existing air conditioners and therefore would require certain expertise on the part of the contractor that needed to be considered in awarding the contract.

The "selection criteria" procedure was drawn from the PSS procurement regulations at NMIAC § 60-40-225, governing "Competitive Sealed Proposals" (commonly called "negotiated procurements," "requests for proposals," or "RFP"), and the application of these criteria to an already-issued Invitation for Bid was anomalous. When PSS intermixed or confused these separate procedures, it created an ambiguity as to whether IFB or RFP procedures would govern the award. No one, however, objected to the revised criteria or requested clarification of the matter prior to the bid opening on February 28, 2005. Five bids were opened and publicly announced and recorded at the opening, a practice that corresponds to IFB, but *not* RFP, procedures.

On March 8, 2005, *based upon the revised criteria*, a decision was made to award the contract to Kautz Glass, the third lowest bidder. The written contract was signed and fully executed on April 28, 2005. The next month, Carpet Masters and Eyun Ji Corporation, respectively the lowest and second-lowest bidders, filed protests with the Commissioner of Education, claiming that the use of the revised

[1] Although the administrative record and the memoranda submitted by the parties make exclusive reference to the internal agency designations of the cited regulations, the Court will follow the official citation format provided by the Northern Mariana Islands Administrative Code. Executive Order No. 05-06 (Dec. 13, 2005).

selection criteria by PSS was unauthorized and improper and that the contract should have gone to the lowest bidder as provided by the IFB procedures. The Commissioner notified Kautz Glass of the protests by letters dated May 5 and May 13, 2005, requesting in each letter that Kautz suspend performance of the contract pending resolution of the protests.[2] By letter dated May 25, 2005, the Commissioner notified Kautz Glass that its contract was "terminated for convenience" according to a written condition in the contract.[3] In a separate letter bearing the same date, the Commissioner notified Kautz that the contract would be awarded to Carpet Masters as the lowest responsive bidder. Kautz filed its own protest the next day, which was rejected by the Commissioner in a decision dated July 6, 2005.

The parties dispute the timing of the issuance and receipt of the Commissioner's formal decision, but the CNMI Office of Public Auditor ("Public Auditor" or "OPA") received an appeal by Kautz Glass of the Commissioner's decision on July 29, 2005 and ultimately determined the appeal to be timely. Kautz Glass then filed for declaratory and injunctive relief in the Superior Court on September 29, 2005, seeking reinstatement of its contract with PSS. A hearing was held on October 12, 2005 and the request for a preliminary injunction was denied in a written order dated November 3, 2005. On October 27, 2005, OPA issued a 12-page written decision denying Kautz' appeal.

In its decision, the Public Auditor determined that the appeal was timely, that the original solicitation was an "Invitation for Bid" and that the inclusion of the revised criteria had not been authorized and was an "error by PSS." The Public Auditor also found the Commissioner's determination that the actual lowest bidder was "responsible" and "responsive" was within her discretion, and that cancellation of the contract with Kautz Glass was permissible pursuant to regulation

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[2] Actually, Kautz Glass had not received a "Notice to Proceed" at that point and has not asserted any reliance damages.

[3] Section 13 of the contract provided: "Termination. The Chief Procurement Officer may, when the interests of the PSS so require, terminate this contract in whole or in part, for the convenience of the PSS."

(declining to determine whether or not the contract clause was legally enforceable). On November 28, 2005, Kautz Glass petitioned this Court for judicial review of the OPA decision.

III. Issues

Petitioner submitted a statement of legal issues identifying three broad legal issues for review. Respondent filed its own statement of legal issues that, in addition, contested the timeliness of petitioner's appeal to OPA. The Court will address the issues as raised by the petitioner and will further consider the question of the timeliness of the petitioner's appeal.

1. Was Kautz' appeal of the Commissioner's decision on its protest untimely, thereby leaving OPA without jurisdiction to consider the merits of Kautz' appeal?

2. Whether the Public Auditor's decision was "arbitrary and capricious" by requiring Kautz to produce evidence in support of the Commissioner's decision and failing to consider evidence that the Commissioner's decision was unreasonable?

3. Was the OPA decision "not in accordance with the law," in that the PSS procurement regulations do not allow PSS to terminate a contract for convenience based upon its own mistake of law?

4. Is the OPA decision that PSS was legally entitled to cancel its contract with Kautz unsupported by substantial evidence?

IV. Analysis

1. Standard of Review

The Superior Court has jurisdiction to hear an appeal of a formal decision of the Public Auditor pursuant to 1 CMC § 9112(b). The standard of review is set forth at 1 CMC § 9112(f), which "requires a reviewing court to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of an agency action." *Tenorio v. Superior Court*, 1 N.M.I. 1, 13 (1989). Review of the agency's findings of fact is according to a "substantial evidence" standard. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37, 41 (1993). "Substantial evidence is such

relevant evidence as reasonable minds might accept as adequate to support a conclusion." *Santos v. Nansay Micronesia, Inc.*, 4 N.M.I. 155, 167 (1994).

2. Timeliness and Jurisdiction

In its submission to the Public Auditor, PSS argued that Kautz's inter-agency appeal should be dismissed as untimely. After considering the factual statements presented and upon a review of the relevant regulations, the Public Auditor determined that Kautz' appeal could not be dismissed as untimely and proceeded to consider the appeal on its merits. PSS has not applied for judicial review of OPA's determination, but maintains in its responsive brief before this Court that the Public Auditor lacked jurisdiction to render a decision on the matter and that, consequently, Kautz' petition for review must be dismissed.

"A court has no jurisdiction to review administrative decisions unless timely appealed during the administrative process." *Pacific Saipan Technical Contractors v. Rahman*, 2000 MP 14, 6 N.M.I. 146, 150, *citing*, *Rivera v. Guerrero*, 4 N.M.I. 79, 82 (1993). Although PSS has not appealed OPA's decision, neither has it waived the issue of timeliness, and this Court is obliged to consider the question of its own jurisdiction in every case. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94, 118 S.Ct. 1003, 1012, 140 L.Ed.2d 210; *CNMI v. Crisostimo*, 2005 MP 18, ¶ 8.

Under NMIAC § 60-40-405, an appeal from the Commissioner's decision on an award protest must be received by the OPA not later than ten days from the date that the protester or their agent received notice of the Commissioner's decision. PSS presented to the Public Auditor that the Commissioner's written decision was dated July 6, 2005, and also submitted an unauthenticated mail log to show that a copy of the decision was deposited for mail collection on July 7, 2005. Kautz stated that it received the decision on July 15, 2005, eight calendar days later. OPA received Kautz' appeal on July 29, 2005, ten working days and fourteen calendar days following the date upon which Kautz claimed to have received the decision.

The Public Auditor first examined subsection (d) of NMIAC § 60-40-401, regarding computation of time under the subpart of the procurement regulations dealing with "Bid Protests and Appeals." That subsection states that "Except as otherwise provided, all 'days' referred to in this subpart are deemed to be working days of the Public School System." Noting that the limitation within which to file an appeal dates from the time that the Commissioner's decision is "received," and that no evidence had been presented to establish that Kautz had *in fact* received the decision any earlier than claimed, the Public Auditor determined that there was no basis for finding Kautz' appeal to be untimely.

The Court finds that the Public Auditor's interpretation and application of the relevant regulations is correct and agrees with the determination that Kautz' appeal was timely filed with OPA.[4]

3. The decision of OPA was not arbitrary or capricious.

Kautz relies upon the fact that PSS originally determined it to be the most "responsible and responsive" bidder under its revised selection criteria and asserts, based upon this fact, that the subsequent cancellation of its contract for the convenience of PSS and the award to Carpet Masters was *prima facie* unjustifiable and contrary to law. Kautz then quotes the OPA decision wherein it is stated that Kautz had provided no evidence of bad faith on the part of PSS or any evidence to show that Carpet Masters was not a responsible bidder.[5] Kautz argues that this was an inappropriate

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[4] The Public Auditor is correct in this instance under any standard of review. So-called "mixed questions of fact and law" are commonly reviewed *de novo*, although there is no consistent judicial practice for all questions that bear this label. *See*, *Sattler v. Mathis*, 2006 MP 6, ¶¶ 7-9.

[5] Specifically, Kautz offers the following excerpts: "In the instant case, Kautz states that it is the most 'responsive and responsible' and gives no specific facts in its Appeal supporting why Carpet Masters cannot be or should not have been deemed responsible." Petition for Judicial Review, Exhibit "J" (OPA Decision) p. 7. Kautz further quotes from the Public Auditor's statement of the standard of review: "A determination of nonresponsibility will not be disturbed 'unless the protestor demonstrates bad faith by the agency or the lack of any reasonable basis for the determination.'" [quoting *Matter of Automated Datatron, Inc.*, 68 Comp.Gen. 89 (B-232048) 1988, Lexis 1311 *4] and "no evidence was presented and no bad faith was shown to substantiate OPA deviating from its position regarding review." *Id.*, at p. 8.

standard of review that shifted the burden to the petitioner to give evidence to *support* the decision of PSS.

Under the CNMI Administrative Procedure Act, an agency decision may be set aside if found to be "arbitrary and capricious," which has been defined as a "characterization of a decision or action taken by an administrative agency or inferior court meaning willful and unreasonable action without consideration or in disregard of facts or without determining principle." *In re Blankenship*, 1 N.M.I. 209, 217 (1992) (*citing*, Black's Law Dictionary, 5th ed. 1979). "Agency action should be overturned only when the agency has relied on factors the Legislature has not intended it to consider, 'entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.'" *Pacific Security Alarm, Inc. v. Commonwealth Ports Authority*, 2006 MP 17, ¶ 14 (*quoting*, *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 2866, 77 L.Ed.2d 443 (1983)).

A review of the Public Auditor's 12-page written decision reveals that OPA rested its decision on a great deal more than the isolated excerpts advanced by the petitioner. The OPA decision extensively analyzed PSS procurement regulations with regard to the history of the dispute, citing case law and a legal treatise in support of its conclusions. The factual recitation contained in the decision does not materially differ from the petitioner's own recount of the events leading to its protest. Furthermore, the portion of the decision expressing the standard of review and presumption of regularity that attaches to agency determinations is legally correct and supported by CNMI case law. *Pacific Security Alarm, Inc.*, *supra*, ¶ 15; *In re Hafadai Beach Hotel Extension*, supra, 4 N.M.I. at 45 (*citing*, *Chemical Waste Mgmt., Inc., v. EPA*, 649 F.Supp. 347, 354 (D.C. Cir. 1986)). As one challenging the actions of PSS, Kautz was not entitled to a presumption in its favor. *Id.* There is

nothing in the record before the Court to indicate that OPA failed to consider an essential aspect of the problem it was presented with, or that its decision was otherwise "arbitrary and capricious."

4. The decision of OPA was in accord with the law.

Kautz challenges the legal right of PSS to unilaterally terminate its contract based upon its own alleged mistake and argues that OPA failed to properly review the pertinent regulations and arrived at a legally incorrect conclusion. Kautz disagrees with the conclusion that the use of "evaluation factors" drawn from the procurement regulations governing "Competitive Sealed Proposals" at NMIAC § 60-40-225 is necessarily incompatible with the procedures for "Competitive Sealed Bidding" at NMIAC § 60-40-205. Kautz argues that it relied in good faith upon the bid solicitation together with the revised criteria and that PSS was without authority to terminate its contract solely on the basis of its competitor's price after having followed the competitive bid procedures all the way through to the execution of the award. Kautz further argued that the regulations only allow for a termination for convenience once performance under the contract has already begun.

OPA agreed with the contention of PSS that the original solicitation was an "Invitation for Bid" and that the publication of the revised selection criteria and the use of "evaluation factors" by the contracting officers had been a good faith mistake. Based upon this characterization, OPA found that termination of the contract for convenience was an allowable remedy under NMIAC § 60-40-410 (Remedies) and that under NMIAC § 60-40-205(i)(1) (Award of Competitive Sealed Bidding), the award would necessarily have to go to Carpet Masters as the responsible bidder with the lowest bid. OPA determined that termination for convenience was permitted under the regulations, but expressly declined to determine whether the contract provision allowing for termination for convenience was legally binding.

A government contract may be properly conditioned upon the right of the government to terminate the contract for its own convenience. *Krygoski Construction Co., Inc., v. U.S.,* 94 F.3d 1537, 1540-41 (Fed. Cir. 1996) (reciting the history of the government's right to terminate procurement contracts for the government's own convenience). The government's right to terminate a contract for convenience is broad and will not be set aside on review "in the absence of bad faith or clear abuse of discretion." *Northrup Grumman Corp. v. U.S.*, 46 Fed.Cl. 622, 626 (Fed. Cl. 2000). The decision to terminate for convenience is discretionary with the contracting officer, and does not depend upon a change of circumstances. *T & M Distributors, Inc. v. U.S.*, 185 F.3d 1279, 1283-84 (Fed. Cir. 1999). Good faith on the part of the contracting agency is presumed, and "[m]ere error on the part of the Government, even if it would constitute sufficient ground for contractual breach were the termination clause inapplicable, is insufficient to overcome the presumption of regularity inherent in the invocation of the termination for convenience." *Kalvar Corp., Inc. v. U.S.*, 543 F.2d 1298, 1303 (Ct. Cl. 1976).

In this case, OPA compared the procurement regulations at NMIAC § 60-40-205 governing competitive sealed bidding procedures with the regulations at NMIAC § 60-40-225 governing competitive sealed proposals and found them to be distinct regimes. OPA upheld the determination of the Commissioner that the solicitation was properly characterized as an invitation for bids, to which RFP criteria had been mistakenly applied, rather than as an IFB that had been successfully "converted" into an RFP.[6] This was based upon the observation that the application of the RFP evaluation criteria was the only anomaly in what was otherwise a materially consistent competitive bidding process, whereas many essential requirements for procurement by RFP were absent.

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[6] It should be noted that in federal procurements, the Federal Acquisitions Regulations System (FARS) contains regulations permitting the conversion of an IFB into an RFP without re-issuing the solicitation in specified circumstances. 48 C.F.R. 14.404-1(f). There is no comparable provision in the PSS procurement regulations.

This observation is correct, and PSS is entitled to deference in its interpretation that it had followed its competitive sealed bidding procedures with the exception of a single mistake. *Pacific Security Alarm, Inc.*, *supra*, 2006 MP 17, at ¶ 14. Kautz' principal grievance, however, apparently arises from PSS' decision to remedy this mistake by canceling its contract with Kautz and summarily awarding the contract to Carpet Masters. The Commissioner's August 26, 2005, written submission to OPA offered no explanation for this decision other than a reference to NMIAC § 60-40-205(i)(1), which requires the competitive bid award to go to the lowest responsive and responsible bidder, and to reference the government's right to terminate a contract for convenience. The Public Auditor, however, also cited NMIAC § 60-40-410(b) for authority. That subsection reads:

> Remedies After an Award. If, after an award the Commissioner of Education or the Public Auditor determines that a solicitation or award of a contract is in violation of law or regulation, then:
> (1) If the person awarded the contract has not acted fraudulently or in bad faith:
>> (i) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Public School System.
>> (ii) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination.

This authority is consistent with the decisional law recognizing the right of the government to terminate a procurement contract for convenience, even based upon its own error. *See, e.g., Kalvar Corp., Inc.*, supra, 543 F.2d at 1303. One of the fundamental purposes of the procurement regulations, however, is to promote public confidence in the bidding process through fair and equitable treatment of all persons who deal with the procurement system and to foster open and fair competition. NMIAC § 60-40-001(b). When the contracting agency has introduced an error into the solicitation, it is incumbent to consider whether or not the bidding process has become tainted by

1 the possibility that the individual bid prices were influenced by the error, or that the mistaken
2 solicitation changed the field of potential bidders. *See, Gentex Corp. v. U.S.*, 58 Fed.Cl. 634, 654
3 (Fed.Cl. 2003) ("The traditional remedy for a procurement error of this kind [lack of notice of an
4 evaluation criterion] is not a directed award, but a recompetition with all players enjoying an equal
5 playing field in a way that the Government obtains its true best value at a benefit to the taxpayers").[7]
6 Such consideration may preclude the summary award to an alternate bidder. *Id.*

7 In the case under review, the Court is reluctant to presume that the administrative
8 decision to award the contract to Carpet Masters was uninformed by any such consideration.
9 Although the record reveals no discussion of alternative remedies, and the regulations are silent
10 with respect to the available options that may follow the termination of an award, the facts are
11 sufficient to find that the decision of the Commissioner to reassign the contract was both
12 reasonable and within the law. This is because the mistaken issuance and use of the
13 inappropriate evaluation criteria by PSS may easily be seen as having no effect on the ultimate
14 contract prices submitted by the bidders, and no tendency to discourage other potential bidders.
15 *Cf., Gentex Corp.*, *supra*, 58 Fed.Cl. at 654. It is within the range of discretion afforded the
16 Commissioner to determine that a resolicitation of bids or proposals, once the submitted bids had
17 been made public, would have worked an even greater harm on the bidding process. *California*
18 *Marine Cleaning, Inc., v. U.S.*, 42 Fed.Cl. 281, 292 (Fed.Cl. 1998).
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[7] Relative to standing, the U.S. Court of Appeals has stated: "A disappointed bidder that claims illegality in a procurement
21 alleges an injury beyond its economic loss of the contract. The disappointed bidder may also claim injury to its right to a legally valid procurement process. This right is implicitly bestowed on all bidders by the mandatory language of the federal
22 procurement statutes and by the contractual invitation to bid embodied in the solicitation." *Nat'l Maritime Union of America v. Military Sealift Command*, 824 F.2d 1228, 1237 (U.S.App. D.C. 1987) (citations omitted). *Also, see, Saratoga Dev. Corp.*
23 *v. U.S.*, 77 F.Supp. 29, 37-38 (D. D.C. 1991), citing to an opinion of the Comptroller General that stated "We believe that a change in the evaluation criteria from award primarily on the basis of technical factors (an 80/20 technical/price ratio) to award *primarily on the basis of price* (to the low, technically acceptable offeror) materially alters the basis upon which
24 proposals were solicited and *requires the reopening of negotiations*." *TMC, Inc*., 88-1 CPD ¶ 492, at 2 (May 24, 1988) (emphasis added).

Awarding the contract to the lowest responsive and responsible bidder following a published invitation for bids is mandated by NMIAC § 60-40-205(i)(1). Cancellation of the award and termination of PSS's contract with Kautz was legally permissible, and the award of the contract to the lowest bidder under the prior solicitation was based upon a reasonable interpretation of procurement law as expressed in the regulations and under the authorities cited above. *In re Hafadai Beach Hotel Extension*, supra, 4 N.M.I. at 44, n. 27. The Court cannot, therefore, find that the decision of OPA to uphold the Commissioner's denial of Kautz' protest is "not in accord with the law." *Id., See also, John Reiner & Co. v. U.S.*, 325 F.2d 438, 440 (Ct.Cl. 1963) ("If the contracting officer has viewed the award as lawful, and it is reasonable to take that position under the legislation and regulations, the court should normally follow suit.").

5. The decision of OPA was supported by substantial evidence.

Regarding the evidentiary basis of the Public Auditor's decision, Kautz maintains that the OPA received "more than substantial evidence to support its argument that the termination of its contract by Respondent was illegal," and that the evidence "showed that it was the most 'responsive and responsible' Bidder in this case based on the criteria established by Respondent itself." (Petitioner's Legal Brief on Legal Issues, p. 6). Kautz does not specifically point to the evidence, allegedly disregarded by OPA, that establishes these legal conclusions. More importantly, however, its argument misconstrues the standard of substantial evidence on review. The Court must uphold the decision of OPA if it is reasonable in light of all of the facts that were before it, and it is the petitioner's burden to prove that the administrative decision was *unsupported* by substantial evidence. *Ramos v. Magusa*, 2002 MP 25, ¶ 13, 6 N.M.I. 520, 523, (citing, *In re Hafadai Beach Hotel Extension*, supra, 4 N.M.I. at 44.). The possibility of drawing two inconsistent conclusions does not prevent an agency finding from being supported by substantial evidence. *Santos v. Nansay Micronesia, Inc.*, *supra*, 4 N.M.I. at 167.

1 The record revealed to this Court shows that the Public Auditor considered the submissions
2 of both Kautz and PSS, carefully noting in its decision those facts upon which its conclusions were
3 based, as well as noting certain facts *omitted* from the submissions and upon which its decision
4 *could not* be based. (See, DECISION, *In re Appeal of Kautz Glass Co.*, Oct. 27, 2005, pp. 9, 11). In
5 this regard, the Court finds it inexplicable that the OPA interpreted its jurisdiction so narrowly as to
6 profess that it had "no authority to determine whether or not a termination under the terms of the
7 contract was appropriate or not." (DECISION, Part VI B., p. 9). The record shows that a copy of the
8 contract was before the Public Auditor and that the Commissioner had based her decision primarily
9 upon the contract clause preserving the right of PSS to terminate for convenience. (Commissioner's
10 response to OPA, dated August 24, 2005, p. 6). The relationship between the parties is essentially
11 determined by their contract (e.g., the contract could well have *waived*, as much as affirmed, the
12 right of PSS to terminate for convenience), and the failure of OPA to consider the contractual terms
13 is puzzling. Any such error, however, does not work in favor of the petitioner, who must
14 demonstrate that it has suffered prejudice from the Public Auditor's omission. *Camacho v. Northern*
15 *Marianas Retirement Fund*, 1 N.M.I. 131, 137 (1990). It is evident from the record that there is
16 nothing in the contract that, if properly interpreted, would have advanced Kautz' position that PSS
17 had no right to terminate its contract or to award the contract in accordance with its determination of
18 the lowest responsible bidder.

19 It appears that the material facts leading up to this dispute were not generally contested, and
20 that the disagreement of the parties turns upon their respective interpretations of their legal rights.
21 As discussed in the previous section of this decision, the Court finds the conclusion of OPA
22 regarding these issues to be reasonable. The petitioner in this case has not met the burden of proving
23 that the decision of OPA was unsupported by substantial evidence.

24 / /

V. Conclusion

The Court does not find that the CNMI Office of Public Auditor abused its discretion, ignored substantial evidence, or misapplied the law to the petitioner's prejudice when it upheld the administrative decision of the Commissioner of Education to deny the appeal of Kautz Glass Company. For the foregoing reasons, the petition to set aside the decision of the Public Auditor in this matter is DENIED and the Public Auditor's decision is hereby AFFIRMED.

SO ORDERED this 31st day of August, 2006.

/s/
RAMONA V. MANGLONA, Associate Judge