



By Order of the Court, Judge Joseph N. Camacho

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**FOR PUBLICATION**

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

<b>USA FANTER CORP., LTD,</b>	)	<b>CIVIL ACTION NO. 17-0258</b>
	)	
<b>Plaintiff,</b>	)	<b>ORDER GRANTING PLAINTIFF’S</b>
	)	<b>PETITION FOR PRELIMINARY</b>
<b>v.</b>	)	<b>INJUNCTION ENJOINING</b>
	)	<b>DEPARTMENT OF PUBLIC LANDS</b>
<b>CNMI DEPARTMENT OF PUBLIC</b>	)	<b>FROM ACTING ON A SECOND</b>
<b>LANDS,</b>	)	<b>REQUEST FOR PROPOSALS UNTIL</b>
	)	<b>LITIGATION REGARDING THE FIRST</b>
<b>Defendant.</b>	)	<b>REQUEST FOR PROPOSALS IS</b>
	)	<b>RESOLVED</b>
	)	
	)	

This matter came before the Court on December 11, 2017 in Courtroom 220A on Plaintiff USA Fanter Corp., Ltd’s (“Fanter”) Petition for Temporary Restraining Order and Preliminary Injunction (hereinafter “Petition for Preliminary Injunction”). Plaintiff Fanter was represented by Attorney Robert T. Torres and Attorney Oliver M. Manglona. The Department of Public Lands (“DPL”) was represented by Assistant Attorney General Matthew J. Pugh.

Fanter requested that the Court enter an injunction preventing DPL from awarding a contract for a quarry permit pursuant to RFP 17-RED005. Fanter filed its Petition for Preliminary Injunction on October 25, 2017. DPL filed its Response in Opposition to Plaintiff’s Petition for Preliminary Injunction on November 17, 2017. DPL subsequently filed a Notice of Errata and Correction to Response in Opposition to Plaintiff’s Petition for Preliminary Injunction on November 28, 2017. Fanter filed its reply on December 1, 2017.

Based on a review of the filings, oral arguments, and applicable law, the Court **GRANTS** Fanter’s Petition for Preliminary Injunction.

1 **II. FACTUAL AND PROCEDURAL HISTORY**

2 Sometime prior to August 12, 2016, DPL issued RFP16-RED007, titled “Quarry Operator  
3 on Public Lands – Lot Number 011 C 02 – As Matius, Saipan.” Pl.’s Compl. Ex. 1. RFP16-RED007  
4 specified that “[t]he Department of Public Lands reserves the right to reject any or all proposals and  
5 to waive any imperfection in any proposal, if, in its opinion to do so would be in the best interest of  
6 public land beneficiaries.” *Id.* RFP16-RED007 sought to “issue a quarry permit to the most  
7 responsive firm capable of providing DPL the highest return from limestone quarry operations on  
8 public lands.” Pl.’s Compl. Ex. 2 at 2. Fanter submitted a proposal for RFP16-RED007 on  
9 September 16, 2016, the submission deadline. Pl.’s Compl. Ex. 3; Aff. of Qian, Guo Cao.

10 On November 9, 2016, Defendant sent letters to all the bidders. DPL issued a notice of  
11 intent to award letter to Win Win Way Construction Co., (Saipan) Inc. (hereinafter “Win Win  
12 Way”). DPL issued notice of non-award letters to all the other bidders, including Fanter. The top  
13 three bidders on RFP16-RED007 were: 1. Win Win Way, 2. Blue Oasis, LLC (hereinafter “Blue  
14 Oasis”), and 3. Fanter. Pl.’s Compl. Ex. 5. DPL received either six or seven bids in response to  
15 RFP16-RED007.<sup>1</sup>

16 DPL attempted to negotiate a contract with Win Win Way, but the parties were ultimately  
17 unable to agree on terms. Complaint ¶ 9. Win Win Way withdrew from consideration on or about  
18 May 23, 2017. Even though Blue Oasis received a non-award letter, DPL began negotiations with  
19 Blue Oasis, the second highest rated bidder. *Id.* ¶ 10. DPL was unable to agree on terms with Blue  
20 Oasis and did not enter into a contract with Blue Oasis. *Id.* Like Blue Oasis, Fanter received a non-  
21 award letter and was the next highest bidder after Win Win Way and Blue Oasis.

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<sup>1</sup> *USA Fanter Corp. v. DPL*, Civ. No. 17-0258 (NMI Super. Ct. Nov. 28, 2017) (Defendant’s Response in Opposition to  
24 Plaintiff’s Petition for Preliminary Injunction at 2) (“DPL received six proposals in response to RFP16-RED007.”) At  
the hearing on this matter, counsel for DPL indicated that DPL received seven proposals in response to RFP16-  
RED007.

1 After contract negotiations failed with Blue Oasis, DPL made the determination that “given  
2 the significant amount of time that had passed since the RFP was issued, and considering the terms  
3 of the remaining proposals, it would not be in the best interest of DPL and its beneficiaries, people  
4 of Northern Marianas Descent, to award the contract to any of the remaining bidders.” Pl.’s Compl.  
5 Ex. 5. Thus, DPL issued a second RFP for the quarry project without first negotiating with the third  
6 highest ranked bidder, Fanter, or any of the other remaining responsive bidders.

7 Sometime before September 29, 2017, over a year after the first RFP was issued, DPL  
8 issued RFP17-RED005, “Quarry Operator on Public Lands – Lot Number 011 C 04 – As Matuis,  
9 Saipan.” Pl.’s Compl. Ex. 6. RFP17-RED005 had a submission deadline of October 27, 2017.<sup>2</sup>

10 On October 1, 2017, Fanter sent a letter to the Secretary of the Department of Public Lands,  
11 protesting the cancellation of RFP16-RED007 and the issuance of RFP17-RED005. Pl.’s Compl.  
12 Ex. 5. Fanter submitted a proposal in response to RFP17-RED005 on October 26, 2017. Pl.’s Reply  
13 Ex. 2. DPL has not yet finished evaluating the proposals it received in response to RFP17-RED005.  
14 Currently, no party has an exclusive quarry permit under either RFP16-RED007 or RFP17-  
15 RED005.

16 Fanter’s Petition for Preliminary Injunction asks the Court to prevent DPL from issuing a  
17 permit for Lot No. 011 C 04 under RFP17-RED005 until DPL and Fanter “have determined they  
18 cannot come to terms for a contract for the exclusive quarry permit upon award of RFP16-  
19 RED007.” Petition for Preliminary Injunction at 1. In other words, Fanter is not asking the Court to  
20 mandate that DPL enter into a contract with Fanter. Rather, Fanter is asking that DPL give Fanter  
21 the same opportunity to negotiate as Win Win Way and Blue Oasis, and that the Court enjoin DPL  
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24 <sup>2</sup> RFP16-RED007 dealt with Lot Number 011 C 02 and RFP17-RED005 dealt with Lot Number 011 C 04. Both lots are  
located in As Matuis, Saipan. Fanter alleges that these are the same pieces of land, minus a small piece of land that had  
been subdivided. Complaint ¶ 13; Exh. 8 at 2-3.

1 from awarding any contract under RFP17-RED005 until DPL and Fanter fail to agree upon contract  
2 terms under RFP16-RED007.

3 Fanter’s Petition for Preliminary Injunction asks that the Court grant “a preliminary  
4 injunction preventing DPL from awarding an exclusive quarry permit for Lot No. 011 C 04 under  
5 RFP17-RED005 until such time this Court has ruled on the merits of Fanter’s Petition and  
6 Complaint.” Petition for Preliminary Injunction at 11.

7 **III. LEGAL STANDARD**

8 “The purpose of a preliminary injunction is not to determine the merits of the case. Rather, it  
9 is to preserve the status quo between parties to an action pending a final determination on the  
10 merits.” *Villanueva v. Tinian Shipping and Transp., Inc.*, 2005 MP 12 ¶ 19 (internal citations  
11 omitted). Commonwealth courts typically look to the following four factors in determining whether  
12 a preliminary injunction must be granted:

- 13 (1) whether the plaintiff has a strong likelihood of success on the merits; (2) the  
14 level of the threat of irreparable harm to the plaintiff if the relief is not granted;  
15 (3) the balance between the harm the plaintiff will face if the injunction is denied  
and the harm the defendant will face if the injunction is granted; and (4) any  
effect the injunction may have on the public interest.

16 *Id.* ¶ 20; *Island Marine Sports, Inc. et al v. Department of Public Lands and Tasi Tours*, Civ. No.  
17 12-0151 (NMI Super. Ct. July 19, 2012) (Opinion & Order Granting Preliminary Injunction at 12).

18 “Alternatively, a court may issue a preliminary injunction if the moving party demonstrates either a  
19 combination of probable success on the merits and the possibility of irreparable harm, or the  
20 existence of serious questions going to the merits and a balance of hardships tipping in its favor.”

21 *Villanueva*, 2005 MP 12 ¶ 20 (citation omitted).

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1 **IV. DISCUSSION**

2 To determine whether Fanter’s Petition for Preliminary Injunction should be granted, the  
3 Court must turn to the four factor test outlined in *Villanueva*. The Court will address each of these  
4 factors in turn.<sup>3</sup>

5 **A. Whether the plaintiff has a strong likelihood of success on the merits**

6 First, the Court will turn to “whether the plaintiff has a strong likelihood of success on the  
7 merits.” *Villanueva*, 2005 MP 12 ¶ 20. Fanter argues that DPL did not have the authority to cancel  
8 RFP16-RED007, arguing that DPL’s treatment of Fanter’s proposal under RFP16-RED007 was  
9 “arbitrary and capricious and contrary to applicable law.” DPL argues that DPL “clearly exercised  
10 its discretion in a reasonable manner and based its decision on the best interests of its  
11 beneficiaries.” Def.’s Errata Ex. 1. at 7. DPL further argues that, although NMIAC § 145-70-501  
12 does not outline procedures for cancelling an RFP, that the Secretary of DPL still has the discretion  
13 to choose to award an RFP. *Id.*

14 “In determining likelihood of success on the merits, courts look to the substantive law at  
15 issue.” *Island Marine Sports*, Civ. No. 12-0151 (Opinion and Order Granting Preliminary  
16 Injunction at 15) (citing *Roho, Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir. 1990)). The movant  
17 must at the very least “show that their likelihood of success is more than negligible.” *Id.*<sup>4</sup> Thus,  
18 Fanter must at a minimum show that the likelihood that DPL acted in an arbitrary and capricious

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21 <sup>3</sup> DPL raises the threshold issue that Fanter lacks standing to bring its Petition & Complaint, and therefore is unlikely to  
succeed on the merits of the claims it contains. DPL has moved to dismiss Fanter’s Petition & Complaint based on this  
argument. The Court will address DPL’s motion to dismiss in a separate order.

22 <sup>4</sup> In *Island Marine Sports*, this Court noted that “Courts differ as to the exact burden of persuasion on the movant” and  
23 that some courts “require a greater showing.” *Id.* at 15 n. 3; *see Commonwealth Utilities Corp. v. Commonwealth*  
*Healthcare Corp.*, Civ. No. 13-0227 (NMI Super. Ct. January 20, 2015) (Order Granting Defendant’s Request for  
24 Preliminary Injunction at 10) (requiring the movant “to demonstrate a prima facie showing of a right to relief in order  
to satisfy this factor.”). In *Commonwealth Utilities Corp.*, a *prima facie* showing means that the evidence “does not need to  
be conclusive in order to establish a likelihood of success on the merits.” *Id.* at 10.

1 manner or abused its discretion with regard to Fanter’s responsive RFP16–RED007 proposal is  
2 more than negligible.

3 Title 1 Section 2808(c) mandates that DPL “shall develop administrative policies,  
4 procedures, and controls related to public land.” DPL’s policies and procedures must ensure that  
5 “public land is utilized in an efficient and objective manner.” 1 CMC § 2808(c)(2). Revenues  
6 generated from the management and disposition of public lands are trust funds to be held for the  
7 benefit of the people of Northern Marianas descent. *DPL v. Commonwealth*, 2010 MP 14 ¶ 34.

8 While DPL does have an interest in seeking the highest compensation for its beneficiaries, it  
9 is specifically not empowered to act within the free market without restriction. Instead, the  
10 legislature placed restrictions on DPL action in 1 CMC § 2808(c). These restrictions include  
11 limitations on the value that DPL may place on public lands (1 CMC § 2808(c)(1)&(3)) and  
12 limitations on DPL’s discretion regarding what it may charge for rent (1 CMC § 2808(c)(3)) and its  
13 rent-collection procedures (1 CMC § 2808(c)(5)&(7)). DPL is also specifically required by this  
14 statute to “develop administrative policies, procedures, and controls related to public land, which  
15 shall ensure that...[p]ublic land is utilized in an efficient and objective manner.” 1 CMC §  
16 2808(c)(2). Whether these “administrative policies, procedures, and controls related to public land”  
17 were in place or not at the time relevant to Fanter’s claims, the Legislature clearly and specifically  
18 intended to limit DPL’s discretion as a free-market actor by eliminating its ability to act  
19 “inefficiently” and “subjectively.”

20 NMIAC § 145-70-501 governs DPL’s requests for proposals, providing criteria for  
21 comparing proposals, procedures for competing proposals, and describing the contents of RFPs.  
22 Section 145-70-501(f) provides “DPL shall always request a best and final offer on the amount of  
23 rent payments and public benefit options before selecting the final proposal.” Unlike the RFP  
24 regulations of most other agencies of the Commonwealth, DPL’s RFP regulation does not contain a

1 procedure for cancelling an RFP<sup>5</sup> or for rejecting a responsive proposal to an RFP.<sup>6</sup> NMIAC § 145-  
2 70-501. The Secretary of DPL “shall have *reasonable* discretion regarding issues not anticipated by  
3 these regulations.” NMIAC § 145-70-101(a) (emphasis added).

4 Here, DPL issued a second RFP without an established procedure to cancel RFP16-  
5 RED007.<sup>7</sup> DPL negotiated with Win Win Way and sent a non-award letter to the unsuccessful  
6 bidders, including Blue Oasis and Fanter, but later entered into negotiations with only Blue Oasis.  
7 Despite the duty of the Secretary of DPL to use “reasonable” discretion pursuant to NMIAC § 145-  
8 70-101(a), and the limitation that public lands must be used in an “objective” manner pursuant to 1  
9 CMC § 2808(c), Blue Oasis was the only one later invited to negotiate with DPL. This unequal  
10 treatment of Blue Oasis and Fanter supports Fanter’s allegation that DPL’s actions are both  
11 subjective and arbitrary. Fanter has shown that “their likelihood of success is more than negligible.”  
12 *See Island Marine Sports*, Civ. No. 12-0151 (Opinion and Order Granting Preliminary Injunction at  
13 15). Thus, this factor tips in favor of Fanter.

14 **B. The level of the threat of irreparable harm to the plaintiff if the relief is not granted**

15 Second, the Court will consider “the level of the threat of irreparable harm to the plaintiff if  
16 the relief is not granted.” *Villanueva*, 2005 MP 12 ¶ 20. Fanter argues that it faces irreparable harm

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18 <sup>5</sup> NMIAC § 145-70-501; *see, e.g.*, NMIAC §70-30.3-240 (authorizing the official with expenditure authority, when  
19 approved by the P&S Director of the Department of Finance, to cancel a RFP if determined to be in the best interest of  
20 the government under specific circumstances); NMIAC §40-50-301 (similarly authorizing cancellation of a  
Commonwealth Ports Authority request for proposal by the Executive Director or Board); NMIAC §50-50-235  
(similarly authorizing cancellation of a Commonwealth Utilities Corporation request for proposal by the Director and as  
approved by the Chairman of the Board); NMIAC §90-20-301 (similarly authorizing the contracting officer of the  
Marianas Visitors Authority to cancel a request for proposal).

21 <sup>6</sup> NMIAC § 145-70-501; *see, e.g.*, NMIAC §70-30.3-240 (authorizing the official with expenditure authority, when  
22 approved by the P&S Director of the Department of Finance, to reject a submitted proposal if determined to be in the  
best interest of the government under specific circumstances); NMIAC §40-50-301 (similarly authorizing rejection of a  
submitted proposal to a Commonwealth Ports Authority request for proposal); NMIAC §50-50-235 (similarly  
authorizing rejection of a submitted proposal to a Commonwealth Utilities Corporation request for proposal); NMIAC  
23 §90-20-301 (similarly authorizing rejection of a submitted proposal to a Marianas Visitors Authority request for  
proposal).

24 <sup>7</sup> RFP16-RED007 and RFP17-RED005 concern the exact same potential quarry site in As Matusi, with a small piece of  
land partitioned for right of way.

1 if DPL enters into an exclusive quarry contract for RFP17-RED005 prior to this case being heard on  
2 the merits. Fanter argues that an awardee under RFP17-RED005 could remove a “significant  
3 portion of the limestone,” that litigation delays with competing quarry permits could drag on, that  
4 Fanter’s staff would be idle while awaiting resolution, and that Fanter could “lose future business  
5 opportunities due to the delay in or loss of revenues if no conflicting permit had ever been  
6 awarded.” Reply at 10.

7 “Generally speaking, irreparable harm is something which an action at law for money  
8 damages cannot fix.” *Island Marine Sports*, Civ. No. 12-0151 (Opinion and Order Granting  
9 Preliminary Injunction at 21) (citing *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 393-94  
10 (2006)). Despite this, “an injury is not fully compensable by money damages if the nature of the  
11 plaintiff’s loss would make the damages difficult to calculate.” *Id.* (quoting *Basiccomputer Corp. v.*  
12 *Scott*, 973 F.2d 507, 511 (6th Cir. 1992). Although “[l]ost profits alone do not ordinarily constitute  
13 irreparable harm . . . a loss of customer goodwill is generally considered irreparable because it is  
14 difficult to calculate.” *Id.* at 22. Thus, “[p]rice erosion, loss of goodwill, damage to reputation, and  
15 loss of business opportunities are all valid grounds for finding irreparable harm.” *Id.* (quoting *Celis*  
16 *in Vitro v. CellzDirect, Inc.*, 664 F.3d 922, 930 (Fed. Cir. 2012)).

17 Fanter’s loss of business opportunities, idling workforce, and the risk of delays should  
18 another awardee be issued a permit for RFP17-RED005 are all harms beyond mere monetary  
19 damages. Once an exclusive quarry permit is issued for RFP17-RED005 to another awardee, it is  
20 likely to give birth to future litigation that may take years to untangle. If Fanter ultimately prevails  
21 on the merits in this case, the other awardee would have already removed limestone from the quarry  
22 site, and the litigation between Fanter and the other awardee would likely drag on, denying business  
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1 opportunities to them both.<sup>8</sup> More importantly, these delays would reduce rents and royalties for  
2 people of Northern Marianas Descent while Fanter and another awardee litigate who has the rights  
3 to the quarry—the Court gives great weight to this loss of rent and royalties to people of Northern  
4 Marianas Descent. The potential for protracted additional litigation would also reduce public  
5 confidence in DPL’s bidding procedure. Thus, there is irreparable harm if an exclusive quarry  
6 permit is issued for RFP17-RED005 before this case is decided on the merits. Thus, this factor tips  
7 in favor of Fanter.

8 **C. The balance between the harm the plaintiff will face if the injunction is denied and the**  
9 **harm the defendant will face if the injunction is granted**

10 Third, the Court will consider “the balance between the harm the plaintiff will face if the  
11 injunction is denied and the harm the defendant will face if the injunction is granted.” *Villanueva*,  
12 2005 MP 12 ¶ 20. This *Villanueva* factor requires this Court to balance on one hand the harm Fanter  
13 faces should this Court deny its petition for a preliminary injunction, and on the other hand the  
14 harm DPL faces in a delay in the award of the exclusive quarry permit for Lot No. 011 C 04.

15 DPL argues that the Department of Public Lands manages public lands, and proceed from  
16 public lands are held in the Marianas Public Land Trust on the behalf of people of Northern  
17 Marianas Descent. Def.’s Errata Ex. 1. at 11. DPL argues that it “reissued the RFP in an effort to  
18 seek higher returns for its beneficiaries,”<sup>9</sup> and that forcing DPL to award a permit below the market  
19 price would “significantly impair DPL’s duties in its management of public land, violate the  
20 [Secretary of Public Land’s] strict fiduciary duties, and negatively impact the interests of the  
21 beneficiaries to manage public lands for their benefit.” *Id.*

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22 <sup>8</sup> Further, although Fanter currently operates a quarry in Saipan, this dispute involves another quarry site—and once this  
23 new quarry permit is awarded to a different awardee, it will be difficult to undo, and Fanter’s staff will either idle or be  
let go due to the missed business opportunity.

24 <sup>9</sup> The Court finds that RFP16-RED007 and RFP17-RED005 are essentially the same RFP—the main difference is that  
the second RFP omits a piece of land for right of way to the property. Counsel for both parties also stated this on the  
record.

1           Fanter, on the other hand, argues that it faces an idling work force, long litigation delays  
2 with a potential competing awardee, and the loss of a business opportunity. Further, Fanter points  
3 out that a competing awardee “could quarry a significant portion of the limestone out” before the  
4 litigation in the present case is complete. Reply at 10.

5           Once an exclusive quarry permit is issued to another awardee and quarry operations  
6 commence, it will be difficult to disentangle the other awardee from the quarry—this situation  
7 would be ripe for litigation. A significant portion of limestone could already be removed before this  
8 case is resolved on the merits. In addition, although Fanter would potentially lose profits from this  
9 situation, it is people of Northern Marianas Descent who would lose the rents and royalties from the  
10 quarry if Fanter and another awardee litigate over rights to the quarry.

11           The Court gives great weight to the fact that people of Northern Marianas Descent will lose  
12 out on rents and royalties as this litigation and future litigation with a potential alternate awardee.  
13 The rents and royalties on this quarry project are meant to be invested on the behalf of people of  
14 Northern Marianas Descent. This loss cannot be wholly measurable in money—it is measured in  
15 the loss of programs such as homesteads, housing, and scholarships, etc., for people of Northern  
16 Marianas Descent. Although DPL is tasked with managing public lands, the harm of a delay in  
17 issuing the permit is far less than the harm faced by Fanter if a competing permit is issued prior to  
18 the resolution of this case. It is best to resolve this lone lawsuit, instead of opening the floodgates to  
19 potentially several lawsuits. The balance of hardships tips in favor of Fanter.

20           **D. Any effect the injunction may have on the public interest**

21           Fourth, the Court will consider “any effect the injunction may have on the public interest.”  
22 *Villanueva*, 2005 MP 12 ¶ 20. DPL argues that “[t]he public has a general interest in the fair and  
23 efficient use of public lands” and that “[i]f the Court were to strip DPL and the Secretary of their  
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1 discretion to reissue RFPs and instead were to require them to award a below-market-rate contract  
2 to Fanter, it would be contrary to the public interest.” Def.’s Errata Ex. 1. at 11.

3 Fanter, on the other hand, argues that its “complaint goes to the extent of DPL’s statutory  
4 and regulatory authority regarding its administration of Requests for Proposals.” Petition for  
5 Preliminary Injunction at 10. Fanter argues that public interest is served when this case causes DPL  
6 to examine its RFP procedures.

7 The Court agrees that the public has an interest in the administration of lands. The public  
8 interest is served in ensuring that DPL is not acting arbitrarily or capriciously in handling RFP bids.  
9 Further, potential litigation between Fanter and another awardee over rights to the quarry would  
10 endanger rents and royalties from the quarry, thus impacting people of Northern Marianas Descent.  
11 In addition, DPL’s argument that an award to Fanter would be a below market rate contract is an  
12 unsupported exaggeration. The Secretary of DPL is required to negotiate fairly with bidders in the  
13 interest of people of Northern Marianas Descent. Fanter is only asking for the opportunity to  
14 negotiate with DPL, just as Blue Oasis already has. Nothing in this order will require DPL to  
15 negotiate a below market rate contract. Thus, this factor tips in favor of granting the injunction.

16 In summary, Fanter has satisfied all four *Villanueva* factors. *See Villanueva*, 2005 MP 12 ¶  
17 20. The first *Villanueva* factor has been met because Fanter has a strong likelihood of success on  
18 the merits. *See Id.* Second, the Court found that there would be irreparable harm to Fanter if an  
19 exclusive quarry permit is issued for RFP17-RED005 before this case is decided on the merits,  
20 satisfying the second factor. *See Id.* Third, the balance of hardships tips in favor of Fanter,  
21 satisfying the third factor. *See Id.* Fourth, the impact of an injunction on the public interest tips in  
22 favor of granting an injunction, due to the danger of loss of profits and programs to people of  
23 Northern Marianas Descent if there is subsequent litigation regarding the quarry permit, satisfying  
24 the fourth factor. *See Id.* Thus, the Court grants Fanter’s request for a preliminary injunction.

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**V. CONCLUSION**

For the reasons set forth in this Opinion, the Court ORDERS the following:

1. DPL is enjoined from awarding an exclusive quarry permit for Lot No. 011 C 04 under RFP17-RED005 until the injunction is lifted.
2. Fanter is required to give a security pursuant to NMI R. Civ. P. 65(c) in such a sum as this Court deems proper for the payment of costs or damages that may be suffered by DPL should it be found to have been wrongfully enjoined. However, DPL did not assert a specific or general cost or damage it may suffer as a result of this preliminary injunction. Therefore, in a separate order, the Court will set a hearing to hear the parties' arguments and recommendations as to an appropriate security amount.
3. This preliminary injunction shall take effect upon the issuance of this Order.

**IT IS SO ORDERED** this 23<sup>rd</sup> day of February, 2018.

/s/  
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JOSEPH N. CAMACHO  
Associate Judge