

Appeal No. 03-0035-GA

**IN THE SUPREME COURT OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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**PACIFIC SECURITY ALARM, INC.,**  
*Plaintiff-Appellee,*

v.

**COMMONWEALTH PORTS AUTHORITY,**  
*Defendant-Appellant.*

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Superior Court Case No. 02-0119E

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**OPINION**

**Cite as: Pacific Security Alarm, Inc. v. CPA, 2006 MP 17**

Argued and submitted on August 20, 2004  
Tinian, Northern Mariana Islands

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BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; ROBERT J. TORRES, *Justice Pro Tempore*; MICHAEL BORDALLO, *Justice Pro Tempore*

FOR PUBLICATION

DEMAPAN, Chief Justice:

¶1 Pacific Security Alarm (PSA) was one of seven bidders on a Commonwealth Ports Authority (CPA) project to improve the security access system and construct a new security control office at the Saipan International Airport. As the runner up bidder, PSA challenged AIC Marianas' (AIC) winning bid by filing a protest with the CPA's Executive Director, who rejected the bid protest. PSA argued that AIC submitted an unresponsive bid which the CPA then wrongfully allowed to be cured of its defects. In addition, PSA argued that the award to AIC was arbitrary, capricious, and an abuse of discretion.

¶2 PSA appealed the Executive Director's denial to the CPA Board of Directors, which also denied PSA's appeal. PSA then filed a complaint for injunctive relief with the Superior Court which was denied, as well as a petition for judicial review. PSA additionally argued in its petition for judicial review of the administrative agency's decision that its due process rights were violated because the CPA allowed a biased committee of its board of directors to decide the appeal.

¶3 The Superior Court affirmed the agency decision and found that the CPA's award to AIC was not arbitrary or capricious. We AFFIRM the trial court's decision.

#### I.

¶4 In June 2001, the CPA published a Notice to Bidders, which solicited bids to improve security systems at the Saipan International Airport. S.S.F.M. International,

Inc., the project manager and designer ("Project Manager"), held a pre-bid conference. In a prepared question and answer format, the Project Manager provided specific information on requirements concerning the availability of technical staff and the issue of prices and quantities for the various bid items.

¶5 Paragraph 1.07 of the invitation for the bid ("Bid Invite") specified qualification prerequisites for potential bidders. These requirements included:

- (1) An office in Saipan or Guam "staffed with certified factory trained engineers and technicians fully capable of engineering, supervising installation, system startup, commissioning, providing training, and providing ongoing maintenance and emergency service."
- (2) The "bidder" and his equipment supplier/subcontractor have ten years experience in the design, development, production and installation of computerized building systems with emphasis on access control and closed circuit video systems"
- (3) The bidder shall submit a list of manufacturer and model numbers of proposed equipment to be installed as listed in § 01300
- (4) The bidder shall submit a list of proposed spare parts as recommended by the equipment manufacturers.

Appellant's E.R. at 12-13.

Paragraph B of the Bid Invite provided:

Proposal Qualification: The Bidder shall ensure that his proposal addresses and satisfies all requirements of this specification. The Bidder shall provide necessary and sufficient information that

allows comprehensive review of his proposal and proves that his proposal meets the requirements of the specification.  
Appellant's E.R. at 14.

The Bid Invite instructions also stated:

The apparent low bidder will be subject to a thorough and comprehensive review of its qualifications and Bid Documents to ensure that they are "responsive and responsible." This review will include, but is not limited to previous project experience, financial capabilities, quality of equipment and personnel, and bonding and insurance. If the apparent low bidder is found not to be "responsible or responsive," their bid will be rejected and the next lowest bidder will be evaluated for qualifications.  
Appellant's E.R. at 9.

¶6 The CPA received seven bids prior to the bid opening and determined that AIC was the lowest responsible bidder at \$1,493,814.00 and PSA was the next lowest bidder at \$1,526,170.00. AIC pooled its resources with subcontractor Diebold to prove its qualifications and meet the responsibility requirement. Diebold had a staff of certified factory-trained technicians and more than ten years of experience with respect to airport security installation. The CPA announced its intent to award the contract to AIC. After Federal Aviation Administration review, the CPA entered into a contract with AIC for the airport project in October 2001. In response, PSA filed a protest. AIC, thereafter, submitted additional information and materials to the CPA, including detailed listings of equipment, parts and identification of personnel.

¶7 After the CPA denied the protest, PSA appealed the denial to the CPA

Appeals Board and moved to recuse the attorney representing the Appeals Board as well as the entire Appeals Board. Counsel for the Appeals Board subsequently withdrew, but the members of the Appeals Board declined to recuse themselves.

¶8 In the meantime, the CPA issued a Notice to Proceed to AIC and in a letter subsequently notified PSA of this decision. Before the Appeals Committee could make its decision, PSA initiated an action in the Superior Court for injunctive relief. The CPA responded that the September 11, 2001 terrorist attacks in New York and Washington D.C. resulted in a security situation that required the immediate construction and installation of the airport security project.

¶9 The Superior Court issued an order denying the motion for a preliminary injunction. Subsequently, the Appeals Board denied PSA's appeal. PSA then sought judicial review of the denial of its appeal in the Superior Court. The Superior Court affirmed the administrative order.<sup>1</sup> PSA filed a timely notice of appeal with this Court in accordance with Rule 4(A) of the Commonwealth Rules of Appellate Procedure.

## II.

¶10 This Court has jurisdiction pursuant to Article IV, section 3 of the Commonwealth Constitution and Title 1, section 3102(a) of the Commonwealth Code.

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<sup>1</sup> *Security Alarm Inc., v. Commonwealth CPA and AIC Marianas, Inc.*, Civ. No. 02-0199-E (N.M.I. Super. Ct. Oct. 1, 2003).

### III.

¶11 We address this appeal in two parts. First, we begin our analysis by addressing the applicable standard of review. Next, we move into a substantive discussion of the legal issues raised.

#### A. Standard of Review

¶12 PSA argues the applicable standard of review of this administrative appeal from the Superior Court is *de novo*. The CPA asserts that the specific review standard is set forth by the Commonwealth Administrative Procedure Act (“Administrative Procedure Act”) at 1 CMC § 9112(f) and contends that there exists a presumption of administrative regularity in judicial review of agency decisions. Essentially, both parties are partially correct. While our review of the Superior Court decision is indeed *de novo*, it is important to emphasize that we are bound by the constraints of the Administrative Procedure Act in our *de novo* review. As a result, we do not give deference to the lower court’s findings because our review of agency actions is done with the identical guidelines followed by the lower court under the Administrative Procedure Act. *In re San Nicolas*, 1 N.M.I. 329, 333-5 (N.Mariana Islands, 1990).

¶13 The Administrative Procedure Act provides that appeals from final judgments of the Commonwealth Superior Court regarding agency actions “be

taken as in other civil cases.” 1 CMC § 9113. Any court reviewing the actions of a NMI administrative agency, however, must follow the Administrative Procedure Act. 1 CMC § 9112. See *In re San Nicolas*, 1 N.M.I. 329, (N.Mariana Islands, 1990). The CPA Board of Directors Appeal Committee’s decision qualifies as final agency action as defined by 1 CMC § 9112(d). The applicable standards of review of agency action are set forth in 1 CMC § 9112(f)<sup>2</sup>, and as a “reviewing court,” we must analyze this appeal using the guidelines set forth in this section.

¶14 Under the Administrative Procedure Act, we defer to agency decisions. Agency decisions are reviewed on the basis of an “arbitrary and capricious” standard. *Wileman Bros. & Elliott, Inc. v. Espy*, 58 F.3d 1367, 1374 (9th Cir. 1995).

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<sup>2</sup> 1 CMC § 9112(f) provides that:

- (f) To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall:
  - (1) Compel agency action unlawfully withheld or unreasonably delayed; and
  - (2) Hold unlawful and set aside agency action, findings, and conclusions found to be:
    - (i) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
    - (ii) Contrary to constitutional right, power, privilege, or immunity;
    - (iii) In excess of statutory jurisdiction, authority, or limitations, or short of statutory rights;
    - (iv) Without observance of procedure required by law;
    - (v) Unsupported by substantial evidence in a case subject to 1 CMC §§ 9108 and 9109 or otherwise reviewed on the record of an agency hearing provided by statute; or
    - (vi) Unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the forgoing determination, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

Although arbitrary action under 1 CMC § 9112 is not specifically defined in the statute, it has been defined in this jurisdiction as “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*, 3 N.M.I. 209, 217 (1992)(citing Black’s law Dictionary 5th ed. 1979). Entirely failing to consider an important aspect of a claim will also render an agency action arbitrary and capricious. *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37, 45 n.33 (1993). That being said, “the scope of review under the ‘arbitrary and capricious’ standard is narrow and a court is not to substitute its judgment for that of the agency.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). *Id.* 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.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

¶15 Agency actions under review are also “entitled to a presumption of regularity.” *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977). An agency should

not be required to provide an explanation unless the presumption of regularity has been rebutted by evidence suggesting that the agency decision is arbitrary and capricious. *Impresa Construzioni Geom. Domenico Garufi v. U.S.*, 238 F.3d 1324, 1338 (2001). In the context of a bid protest, a frustrated bidder must show not only that there was a significant error in the bidding process, but that the error prejudiced it in order to prevail. *Industrial Property Management, Inc. v. U.S.*, 59 Fed.Cl. 318, 323 (2004). "To establish prejudice a protester must show that there is a 'substantial chance it would have received the contract award but for that error.'" *Id.*, citing *Alfa Laval Separation, Inc. v. United States*, 175 F.3d 1365, 1367 (Fed.Cir.1999).

## **B. The selection and Award to AIC.**

### **1. Responsiveness of Bid**

¶16 The standards used in contracting and bidding by the CPA are codified by the Commonwealth Ports Authority Act (the CPA Act). *Rivera v. Guerrero*, 4 N.M.I. 79, 82 (1993). The CPA Act empowers the CPA "[t]o adopt and enforce rules and regulations for the orderly, safe, and sanitary operation of its ports." *Id.* (citing 2 CMC § 2122(j)). The CPA's bidding procedures and exceptions provide that expenditures exceeding \$25,000.00 must be made by contract to the "lowest responsible bidder." 2 CMC § 2132. The CPA rules and regulations provide that a bid may be rejected for the failure to conform to the essential requirements of an Invitation to Bid. See CPA Regulations at Part 3.2(7)(a).

¶17 Laws regulating competitive bidding are enacted for the benefit and protection of the taxpaying public, not for the benefit and enrichment of bidders. *Legal Aid Society v. City of New York*, 114 F.Supp.2d 204, 230-31 (S.D.N.Y., 2000). The purpose of such laws is “to guard against favoritism, improvidence, extravagance, fraud and corruption.” *Id.*

¶18 PSA argues that AIC’s bid was unresponsive because AIC (1) failed to identify the equipment and spare part list; (2) failed to specify the quantities of card readers and spare cards; and (3) did not have personnel on Saipan who possessed the necessary experience and background to meet the Bid Invite personnel requirement. In order to analyze whether the bid was responsive, it is necessary to determine whether the specific proposal items in the bid fall under the category of the responsibility of the bidder to perform or the category of the responsiveness of the actual bid submitted.

¶19 Responsibility and responsiveness are two distinct categories involved in bidding proposals. The term “responsibility” refers to a bidder’s ability to perform the contract before an award is determined. *News Printing Co., Inc. v. U.S.*, 46 Fed.Cl. 740, 746 (2000). The term “responsiveness” refers to whether the actual bid is in conformity with the material terms of an invitation for bids. *Id.*

¶20 Responsibility determinations will not generally be overturned unless there are allegations of fraud or bad faith. *Id.* Government agencies have broad discretion

in making responsibility determinations. *Id.* Eligibility requirements, including personnel and their qualifications, are matters of bidder responsibility. *Id.* In addition, contracting officers are not required to provide written explanations for their actions in determining responsibility. *Impresa Costruzioni Geom. Domenico Garufi v. U.S.*, 238 F.3d 1324, 1338 (cir. 2001).

¶21 Because the equipment, spare parts, and staffing and experience requirements were included as part of the "Qualifications" section of the Bid Invite, the CPA correctly determined they were matters of responsibility. Bidders were required to submit lists of equipment and spare parts in support of their bid. Bidders were also required to list manufacturer names and model numbers for the required equipment. IFB § 13980 at 1.07A Bidder Qualification (3)(e and F). A spare parts list was also required. Although AIC did not submit its lists until after bid opening, the CPA found the failure to submit such lists went to issues of responsibility that could be resolved after the bid opening and were not fatal to AIC's bid. The CPA further determined that because it had placed the list requirement within the "Qualification" section of the bid, bidders understood that failure to fully comply with this "responsibility" issue would not be fatal, and thus it would be unfair to lead a bidder to believe that it could address this particular bid requirement after the opening and later re-label the requirement as relating to responsiveness. We agree. The CPA had broad discretion to define its terms and make responsibility

determinations. It fairly put bidders on notice as to what was required and there was no fraud or bad faith evident in the process.

¶22 PSA also argues that AIC should not have been allowed to pool its resources with subcontractor Diebold to prove its qualifications. The Appeals Board ruled this was a matter of Bid Invite language interpretation and that the obvious goal of this provision was to insure the successful bidder had the “ability and capacity to perform all contract requirements.” Because the requirements of equipment, spare parts and staffing were matters of responsibility, the CPA had broad discretion to make its determination. The fact that AIC pooled its resources to prove its qualifications does not implicate bad faith or fraud. Absent any other allegations of bad faith or fraud, we find that the CPA’s determination of responsibility cannot be overturned.

¶23 Looking at responsiveness, PSA cites several unpublished decisions to support the contention that AIC’s bid was unresponsive because failure to provide an equipment and spare parts list is a matter of responsiveness. We do not find these decisions to have precedential value. Rule 51, Rules of Appellate Procedure (as amended by Judicial Administrative Order No. 2004-300, Sept. 3, 2004). See *Kaainoa v. Cabrera*, 6 N.M.I. 634, 637, fn. 7 (N. Mariana Islands, 2003). In addition, PSA cites no case law prohibiting the soliciting agency from classifying something that could be considered as an issue of “responsiveness” as one of “responsibility.”

¶24 AIC's bid as submitted was responsive because it was in conformity with the material terms of the invitation for bids. The bid proposal contained a precise figure for which the contractor offered to complete the job. As discussed above, certain issues which may arguably be classified as responsive were here classified as issues of responsibility in the invitation to bid and therefore addressed in that context. AIC's bid remained responsive by offering to provide the exact thing called for in the invitation for bids at the offered price.

## 2. AIC's Cure of its Bid

¶25 Next, PSA argues the selection and award to AIC was unlawful because AIC was wrongfully allowed to cure its unresponsive bid after opening of the bids. PSA asserts it was an abuse of discretion for the CPA to notify AIC at a separate meeting after the bids were open that some of the quantities in their original bid were incorrect, and to allow them the opportunity to refuse the contract award. The Bid Invite called for 1000 magnetic card readers and AIC offered only 100. PSA argues this action contradicted the proper application of Commonwealth Procurement Regulations, CPA Procurement Regulations and established case law.

¶26 PSA believes the CPA cannot justify this action in light of Commonwealth Procurement Regulations, 23 Comm. Reg. No. 5, which permits corrections of bids in

certain instances but does not allow an otherwise low bidder to change its bid.<sup>3</sup> PSA further contends application of § 3.2(8) of CPA's Procurement Regulations also prohibits allowing AIC to alter its bid. The language of this provision is virtually identical to the Commonwealth Procurement Regulations with the exception being approval of bid correction under this provision is made by the contracting officer instead of the Director of Procurement and Supply. See Commonwealth CPA Procurement Regulations § 3.2(8).

¶27 PSA cites *Grade Construction v. United States*, 7 Cl. Ct. 263 (Cl. Ct. 1985) for the proposition that in relation to a provision concerning responsiveness, the government cannot allow a bidder to cure or correct a bid regardless of how *de minimis* or negligible the impact upon the price of the item bid. *Grade Construction*, 7

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<sup>3</sup> 23 Comm. Reg. No. 5 provides in pertinent part that

[c]orrection or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards based on bid mistakes must be approved by the P&S Director in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interests of the government or fair competition shall be allowed. Whenever a bid mistake is suspected, the government shall request confirmation of the bid prior to award. In such an instance, if the bidder alleges an error, the government shall only permit correction of the bid or withdrawal of the bid in accordance with subparagraph (a) or (b).

Correction of bids. Correction of bids shall only be permitted when:

(1)an obvious clerical mistake is evident from examining the bid document. Examples of such mistakes are errors in addition or the obvious misplacement of a decimal point; or

(2)the otherwise low bidder alleges a mistake and the intended bid is evident from the bid document or is otherwise supported by clear and convincing evidence as to the bid intended and the corrected bid remains the low bid. A lower bid shall not be permitted to correct a bid mistake resulting from an error of judgment.

Cl. Ct. at 273. In *Grade Construction* the court prevented the lowest bidder who had previously failed to acknowledge a bid amendment from later acknowledging the bid amendment. PSA argues the CPA put AIC into the position where it could decide to accept the additional items or avoid the contract, a situation *Grade Construction* explicitly prohibits.

¶28 *Grade Construction* is inapplicable here. CPA Procurement Rule § 3.2(8)(a)(i) allows a bidder to correct a bid when “an obvious clerical mistake is clearly evident from examining the bid document.” The CPA acknowledged that AIC’s bid provided for fewer electronic components than what the bid required. The Appeals Board ruled this quantity deficiency was not an issue of responsiveness because AIC was willing to provide the additional quantities without changing the bid price. We agree. As a result, AIC essentially transformed its understatement of quantities from a responsive issue to a typographical error. Thus, AIC was still offering to provide the exact thing called for in the Bid Invite at the offered price.

¶29 Further, it was not an abuse of discretion for the CPA to accept AIC’s bid, which provided the additional required equipment at no charge to the CPA. Instead of withdrawing its bid, AIC chose to offer the additional quantities at the original bid price. Had AIC refused to provide the additional quantities or attempted to

amend its bid price, the CPA would have rejected the bid. Therefore, the CPA's award of the project contract to AIC was not unlawful.

### 3. Arbitrary or Capricious Conduct of CPA

¶30 Next, PSA argues that CPA demonstrated favoritism and the kind of "arbitrary and capricious" conduct that competitive bidding laws are meant to prevent when it awarded the contract to AIC. PSA reasserts all of its arguments including the assertions that (1) AIC did not identify the required equipment and spare parts listings for components of an airport security system required by the Bid Invite, (2) AIC failed to specify the quantities of card readers and spare cards, (3) AIC was allowed to amend its bid after opening to correct these deficiencies, and (4) the CPA wrongfully allowed AIC to use a subcontractor to satisfy the Bid Invite personnel requirement.

¶31 Recognizing the several standards of review set forth in 1 CMC § 9112(f), this Court finds no merit in PSA's assertion that the CPA's award to AIC was "arbitrary and capricious" or the result of favoritism. There was nothing irrational in the CPA's selection process or its ultimate decision to award the project to AIC. First, the CPA sought professional technical advice from the very start of the Bid Invite process, employing the Project Manager, an expert in the bidding selection process, as a consultant. Second, the CPA solicited bids through a Bid Invite that required bidders to meet specific qualifications as to both responsibility and responsiveness.

AIC was the lowest responsive responsible bidder and was therefore awarded the project. PSA, who was the second lowest bidder, was allowed to protest the bidding process and was heard by the CPA's Executive Director who thoughtfully addressed the protest and produced a clear and rational multi-page written decision upholding the award to AIC. PSA then appealed this decision to the CPA Appeals Committee. The Appeals Committee issued a detailed rational written decision thoroughly considering and addressing all the facts and legal arguments PSA had brought before it. Nothing the CPA did during the selection or administrative appeals process fails scrutiny under 1 CMC § 9112(f). Accordingly, we find that the award to AIC was not arbitrary or capricious.

#### **4. CPA Appeals Board as an Impartial Tribunal**

¶32 Article I, § 5, of the CNMI Constitution provides due process protection in the Commonwealth much like the Fourteenth Amendment of the United States. *Com. of Northern Mariana Islands v. Bergonia*, 3 N.M.I. 22 (1992). Accordingly, we apply Article I, § 5 using the same analysis as the Fourteenth Amendment to the United States Constitution. *Id.* Due process prevents the State from depriving a plaintiff of a protected property interest without "a fair trial in a fair tribunal." *See In re Murchison*, 349 U.S. 133, 136 (1955). PSA argues the CPA Appeals Committee showed bias in considering its appeal because the CPA Board of Directors hired counsel to appear on the CPA's behalf concerning PSA's injunction lawsuit, Civil

Action No. 02-005. The CPA took a position in the injunction hearing, which concerned the identical factual circumstances as PSA's administrative appeal. PSA argues the CPA's position at the injunction hearing showed that the Appeals Board had in some measure pre-adjudged the facts as well as the law since the CPA affirmatively argued the selection and award to AIC was proper. In addition, PSA argues that the CPA Appeals Committee acting as a decision maker additionally had a strong motive to rule in a way that aided the institution. *See Alpha Epsilon Phi Tau Chapter Housing Assn. v. City of Berkeley*, 114 F.3d 840, 844 (9th Cir. 1997).

¶33 PSA's due process arguments fail in their entirety. In order to find a due process violation, we look to the test set forth in *Alpha Epsilon*:

*Tumey v. Ohio* and its progeny establish two main categories of due process challenges based on structural bias. First, due process is violated if a decisionmaker has a "direct, personal, substantial pecuniary interest" in the proceedings. *Id.* Second, even if the decisionmaker does not stand to gain personally, due process may also be offended where the decisionmaker, because of his institutional responsibilities, would have "so strong a motive" to rule in a way that would aid the institution.

*Alpha Epsilon Phi Tau Chapter Housing Assn*, 114 F.3d 840 at 844 (internal citations omitted).

¶34 Nothing in the record supports PSA's contention that the CPA's general counsel, the litigation counsel the CPA employed to handle the injunctive relief proceedings, the CPA Appeals Board, or any individual member thereof had a

direct, personal, substantial pecuniary interest in the proceedings, or was in any way impartial or predisposed to deciding against PSA in the administrative appeals process. In addition, there is no motive for the CPA to rule in a specific way because of the decision-maker's institutional responsibilities. This is not a case like *Alpha Epsilon*, where the decision-maker Board regulated the entities that directly funded its operations. *Alpha Epsilon Phi Tau Chapter Housing Assn. v. City of Berkeley*, 114 F.3d at 842. Here we have a contract to perform work on the airport which has nothing to do with the survival of the CPA as an institution.

¶35 In addition, there exists a presumption that an agency will follow its regulatory directives by invalidating "any of its own actions that it finds to be illegal." *Rivera v. Guerrero*, 4 N.M.I. 79, 83 (1993). Members of an appeals committee are presumed to be impartial and fair:

The courts have long applied the presumption that policymakers with decision-making power exercise their power with honesty and integrity. The burden of overcoming the presumption of impartiality "rests on the party making the assertion [of bias]," and the presumption can be overcome only with convincing evidence that "a risk of actual bias or prejudgment" is present. In other words, any alleged prejudice on the part of the decisionmaker must be evident from the record and cannot be based on speculation or inference.

*Navastar International Transport. v. E.P.A.*, 941 F.2d 1339, 1360 (6th Cir. 1991)(internal citations omitted). PSA has failed to point to anything in the record that warrants this Court ruling there was a risk of actual bias or prejudgment inherent in the CPA

Appeals Board. Therefore, the Court finds no impartiality in the makeup or execution of the CPA's administrative appeals process and no due process violation in the resulting decision.

¶36 Because the Court finds the CPA's award to AIC proper, the Court declines to address the issue of lost profits.

#### CONCLUSION

¶37 For the reasons above, this Court holds the CPA's selection and award of the Saipan International Airport Security Access System Phase II Project to AIC was lawful and the decision of the CPA Appeals Board and trial court is AFFIRMED. Because the award to AIC was lawful, PSA is not entitled to bid preparation costs, attorneys' fees, or any other costs incurred in pursuing its bid protest or resultant litigation including this appeal.

SO ORDERED this 13th day of July, 2006.

/s/ Miguel S. Demapan  
MIGUEL S. DEMAPAN  
Chief Justice

/s/ Robert J. Torres  
ROBERT J. TORRES  
Associate Justice Pro Tempore

/s/ Michael J. Bordallo  
MICHAEL J. BORDALLO  
Associate Justice Pro Tempore