

1 CMC 7404 has been amended several times but these amendments have not repealed nor replaced Section 4 of PL 11-87. The CNMI Administrative Code, as published by the Law Revision Commission, is the official source for administrative rules and regulations as stated in Executive Order 05-06, dated December 13, 2005:

“...administrative rules and regulations promulgated pursuant to the Administrative Procedures Act ... shall be the prima facie evidence of the rules and regulations contained therein.”

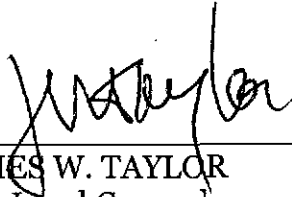
A review of the Commonwealth’s regulations reveals that there are presently no published regulations relating to the CNMI Local Business Preference law. Since Executive Order 05-06 states that the administrative rules and regulations contained in the Administrative Code are prima facie evidence of the existence of regulations, the absence of such regulations is also true. The underlying law creating the preference (PL 11-87) required that regulations be promulgated in order for the preference to have full force and effect. The absence of regulations simply means that the preference law is not in force. If the preference law cannot be applied to contract awards because it lacks full force and effect, it follows that it cannot be used as a basis for a bid protest or appeal. Simply put, without regulations, the codified preference law at 1 CMC 7404 has no force or effect.

When interpreting legislative meaning, the courts first look to the plain language of the act. *Commonwealth v. Hastinto*, 1 N.M.I. 377, 382 (1990). As a fundamental canon of statutory interpretation, the “language of the statute must be given its plain meaning when the meaning is clear and unambiguous.” *Aguon v. Marianas. Pub. Land Corp.*, 2001 MP 4 ¶ 30 (citing *Estate of Faisao v. Tenorio*, 4 NMI 260, 266 (1995)). After determining the plain meaning of the act, “the sole function of the courts is to enforce it according to its terms.” *Hastinto*, 382. Here, the plain language of 1 CMC 7404, citing to Section 4 of PL 11-87 in the Commission Comments, requires that regulations exist before the Local Business Preference law may be applied to contract awards.

A bidder claiming to be ‘aggrieved’ under NMIAC 70-30.3-501(a) (1), such that it can protest the proposed award of a contract to another bidder, must have a valid statutory and/or regulatory basis for such action. Unless the underlying law forming the basis of a protest is in effect, the ‘aggrieved’ bidder has no standing to protest. This is the situation here. The enacting legislation for the Local Business Preference law required that regulations be in effect for the preference to be applied and none existed at bid opening. As such, GPPC does not have the status of an ‘aggrieved’ bidder if the law under which it protests is not in full force and effect. Without the status of an ‘aggrieved’ bidder, GPPC lacks standing to appeal or even protest if the preference law is used as the basis for such action.

Therefore, the Public Auditor determines that GPPC is not an ‘aggrieved’ bidder since its protest and appeal are based on the Local Business Preference law and that law was not in effect at the time of bid opening. It was not in effect because regulations had not been promulgated as were required by the public law (PL 11-87) that created the preference.

GPPC has no standing to protest the pending award to Hawaiian Rock. Without a basis of protest, GPPC has no standing to appeal for the same reasons. Accordingly, the appeal is DISMISSED for lack of standing.



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