IN THE SUPREME COURT OF GUAM

BANK OF GUAM, a Guam Banking Corporation
Plaintiff-Appellant

vs.

MICHAEL J. REIDY, as Director for the Department of Administration
Defendant-Appellee

Supreme Court Case No. CVA99-044
Superior Court Case No. CV2928-98

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on June 14, 2000
Hagåtña, Guam

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BEFORE: BENJAMIN J.F. CRUZ, Chief Justice, PETER C. SIGUENZA, JR., Associate Justice, and JOHN A. MANGLONA, Designated Justice.

CRUZ, C.J.:

[1] Plaintiff-Appellant Bank of Guam petitioned the Superior Court for a writ of mandate compelling the Director of the Department of Administration's compliance with 5 GCA § 21111(b) (1998). The lower court dismissed the claim by denying the writ of mandate on two grounds: (1) section 21111(b) is vague and unenforceable; and (2) Bank of Guam did not have a clear and present right under the statute. Bank of Guam alleges that both grounds were wrongly decided and that the Defendant-Appellee's award of a contract for banking services to Bank of Hawaii is in violation of Guam's Procurement Law, Chapter 5 of Title 5 of the Guam Code Annotated.

[2] We hold that section 21111(b) (1998) is ambiguous and therefore void. As such, the statute cannot be the basis for enjoining Reidy's performance. Further, we find that *mandamus* cannot be issued under the predecessor statute of section 21111(b) (1998). Accordingly, we affirm the trial court's dismissal of Bank of Guam's Petition.

[3] In its Petition for Writ of Mandate, Bank of Guam also alleged that the award of the contract was in violation of the procurement statutes and regulations. Because the lower court did not address these issues, we remand for such determination.

I.

[4] In 1997, an independent third party, the Barents Group ("Barents"), assessed the government's banking practices and relationships and reported that the Bank of Guam ("BOG") had been the government's primary bank for day-to-day depository activity since the mid-1970s.

Barents indicated that BOG was the government's concentration bank,[1] a status it enjoyed without any official recognition. As the government's concentration bank, BOG at fiscal year-end 1996 had seven demand deposit accounts aggregating to $34.1 million, ten ordinary savings accounts totaling $15.6 million, thirteen certificates of deposit amounting to $43.5 million, and $68.3 million in nineteen trust accounts. Barents observed that the government maintained an excessive number of bank accounts at BOG, a practice that increased its cost of banking, reduced the government's ability to earn a higher investment yield, and limited the cash manager's ability to manage liquidity. Barents also observed that the true economic cost of the relationship with BOG was unknown because the bank generated no reports detailing the cost of services rendered *vis-a-vis* compensating balances left in the government's various demand accounts. Based in part on these observations, Barents concluded that it was in the government's interest to bid out its banking business once every five years.

[5] The first of these bids was a July 30, 1998 Request For Proposal ("RFP"). The RFP gave the procedure for the government's selection of a concentration bank. The RFP called for the various bidding banks to submit non-price data which would be used to analyze and rank the respective banks. After establishing relative rankings, the government was to negotiate a contract

[1] According to Barents:

> A concentration bank acts as the central clearing house for government deposits and disbursements. Although deposit accounts are usually established at all banks, within the government's jurisdiction, money deposited at these secondary banks are electronically swept each day to a single account at the concentration bank. This pooling of cash reserves at a single bank increases the ability of the government to monitor and control the flow of money through the banking system. Without a pooled account in a concentration bank, the government cash manager is required to track and invest small amounts of excess cash in many accounts. This almost always reduces the government's investment earnings.

Appellant's Excerpts of Record, Tab G, Exh. A at p. 4.

with the bank receiving the highest non-price rating. If negotiations proved unsuccessful, the government would then negotiate with the next highest-rated bank.

[6] Bank of Hawaii, BOG, and First Hawaiian Bank submitted proposals. The Department of Administration rated each proposal according to the non-price factors, with Bank of Hawaii receiving the highest rating (366.00), BOG coming in at a close second (364.50), and First Hawaiian Bank at a distant third. Reidy thereafter negotiated a contract with Bank of Hawaii, and on or about November 16, 1998, informed the banks of the government's intent to award the contract to Bank of Hawaii.

[7] Bank of Guam responded by sending a letter on November 20, 1998 which claimed that the contract should have been awarded to it. In a letter dated December 9, 1998, BOG gave formal grounds for protest: (1) the contract was in violation of 5 GCA § 21111(b); (2) the contract violated 5 GCA § 5008; (3) the method of evaluation was subjective, creating potential for external influence on evaluators; (4) certain entries in the evaluation appeared altered; (5) the pricing difference between the two banks was substantially in favor of BOG; and (6) the contract was in violation of federal banking policies pertaining to the preservation and maintenance of minority banks. On December 21, 1998, while BOG's protest ensued, the Legislature repealed and reenacted section 21111(b). On December 23, 1998, Reidy responded to the protest, deciding that each of BOG's grounds were either without merit or not meriting consideration.

[8] On December 24, 1998 BOG filed a Petition for Writ of Mandate at the Superior Court seeking to enjoin Reidy's compliance with section 21111(b), as repealed and reenacted ("section 21111(b) (1998)"). The trial court then issued an Alternative Writ of Mandate on December 31, 1998 ordering Reidy's compliance with section 21111(b) (1998). On January 14, 1999, Reidy

moved for dismissal of the Petition pursuant to Rules 12(b)(6) and 12(b)(7) of the Guam Rules of Civil Procedure. At a scheduling hearing held on March 12, 1999, Reidy withdrew the Rule 12(b)(6) motion and moved for a hearing on the merits of the petition.

[9] The hearing on the merits was held on April 9, 1999. The trial court thereafter granted Reidy's motion, stating in its Decision and Order that it would limit its review to the most dispositive argument. *Bank of Guam v. Reidy*, CV2928-98 (Super. Ct. Guam Aug. 13, 1999). The lower court proceeded to dismiss the petition on grounds that Reidy could not be compelled to act as section 21111(b) (1998) is vague and unenforceable. Specifically, the statute fails to provide adequate guidance for Reidy in resolving the provision which requires that funds be deposited *pro rata* in the several banks that provide the Territory's long-term capital credit needs and the provision in which funds are to be deposited in a single, most qualified and most responsible bank. *Id.* The lower court also decided that, even if it were possible to enjoin Reidy's performance, there was no guarantee that BOG would benefit under the statute. *Id.*

II.

[10] We have jurisdiction to review a petition for writ of mandate pursuant to Title 7 GCA § 3107 (1994).

III.

A.

[11] The extraordinary remedy of *mandamus* normally lies within the discretion of the trial court. *See Bondoc v. Worker's Compensation Comm'n*, 2000 Guam 6, ¶ 6; Title 7 GCA § 31202 (1993);

s*ee also Fallini v. Hodel*, 783 F.2d 1343, 1345 (9th Cir. 1986) (citations omitted); *Garcia v. Taylor*, 40 F.3d 299, 301 (9th Cir. 1994) (citing to *Fallini*) (superceded by statute on other grounds); *Oregon Natural Resources Council v. Harrell*, 52 F.3d 1499, 1508 (9th Cir. 1995). We review the denial of a petition for writ of mandate for an abuse of discretion. *Bondoc*, 2000 Guam 6 at ¶ 6. "A trial court abuses its discretion when its decision is based on clearly erroneous factual findings or an incorrect legal standard." *Fallini*, 783 F.2d at 1345. We will not reverse a trial court's decision unless we have a definite and firm conviction that it committed a clear error of judgment in the conclusion it reached upon weighing of the relevant factors. *Santos v. Carney*, 1997 Guam 4, ¶ 4 (citation omitted).

[12] Whether BOG has satisfied the elements for *mandamus* is a question of law reviewed *de novo*. *See Bondoc*, 2000 Guam 6 at ¶ 7; *cf. Oregon Natural Resources Council*, 52 F.3d at 1508 (providing authority that elements of the *mandamus* test are reviewed *de novo*).

[13] Generally, in reviewing a petition for *mandamus* relief, the petitioner must show there is "(1) [a] clear, present and usually ministerial duty on the part of the respondent; and (2) [a] clear, present and beneficial right in the petitioner to the performance of that duty." *Baldwin-Lima Hamilton Corp. v. Superior Court*, 208 Cal. App. 2d 803, 813, 25 Cal. Rptr. 798, 805, (Ct. App. 1962) (describing basic requirements of analogous California writ of mandate statute); *see* Title 7 GCA §§ 31202, 31203 (1993);

[14] The primary purpose of *mandamus* is the enforcement of a plain, nondiscretionary legal duty to act. *See* 7 GCA § 31202; *see generally Farrington v. Fairfield*, 194 Cal. App. 2d 237, 239, 16 Cal. Rptr. 119, 120 (Ct. App. 1961). *Mandamus* will not issue to compel performance of an act by one not having a clear, present, and usually ministerial duty to perform that act. *See Baldwin-Lima*

Hamilton Corp. 208 Cal. App. 2d at 813, 25 Cal. Rptr. at 805. The duty to perform must exist at the time of application for the writ. *See Treber v. Superior Court*, 68 Cal. 2d 128, 134, 65 Cal. Rptr. 330, 334-35 (1968). *Mandamus* will not lie to compel the performance of future acts or for possible refusal to perform a future duty or to forestall anticipated error. *See Communist Party v. Peek*, 20 Cal. 2d 536, 540, 127 P.2d 889, 892 (1942); *Northridge Park County Water Dist. v. McDonnell*, 158 Cal. App. 2d 123, 127-28, 322 P.2d 25, 28 (1958) (citations omitted).

[15] In addition to there being an enjoinable duty, *mandamus* will not issue unless the petitioner demonstrates a clear entitlement to the writ by a showing that it is necessary to enforce or protect a specific legal right. *See City of San Diego v. Andrews*, 195 Cal. 111, 120, 231 P. 726, 729 (1924). The right must exist in the petitioner when the proceeding is brought, and cannot be a right that may arise in the future. *See Northridge Park County Water Dist*. 158 Cal. App. 2d at 127-28, 322 P.2d at 28. The right must be clear and certain. *See Berry v. Coronado Bd. of Educ.*, 238 Cal. App. 2d 391, 397, 47 Cal. Rptr. 727, 731 (Ct. App. 1965). Further, the right must be substantial. *See Silva v. Cypress*, 204 Cal. App. 2d. 374, 376, 22 Cal. Rptr. 453, 455 (Ct. App. 1962).

[16] Before we may reach the issue of the petitioner's showing of a correlative duty and right, however, we must first examine the legal basis for the duty and any ostensible rights. Thus, the first inquiry is whether it is possible to interpret section 21111(b) (1998), or its predecessor statute, as having, in correlation, a duty on the part of Reidy and a right existing in BOG. We review issues of statutory construction and interpretation *de novo*. *Pangelinan v. Gutierrez*, 2000 Guam 11, at ¶ 7.[2]

[2] Reidy argues that section 21111(b) (1998) is not applicable because the statute became law after notice of the government's intent to award the banking services contract to Bank of Hawaii. Indeed, there is a presumption against retroactive application of new laws to pending cases. *In re Arrowhead Estates Dev. Co.*, 42 F.3d 1306, 1311 (9th Cir.

B.

[17] We begin here by reviewing the history of section 21111(b). In 1953, the Legislature passed Bill No. 55, which became P.L. 2-9 and was later codified at Section 6300 et seq. of Chapter 3 of Title VII of the Government Code of Guam. The statute described how the government was to manage its liquidity, including cash deposits. Section 6310 provided:

> **Deposit.** The Director of Finance may direct that any moneys belonging to, and under the control of, the government of Guam, in the hands of the Treasurer shall be deposited to the credit of the Government in eligible banks. Any sum so deposited is deemed to be in the treasury of Guam.

Guam Govt. Code § 6310 (1953). In 1965, the Legislature amended section 6310 to provide:

> **Deposit.** The Director of Finance may direct that any moneys belonging to, and under the control of, the government of Guam, in the hands of the Treasurer shall be deposited to the credit of the Government in eligible banks;
>
> Provided, however, that no one eligible bank shall receive more than fifty per cent (50%) of such moneys so deposited by the Treasurer in eligible banks. Any sum so deposited is deemed to be in the Treasury of Guam.

Guam Govt. Code § 6310 (1965). A few years later, the Legislature again changed the statute, this time to provide:

> **Deposit. (a)** The Director of Finance may direct that any moneys belonging to, and under the control of, the government of Guam, in the hands of the Treasurer shall be deposited to the credit of the Government in eligible banks. Any sum so deposited is deemed to be in the Treasury of Guam.
>
> **(b) Policy.** It is the policy of the government of Guam that government funds shall be deposited in eligible banks in proration as those eligible banks meet the long-term capital credit needs of the Territory. "Capital credit" is defined to include loans made for equity investments, purchase of real estate and other loans repayable in not less than five years.

1994). Also, "[r]etroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset transactions." *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191, 112 S.Ct. 1105, 1112 (1992). However, if we were to hold that the statute did not apply, it would follow that Title 5 GCA § 21111 (1993) applies. In this opinion, we hold that mandamus cannot lie under either the 1998 or 1993 codifications of section 21111(b).

> **(c) Rules & Regulations.** The Governor may make rules and regulations which shall be promulgated by Executive Order to implement the provisions of this Section.

Guam Govt. Code § 6310 (1968). Section 6300 was eventually codified at Title 5 GCA § 21111.

[18] On December 21, 1998, the Legislature repealed and reenacted section 21111(b) to provide as follows:

> **(b) Procurement Requirements.** Government funds shall be deposited in eligible banks in pro-ration as those eligible banks meet the long term capital credit needs of Guam. "*Capital credit*" is defined to include loans made for equity investments, purchase of real estate and other payables in *not* less than five (5) years. The provisions of the Guam Procurement Law (§ 5001, *et seq.*, Title 5 Guam Code Annotated) shall be applicable to deposit of funds, to the extent that such funds shall be deposited in a bank most qualified, most responsible, considering local preference laws, and submitting the lowest cost or pricing in maintaining such deposits.

Title 5 GCA § 21111(b) (1998).

[19] We agree with Reidy and the trial court that section 21111(b) (1998) is ambiguous and thus unenforceable. When the Twenty-fourth Guam Legislature repealed and reenacted subsection (b), it rewrote the statute using positive language, thereby providing for mandatory action, arguably Reidy's duty under the statute. However, a plain reading of the language of the statute reveals that subsection (b) contradicts itself. *See Pangelinan v. Gutierrez*, 2000 Guam 11, ¶ 23 ("In cases involving statutory construction, the plain language of a statute must be the starting point.") (citations omitted).

[20] The first sentence reveals the legislative intent that "funds shall be deposited in eligible banks in pro-ration as those eligible banks meet the long term capital credit needs of Guam". 5 GCA § 21111(b) (1998). Thus, the statute clearly directs that funds be deposited in *several* banks. The final sentence of subsection (b) then countermands the first, and evinces the clear intent that funds "shall be deposited in a bank most qualified, most responsible, considering local preference

laws, and submitting the lowest cost or pricing in maintaining such deposits." *Id.* The language of the final sentence reveals the intent that funds be deposited in a *single* bank. The two sentences of the statute are in obvious and direct conflict with each other and are therefore void for uncertainty in meaning. *See Great Lakes Pipe Line Co. v. Wetschensky*, 396 P.2d 295, 299 (Kan. 1964).

[21] Courts are reluctant to declare a statute void because of conflicting provisions. *See Southern Canal Co. v. State Board of Water Engineers*, 318 S.W.2d 619, 624 (Tex. 1958); *Folks v. Barren County*, 232 S.W.2d 1010, 1013 (Ken. 1950). It is axiomatic that in interpreting a statute courts are to look to legislative intent in an effort to harmonize conflicting provisions. *See Southern Canal Co.*, 318 S.W.2d at 624; *Folks*, 232 S.W.2d at 1013; *Great Lakes Pipe Line Co.*, 396 P.2d at 299. However, where a statute is so internally contradictory that any effort to enforce it would be wholly impossible, courts have no alternative but to render the statute void. *See Southern Canal Co.*, 318 S.W.2d at 624 (citations omitted). Our reading of subsection (b) of section 21111 (1998) impels us to declare it void.

[22] Further, when faced with a statute that contains contradictory legislative directives, a court cannot simply elect to give effect to one directive over the other in an effort to save the statute. Such would be an exercise in judicial legislation, which is clearly not the prerogative of the courts. *See Great Lakes Pipe Line Co.*, 396 P.2d at 300. Because the statute is void for ambiguity, there cannot be any duty in Reidy, or correlative right in BOG, flowing from the 1998 enactment. Further, because we hold that the 1998 enactment is void, the prior enactment and codification of subsection (b) remains in force. *See State ex rel. Clover Valley Lumber Co. v. Sixth Judicial Dist. Ct. in and for Pershing County*, 83 P.2d 1031, 1034 (Nev. 1938) (declaring valid and effective a prior enactment where its later amended version was found to be invalid); *Rosenfield v. Drake*, 170

A. 414, (Pa. Super. Ct. 1934) (holding that a statute that is held to be invalid does not act to repeal its predecessor unless the statute employs language showing an intent to repeal the earlier statute even if later found invalid); *see also Dewrell v. Kearly*, 32 So.2d 812, 814 (Ala. 1947). A reading of the prior law, enacted in 1968 and later codified as 5 GCA § 21111(b) (1993), reveals that the statute does not suffer from the contradictory language which resulted in our invalidation of the 1998 enactment. We find this predecessor version to be valid.

[23] The next issue is whether there is a duty in Reidy and correlative right in BOG, flowing from the predecessor statute, which is valid and remains in force. We find that there is none. The 1968 enactment speaks in permissive language. *See* 5 GCA § 21111(b) (1993). The statute describes, in normative language, a policy of deploying government funds to banks that support long-term capital credit needs of Guam. *See id.* The statute does not give any direction. Therefore, under the 1968 enactment, there is no duty on the part of Reidy. Because the statute merely states government policy of favoring certain eligible banks, and does not affirmatively direct that moneys be deposited in these banks, BOG clearly cannot claim any beneficial right under the statute. There can be no beneficial right to the performance of a duty where no duty exists.

C.

[24] We now turn to the question of whether *mandamus* must issue. We hold that the trial court did not abuse its discretion in denying BOG's petition for writ of mandate.

[25] This court has had occasion to review lower court denials of writs of mandate. *See e.g.*, *Holmes v. Territorial Land Use Comm'n*, 1998 Guam 8; *Bondoc*, 2000 Guam 6. In *Guam Publications*, we announced generic guidelines to consider when deciding whether to issue the writ.

Guam Publications 1996 Guam 6 at ¶ 11. These guidelines are whether: "1) [t]he party seeking the writ has no other adequate means, such as direct appeal, to attain the relief he or she desires; 2) [t]he petitioner will be damaged or prejudiced in a way not correctable on appeal; 3) [t]he court's order is clearly erroneous as a matter of law; 4) [t]he court's order is an oft-repeated error, or manifests a persistent disregard of the rules; and 5) [t]he court's order raises new and important problems, or issues of law or first impression." *Id.* (citation omitted). These guidelines normally apply "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Id.* at ¶ 10 (citations omitted).

[26] Since *Guam Publications*, we have consistently held that the list of guidelines is not inclusive. *See People v. Superior Ct. of Guam (Quint)*, 1997 Guam 7, ¶ 8; *People v. Superior Ct. of Guam (Bruneman)*, 1998 Guam 24, ¶ 6. Nevertheless, *mandamus* is extraordinary relief, and so we take this occasion to review the law of *mandamus* in this jurisdiction.

[27] According to statute, a writ of mandate:

> [M]ay be issued by any court, except a commissioner's court or police court, to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

7 GCA § 31202. The writ:

> "must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It must be issued on the verified petition of the party beneficially interested."

7 GCA § 31203. Thus, when a court decides whether to issue a writ, it must inquire whether the following conditions exist:

(i) Is the respondent an inferior tribunal, corporation, board or person? *See* 7 GCA § 31202;
(ii) Has the respondent failed to perform a clear, present duty, having the legal authority and present ability to do so? *See* 7 GCA § 31202 *Treber v. Superior Court*, 68 Cal. 2d 128, 134 65 Cal. Rptr. 330, 334 (Ct. App. 1968);
(iii) Does the duty entail ministerial action, the assumption of jurisdiction, the exercise of discretion or the abuse of discretion? *See State Bd. of Equalization v. Watson*, 68 Cal. 2d 307, 66 Cal. Rptr. 377 (1968);
(iv) Does the petitioner have a clear, present right, *see* 7 GCA § 31202; *Berry v. Coronado Bd. Of Educ.*, 238 Cal. App. 2d 391, 47 Cal. Rptr. 727 (Ct. App. 1965), and beneficial interest in the performance of the respondent's duty? *See Silva v. Cypress*, 204 Cal. App. 2d. 374, 22 Cal. Rptr. 453 (Ct. App. 1962);
(v) Does the petitioner have another remedy at law, and if so, is it adequate? *See* 7 GCA § 31203; and
(vi) Is the petition verified? *See* 7 GCA § 31203.

[28] Although Reidy's office is an inferior person, our construction of the 1968 enactment reveals that there is no duty on the part of Reidy and BOG does not have a clear, present right and beneficial interest in the performance of a non-existent duty. Therefore, the trial court did not abuse its discretion by denying BOG's petition for writ of mandate compelling Reidy to deposit funds at the bank.

D.

[29] Bank of Guam, in its Petition for Writ of Mandate, invoked the lower court's jurisdiction under Title 5 GCA § 5480 of the Procurement Law. Bank of Guam also made specific allegations that the award of the contract was in violation of procurement laws.[3] Bank of Guam prayed for

[3] First, the award of the banking services contract to Bank of Hawaii was in violation of the policy in favor of local procurement as codified at 5 GCA § 5008. Plaintiff-Appellant's Excerpts of Record, Tab A, pp. 3–4, ¶ 11 (Petition for Writ of Mandate, Dec. 24, 1989). Second, Reidy's denial of the protest was improper under GSA regulations 3-207.06.2 (concerning evaluation of RFPs) and 3-207.09.1 (concerning discussions with offerors). Plaintiff-Appellant's Excerpts of Record, Tab A, p. 4, ¶ 13(a) (Petition for Writ of Mandate, Dec. 24, 1989). Third, Reidy's negotiations with Bank of Hawaii were in violation of GSA regulation 3-207.12.2 (concerning elements of negotiations). Plaintiff-Appellant's Excerpts of Record, Tab A, pp. 4-5, ¶ 13(b) (Petition for Writ of Mandate, Dec. 24, 1989). Fourth, Reidy did not comply

mandamus relief compelling Reidy to deposit funds in accordance with section 21111(b) (1998). The bank did not pray specifically for judicial review of Reidy's decision in its petition. In the instant appeal, BOG seeks review of the procurement issues raised in the lower court.

[30] The record reveals that, in response to BOG's protest of the bid award, Reidy informed BOG of its right to judicial review in a letter dated December 23, 1998. *See* Plaintiff-Appellant's Excerpts of Record, Tab A, Exh. H (Petition for Writ of Mandate, December 24, 1998). This letter appears to be the procurement officer's decision allowing a bidder to seek judicial relief. *See* 5 GCA § 5425(c) (1996). After receiving such decision, the Superior Court obtained jurisdiction over the matter. *See* Title 5 GCA § 5480 (1996); s*ee also Pacific Rock Corp. v. Dept. of Educ.*, 2000 Guam 19, ¶ 26.

[31] Because BOG brought its petition pursuant to the Procurement Law, the lower court had jurisdiction to review both the request that Reidy be compelled to comply with 5 GCA § 21111(b) as well as BOG's protest. While the lower court determined that *mandamus* could not lie under 5 GCA § 21111(b), the lower court failed to address the issues BOG raised with respect to the bid. Where the trial court has erroneously failed to exercise its discretion, an appellate court may either remand or, if the record is sufficiently developed, decide the issue itself. *See Wharf v. Burlington Northern R. Co.*, 60 F.3d 631, 637 (9th Cir. 1995). Because the record is insufficient to resolve the protest issues BOG raises, we express no opinion whatsoever on any of the protest issues raised in the lower court or on appeal and remand to the lower court for a determination of these issues.

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with certain subsections of regulation 3-203.14 (concerning discussions with individual offerors) or with regulation 3-207.12.6 (concerning the re-solicitation of bids). Plaintiff-Appellant's Excerpts of Record, Tab A, p. 5, ¶ 13(b) (Petition for Writ of Mandate, Dec. 24, 1989). Fifth, Reidy did not comply with regulation 3-203.14 (concerning negotiations with bidders submitting acceptable bids), Plaintiff-Appellant's Excerpts of Record, Tab A, p. 6, ¶ 13(d) (Petition for Writ of Mandate, Dec. 24, 1989), or the submission of best and final offers. Plaintiff-Appellant's Excerpts of Record, Tab A, p.6, ¶ 13(e) (Petition for Writ of Mandate, Dec. 24, 1989).

IV.

[32] For the foregoing reasons, the decision of the trial court denying BOG's Petition for Writ of Mandate is **AFFIRMED** and the case is **REMANDED** as to the remaining issues.

JOHN A. MANGLONA
Designated Justice

PETER C. SIGUENZA, JR.
Associate Justice

BENJAMIN J. F. CRUZ
Chief Justice