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Counsel for General Pacific Services, LLC

**PROCUREMENT APPEAL OF DENIAL OF PROCUREMENT PROTEST
THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Procurement Appeal of)
)
)
GENERAL PACIFIC SERVICES, LLC,) **APPEAL NO. OPA-PA-26-001.**
) **NOTICE OF APPEAL OF 5 G.C.A.**
) **§ 5425(g) DETERMINATION;**
) **OPPOSITION TO SUBSANTIAL**
) **INTEREST DETERMINAITON**
Appellant.)
_____)

I. INTRODUCTION

Appellant General Pacific Services, Inc. (“GPS”) submits its Appeal of the claimed Determination of Need issued on Friday evening, February 6, 2026, by the Director of the Department of Public Works (“DPW”). GPS asks that the Office of Public Accountability (“OPA”) reject the DPW written determination purporting to override the automatic stay triggered by GPS’s timely bid protests in the procurement for the Simon Sanchez High School Finance, Demolition, Design, Build, Lease/Leaseback & Insurance/Capital Maintenance (FDDBLM) Project, Project No. 730-5-1059-L-YIG.

II. PROCEDURAL BACKGROUND AND POSTURE

DPW has received proposals for the FDDBLM Project. On November 19, 2025, GPS filed a protest alleging significant failures to maintain a complete procurement record that would support an award to intended awardee Core Tech International (“CTI”).¹ On December 12, 2025, GPS filed an additional protest, alleging an improper standalone procurement for the demolition portion of the project that was already included in the main procurement, and the recently disclosed non-responsiveness of intended awardee CTI. The protests remain unresolved.

Given the lack of response to the protests and the lapse of more than 60 days since DPW first received the protests, GPS brought this matter before the OPA on January 28, 2026. As is standard for such appeals, the OPA then ordered DPW to provide the Procurement Record by Thursday, February 5, 2026. Notice of Receipt of Procurement Appeal, January 29, 2026.

On Thursday afternoon, DPW submitted to the OPA what it called a “copy of procurement records” containing a website screenshot of various hyperlinks and URL address. That transmittal was not served on GPS. After working hours on Friday evening, February 6, 2026, DPW issued a letter to its procurement file claiming that “urgency and public interest” support a decision by DPW to issue a written determination pursuant to 5 GCA § 5425(g)(1) overriding the procurement stay and

¹ All relevant protest and appeal documents, including the project Request for Proposal, were submitted as attachments to GPS’s notice of appeal filed on January 28, 2026.

proceeding with an award to CTI without delay. GPS has subsequently raised the issue of that determination to the OPA, as Guam law provides that “the Public Auditor shall review and confirm or reject any determination by the Chief Procurement Officer or the Director of Public Works pursuant to 5 GCA § 5425(g) that award of a contract without delay pending Appeal is necessary to protect the interests of the government.” 2 GARR Div. 4 § 12115(b).

III. DPW’S PURPORTED OVERRIDE DETERMINATION

A. THE AUTOMATIC STAY IS IN EFFECT AND CANNOT BE LIFTED ABSENT STRICT STATUTORY COMPLIANCE AND NECESSITY SUBSTANTIATED BY THE RECORD.

Guam’s procurement law establishes a mandatory automatic stay provision that protects the integrity of the protest process. Under 5 G.C.A. § 5425(g), when a timely protest is filed, “Guam shall not proceed further with the solicitation or with the award of the contract prior to final resolution of such protest, and any such further action is void.” 5 G.C.A. § 5425(g). The Guam Supreme Court has consistently emphasized that this stay applies “automatically” upon the filing of a timely, pre-award protest and requires no court order to become effective. *See, e.g., DFS Guam L.P. v. A.B. Won Pat Int’l Airport Auth., Guam*, 2020 Guam 20 ¶ 148. The automatic stay serves important protective functions in the procurement process. In discussing the automatic stay provision, the Guam Supreme Court has noted in that “[t]he automatic stay provision of Guam’s Procurement Code also provides a significant safeguard against government malfeasance negatively impacting the public fisc” in the context of addressing concerns about late discovery of misconduct. *DFS Guam L.P.*, 2020 Guam 20 ¶ 70 n.15. The Court has held that once a party brings a timely

protest, an automatic stay of procurement until final resolution of that protest is required. *See id.* ¶ 148.

The only mechanism for overriding the automatic stay is through strict compliance with the three-part test set forth in 5 G.C.A. § 5425(g). Each element is mandatory and must be satisfied in full.

First, the Chief Procurement Officer or Director of Public Works must make a written determination that “the award of the contract without delay is necessary to protect substantial interests of Guam.” 5 G.C.A. § 5425(g)(1). This determination cannot be made unilaterally; it requires “consultation with and written concurrence of the head of the using or purchasing agency and the Attorney General or designated Deputy Attorney General.” *Id.* **Second**, unless the Governor declares an emergency, the protestant must receive at least two days’ notice (exclusive of Guam holidays) before the government proceeds. 5 G.C.A. § 5425(g)(2). **Third**, if, like here, a protest is pending before the Public Auditor, the OPA must confirm the necessity determination. 5 G.C.A. § 5425(g)(3).

B. THE OPA SHOULD REJECT DPW’S DETERMINATION.

The Public Auditor has authority to review and either confirm or reject necessity determinations. Here, DPW’s conclusory necessity assertions cannot possibly satisfy the statutory standard intended by the Guam Legislature. The agency offered absolutely no concrete or specific justification for overriding the automatic stay. It did not identify any firm construction start date at risk, any funding source that would lapse, any grant deadline, accounting constraint,

engineering concern, or other tangible harm that would result from allowing the stay to remain in place. Instead, the agency relies solely on vague, generalized statements about the importance of education and the need to move the project forward—platitudes that could be recited in virtually any school procurement and that do nothing to demonstrate an actual, imminent need to access 5 G.C.A. § 5425(g). Without facts, timelines, or documented consequences, the agency’s reasoning amounts to little more than a few lines of ChatGPT generated drivel, not the kind of substantive showing required to justify such an extraordinary action. *See EyeMed Vision Care, LLC v. State, Dept. of Management Services*, 964 So.2d 201, 203-04 (D. Fla. 2007). (explaining that courts will scrutinize whether agencies have provided “particular facts and circumstances” demonstrating the necessity of continuing procurement process “in order to avoid a substantial disruption”); *see also In the Appeal of Guam Community Improvement Foundation, Inc.*, OPA-PA-09-005, Dec. & Order Re Purchasing Agency’s Mot. for Confirmation of Substantial Interest at 7-10 (Oct. 29, 2009) (Public Auditor refusing to lift the automatic stay for the building of a school based upon the mere *presence* of urgency and substantial interest since they did not, by themselves, constitute the required showing of necessity to lift the automatic stay.) The OPA should reject DPW’s determination.

DPW’s new claimed need to override the automatic stay for a project first protested in 2016 rings hollow. The delay of the Simon Sanchez High School (“SSHS”) construction project began a decade ago when original losing bidder—CTI—protested, appealed, and litigated the original SSHS procurement to a halt.

Throughout that entire period, the procuring agency never once made a determination to override or ignore the automatic stay triggered by those protests. *See, e.g.,* KUAM News, *CoreTech's protest denied of DOE contract* (2016), <https://www.kuam.com/story/31065971/coretechs-protest-denied-of-doe-contract>.

CTI only relented on its protracted litigation after a delay of more than two years when DPW agreed to let CTI “off the hook on \$3 million of liquidated damages it owe[d] the Government of Guam” from other delayed projects, cancelled the SSHS procurement, and then agreed to let CTI bid again. KUAM News, *DPW, Coretech reach settlement* (2018), <https://www.kuam.com/story/39373690/dpw-coretech-reach-settlement>.

With CTI, DPW consistently allowed the procurement stays to remain in place freezing the status quo, even as the project languished and delays mounted year after year. DPW was also in no hurry to move this procurement along prior to GPS's protest. The procurement that DPW eventually re-issued was finally sent to the public on March 21, 2025 — *seven years after resolving CTI's first protest*. DPW waited until June 6, 2025, to decide on a first ranked offeror, and then spent the rest of the year—*more than five months*—“negotiating” with CTI. Against that history, the agency's current sudden decision to disregard the automatic stay for a different protester who filed its protest appeal *eight days earlier* with the OPA appears starkly inconsistent. Having tolerated prolonged delays under CTI's serial protests and litigation maneuvers without invoking its authority to lift a stay, the agency's

sudden willingness to do so now raises serious questions of unequal treatment and renders its position not only inconsistent, but fundamentally hypocritical.

IV. IF THE OPA IS NOT PREPARED TO REJECT DPW'S DETERMINATION OUTRIGHT, GPS REQUESTS THAT THE OPA HOLD A HEARING, AND ALLOW FULL DISCOVERY AND BRIEFING ON THE MATTER.

The OPA operates under specific statutory authority that incorporates due process requirements. Under 1 G.C.A. § 1909, the Public Auditor has broad powers “[t]o conduct public hearings, to subpoena witnesses, to conduct depositions, to administer oaths, to require the production of any books, records or documents.” 1 G.C.A. § 1909(d). Importantly, the statute provides that the Public Auditor may “make rules and regulations, subject to the provisions of the Administrative Adjudication Law, as may be necessary to carry out the duties and powers of the Office.” 1 G.C.A. §1909(g). GPS’s interests and rights flowing from its role as an interested party in this procurement require that the OPA provide GPS with an opportunity to brief and be heard with regard to DPW’s recent determination overriding the automatic procurement stay. This is especially important in this case, given the continued shambolic state of DPW’s procurement record does not support a legal procurement, let alone a justification for extraordinary relief.

V. REQUESTED ACTION

For the foregoing reasons, GPS respectfully requests that the OPA:

1. Reject DPW's written determination purporting to override the automatic stay for Project No. 730-5-1059-L-YIG; and
2. Confirm that the automatic stay remains in full force and effect pending final resolution of GPS's protests and related appeal.
3. For such other relief that court determines is proper.

Respectfully submitted this 9th day of February 2026.

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