



Office of the Attorney General
Douglas B. Moylan
Attorney General of Guam
Solicitor Division
134 W Soledad Avenue, Suite 302
Hagatna, GU 96910
Tel: (671) 475-2709
Fax: (671) 472-2493
www.oagguam.org

Attorneys for the Government of Guam

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

In the Procurement Appeal of
GENERAL PACIFIC SERVICES, LLC
Appellant.

APPEAL NO. OPA-PA-26-001

**MOTION TO DISMISS;
MEMORANDUM OF POINTS AND
AUTHORITIES
(2 GAR Div. 4 § 12104 (c)(9))**

MOTION

The Department of Public Works, by and through counsel, hereby moves the Office of Public Accountability for an order dismissing the Notice of Procurement Appeal; Alternative Motion to Compel Agency Decision filed by Appellant General Pacific Services, LLC on January 28, 2026. This motion is made pursuant to 2 GAR Div. 4 § 12104(c)(9), and is supported by the memorandum of points and authorities that follows, the record before the

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1 Office of Public Accountability, all matters of which the hearing officer may take judicial
2 notice, and all matters that may be adduced at a hearing hereon.

3 MEMORANDUM OF POINTS AND AUTHORITIES

4 A. Argument

5 This matter arises out of three (3) pre-award protests filed by Appellant General Pacific
6 Services, LLC (“GPS”), protesting the proposed award of a contract for the Simon Sanchez
7 High School Finance, Demolition, Design, Build, Lease/Leaseback & Insurance/Capital
8 Maintenance (FDDBLM) Project – Project No. 730-5-1059-L-YIG (“SSHS Project”) to the
9 most qualified offeror, Core Tech International, Inc. (“CTI”).

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11 The SSHS Project is a legislatively authorized public school redevelopment project
12 procured under a single, integrated Request for Proposals issued pursuant to the *Ma Kahat* Act
13 of 2013, 5 GCA Chapter 58D. The procurement encompasses financing, demolition, design,
14 construction, lease/leaseback, insurance and capital maintenance, and is intended to replace
15 aging and inadequate facilities of the Simon Sanchez High School campus, and to restore
16 normal instructional operations for displaced students.

17 GPS filed its first protest on November 19, 2025, and its second and third protests on
18 December 12, 2025. On January 28, 2026, GPS filed a document styled a “Notice of
19 Procurement Appeal; Alternative Motion to Compel Agency Decision” (“NPA”) in this matter
20 before the Office of Public Accountability (“OPA”).

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22 In the NPA, GPS complained that the Department of Public Works (“DPW”) had not
23 responded to procurement protests submitted by GPS in the Simon Sanchez Procurement. NPA
24 at 5. Specifically, GPS claimed DPW exceeded a sixty (60) day response period referenced in 5
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1 GCA § 5427(f), and ignored GPS’s inquiries. *Id.* GPS characterizes this as a “constructive
2 denial,” and asks the OPA to review the merits of its protests and declare that GPS should have
3 been selected as the successful offeror. *Id.* at 9.

4 GPS’s claims are not properly before the OPA. This matter must be dismissed for lack
5 of jurisdiction.

6 **1. The OPA Lacks Jurisdiction Because No Agency Decision Has Been Issued**

7 Guam law grants the OPA jurisdiction to hear appeals from agency decisions
8 concerning (1) protests in connection with the method of source selection, solicitation or award
9 of a contract (“pre-award protests”), and (2) controversies between the government and a
10 contractor that arise under or by virtue of a contract between them (“post-award protests”). *See*
11 5 GCA §§ 5425(e) and 5427(e), respectively. These two categories are governed by separate
12 statutory frameworks and timelines.

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14 Guam law provides that if a pre-award protest is not resolved by mutual agreement, the
15 Director of Public Works shall promptly issue a decision in writing. 5 GCA § 5425(c). GPS
16 acknowledges in its NPA that no statutory deadline directly governs the timing of a pre-award
17 protest decision. NPA at 5. However, relying on 5 GCA § 5427(f), GPS claims that it may
18 proceed as if an adverse decision had been issued because DPW did not issue a written
19 decision within sixty (60) days of GPS’s protests. NPA at 5. It describes DPW’s continued
20 review of its protests outside of this period as “constructive denial” of GPS’s protests. NPA at
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22 2. That argument fails as a matter of law.

23 Section 5427 expressly applies *only* to post-award protests – controversies between the
24 government and a contractor arising under an existing contract. 5 GCA § 5427(f). It does not
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1 apply to pre-award protests governed by Section 5425. Although GPS relies on Section 5427's
2 timelines to argue that its appeal is timely, the distinction between Section 5425 and 5427 is
3 fundamental to the threshold question of jurisdiction – whether the OPA has jurisdiction to
4 hear this matter at all.¹

5 While Section 5427 authorizes a protestor to treat delayed agency resolution of post-
6 award protests as a constructive denial and to seek review by the Public Auditor pursuant to
7 Section 5427(e). Section 5425 contains no corresponding provision authorizing a protestor to
8 treat an agency's continuing review and consideration of pending protests as a denial. There is
9 no statutory basis for GPS to bypass the agency decision process and proceed directly to an
10 appeal. In the absence of a final written decision, the OPA lacks jurisdiction over this matter.

11 The OPA has previously held that it lacks jurisdiction over pre-award protests in the
12 absence of a written agency decision. *See In the Appeal of Pacific Data Systems*, OPA-PA-15-
13 005 (Apr. 30, 2015). In *Pacific Data Systems*, the Public Auditor dismissed a premature appeal
14 for lack of jurisdiction, explaining that her jurisdiction is limited to matters properly submitted
15 for review. *Id.* at 1. The Public Auditor further noted that a copy of the protest decision is a
16 required component of a valid appeal. *Id.* citing 2 GAR Div. 4 Chap 12 § 12104(b)(5) and (7).
17 That holding directly applies here.

18 Because no written protest decision has been issued, GPS's purported appeal fails to
19 satisfy the jurisdictional prerequisites for OPA review and must be dismissed.
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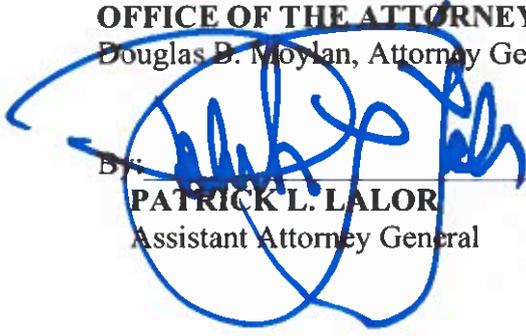
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23 ¹ GPS's filings invoke provisions of both 5 GCA § 5425 and 5 GCA § 5427. It relies on Section 5427 to argue that
24 DPW's ongoing review constitutes a constructive denial. At the same time, GPS repeatedly invokes the automatic
25 stay provisions of Section 5425 applicable to pre-award protests, thereby acknowledging that its protests are pre-
award in nature. GPS's simultaneous reliance on both statutory schemes reflects a selective invocation of statutory
timelines to constrain agency review while preserving the procedural benefits of the automatic stay.

1 **B. Conclusion**

2 For the foregoing reasons, the Office of Public Accountability lacks jurisdiction over
3 this matter. The Notice of Procurement Appeal filed by Appellant General Pacific Services,
4 LLC on January 28, 2026 should be dismissed.

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6 Respectfully submitted this 12th day of February, 2026.

7 **OFFICE OF THE ATTORNEY GENERAL**
8 Douglas B. Moylan, Attorney General

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10 BY: **PATRICK L. LALOR**
11 Assistant Attorney General
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