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APPEAL CASE NO. OPA-PA-26-001; Reply Memorandum

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Fri, Mar 13, 2026 at 5:02 PM

Hafa Adai Mr. Hernandez,

I was advised from Ms. Marcel at your office that we can submit to you the following for e-filing in the above matter:

1. Reply Memorandum
2. Declaration of Vince Arriola
3. Declaration of Judith Won Pat

If physical copies are preferred we can deliver on Monday.

Thank you,

Danielle



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3 attachments

 **OPA-PA-26-001. Declaration of Vince Arriola SIGNED.pdf**
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IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

In the Procurement Appeal of
GENERAL PACIFIC SERVICES, LLC,

Appellant.

APPEAL CASE NO. OPA-PA-26-001

REPLY MEMORANDUM IN
SUPPORT OF DETERMINATION OF
SUBSTANTIAL INTEREST

I. INTRODUCTION

Appellant General Pacific Services, LLC (“GPS”) challenges the Department of Public Works’ (“DPW”) determination under 5 GCA § 5425(g) that proceeding with the procurement without delay is necessary to protect a substantial interest of the Government of Guam.¹ GPS

¹ On several occasions in its Opening Brief, GPS refers to the § 5425(g) determination issued by DPW as a “Determination of Need” or a “Determination of Substantial Need.” See GPS Br. at 1, 4. That terminology does not appear in § 5425(g) and describes a different category of determination under Guam procurement law. A “determination of need” is required for several distinct procurement mechanisms, including exceptional term contracts for commercial leasing of public real property (5 GCA § 5127(b)), sole-source procurements (5 GCA § 5214(a)), and, most commonly, emergency procurements (5 GCA § 5215).

The determination at issue here arises under § 5425(g), which governs a different statutory mechanism and applies a different standard. By contrast, the determination of need referenced in § 5215 for emergency procurements requires the procuring authority to describe with factual particularity the nature and apparent cause of a condition posing an

argues that the determination should be rejected because the automatic stay provisions of Guam procurement law are intended to preserve the integrity of the procurement process and because, in GPS's view, the circumstances do not justify proceeding during the pendency of its protest. In doing so, GPS attempts to transform this narrow statutory procedure into a broader reconsideration of the procurement itself.

GPS's argument overstates both the scope of this proceeding and the effect of the automatic stay. Guam law expressly authorizes a purchasing agency to proceed with an award notwithstanding a pending protest where the Director of Public Works determines that award without delay is necessary to protect a substantial interest of the government. 5 GCA § 5425(g). The role of the reviewing authority is therefore not to decide the procurement question anew, nor to evaluate the ultimate merits of the protest. Rather, the reviewing authority must determine whether the Director's written determination identifying substantial governmental interests has a rational basis and should be confirmed under the statutory framework.²

The procurement regulations governing this specific procedure provide that the reviewing authority shall "confirm or reject" the Director's determination. *See* 2 GAR Div. 4, Ch. 9, § 12115; *id.* § 9103(e)(3). GPS relies on *Appeal of Guam Education Financing Foundation, Inc.*, OPA-PA-09-007 ("JFK"), in which the Public Auditor described review of a substantial-interest determination as *de novo*. Even if the Public Auditor were to apply the *de novo* framework urged

imminent threat to public health, welfare, or safety, and to state that the threat is imminent and that emergency procurement is necessary without delay to protect the public or the environment.

Section 5425(g) contains no such requirements. Instead, it requires the procuring authority to make a written determination that award of the contract without delay is necessary to protect substantial governmental interests. GPS should not be permitted to conflate the emergency procurement requirements of § 5215 with the distinct standard established by § 5425(g).

² Even if the Public Auditor were to apply the *de novo* framework urged by GPS, the outcome would be the same. As discussed below, the record demonstrates that delaying the procurement would harm substantial governmental interests within the meaning of 5 GCA § 5425(g), and the Director's determination should therefore be confirmed under either standard of review.

by GPS, however, the outcome would be the same. As explained below, the record demonstrates that delaying the procurement would harm substantial governmental interests within the meaning of § 5425(g).

Accordingly, the reviewing authority should confirm the Director's determination and permit the procurement to proceed.

II. ARGUMENT

A. Standard of Review

GPS contends that the Director's determination must be reviewed *de novo*. The governing law and regulations applicable to this specific procedure, however, repeatedly provide that the reviewing authority shall "confirm or reject" the Director's determination. 5 GCA §§ 5425(g) and 5703; 2 GAR Div. 4, Ch. 9, §§ 12115 and 9103(e)(3). That confirmatory language reflects a review of an existing agency determination rather than a fresh procurement decision in the first instance. At minimum, the *specific* law and regulations governing substantial-interest determinations must be read together with the Public Auditor's *general de novo* review authority under 5 GCA § 5703.

In *JFK*, the Public Auditor stated that review of a declaration of substantial interest is conducted *de novo*. That decision, however, did not address the significance of the law and regulations requiring the reviewing authority to "confirm or reject" the Director's determination, nor did it explain why the procurement authorities cited by the purchasing agency there—including *Pac. Data Sys., Inc. v. Superior Court of Guam*, Civ. No. 90-00029, 1990 WL 320357, at *2 (D. Guam App. Div. Oct. 24, 1990) ("PDS")—would not apply in this context. In *PDS*, the Appellate Division explained that procurement determinations "properly belong[] to the executive branch" and that confirmation of such determinations does not constitute *de novo* reconsideration by the reviewing body.

Even so, DPW need not resolve that tension here. The Director's determination should be confirmed under either a confirmatory or independent review standard.

1. GPS's Historical Narrative Does Not Alter the Statutory Inquiry

GPS's brief devotes substantial attention to recounting earlier protests, litigation, and disputes involving prior iterations of the Simon Sanchez High School project. That historical narrative does not alter the statutory inquiry presented here. The question before the hearing officer under 5 GCA § 5425(g) is not whether prior procurement disputes occurred, nor whether GPS's protest ultimately has merit. The statute instead asks whether the procuring agency's determination that awarding the contract without delay is necessary to protect substantial governmental interests should be confirmed under the governing statutory framework.

The substantial-interest determination authorized by § 5425(g) serves a narrow procedural function. It permits the procuring agency to proceed with a procurement notwithstanding the automatic stay triggered by a protest where delay would harm substantial governmental interests. The determination therefore does not resolve the merits of the protest and does not insulate the procurement from further review. The protest may still proceed through the ordinary adjudicative process. The only question at this stage is whether the government's interests would be harmed by suspending the procurement during the pendency of that process.

The Director's determination must therefore be evaluated only to determine whether it identifies substantial governmental interests and provides a rational basis for concluding that delaying the award while the protest proceeds would harm those interests.

2. Guam law assigns the substantial-interest determination to the Director of DPW.

Guam procurement law places the responsibility for determining whether a procurement must proceed notwithstanding a protest squarely with the procuring agency. Under 5 GCA §

5425(g), once a protest has been filed, the government may not proceed further with the solicitation or award of the contract unless the Chief Procurement Officer or the Director of Public Works makes a written determination that the award of the contract without delay is necessary to protect the substantial interests of the Government of Guam. The statute further requires that this determination be made after consultation with the using agency and the Attorney General.

As reflected in the Director's declaration, the determination at issue here was made after consultation with DPW procurement personnel and with officials of the Guam Department of Education responsible for the Simon Sanchez High School project. *See* Declaration of Vince Arriola in Support of Reply Memorandum re: Determination of Substantial Interest ("Arriola Dec.") at ¶ 12.

By assigning this determination to the Director of Public Works, the Legislature recognized that the procuring agency is best positioned to evaluate the operational, financial, and public-interest consequences of delay. The Director is therefore charged in the first instance with assessing whether delay would harm substantial governmental interests associated with the procurement. The determination therefore reflects the agency's exercise of its statutory responsibility to balance the government's procurement needs against the delay caused by a protest.

The role of the Public Auditor arises only after that determination has been made. As discussed below, the governing statute limits the reviewing authority to determining whether that determination should be confirmed under the statutory framework established in § 5425(g).

3. Section 5425(g) limits the reviewing authority to confirming the determination.

GPS argues that the Director's determination must be reviewed *de novo*, relying primarily on the Public Auditor's decision in *Appeal of Guam Education Financing Foundation, Inc.*, OPA-

PA-09-007 (Nov. 16, 2009) (“JFK”). In that decision, the Public Auditor described review of a substantial-interest determination as *de novo*.

The *JFK* decision, however, acknowledged precedent from the District Court of Guam addressing confirmation review in procurement matters but declined to follow it, stating only that the precedent “did not apply,” without further analysis. See *PDS*, 1990 WL 320357 at *2–3. In *PDS*, the Appellate Division explained that procurement determinations “properly belong[] to the executive branch” and that confirmation of such determinations does not constitute *de novo* reconsideration by the reviewing body. Rather, the reviewing body’s role is limited to determining whether the agency’s decision has a rational basis and is not arbitrary or an abuse of discretion.

Statutory interpretation ultimately rests with the courts. Where a judicial decision has interpreted the structure and function of confirmation review in procurement matters, that interpretation provides the governing framework. Accordingly, the reasoning of *PDS*—rather than the unexplained departure reflected in *JFK*—should guide the interpretation of § 5425(g) in the review of the determination at issue here.

PDS’s interpretation is moreover consistent with applicable canons of statutory interpretation. Section 5703 is a *general* grant of jurisdiction governing procurement appeals broadly. Section 5425(g), by contrast, addresses a *specific* and narrow circumstance: whether a procuring agency’s written determination that award of a contract is necessary to protect substantial governmental interests should be allowed to proceed during the pendency of a protest. In that circumstance, the statute provides that the reviewing authority shall confirm the determination before the procurement may proceed.

Guam courts apply the well-established rule that a more specific statutory provision governs over a more general one addressing the same subject. See *In re Leon Guerrero*, 2021 Guam 6 ¶ 27 (“a narrower, more specific provision of a statute takes precedence over a more

general provision”); *Topasna v. Government of Guam*, 2021 Guam 23 ¶ 17 (a specific statute operates as an “exception to, or qualification of, the general statute”) (citing *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 646 (2012) (“[W]here there is, in the same statute, a particular enactment, and also a general one...the particular enactment must be operative[.]”)). Section 5425(g) therefore governs the review of a substantial-interest determination and limits the reviewing authority to confirming whether the statutory requirements have been satisfied.

Guam courts also apply the related principle that statutory language must be interpreted so that each word and provision has operative effect. See *In re Leon Guerrero*, 2021 Guam 6 ¶ 70 (“[A] statute should be construed to give effect to all of its provisions so that no part would be superfluous or insignificant.”). Interpreting § 5703’s general grant of *de novo* jurisdiction to override the Legislature’s specific instruction in § 5425(g) that the reviewing authority confirm the agency’s determination would render that term meaningless. The statutes must instead be read harmoniously so that both provisions retain effect.

The Guam Procurement Regulations reinforce this distinction. The regulations provide that the Public Auditor generally has authority to review procurement matters *de novo*. See 2 GAR Div. 4 Ch. 12 § 12103(a). However, when addressing a determination under 5 GCA § 5425(g) that a contract award must proceed without delay to protect the substantial interests of the Government of Guam, the regulations mirror the statutory language and provide that the Public Auditor “shall either *confirm* or *reject* the determination.” See 2 GAR § 12115.

The confirmatory role of the Public Auditor in determination review is reiterated in 2 GAR Div. 4 § 9101(e)(3), which provides that where a protest is pending before a reviewing body, award of a contract may proceed prior to final resolution of the protest only where the reviewing body has *confirmed* such determination.

This parallel statutory and regulatory structure demonstrates that the departure from *de novo* review in the narrow context of determination review was deliberate. Both the Legislature and the rulemakers preserved the distinction between general procurement review and the limited confirmation review applicable to substantial-interest determinations. To interpret § 5425(g) as requiring full *de novo* reconsideration would therefore require disregarding the Legislature’s distinct use of the term “confirm” and collapsing the distinction that both the statute and the regulations carefully maintain—effectively rewriting the statute to provide that the Public Auditor shall independently *determine* whether proceeding with the contract is necessary to protect the Government’s interests.

Under the proper, harmonized reading of these provisions, § 5703 establishes the Public Auditor’s general jurisdiction over procurement appeals, while § 5425(g) defines the specific and limited role of the reviewing authority when an agency determines that immediate award is necessary to protect the government’s interests. The reviewing authority therefore may not substitute its judgment for that of the procuring agency so long as the agency’s determination reflects a rational basis.

To the extent the *JFK* decision suggests otherwise—without analysis and in tension with the judicial precedent established in *PDS*—that interpretation should not control here. Consistent with the statutory text, the governing regulations, and the guidance provided in *PDS*, the Director’s determination must be confirmed so long as it reflects a rational basis and is not arbitrary or an abuse of discretion.³

³ The limited scope of review applied to procurement determinations is not unique to Guam. Consistent with the approach reflected in *PDS*, federal procurement jurisprudence likewise recognizes that review of procurement decisions is “extremely limited” and that reviewing bodies may not substitute their judgment for that of the procuring agency. *MCS Mgmt., Inc. v. United States*, 48 Fed. Cl. 506, 516 (2001). Instead, a procurement determination will be upheld so long as it is supported by a rational basis and is not arbitrary, capricious, or an abuse of discretion. *See also PMTech, Inc. v. United States*, 95 Fed. Cl. 330, 348 (2010); *Beechcraft Def. Co., LLC v. United States*, 111 Fed. Cl. 24, 30–31 (2013).

4. Section 5425(g) Does Not Require an Emergency Showing

GPS attempts to elevate the statutory standard governing substantial-interest determinations by importing requirements drawn from other procurement doctrines and from federal procurement law. The text of § 5425(g), however, establishes the governing standard. The statute authorizes a procuring agency to proceed with award of a contract during the pendency of a protest where the agency determines in writing that awarding the contract without delay is necessary to protect substantial interests of the Government of Guam. Nothing in the statute requires the agency to demonstrate an emergency, to prove imminent harm, or to satisfy the heightened standards governing other forms of procurement.

GPS's argument effectively collapses §5425(g) into the emergency procurement framework of §5215, even though the Legislature adopted different language and different standards for those distinct provisions.

GPS relies in part on commentary to the Model Procurement Code and on cases from other jurisdictions interpreting different statutory frameworks. Those authorities do not alter the governing language of Guam's procurement law. The Model Procurement Code commentary explains that provisions of this type exist to allow essential governmental functions to continue despite the pendency of a protest. That principle directly supports the determination here. Construction of a major public school facility serving the students of Guam is plainly an essential governmental function, and the statute authorizes the procuring agency to protect that interest from further delay.

GPS also cites federal bid-protest cases discussing the "urgent and compelling circumstances" standard used to override procurement stays under federal law. Congress adopted that heightened standard for federal procurements. Guam's Legislature did not. Section 5425(g) instead uses the broader formulation "substantial interests of the Government of Guam." Importing

the federal “urgent and compelling” requirement would therefore rewrite the statutory standard the Guam Legislature enacted.

The statute accordingly requires only that the procuring agency identify substantial governmental interests and determine that delaying the procurement during the pendency of the protest would harm those interests. The Director’s written determination satisfies that requirement.

5. GPS Misapplies the *JFK* Decisions and Misstates the Governing Standard

GPS’s argument relies heavily on the Public Auditor’s decisions in the *JFK* procurement protests. Those decisions do not establish a categorical rule that determinations like the one at issue here must be rejected. Instead, they reflect fact-specific determinations made in a particular procurement context more than a decade ago.

Most importantly, the *JFK* decisions did not hold that the interests identified by DPW in that case were legally insufficient as a matter of law. Rather, the Public Auditor concluded that, based on the specific record before it, the agency had not demonstrated that the particular delay associated with that protest would materially affect the interests identified. The outcome therefore turned on the factual circumstances presented in that procurement, not on the existence or nonexistence of the governmental interests themselves.

GPS attempts to convert that fact-specific analysis into a categorical rule that similar interests can never support a determination under 5 GCA § 5425(g). Nothing in the statute or the *JFK* decisions supports such a rule. Section 5425(g) requires only that the procuring agency identify substantial governmental interests and determine that delaying the procurement during the pendency of the protest would harm those interests. The statute does not require a showing of emergency conditions, imminent danger, or extraordinary circumstances.

GPS's argument effectively attempts to import the far more demanding requirements associated with emergency procurement provisions such as 5 GCA § 5215. Section 5425(g), however, establishes a different and more limited inquiry. The statute asks whether delay would harm substantial governmental interests—not whether an emergency exists or whether the government faces an imminent threat to public health or safety.

Indeed, the Model Procurement Code commentary cited by GPS confirms that provisions like § 5425(g) exist to allow essential governmental functions to continue during the pendency of a protest where delay would harm important governmental interests. Construction of a major public school facility serving the students of Guam plainly implicates such interests.

Moreover, the factual circumstances presented here differ materially from those described in the *JFK* decisions. As explained in the declarations submitted in this matter, Simon Sanchez High School students have already experienced years of operational disruption following the loss of their permanent campus, including extended periods of double-session scheduling and the need to relocate students among temporary facilities. The Guam Department of Education is now planning to relocate the Simon Sanchez High School student population to the Tiyan campus as an interim operational measure while temporary facilities are constructed pending completion of the permanent school campus. These circumstances illustrate the scale of the operational challenges facing the school system and underscore the government's interest in avoiding further delay in the construction of the permanent facility.

For that reason, the proper inquiry is not whether the circumstances here mirror the facts of the *JFK* procurement. Rather, the question is whether the Director identified substantial governmental interests and provided a rational basis for determining that delaying the award of the contract during the pendency of the protest would harm those interests. As explained below, the Director's determination satisfies that standard.

B. The Director's Determination Was Reasonable and Supported by a Rational Basis

On February 6, 2026, DPW Director Vince Arriola determined that proceeding with the procurement without delay was necessary to protect substantial interests of the Government of Guam, including avoiding further delay in the construction of the new Simon Sanchez High School and preventing the operational and financial consequences associated with postponing the project during the pendency of the protest. As explained in the Director's declaration, the determination was made after consultation with DPW personnel responsible for the procurement and with officials of the Guam Department of Education involved in the Project. *See* Arriola Dec. at ¶ 12.

Section 5425(g) authorizes a procuring agency to proceed with award of a contract during the pendency of a protest where the agency determines that delay is "necessary to protect substantial interests of the Government of Guam." The statute does not require a showing of irreparable harm or extraordinary circumstances. Rather, it requires only that the agency identify substantial governmental interests and determine that those interests would be harmed by delaying the procurement.

The Director's written determination satisfies that standard. As explained in the Director's declaration, the determination identified several significant governmental interests that would be adversely affected if the procurement were halted during the pendency of the protest. Arriola Decl. at ¶ 15. These include the Government's interest in avoiding further delay in the construction of the new Simon Sanchez High School, preventing additional disruption to students and school operations associated with further delays, and protecting the Government from the increased costs and operational consequences that accompany postponement of a major public construction project.

Each of these considerations plainly qualifies as a substantial governmental interest within the meaning of § 5425(g). Public school facilities, the education of Guam's students, and the efficient use of public funds are core governmental responsibilities entrusted to the Government of Guam. The determination therefore reflects a reasonable and factually supported assessment that delaying the procurement would undermine those interests.

1. The determination identifies substantial governmental interests.

The Director's written determination identified several substantial governmental interests that would be harmed by delaying the procurement during the pendency of the protest. These interests arise directly from the Government of Guam's responsibility to deliver critical public infrastructure, maintain effective operation of public schools, and protect public resources. Each of these interests falls squarely within the scope of the "substantial interests of the government" contemplated by 5 GCA § 5425(g).

First, the determination recognized the Government's significant interest in avoiding further delay in the construction of the new Simon Sanchez High School. The replacement of the existing campus is a major public infrastructure project intended to provide a safe and modern educational facility for Guam's students. As reflected in the Director's declaration, approximately 1,500 students and approximately 200 faculty and staff are currently assigned to Simon Sanchez High School and will be directly affected by the timing of the Project's completion. Arriola Decl. at ¶ 14. Delaying the award of the contract during the pendency of the protest would postpone the start of construction and extend the timeline for delivering the completed school to the community. Ensuring the timely construction of critical public educational facilities is plainly a substantial governmental interest within the meaning of § 5425(g).

Second, the determination recognized the Government's interest in minimizing disruption to students and school operations caused by continued delay of the project. The prolonged delay

in replacing the existing facility has already required significant operational accommodations by the Guam Department of Education. Unlike the *JFK* students from a decade before, students affected by the condition of the existing Simon Sanchez campus have experienced years of disrupted and irregular instruction, including the widespread shift to remote learning during the COVID-19 pandemic. Those instructional losses cannot be recovered, and the Government has a substantial interest in avoiding further disruption to students' educational experience. Additional delay in the construction of the new facility would prolong the use of temporary arrangements and irregular scheduling, compounding the educational disruption already experienced by these students and further postponing the delivery of a stable and permanent learning environment.

Third, the determination recognized the Government's financial and administrative interest in avoiding the costs and operational consequences associated with delaying a major construction project. Public construction projects are particularly susceptible to cost escalation and scheduling complications when procurement timelines are disrupted. The Director further determined that delays at this stage of the procurement process cannot be recovered once the construction schedule is pushed back and that delaying the award increases the risk of cost escalation associated with labor, materials, subcontractor pricing, and contractor availability. *See* Arriola Decl. at ¶ 19. Delaying the award of the contract risks increasing construction costs, extending project timelines, and imposing additional burdens on public resources.

GPS may point to the Public Auditor's *JFK* decision, where a determination invoking similar categories of governmental interests was rejected. That decision, however, does not dictate the outcome here. As discussed above, the statutory framework directs the reviewing authority to confirm or reject the procuring agency's determination rather than to substitute its own judgment for that of the agency. In addition, the analysis in *JFK* turned in part on case-specific factual findings that do not apply here. The Public Auditor in that case concluded that the anticipated

delay associated with the protest would be relatively limited and further determined that operational impacts—such as the use of double sessions—were sufficiently mitigated by temporary classroom arrangements. The circumstances presented here are materially different. The determination at issue concerns the continued delay of a major public school construction project and the operational and financial consequences associated with postponing that project during the pendency of the protest and any subsequent appeals.

Taken together, these considerations reflect core governmental responsibilities: providing adequate educational facilities, maintaining stable school operations, and safeguarding public funds. The Director's determination therefore identified substantial governmental interests that reasonably justified proceeding with the procurement without delay during the pendency of the protest.

2. The Director reasonably determined that delay would harm those interests.

The Director's determination was grounded in the practical consequences of delaying the award of the contract for the Simon Sanchez High School project.

As explained in the Director's declaration, construction on the Project cannot begin until the contract is awarded. Arriola Decl. at ¶ 17. Delaying the award during the pendency of the protest would therefore delay the commencement of construction and extend the overall timeline for delivery of the new school facility. The Director reasonably determined that such delay would harm the substantial governmental interests identified in the determination.

GPS suggests that because the SSSH project has already experienced years of delay, the government can tolerate additional delay while the protest process unfolds. That reasoning reverses the logic of § 5425(g). The statute authorizes the procuring authority to proceed where further delay would jeopardize substantial governmental interests. A project that has already experienced

prolonged disruption—particularly one involving a public high school serving hundreds of students—presents precisely the circumstances in which additional delay compounds the harm the statute is designed to prevent.

The fact that the Project has already experienced substantial delay underscores the government’s interest in avoiding further delay, not the opposite. The statute does not require the government to accept still more postponement simply because the Project has already been delayed.

The Director’s determination was also supported by the operational realities facing Guam’s public school system. As explained in the declaration of Acting Superintendent Judith T. Won Pat, Ed. D., Simon Sanchez High School has not operated from its permanent campus since the facility was severely damaged by Super Typhoon Mawar in 2023. *See* Declaration of Judith T. Won Pat, Ed. D. (“Won Pat Decl.”) at ¶ 2. Since that time, Simon Sanchez High School students have been operating under a double-session arrangement with John F. Kennedy High School, in which two separate high school populations share a single campus during different portions of the day. *Id.* at ¶ 3, 4.

This arrangement affects approximately 1,416 Simon Sanchez High School students and has now persisted for multiple school years. Under the double-session schedule, classes extend later into the afternoon and evening than a traditional school day, limiting students’ ability to participate in academic programs, extracurricular activities, and other opportunities normally available during standard school hours.

GDOE is now planning to relocate Simon Sanchez High School students to the Tiyan campus as an interim operational measure intended to eliminate the double-session schedule. As the Superintendent explains, the Tiyan campus currently serves approximately 900 students. Relocating Simon Sanchez High School students there could increase the campus population to

approximately 2,300 students while the government works to establish temporary classroom facilities for the school pending completion of the permanent campus.

The impact of the current situation, not to mention further delays, is without dispute. Specifically,

- Student anxiety is now an issue based on later home arrivals. *See* Declaration of Judith T. Won Pat, Ed. D. (“Won Pat Decl.”) at ¶ 12.
- Teachers and staff are impacted and the situation has a negative effect on recruitment of good quality teachers. *See* Declaration of Judith T. Won Pat, Ed. D. (“Won Pat Decl.”) at ¶ 15.
- Extracurricular activities are negatively impacted. *See* Declaration of Judith T. Won Pat, Ed. D. (“Won Pat Decl.”) at ¶ 9.
- The compressed schedule deleteriously impacts participation by students in specialized training programs. *See* Declaration of Judith T. Won Pat, Ed. D. (“Won Pat Decl.”) at ¶ 8.
- Student homework completion and even their circadian rhythms are being disrupted. *See* Declaration of Judith T. Won Pat, Ed. D. (“Won Pat Decl.”) at ¶ 20.
- Special education classes are negatively affected. *See* Declaration of Judith T. Won Pat, Ed. D. (“Won Pat Decl.”) at ¶ 25.

These circumstances illustrate the continuing operational challenges faced by students, families, teachers, and administrators as a result of the loss of the Simon Sanchez High School campus. Moreover, this list is not limited. *See generally*, Declaration of Judith T. Won Pat, Ed. D. (“Won Pat Decl.”). The Director reasonably concluded that further delay in the award of the construction contract would prolong these disruptions and postpone the delivery of a permanent school facility.

Under either a confirmatory or *de novo* framework, the record therefore demonstrates that delaying the procurement would harm substantial governmental interests within the meaning of 5 GCA § 5425(g).

3. GPS has not shown the determination was arbitrary or unsupported.

GPS's disagreement with the Director's judgment does not establish that the determination was arbitrary, unsupported, or contrary to law. The Director identified specific governmental interests, consulted with relevant officials, and explained why delay in awarding the contract would harm those interests. That showing satisfies the requirements of § 5425(g).

GPS instead attempts to reframe the inquiry by importing standards drawn from other procurement doctrines and by relying on fact-specific decisions involving different projects, different timelines, and different records. Those arguments do not demonstrate that the Director's determination lacked a rational basis or that it was arbitrary or contrary to law. At most, GPS has shown that it disagrees with the Director's assessment. The disagreement of an unsuccessful bidder does not provide a basis for rejecting a determination the statute assigns to the procuring agency in the first instance.

C. The Determination Should Be Confirmed Even Under *De Novo* Review

Even if the Public Auditor were to apply the *de novo* framework urged by GPS, the outcome would be the same. The record demonstrates that delaying the procurement would harm substantial governmental interests within the meaning of 5 GCA § 5425(g).

The evidence supports the Director's determination that proceeding without delay is necessary. The procurement concerns a major public school construction project serving approximately 1,500 students and approximately 200 faculty and staff. Delaying the award would postpone the start of construction, extend the timeline for completion of the school, prolong

disruption to students and school operations, and increase the risk of cost escalation and other financial consequences.

GPS offers no evidence showing that those harms are illusory or that further delay would be cost-free. At most, GPS argues that the government should accept additional delay because the Project has already been delayed in the past. That argument does not address the statutory inquiry under § 5425(g), and it does not undermine the Director's conclusion that the government's substantial interests would be harmed if the award does not proceed.

III. CONCLUSION

There is a particularly poignant statement in Appellant's Opening Brief. It says, ". . . the delay of the SSHS construction project began a decade ago when original losing bidder CTI protested, appealed, and litigated the original SSHS procurement to a halt." A reasonable enthymeme would be that since GPS did not prevail in this case, GPS now seeks to exact its revenge by employing the typical schoolyard tactic of, "He started it." Such behavior should not be countenanced.

Appellant takes the position that DPW has given an inordinate weight to current factors when deciding to lift the automatic stay during GPS's procurement appeal. The distinction is important. Appellant is **not** contending that DPW did not comply with the law; Appellant is merely contending that it does not like the *way* DPW complied with the law. For these reasons, the Director reasonably determined that proceeding with the procurement without delay was necessary to protect substantial interests of the Government of Guam. The determination identified legitimate governmental interests relating to the timely construction of a critical public school facility, the stability of school operations, and the responsible management of public resources.

GPS's proposed standard would effectively eliminate the mechanism the Legislature created in 5 GCA § 5425(g). If a procuring agency were required to demonstrate emergency

conditions, imminent danger, or extraordinary circumstances before proceeding during the pendency of a protest, the statute would serve little practical purpose. The Legislature instead authorized agencies to proceed where delay would harm substantial governmental interests, subject to confirmation by the reviewing authority.

The record here demonstrates precisely the type of circumstances contemplated by that statute: a major public school construction project affecting thousands of students, teachers, and families, where additional delay would prolong significant operational disruption within the public school system.

Accordingly, the Public Auditor should confirm the Director's determination and permit the procurement to proceed.

Respectfully submitted this 13th day of March, 2026.

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

By: 

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Assistant Attorney General