



Jerrick Hernandez <jhernandez@guamopa.com>

---

## E-FILING: In the Appeal of General Pacific Services: OPA-PA-26-001

---

**Sosanbra Salas** <ssalas@rwtguam.com>

Wed, Mar 18, 2026 at 4:32 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, Braddock Huesman <bhuesman@rwtguam.com>

Good afternoon Mr. Hernandez:

Please see the attached document to be filed in the above-referenced matter. Should you have any questions or concerns, please feel free to contact our office. Thank you.

--

Regards,

**Sosanbra Salas Reyes**

**RAZZANO WALSH & TORRES, P.C.**

139 Murray Blvd. Ste. 100

Hagatna, Guam 96910

(T): 671-989-3009

(T): 671-988-3941

(F): 671-989-8750



**3.18.26 Appellant's Response Brief March 18, 2026; Appeal of 5 G.C.A. S 5425 (g) Determination; Opposition to Substantial Interest Determination.pdf**

1039K

**RAZZANO WALSH & TORRES, P.C.**  
JOSHUA D. WALSH  
DEBORAH E. FISHER  
BRADDOCK J. HUESMAN  
PAN AMERICAN BUILDING  
Suite 100, 139 Murray Blvd.  
Hagåtña, Guam 96910  
Telephone: (671) 989-3009  
Facsimile: (671) 989-8750  
Electronic Service: eservice@rwtguam.com

*Attorneys for Appellant*  
*General Pacific Services, LLC*

**OFFICE OF PUBLIC ACCOUNTABILITY**

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

**APPEAL NO. OPA-PA-26-001**

**APPELLANT'S RESPONSE BRIEF  
MARCH 18, 2026; APPEAL OF 5 G.C.A.  
§ 5425(g) DETERMINATION;  
OPPOSITION TO SUBSTANTIAL  
INTEREST DETERMINATION**

**I. INTRODUCTION<sup>1</sup>**

DPW asks the Public Auditor to confirm a determination it cannot defend. Its Reply advances three arguments, each of which fails independently and all of which fail

---

<sup>1</sup> On March 3, 2026, Appellant General Pacific Services, LLC ("GPS") submitted its Opening Brief appealing the Department of Public Works' ("DPW") Determination of Need issued by the Director after hours on Friday evening, February 6, 2026. DPW filed its Reply Memorandum in Support of Determination of Substantial Interest ("Reply") on March 13, 2026, with the Office of Public Accountability ("OPA"). Interested Party Core Tech International ("CTI") filed its brief on that same day.

together. First, DPW asks this tribunal to abandon the de novo standard of review that the Legislature prescribed, and the Supreme Court of Guam has confirmed — replacing it with a novel “confirmatory” review that exists nowhere in the statute or the regulations. Second, DPW claims that overriding the automatic stay is necessary to protect substantial interests of Guam, yet its own conduct — seven years of tolerance for CTI’s delays, over three months of silence on GPS’s protests, and a determination issued after hours on a Friday evening without contemporaneous documentation — contradicts every assertion of urgency. Third, the declarations DPW submits are post hoc rationalizations drafted five weeks after the decision they purport to support, and even those declarations undermine DPW’s position: the Department of Education has already adapted to the status quo, relocated students, and planned temporary facilities — confirming that the automatic stay does not threaten any substantial governmental interest.

Put differently, DPW spent seven years accommodating CTI. It now asks Public Auditor to strip GPS of a statutory protection within three months. The determination that purports to justify this disparate treatment contains no contemporaneous reasoning, no internal analysis, and no explanation for why CTI’s delays were acceptable, but GPS’s appeal is not. Worse, DPW ignores the most significant substantial interest at stake: GPS’s responsive bid was at least \$80 million cheaper than CTI’s. Overriding the stay to award a contract that costs Guam \$80 million more

— without first resolving the procurement appeal — is not a protection of Guam's substantial interests. It is a gamble with them.

## **II. DPW'S ATTEMPT TO CHANGE THE STANDARD OF REVIEW FROM DE NOVO IS UNSUPPORTED BY LAW OR PRECEDENT**

GPS argued in its Opening Brief that the Public Auditor's review of DPW's substantial interest determination is de novo. This is because 5 GCA § 5703(a) states: "The Public Auditor shall have the power to review and determine de novo any matter properly submitted to her or him." See *In the Appeal of Guam Education Financing Foundation, Inc.*, Appeal No. OPA-PA-09-007, "Decision and Order RE Purchasing Agency's Motion for Confirmation of Substantial Interest," (Nov. 16, 2009)("JFK-2"). The Legislature's grant of authority to the Public Auditor is straightforward and clear. To avoid this analysis, the Reply argues that: the standard is not de novo; GPS has used the wrong standard; and the "confirm or reject" language in regulations means that DPW does not have to justify an override of the automatic stay. These arguments are meritless.

The Reply conflates the standard of review with the review itself: DPW's argument is so novel that DPW lacks any statute or decision, from any jurisdiction, that supports its novel theory. Here, DPW is required to show it was not acting arbitrarily in its attempt to override the automatic stay, and that review by the Public Auditor is de novo. This issue is extremely narrow as it involves only the propriety of the override

of the automatic stay through a showing of need of Guam’s substantial interests—not the final decision on the procurement itself.<sup>2</sup>

**A. DPW Does Not Cite To Authority That Would Provide the Public Auditor Must use a “Rational Basis” Instead of De Novo.**

Without citation DPW claims that the “confirm or reject” language of 5 GCA § 5425(g)(1) and 2 GAR § 12115 should be interpreted to require a review of the Director’s determination that is a rubber stamp confirmation “rather than a fresh procurement decision.” Reply, p. 3. The Reply appears to confuse the standard of review—the scrutiny applied to DPW’s decision with the OPA’s decision to confirm or reject DPW’s decision.

There is no “fresh procurement decision” requested here. Rather, GPS has appealed DPW’s determination to override the automatic stay and the Public Auditor is entitled to review, de novo, DPW’s finding that it is entitled to override the automatic stay provision because the override is “necessary to protect substantial interests.” 5 GCA § 5425(g)(1); 2 GAR Div. 4 § 12115(a).<sup>3</sup> In other words, the Public Auditor’s

---

<sup>2</sup> The relevant procurement statute and the regulation show the requirements of need (“necessary”) and the standard that DPW must show the “substantial interests of Guam.” The “confirm or reject” language is contained in the regulations. *Compare* 5 GCA § 5425(g)(1) (“(1)The Chief Procurement Officer or the Director of Public Works after consultation with and written concurrence of the head of the using or purchasing agency and the Attorney General or designated Deputy Attorney General, makes a written determination that the award of the contract without delay is **necessary to protect substantial interests of Guam**... “(emphasis added)) *with* 2 GAR Div. 4 § 12115 (Any protestor may protest a determination by the Chief Procurement Officer or the Director of Public Works pursuant to 5 GCA (7) § 5425(g) that award of a contract without delay pending Appeal is necessary to protect the substantial interests of the government of Guam.....The Public Auditor shall **either confirm or reject the determination**. (emphasis added).)

<sup>3</sup> DPW similarly argues that 2 GAR Div. 4 § 9101(e)(3), contains similar “confirm” language, but the argument has the same problem as 2 GAR Div. 4 § 12115(a) and so is not addressed separately. See Reply, p. 7.

decision of whether to confirm or reject, like its other agency review processes, is based on a de novo review of DPW's actions and justifications in overriding the automatic stay. The terms "confirm" or "reject" relate to the outcome after the de novo review: they do not themselves set forth a different standard.

Nothing about the phrase "confirm or reject" in 5 GCA § 5425(g) and 2 GAR § 12115 overrides the Legislature's direction "[t]he Public Auditor shall have the power to review and determine de novo *any* matter properly submitted to her or him." 5 GCA § 5703(a) (emphasis added). Worse, DPW cites no precedent or interpretation of "confirm or reject" language that would show that the Public Auditor's review of its decision to override the automatic stay would be anything other than de novo.

DPW's suggestion of a new standard which it calls a "confirmatory or independent review standard" is not supported with a citation to a law or judicial finding. Reply, p. 4. Rather, DPW concocts a statutory analysis, arguing that the requirement that the Public Auditor use a de novo standard has been narrowed by the "confirm or reject" language. *But see* 5 GCA § 5703(a) ("[t]he Public Auditor shall have the power to review and determine de novo *any* matter properly submitted to her or him.") (emphasis added). DPW makes this argument by citing *In re Leon Guerrero*, 2021 Guam 6, ¶ 27, *Topasna v. Government of Guam*, 2021 Guam 23, and *Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 646 (2012) for the generic maxim that a specific statute operates as an "exception to, or qualification of, the general statute." DPW's statutory analysis fails for four reasons.

**First**, 5 GCA § 5425(g) does not use the “confirm or reject” language. It only states that the automatic stay may be lifted if “the Public Auditor or Court has *confirmed* such determination.” 5 GCA § 5425(g)(3)(emphasis added). Compare Reply p. 7 with 5 GCA § 5425(g)(3). There is nothing about the plain language “confirmed” that suggests the review is anything other than de novo. This is especially true considering the Legislature declared OPA’s review is de novo for “*any* matter properly submitted to her or him.” 5 GCA § 5703(a). Confirming something is a process, not a standard, and the law states unambiguously that Public Auditor review is de novo for all questions submitted to it. *Id.*

**Second**, DPW inexplicably uses its own regulations to change the clear meaning of the statute. This is improper. 5 GCA § 5425 is a legislative act and the statute that controls DPW procurement. Conversely, the Guam Administrative Rules and Regulations contain regulations of Government agencies under the Administrative Adjudication Law. 1 GAR § 1101. It is fundamental that regulations do not supersede statutes. Rather, a government agency must adhere to the governing statute and its own regulations; this may burden the agency with additional requirements but does not absolve it of statutory requirements or change a statutory procedure. *See Nolan v. United States*, 44 Fed. Cl. 49, 57 (1999). “A regulation is invalid if it is in contravention of the unambiguous expressed intent of the legislature.” *Guam Election Comm’n v. Responsible Choices for all Adults Coal.*, 2007 Guam 20, ¶ 59 (Guam Dec. 28, 2007)(citation omitted).

**Third**, when statutory language is unambiguous, there is no need to look to interpretation. *Att'y Gen. of Guam v. Gutierrez*, 2011 Guam 10, ¶ 26. When there is no ambiguity in statutory language, courts “presume the Legislature meant what it said, and the plain meaning of the statute governs.” *Id.* (quote and citation omitted). In looking at a statute, a single sentence or word does not control, but the court looks to the “whole law... its object and policy.” *In re People*, 2024 Guam 17, ¶¶ 16-17. Here, the statute states that Public Auditor reviews are de novo. 5 GCA § 5703(a) (“The Public Auditor shall have the power to review and determine de novo any matter properly submitted to her or him.” )

**Fourth** and critically, the statutory framework gives the Public Auditor the power to examine the facts through developing additional discovery to expand the record. *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5, ¶35 (Guam May 14, 2018), citing 5 GCA § 5704. It is the finding of facts by the Public Auditor that are final and conclusive before the Court—not the government agency’s finding of facts. That is why on Superior Court review, the “finding of fact by the Public Auditor shall be final and conclusive unless arbitrary, capricious, fraudulent, clearly erroneous, or contrary to law.” *Id. citing* 5 GCA § 5704(a). In other words, not only is the review de novo, but the Public Auditor is part of the factfinding process.

Because it lacks any supporting caselaw and because it is arguing against the clear statutory language, DPW also attacks the relevant precedent prior decisions of the OPA that doom its argument. Thus, DPW complains that the JFK-2 decision did not

sufficiently discuss “confirm or reject.” Yet the absence of a discussion of “confirm or reject” by the Public Auditor in JFK-2 does not suggest a standard other than de novo where OPA found the standard is de novo.

This is not a complicated issue and the Supreme Court of Guam set forth that the standard for public auditor review is de novo. *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 42. See *SH Enters., Inc. v. Territory of Guam*, 2025 Guam 10, ¶ 21. If the Public Auditor has the power “to review and determine de novo any matter properly submitted to” him, and he does, 5 GCA § 5703(a), then it was incumbent on DPW to explain why its interpretation does not create a surplusage problem. See *Guam Fed'n of Tchrs. v. Gov't of Guam*, 2013 Guam 14, ¶ 67 n. 14 (“Words may be eliminated only when such action is consistent with the legislative intent or meaning. However, it must be certain that the legislature could not possibly have intended the words to be in the statute, and that the rejection of them serves merely as a correction of careless language and gives the true intention of the legislature.”). Here the term “any” does expansive work in the statute, yet DPW argues that certain properly submitted matters—its determination of need—receive a more restrictive review. Put differently, DPW argues that “any matter” is not really part of the statute and does not mean “any matter” if that matter is an appeal of DPW’s determination of need.

To the extent DPW cites the 1990 case, *Pac. Data Sys., Inc. v. Superior Ct. of Guam*, No. CIV. 90-00029, 1990 WL 320357, at \*2 (D. Guam App. Div. Oct. 24,

1990)(“PDS Case”), in an attempt to shift the standard, recent 2020 case law has made the de novo standard clear.<sup>4</sup> *DFS Guam L.P. v. A.B. Won Pat Int’l Airport Auth., Guam*, 2020 Guam 20. DPW does not set forth any meritorious reason why the Public Auditor would have a different standard of review for its review of an override of the automatic stay.

Given that an override of the automatic stay will result in the Project going forward without a determination of the merits of GPS’s protest and its procurement appeal, it is critically important for the Public Auditor to examine whether DPW has shown the requisite need and the substantial interests that would abandon the central mechanism—the automatic stay — that keeps the procurement system intact. DPW in its Reply attempts to minimize the ultimate procurement goals of the statute. But the Guam Supreme Court has held 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

---

<sup>4</sup> In addition, the PDS Case in its broad holding giving an agency administrator the benefit of the doubt (rational basis review) cited to the Chevron case which has since been overruled. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024)(courts need not, and under the Administrative Procedure Act (APA) may not, defer to an agency’s interpretation of the law simply because a statute is ambiguous). The purpose behind this type of reasoning has always been that Courts do not believe they are well suited to examining highly technical facts where agency expertise is required. Here, this is a procedural issue- whether the automatic stay prevents the agency from going forward with the contract before it or OPA makes a determination of the procurement appeal. This issue is procedural and legal, and even on a rational basis review, DPW has not shown a basis for overriding the automatic stay.

about late discovery of misconduct. *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 70 n.15. The Guam Supreme Court has held that “the automatic stay is a legal entitlement that vests upon a timely, pre-award protest. *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 148. The automatic stay is a critical component of a procurement to ensure the integrity of the procurement system. *See, In the Appeal of Pacific Data Systems, Inc.*, OPA-PA-15-005 (Apr. 30, 2015).

**B. A Rational Basis Review Does Not Apply Here, But Even if it Did, DPW Cannot Support Its Decision to Override the Automatic Stay.**

**1. Federal Law as Cited by GPS to Provide Context for the Guam Procurement Law Cannot be Used by DPW To Change the Standard of Review.**

DPW complains that GPS should not cite analogous federal cases, but then, without a hint of irony, cites federal cases to argue that OPA’s review of DPW’s procurement decisions should be similar to the federal system. *But see Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5, ¶ 31 (“Unlike its federal counterparts, the Superior Court is governed by the processes set out in Guam Procurement Law ... not the federal Administrative Procedures Act.”). While the Guam Supreme Court will look to federal precedent when examining our own procurement laws to analogize factual situations, it will not cite federal law in an attempt to override Guam statutory authority. *See, e.g., DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 51 (examining *Palladian Partners, Inc. v. United States*, 783 F.3d 1243, 1254 (Fed. Cir. 2015) as guidance on the need for administrative exhaustion

in procurement protests) ; *Pac. Data Sys., Inc. v. Guam Dep't of Educ.*, 2024 Guam 4, ¶ 15. (“We further find federal jurisprudence on appellate standing persuasive and consistent with our holding in *Teleguam II*.”)

Against this backdrop DPW seeks to use federal caselaw to override Guam statutory authority. DPW claims that the federal procurement review system is “extremely limited” and that reviewing bodies may not substitute their judgment for that of the procuring agency under federal law, *citing MCS Mgmt., Inc. v. United States*, 48 Fed. CL 506, 516 (2001)(procurement determination upheld if 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). Reply, p. 8, fn. 3. GPS takes no issue with these cases. That is the federal standard. Yet it is unclear why DPW thinks the federal standard assists its argument on Guam’s standard.

DPW’s citation to federal cases does not help because those cases hold that even when there is limited review, the agency must have contemporaneous reasoning, must be consistent, and must not be arbitrary. In the *PMTech* case, the Court emphasized that the reasonableness of an override of the automatic stay “must be evaluated based on the evidence that was available to the government *when its decision was made*.” *PMTech, Inc. v. United States*, 95 Fed. CL 330, 352 (2010)(emphasis added). Later, post-hoc declarations like those submitted by DPW here are neither sufficient nor relevant. DPW argues under federal law that a reviewing body of an executive agency’s decision

is limited to determining whether the agency had a rational basis that is not arbitrary or an abuse of discretion. DPW Reply, p. 6; Fn. 3. But even under a rational basis review, an agency cannot act arbitrarily or without any rational basis — that is what DPW has done here.

Thus, federal caselaw can be cited. GPS cited to federal caselaw in its Opening Brief, including *Reilly's Wholesale Produce v. United States*, 73 Fed. Cl. 705, 710 (2006) and *Supreme Foodservice GmbH v. United States*, 109 Fed. Cl. 369, 385 (2013). These cases show that even under a deferential review, DPW cannot meet that deferential standard because its determination of need was utterly insufficient.

**2. GPS Accurately Stated DPW's Burden To Show Necessity and that Substantial Interests of Guam Were Affected.**

DPW also complains that the standard of need set forth by GPS is not contained in 5 GCA § 5425(g). It is unclear why. 5 GCA § 5425(g)(1) provides that for an agency to override the automatic stay it must show that its “award of the contract without delay *is necessary* to protect *substantial interests* of Guam...” (emphasis added). Thus, for DPW to override an automatic stay prescribed by the procurement law, it has to show that the award is needed or necessary immediately. It has to also show that the necessity is based upon “substantial interests,” and so it must show what these substantial interests are. Put differently, the burden is on the purchasing agency to establish necessity and exigency. JFK-2, p. 7, lns. 8-10; *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15, ¶ 16 and ¶ 41 (after automatic stay

triggered, the Court had to “determine whether necessity was adequately shown by [government agency]”).

Hawaii’s Supreme Court, interpreting the identical provision derived from the same Model Procurement Code, has articulated precisely what this burden requires. In *CARL Corp. v. State, Department of Education*, 946 P.2d 1, 23–24 (HI 1997), the court held that it is not enough for the agency to show that a substantial interest is merely “involved”— the agency must demonstrate that delay during the protest period would “threaten to impair” that interest. *Id.* at 22. The court also held that a determination must identify the governmental interest at stake and articulate why award without delay is necessary to protect it. *Id.*, 23-24.

Contrary to DPW’s argument, GPS did not suggest an analysis based on an imminent threat. 5 GCA § 5425(g) does not require a showing of imminent threat to public health, welfare, or safety and GPS never argued that. DPW’s entire claim is a straw man argument. GPS argued that DPW’s determination does not meet the standard of “necessary to protect substantial interests.” 5 GCA § 5425(g)(1); 2 GAR Div. 4 § 12115(a). This language on its face requires a showing of need and a showing that there are substantial interests. DPW failed to make that showing. DPW’s Footnote 1 attempts to suggest that GPS does not understand the difference between an emergency procurement and this procurement. See Reply, p. 1. Not so. The analysis GPS has set forth in its Opening Brief relies on the statutory language requiring the automatic stay,

mandating that DPW justify its override to the OPA, and prescribing that the OPA's review be de novo.

**III. DPW HAS NOT ESTABLISHED THAT OVERRIDING THE AUTOMATIC STAY IS NECESSARY TO PROTECT SUBSTANTIAL INTERESTS.**

**A. DPW Fails to Show That the Automatic Stay Impairs Essential Government Functions.**

GPS agrees that 5 GCA § 5425(g) allows essential governmental functions to continue during the pendency of a protest where delay would harm important governmental interests. See Reply, p. 11. But the automatic stay does not implicate an unreasonable suspension of essential government function. DPW has responsibility not just for public school building infrastructure, but for roads and highways. See 5 GCA Government Operations, Chapter 53 and 54. In addition, the Director of Public Works serves as the central government procurement officer for construction projects. 5 GCA § 5113. An automatic stay on one of DPW's many projects does not implicate a suspension of essential government functions. Thus DPW did not decide to go ahead based on its needs, it claimed to make its decision based on another agency's (DOE) needs.

This is not a situation where the Office of the Attorney General threatened to withdraw legal services to executive branch agencies that were needed to perform essential functions. In that situation, the unanticipated withdrawal of services would affect government agencies **in all the matters** they were handling that needed legal advice or litigation. See *In re Leon Guerrero*, 2024 Guam 18, ¶¶ 11-12. Whereas here,

this is only one of DPW's projects, and it is subject to a statutorily mandated legal process involving the stay: this is not unanticipated or otherwise not part of the legal procurement process. Further, if the building of the new Sanchez High School were truly an essential government function, then there is no explanation why it has been pending for ten years already before DPW's sudden determination. The term essential suggests an ongoing important need, not a ten-year delay.

The *CARL Corp.* court addressed this precise question. There, the State argued that a contract for library automation services implicated a substantial interest. The court found that only a "complete cessation" of the service even "approaches impairment of a substantial State interest requiring award of the contract without delay." *CARL Corp.*, 946 P.2d at 24. Where the existing vendor was willing to continue providing services during the protest — maintaining the status quo — the court held the award without delay was not "necessary." *Id.* The same logic applies here. DOE has been operating under double sessions with JFK for three years. Won Pat Decl., Par. 4. DOE is relocating students to the Tiyan campus and constructing temporary facilities in Yigo. Won Pat Decl., Par. 33–36. The status quo, while not ideal, can be maintained during the brief period needed to resolve GPS's appeal. That is the definition of a situation where award without delay is not "necessary."

**B. GPS Does Not Attempt to Convert a Fact Specific Analysis to a Rule: rather It References Actual Facts That Show DPW's Years Long Delay**

DPW permitted CTI to proceed through a seven-year procurement process, including five months of settlement negotiations with DPW, without invoking override

authority. When GPS filed a timely protest and pursued an appeal expected to take about three months, DPW immediately sought override authority.

Director Arriola's after-hours March 17 declaration justifies the override based on cost escalation risks, student disruption, and contractor pricing concerns if the project is delayed. Again, this protest is expected to take three months. GPS's first two protests were submitted November 19 and December 12, 2025. The protest/appeal period should have been done by now. But DPW has yet to issue a decision and could do so at any time (this assumes that DPW has a competent record to make such a decision). Against a project pending for more than ten years and involving multi-year construction, this represents a negligible fraction of the overall timeline. Any cost escalation over 3 months would be *de minimis* compared to the total project cost.

DPW's determination claims that overriding the automatic stay is "necessary to protect substantial interests of Guam." 5 GCA § 5425(g)(1). Yet DPW ignores the most significant substantial interest at stake: the public fisc. GPS's responsive bid was at least \$80,000,000 cheaper than CTI's. Overriding the stay to award a contract to CTI -- without first resolving GPS's procurement appeal --- exposes Guam to the fiscal harm that the "substantial interests" standard is designed to prevent. Put differently, DPW cannot credibly claim it is protecting Guam's substantial interests by rushing to award a contract that costs taxpayers \$80 million more than a competing bid that may be entitled to the award. If anything, the automatic stay protects Guam's substantial

interests here: it preserves the opportunity to award the contract at the lower price. The stay does not threaten Guam's interests. Lifting the stay does.

As of the date of this brief, DPW has not issued a decision on any of the protests — **over three months of silence caused by DPW**. If time is of the essence, DPW has a funny way of showing it. Worse, these identical concerns applied to CTT's multi-year negotiations. DPW has provided no explanation—none whatsoever—for why CTT's seven-year delay was acceptable, but GPS's three-month appeal delay is not. This disparate treatment, without rational explanation, is exactly what the arbitrary and capricious doctrine prohibits. The silence on this issue constitutes an admission that DPW cannot explain the selective application.

**C. The Declarations Submitted with the Reply Show that DPW has Presented the Public Auditor with Post Hoc Justification and that the Department of Education has already made plans to Situate Students for Whenever Construction Begins and Through to Completion.**

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. Reply, p. 12. The direct result of this action was that another two months will

elapse without commencement of the Project, during which the actual procurement appeal could have been substantially decided.<sup>5</sup>

The Declaration of Director Arriola is dated March 13, 2026 --- five weeks after the February 6, 2026, determination it purports to support. DPW points to nothing tangible that preceded or was contemporaneous with its February 6 decision. There are no memoranda, no internal analyses, no correspondence with DOE, and no documentation of the consultations that the statute requires.<sup>6</sup> Even under the deferential federal standard DPW urges this tribunal to adopt, post hoc rationalizations cannot substitute for contemporaneous reasoning. The court in *PMTech* held that the reasonableness of an override decision “must be evaluated based on the evidence that was available to the government when its decision was made.” *PMTech, Inc. v. United States*, 95 Fed. Cl. 330, 352 (2010). A declaration drafted five weeks after the fact, marshaling justifications that did not appear in the original determination, is the definition of post hoc rationalization. It is not evidence that DPW had a rational basis on February 6; it is evidence that DPW did not.

---

<sup>5</sup> Again, the first two agency level protests were submitted November 19, 2025, and December 12, 2025 – so it has been well over three months that DPW did not address the protests.

<sup>6</sup> GPS sent Sunshine Requests to DPW to review public records evidencing DPW’s determination. Rather than produce public records, DPW applied the pending litigation exception to all four categories of requested records — without differentiation, without a privilege log, and without any analysis of whether individual documents fall within the exception’s scope. Worse, a government agency may only withhold a document under the litigation exception if it “was specifically prepared for use in litigation.” *County of Los Angeles v. Superior Court (Axelrad)*, 82 Cal. App. 4th 819, 830 (2000); *Fairley v. Superior Court*, 66 Cal. App. 4th 1414, 1421 (1998). Put differently, DPW is so desperate to avoid production of public records that it violated the Sunshine Act.

The March 13, 2026, Declaration of DOE Acting Superintendent Judith T. Won Pat, Ed.D., does not help DPW's case --- it undermines it. Dr. Won Pat's Declaration confirms that DOE has been operating under a double-session arrangement with JFK High School for three years. Won Pat Decl., Par. 4. DOE has already planned to relocate approximately 900 students to the Tiyan campus --- the same campus the Public Auditor found adequate in the JFK cases. Won Pat Decl., Par. 33--35. DOE is also constructing temporary facilities in Yigo. Won Pat Decl., Par. 36. There is no evidence that any school has lost accreditation, that students lack access to an adequate educational environment, or that any condition exists that cannot be maintained for the brief additional period needed to resolve GPS's appeal. Put bluntly, the Won Pat Declaration demonstrates that DOE has already adapted to the status quo and has plans in place to continue operating under it. That is the opposite of a showing that the automatic stay threatens a substantial governmental interest requiring immediate override. DOE's own planning confirms that the stay can remain in place while this appeal proceeds.

The *CARL Corp.* court cautioned against precisely this kind of post hoc reasoning. In assessing a substantial interest determination, the court warned that “[i]f the contracting officials could both deny the protest and authorize performance of the contract based on their assessment of the merits, subsection 701(f) would be meaningless.” *CARL Corp.*, 946 P.2d at 23. Put differently, an agency cannot use the substantial interest determination as a vehicle to circumvent the protest process by

pointing to the merits of its own procurement decision. DPW's post hoc declarations do exactly that — they ask the Hearing Officer to accept that DPW's procurement was correct and therefore should proceed, rather than demonstrating that delay during the protest period itself threatens a substantial governmental interest.

There is also the matter DPW does not address: what happens if the stay is lifted, CTI begins performance, and GPS prevails on the merits. If the contract is awarded to CTI and construction commences during the pendency of this appeal, and the Public Auditor or a court then determines that the procurement was unlawfully conducted, Guam will have committed public funds to a contract that should never have been awarded. At that point, the government faces the worst of all outcomes: potential liability to GPS for the wrongful award, sunk costs in a partially completed CTI contract, and the possibility that the entire procurement must be re-done. The automatic stay exists precisely to prevent this scenario. By continuing to mull over GPS's protest without issuing a decision while simultaneously moving to abandon the automatic stay and entrench the challenged award through performance, DPW creates the fiscal and operational disruption it claims to be avoiding. This "proceed-at-all-costs" approach is not a protection of Guam's substantial interests --- it is a gamble with them.

CTI's Interested Party's Reply Brief argues that the project did not sit idle during the past decade, pointing to legislative restructuring (Pub. L. No. 34-101; Pub. L. No. 37-22) and separate procurements for surveying, design, and construction management. As an initial matter, CTI's third-party perspective seeking to buttress the

DPW determination is irrelevant and need not be considered by the OPA at all. *See, Advanced Sys. Dev., Inc. v. United States*, 72 Fed. Cl. 25, 33 (2006) (Explaining how, in the narrow context of examining the override of the automatic procurement stay, “it is unnecessary to search beyond the four corners of the override decision—the agency either complied with the requirements . . . or it did not.”) Even if CTI’s supplementing the agency record is allowed, CTI’s counter-chronology does not alter the relevant inquiry. Regardless of what interim work occurred, DPW never once invoked override authority during CTI’s own multi-year protests and negotiations. The government tolerated those delays without claiming the automatic stay threatened substantial interests. DPW cannot credibly claim urgency now that GPS—not CTI—is the protestor.

CTI also contends that the JFK decisions are not binding administrative precedent. While administrative decisions may not carry the same precedential weight as judicial opinions, the JFK decisions remain the only directly analogous OPA authority addressing § 5425(g) determinations, and no contrary OPA decision exists. The Hearing Officer need not treat them as binding to find them persuasive—particularly where they correctly apply the statutory framework and where the Guam Supreme Court has consistently affirmed de novo review. *See DFS Guam L.P. v. A.B. Won Pat Int’l Airport Auth., Guam*, 2020 Guam 20, ¶ 42.

Finally, CTI suggests that GPS's appeal could delay the project for years, citing the eleven-year *DFS Guam* litigation as a cautionary example.<sup>7</sup> But this briefing schedule itself demonstrates otherwise: the matter was set for hearing within weeks of the filing. The automatic stay does not prevent DPW from continuing all other project activities—it only stays the award of the contract. Against a \$160+ million project with a multi-year construction timeline that has been pending for over a decade, a brief period to ensure the procurement was conducted lawfully is not merely reasonable—it is exactly what the Legislature intended when it enacted the automatic stay.

#### IV. CONCLUSION AND REQUESTED ACTION

Considering the GPS Opening Brief, DPW Reply and Declarations, and this Response, DPW's necessity determination should be rejected, and the Public Auditor should reimplement the automatic stay. Guam precedent from the Office of Public Accountability requires not just an enumeration of adverse impacts, but an articulation of "why it is necessary to protect those interests and award the contract without delay." JFK-1, p. 7, lns. 10-12. DPW has failed to articulate what makes it necessary to protect those interests and issue a contract without delay. DPW's findings rely on generalized assertions of adverse impact, rather than on specific, imminent threats or unique facts compelling enough to warrant lifting the statutory

---

<sup>7</sup> The *DFS* litigation went askew precisely because the procuring agency—*GIAA*—blasted through the procurement stay and installed the new contractor in place. This is why the Guam Supreme Court teaches that "[t]he automatic stay provision of Guam's Procurement Code also provides a significant safeguard against government malfeasance negatively impacting the public fisc." *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20, ¶ 70 n.15. The Public Auditor should overrule DPW's determination of need *precisely to avoid* a DFS litigation scenario.

stay and are therefore not sufficient to show necessity to protect a substantial government interest.


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. Set a scheduling conference to issue expedient dates for the resolution of GPS's protest appeal; and
4. For any other relief that the OPA determines is proper.

*Respectfully submitted* this 18<sup>th</sup> day of March 2026, at Hagåtña, Guam.

**RAZZANO WALSH & TORRES, P.C.**

By: \_\_\_\_\_

  
**JOSHUA D. WALSH**  
*Attorneys for Appellant*  
*General Pacific Services, LLC*

**CERTIFICATE OF SERVICE**

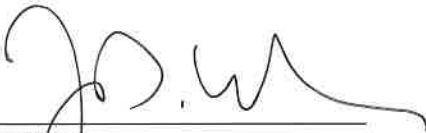
I, JOSHUA D. WALSH, do hereby certify that on this 18<sup>th</sup> day of March 2026, I will cause to be served a true and correct copy of this **APPELLANT'S RESPONSE BRIEF MARCH 18, 2026; APPEAL OF 5 G.C.A. § 5425(g) DETERMINATION; OPPOSITION TO SUBSTANTIAL INTEREST DETERMINATION** on the following counsel via electronic mail:

Patrick L. Lalor  
**Office of the Attorney General of Guam**  
134 W Soledad Avenue  
Hagåtña, Guam 96910

Joyce C.H. Tang  
**Civille & Tang, PLLC**  
330 Hernan Cortez Ave., Ste., 200  
Hagåtña, Guam 96910

*Respectfully submitted* this 18<sup>th</sup> day of March 2026, at Hagåtña, Guam.

**RAZZANO WALSH & TORRES, P.C.**

By:   
**JOSHUA D. WALSH**  
*Attorneys for Appellant*  
*General Pacific Services, LLC*