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E-FILING: In the Procurement Appeal of General Pacific Services, LLC, OPA-PA-26-001

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Jerrick,

Please see the document attached to be filed in the case titled.

Should you have any questions, please contact our office.
Thank you!

- JV

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Opposition to DPW Motion to Dismiss.pdf

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In the Procurement Appeal of

GENERAL PACIFIC SERVICES, LLC,

Appellant.

APPEAL NO. OPA-PA-26-001

**OPPOSITION TO DPW'S MOTION TO
DISMISS AND CTI'S JOINDER**

INTRODUCTION

Despite previously insisting before the Office of Public Accountability (OPA) that the construction of Simon Sanchez High School must proceed “without delay,”¹ the Department of Public Works (DPW) and Interested Party Core Tech International Corporation (CTI) now seek to dismiss it. Their theory is that OPA lacks jurisdiction because DPW refuses to issue a written protest decision. Even if true, it is a jurisdictional defect that exists only because DPW violated its statutory duty to decide GPS’s protests “promptly.” 5 GCA § 5425(c). Put differently, DPW asks this tribunal to

¹ Declaration of Vince Arriola in Support of Reply Memorandum re: Determination of Substantial Interest, March 13, 2026, ¶11.

reward its own noncompliance with the statute by stripping OPA of the authority to review GPS's protests.

The record shows GPS filed three timely pre-award protests; DPW issued no protest decisions; and GPS filed a Notice of Procurement Appeal with an alternative request to compel agency decisions. DPW argues OPA lacks jurisdiction because “no agency decision has been issued,” and that constructive denial under 5 GCA § 5427(f) is inapplicable to pre-award protests; DPW urges dismissal under 2 GAR Div. 4 § 12104(c)(9). DPW Motion to Dismiss (“MTD”) at 3–5. CTI joins DPW’s motion and repeats these jurisdictional arguments, adding that OPA cannot grant the alternative relief to compel agency action. CTI Joinder at 2–5.

The OPA should deny the Motion and Joinder for four reasons. First, the Hearing Officer has already exercised jurisdiction over this appeal—including conducting a hearing, receiving briefing from all parties, and issuing a 26-page decision rejecting DPW’s Substantial Interest Determination (SID)—and DPW and CTI participated in those proceedings without challenging OPA’s authority to act. Second, DPW’s failure to issue protest decisions is not an absence of jurisdiction; it violates § 5425(c)’s mandate that DPW “shall promptly issue a decision in writing,” and that violation cannot be converted into a jurisdictional defense. Third, accepting DPW’s and CTI’s position would render the automatic stay under § 5425(g) unenforceable in any case where the agency simply refuses to act—a result the Legislature could not have intended. Fourth,

OPA has authority to order DPW to issue its overdue protest decisions and should do so.

RELEVANT PROCEDURAL AND FACTUAL HISTORY

DPW initiated the Simon Sanchez High School procurement (Project No. 730-5-1059-L-YIG) under a single integrated RFP, and DPW identified CTI and GPS as competing offerors. Notice of Appeal at Part IV.A.1, Atts. A, B. GPS filed three pre-award protests: (a) November 19, 2025, challenging the sufficiency of the procurement record; (b) December 12, 2025, challenging CTI's responsiveness; and (c) December 12, 2025, challenging a separate "Limited Project Scope Agreement" for demolition as outside lawful procurement. Notice of Appeal at Part III.C; Part IV.A.1; Atts. F, I, J.

As of January 28, 2026, DPW had issued no written decisions on any of the three protests, despite GPS's January 16, 2026, follow-up requesting status and timing for decisions. GPS then filed its Notice of Procurement Appeal and, in the alternative, requested an order compelling DPW to issue decisions. Notice of Appeal at Part IV.A.1; Part III.D; Part IV.C; Att. K.

On February 12, 2026, DPW moved to dismiss for lack of jurisdiction because no agency decision was issued and because constructive denial under § 5427(f) does not explicitly apply to pre-award protests. DPW MTD at 3–5. On May 7, 2026, CTI joined and supplemented the motion, asserting the same lack of jurisdiction argument and opposing OPA's authority to compel DPW to decide the protests. CTI Joinder at 2–5.

Separately, on February 6, 2026, DPW filed a SID under § 5425(g), seeking to override the automatic stay triggered by GPS's protests and proceed with the contract award. GPS challenged the SID on February 9, 2026, as contemplated by the procurement code. *See*, 5 G.C.A. § 5425(g). The Hearing Officer conducted a hearing on March 20, 2026, with all parties participating, received briefing from DPW, GPS, and CTI, and on April 28, 2026, issued a 26-page decision rejecting the SID on two independent grounds: (1) the GDOE Superintendent did not sign the determination as required by § 5425(g)(1), and (2) the SID failed to identify Guam's substantial interests or articulate why award without delay was necessary to protect them. Hearing Officer's Review of DPW's Substantial Interest Determination, OPA-PA-26-001, at 3, 25–26 (Apr. 28, 2026). DPW and CTI participated fully in those proceedings without raising jurisdictional objections. CTI's Joinder in the instant motion to dismiss came after CTI did not get the result it wanted from the OPA; it was filed nine days after the Hearing Officer's adverse decision.

STANDARD OF REVIEW/JURISDICTION

OPA's threshold inquiry is whether this matter is properly before it such that dismissal would undermine the statutory protest process. DPW frames OPA's jurisdiction as triggered only by a written agency decision under 5 GCA § 5425(c), appealable under § 5425(e), and relies on its refusal to issue a written decision as the reason it may seek dismissal. DPW MTD at 3–5. CTI likewise argues that, without a § 5425(c) decision, OPA has no jurisdiction and cannot issue ancillary relief. CTI Joinder

at 3–5. Thus, the jurisdictional question presented is whether OPA must dismiss and allow indefinite agency inaction to defeat protest review, or whether OPA may retain the appeal or compel agency decisions to preserve meaningful review and the statutory scheme. One answer complies with the structure of law, and the other invites absurdity.

ARGUMENT

I. OPA SHOULD EXERCISE JURISDICTION TO PREVENT INDEFINITE AGENCY INACTION FROM DEFEATING THE PROTEST SCHEME.

DPW's and CTT's position would allow an agency to nullify the protest process simply by never issuing a decision—which DPW has done here. That cannot be the outcome in a statutory regime designed to ensure accountability in major procurements like SSHS.

The alternative is untenable. If DPW's and CTT's position is accepted, the automatic stay under § 5425(g) has no enforcement mechanism in any case where the agency refuses to act. The protester cannot appeal to the OPA because there is no decision. The OPA cannot compel a decision because, under CTT's theory, it lacks the authority to do so. The agency can attempt to override the stay with a SID. And if the SID is rejected—as it was here—the agency can still avoid the merits by arguing that the OPA lacks jurisdiction to hear the underlying protests. The Legislature built a system: a timely protest triggers a stay; the agency decides the protest; the protester appeals to the OPA. DPW is asking this tribunal to hold that an agency's refusal to perform its part of that system eliminates the protester's right to the rest of it. That is a right without a remedy. It is not the law.

GPS filed three timely pre-award protests on November 19 and December 12, 2025. DPW issued no decisions on any of them. Section 5425(c) provides that if a protest “is not resolved by mutual agreement, the Director of Public Works shall promptly issue a decision in writing.” “Shall” is mandatory. DPW’s failure to issue decisions is not a gap in the statutory scheme; it violates § 5425(c). The absence of an explicit clock does not convert a mandatory directive into a discretionary one, and it does not license indefinite delay.

DPW’s conduct during this period sharpens the point. While DPW was not issuing decisions on GPS’s protests, it was simultaneously filing a SID to override the automatic stay triggered by those same protests. DPW treated GPS’s protests as real enough to invoke § 5425(g)’s override mechanism—but not real enough to actually decide. Put bluntly, DPW was litigating the consequences of the protests while refusing to perform the statutory duty that the protests triggered. That is not administrative deliberation. It is strategic delay.

DPW relies on *Pacific Data Systems*, OPA-PA-15-005, for the proposition that the OPA lacks jurisdiction without a written agency decision. DPW MTD at 4. But *Pacific Data Systems* holds that genuinely premature appeals—filed before an agency has had a *reasonable opportunity* to act—are not yet ripe for OPA review. It does not hold that OPA lacks jurisdiction whenever an agency refuses to issue a decision regardless of the circumstances. The facts here are different. DPW sat on three protests for months—over two months on the first, over six weeks on the second and third—while

simultaneously filing a SID to override the automatic stay those protests triggered. GPS's appeal was not premature; it was the only available response to protracted agency inaction. Moreover, as GPS's Notice of Appeal notes, the Public Auditor in *Pacific Data Systems* itself recognized OPA's authority to catalyze agency action when the agency fails to perform its statutory duty. Notice of Appeal at Part IV.C.

II. DPW'S "NO FINAL DECISION" ARGUMENT SHOULD BE REJECTED; OPA CAN EITHER PROCEED OR, AT MINIMUM, COMPEL WRITTEN DECISIONS TO PRESERVE THE APPEAL PATHWAY.

DPW asserts OPA jurisdiction arises only after a § 5425(c) decision and that, absent such a decision, dismissal is mandatory. DPW argues that the OPA "lacks jurisdiction over pre-award protests in the absence of a written agency decision," and invokes *Pacific Data Systems*, OPA-PA-15-005. DPW MTD at 4. CTI echoes the same. CTI states "the OPA's jurisdiction arises only from a 5425(c) decision," quoting § 5425(e) and 2 GAR § 12112. CTI Joinder at 3.

But the remedy for an absent decision is not to extinguish review; it is to ensure the agency issues the decisions needed to trigger that review. GPS's Notice of Appeal expressly sought, in the alternative, an order compelling DPW to issue final rulings on the pending protests. Notice of Appeal at Part IV.C; Part III.D.² Granting that alternative relief keeps the statutory structure intact: DPW issues decisions; the 15-day

² The OPA has previously narrowed its focus on DPW's intransigence on issuing a decision on GPS's protests in this matter. The appointed hearing officer asked, "Why does DPW think it can withhold a decision.... I think DPW owes it to the protesting party to get something out there." Hearing on SID, March 20, 2026, at 1 h 20 m. DPW's counsel acknowledged that "**It is certainly within your purview to direct them to expedite it.**" The Hearing officer then explained that "I am suggesting it needs to be done." *Id.*

appeal clock under § 5425(e) runs; OPA proceeds on a complete record (if available in this case). Dismissal, by contrast, risks further delay with no assurance DPW will act, recreating the same jurisdictional impasse and moving resolution of this protest further away.

III. THE CONSTRUCTIVE DENIAL DOCTRINE ADVANCED BY GPS AVOIDS NULLIFICATION OF PROTEST RIGHTS; REGARDLESS OF LABEL, OPA SHOULD NOT ALLOW INACTION TO PRECLUDE REVIEW.

GPS does not contend that § 5427(f)'s constructive denial provision applies by its terms to pre-award protests under § 5425. DPW and CTI are correct that § 5427(f) addresses post-award contract controversies involving contractors, and GPS is a pre-award protester. DPW MTD at 3–4; CTI Joinder at 3–4. But the absence of a parallel constructive denial mechanism in § 5425 is not a basis for dismissal—it is the gap in the statute that makes OPA's intervention necessary. The Legislature mandated that DPW “shall promptly issue a decision in writing” on protests. 5 GCA § 5425(c). It did not provide a remedy for the protester when DPW refuses to comply. That silence cannot be read as legislative intent to leave the protester without recourse. Whether the remedy is styled as constructive denial, inherent authority to preserve the statutory scheme, or ancillary relief to prevent nullification of protest rights, the result must be the same: OPA retains jurisdiction to ensure the protest mechanism functions.

The Hearing Officer's April 28, 2026, decision reinforces this conclusion. In reviewing and rejecting DPW's SID, the Hearing Officer necessarily exercised jurisdiction over GPS's appeal. DPW and CTI briefed the SID issue, appeared at the

March 20 hearing, and accepted the Hearing Officer's authority to act. They cannot now argue that the OPA lacks jurisdiction over the appeal from which the SID review arose. *See, e.g., CARL Corp. v. State*, 946 P.2d 1, 24 (Haw. 1997) (observing that if contracting officials may deny a protest and override the stay based on their own view of the merits, the statutory stay protection becomes meaningless). The same logic applies when the agency achieves the same result by refusing to decide in the first instance.

DPW may contend that the Hearing Officer's review of the SID had an independent jurisdictional basis under 2 GAR Div. 4 § 12115, separate from the appeal itself. Even so, the SID proceedings arose from GPS's protests, were docketed under the same appeal number (OPA-PA-26-001), and required the Hearing Officer to evaluate the merits of DPW's justification for overriding the stay that those protests triggered. DPW cannot invoke the machinery of GPS's appeal when it suits DPW's interests and then deny that machinery exists when the result is unfavorable.

IV. OPA HAS AUTHORITY TO GRANT THE ALTERNATIVE RELIEF OF COMPELLING DPW TO ISSUE WRITTEN PROTEST DECISIONS BY A DATE CERTAIN.

CTI contends that the OPA lacks authority to compel agency action. CTI argues "there is nothing in the Guam procurement law which gives the Public Auditor the ability to grant injunctive relief" and that appeals not meeting § 5425(e) prerequisites are not "properly submitted." CTI Joinder at 4–5. CTI grounds this argument in *SH Enters., Inc. v. Territory of Guam*, 2025 Guam 10, ¶¶ 23, 25, for the proposition that the OPA is a creature of statute whose jurisdiction is strictly construed. But *SH Enterprises*

addressed debarment decisions under § 5426—a different statutory provision with a different structure. The strict-construction principle CTI draws from that case applies equally to § 5425(c)'s mandate that DPW “shall promptly issue a decision in writing.” If OPA’s jurisdiction is strictly construed, so is DPW’s obligation to decide. But GPS’s alternative request is not for merits relief without jurisdiction; it is to direct the agency to perform the ministerial step of issuing the protest decisions that § 5425(c) itself requires.

GPS’s Notice of Appeal cites prior OPA practice recognizing the Public Auditor’s power to compel an agency protest decision to avoid indefinite delay, referencing OPA-PA-15-005, and grounds that authority in OPA’s statutory mandate to promote the integrity of the procurement process. Notice of Appeal at Part IV.C. Ordering DPW to issue decisions by a short deadline is limited, procedural relief that enables the statutory appeal route to function. It neither assumes merits jurisdiction prematurely nor grants substantive injunctive relief; it simply requires the agency to do what the statute already commands—issue written decisions “promptly.”

If this motion is granted, the consequences extend beyond this case. Any procuring agency facing an inconvenient protest could decline to issue a decision, wait for the protester to seek OPA review, and then move to dismiss for lack of a written decision. The automatic stay—the Legislature’s chosen mechanism to protect the integrity of the procurement process during protest—would be unenforceable whenever the agency prefers to proceed without review. That is not and cannot be the law.

CONCLUSION AND REQUEST FOR RELIEF

For these reasons, GPS respectfully requests that the Hearing Officer:

- a) Deny DPW's Motion to Dismiss (and CTI's Joinder);
- b) Alternatively, if OPA elects not to reach the merits until agency decisions issue, order DPW to issue written decisions on GPS's November 19, 2025 and December 12, 2025 protests by a date certain [e.g., within 14 days of the Order], and maintain the automatic stay pending issuance of such decisions and any timely perfected appeal; and
- c) Grant such other and further relief within OPA's authority as is just and proper to preserve the integrity of the procurement process in this matter.

DPW created this problem by refusing to decide GPS's protests. The solution is not to dismiss GPS's appeal. It is to order DPW to do what the statute requires.

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5/15/26 
By: _____

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