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

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Fri, May 22, 2026 at 4:56 PM

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*Hafa Adai Jerrick,*

Please see the attached Reply in Support of Motion to Dismiss for e-filing in the above matter. Kindly confirm if physical copies are preferred and we can deliver Tuesday.

Have a great weekend!

*Thank you,***Danielle****Danielle B. Tenorio-Balbas**

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***Attorneys for the Department of Public Works***

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEAL**

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

APPEAL NO. OPA-PA-26-001  
  
**REPLY IN SUPPORT OF MOTION TO  
DISMISS**  
**(2 GAR Div. 4 § 12104 (c)(9))**

**I. INTRODUCTION**

In its May 15, 2026 Opposition to the Department of Public Works's ("DPW") Motion to Dismiss, Appellant General Pacific Services, LLC ("GPS") relies heavily on arguments concerning alleged agency delay and the practical effects of the statutory protest process on its ability to move forward with its litigation strategy.

GPS does not and cannot dispute the dispositive fact that DPW has not issued a written protest decision under 5 GCA § 5425(c), and that Guam law does not authorize the Office of Public Accountability ("OPA") to exercise appellate jurisdiction in the absence of such a decision. GPS has abandoned its prior theory that Guam law

1 authorizes the OPA to bypass the agency decision requirement in this case. In the  
2 absence of such statutory authority, GPS instead asks the OPA to disregard the  
3 express jurisdictional limitations established by law and proceed to determine the  
4 merits of its protests in the first instance.

5 But rhetoric cannot create jurisdiction where the law provides none. The OPA's  
6 appellate authority is limited to the jurisdiction granted by the Procurement Code and  
7 its enabling statutes. It cannot expand that jurisdiction based on policy concerns or  
8 practical considerations not reflected in the statutory text. This matter is not ripe for  
9 appeal, and should be dismissed.

## 11 II. ARGUMENT

### 12 A. GPS's Policy Arguments Cannot Expand OPA's Statutory Jurisdiction

13 In its "standard of review" section, GPS correctly points out that only one of the  
14 parties is asking the OPA to comply with the structure of Guam law. Opp. at 5.  
15 However, GPS is not that party. Guam law does not supply the jurisdiction GPS urges  
16 the OPA to exercise here. The OPA's authority is created and limited by statute, and it  
17 must apply the jurisdictional framework enacted by the Legislature, not revise it based  
18 on GPS's policy objections to the statutory scheme.<sup>1</sup>

19 The Procurement Code defines the OPA's appellate jurisdiction. Under 5 GCA  
20 § 5425(e), an appeal may be taken to the Public Auditor "within fifteen (15) days *after*  
21 *receipt by the protestant of the notice of decision.*" (emphasis added). Likewise, 1  
22 GCA § 1909(k) authorizes OPA to "hear and decide all *appeals of decisions* that arise  
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24  
25 <sup>1</sup> The Guam Supreme Court has held that the OPA is a "creature[] of legislation," and that its  
authority "is limited to the powers delineated within its enabling statute." *SH Enterprises, Inc. v.*  
*Territory of Guam*, 2025 Guam 10 ¶ 23. The Court has likewise explained that statutory entities  
"may only act within [their] powers as specifically granted by the legislature." *Carlson v. Guam*  
*Tel. Auth.*, 2002 Guam 15 ¶ 9.

1 under 5 GCA § 5425(c).” (emphasis added). Because no written protest decision has  
2 been issued in this matter under § 5425(c), no appealable decision exists over which  
3 the OPA may exercise appellate jurisdiction.

4 GPS’s Notice of Appeal expressly relied on 5 GCA § 5427(f) as the basis for  
5 jurisdiction, arguing that DPW’s alleged delay permitted GPS to “proceed as if an  
6 adverse decision had been received.” Notice of Appeal at 5-6. GPS now concedes  
7 that § 5427(f)’s constructive denial provision does not apply to pre-award protests  
8 under § 5425. Opp. at 7. That concession is dispositive. The sole statutory basis GPS  
9 identified for appellate jurisdiction does not apply here.

10  
11 The OPA has previously held that it lacks jurisdiction over pre-award protests in  
12 the absence of a written agency decision. See *In the Appeal of Pacific Data Systems*,  
13 OPA-PA-15-005 (Order Dismissing Appeal, Apr. 30, 2015). GPS attempts to  
14 distinguish *Pacific Data Systems* by characterizing it as a case involving a “genuinely  
15 premature” appeal filed before the agency had a reasonable opportunity to act. Opp.  
16 at 6. But *Pacific Data Systems* did not apply a discretionary ripeness balancing test or  
17 sliding scale of jurisdiction based on the duration of agency delay.<sup>2</sup> The appeal was  
18 dismissed because no written protest decision existed, and therefore “[the] matter  
19 [was] not properly before the Public Auditor” and the OPA lacked jurisdiction to hear it.  
20 OPA-PA-15-005 at 1. The Public Auditor further noted that the agency protest decision  
21 itself is a required component of the Notice of Appeal, and appeals lacking the  
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<sup>2</sup> GPS seeks to distinguish *Pacific Data Systems* by arguing that the holding was limited to  
circumstances where the agency had not been given a reasonable opportunity to act before  
review was sought. Opp. at 6-7. But in *Pacific Data Systems*, the underlying protest was filed on  
November 24, 2014, and the notice of appeal was not filed until April 7, 2015, more than four  
months later, yet the Public Auditor still dismissed the matter because no written protest decision  
had issued. See *In the Appeal of Pacific Data Systems*, OPA-PA-15-005 (Notice of Appeal, Apr.  
7, 2015).

1 decision being appealed are subject to dismissal. *Id.* The same jurisdictional defect  
2 exists here.

3       Unable to distinguish *Pacific Data Systems*, GPS nonetheless argues that  
4 because § 5425(c) requires DPW to “promptly issue a decision in writing,” OPA must  
5 possess implied authority to supply a remedy whenever GPS believes that obligation  
6 has not been satisfied.<sup>3</sup> But the existence of a statutory obligation does not itself  
7 create appellate jurisdiction where the Legislature declined to provide it. Nor does the  
8 absence of a constructive denial provision in § 5425 authorize OPA to create one  
9 administratively. The Legislature addressed constructive denial expressly in § 5427(f)  
10 and limited that mechanism to post-award contract controversies.  
11

12       GPS incorrectly characterizes the absence of a constructive denial provision in  
13 § 5425 as a statutory “gap” inviting OPA intervention. The Legislature expressly  
14 authorized a constructive denial bypass mechanism in § 5427(f) for post-award  
15 contract controversies while omitting such a mechanism from § 5425 pre-award  
16 protests. These provisions appear within the same statutory procurement scheme and  
17 address closely related forms of procurement disputes.  
18

19       Under the canon *expressio unius est exclusio alterius* (“the expression of one  
20 thing implies the exclusion of another”), the Legislature’s inclusion of a bypass  
21 mechanism in one provision and omission from the other reflects intentional exclusion,  
22 not inadvertence, and must be given meaning. *See People v. Gomia*, 2017 Guam 13 ¶  
23 11. As the Guam Supreme Court explained in *Gomia*, “[i]t is not within the province of  
24 the courts to stretch the law to apply to circumstances clearly not provided for by the  
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<sup>3</sup> GPS’s arguments regarding the practical consequences of dismissal are addressed separately  
below.

1 legislature.” *Id.* at ¶ 13. The same is true here. The OPA may not rewrite the  
2 Procurement Code to supply procedures the Legislature chose not to enact.

3 GPS’s requested result would not merely supplement silence in the statute. It  
4 would effectively negate the express jurisdictional limitations set forth in § 5425(e) and  
5 1 GCA § 1909(k), both of which condition appellate review on the existence of a  
6 written decision under § 5425(c). GPS’s interpretation would render those statutory  
7 requirements superfluous whenever a protestor alleges agency delay. Guam law  
8 disfavors constructions that render statutory language “inoperative or superfluous.”  
9 *People v. Taisacan*, 2023 Guam 19 ¶ 50 (quoting *Corley v. United States*, 556 U.S.  
10 303, 314 (2009)).  
11

12 Because GPS identifies no statute authorizing OPA to exercise appellate  
13 jurisdiction over a pre-award protest absent a written decision under § 5425(c), it  
14 ultimately urges OPA to expand its own jurisdiction in order to accommodate  
15 perceived defects in the statutory protest process. Guam law does not permit that  
16 result. Because no written protest decision has issued here, this appeal is not properly  
17 before the OPA and must be dismissed.

#### 18 **B. GPS’s Protest Rights Are Not Extinguished by Dismissal**

19 GPS curiously argues that dismissal would “nullify” or “extinguish” its protest  
20 rights. *Opp.* at 7-10. This argument relies on the faulty premise that the automatic stay  
21 under § 5425(g) is contingent on the continuation of this unripe appeal. But dismissal  
22 here would not extinguish the underlying protests or the automatic stay those protests  
23 triggered. Under § 5425(g), the stay arises “[i]n the event of a timely protest” and  
24 remains in effect “prior to final resolution of such protest” unless one of the statute’s  
25 enumerated exceptions applies. 5 GCA § 5425(g). Because DPW has not issued a

1 decision on GPS's protests, those protests have not been denied at the agency level,  
2 let alone finally resolved such that the automatic stay would dissolve.<sup>4</sup>

3 Nor would dismissal foreclose future appellate review. When DPW issues a  
4 written decision under § 5425(c), GPS retains the right to file a timely appeal under §  
5 5425(e). GPS's appellate rights therefore remain fully preserved within the framework  
6 established by the Procurement Code.

7 Accordingly, while the statutory limitations on OPA's appellate jurisdiction  
8 foreclose review of GPS's unripe appeal at this time, dismissal would not extinguish  
9 the underlying protests or dissolve the automatic stay triggered by those protests.  
10 GPS's ability to seek appellate review upon issuance of a written decision under §  
11 5425(c) likewise remains fully protected within the framework established by Guam  
12 procurement law.  
13

### 14 **C. SID Review Does Not Confer Jurisdiction Over the Protest Appeal**

15 GPS next argues that DPW accepted the OPA's jurisdiction over GPS's  
16 underlying protest appeal by submitting a substantial interest determination ("SID")  
17 and participating in briefing and hearing on that determination. Opp. at 2, 4, 8-9. That  
18 argument fails. As GPS acknowledges, SID reviews and merits appellate jurisdiction  
19 arise from distinct statutory provisions, are triggered by different language, and serve  
20 different purposes. DPW's compliance with the SID process did not concede OPA  
21 jurisdiction over GPS's unripe appeal.  
22

23 As discussed, the OPA's appellate jurisdiction over an agency denial of a  
24 procurement protest arises under 5 GCA § 5425(e). Section 5425(g)(3), by contrast,  
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<sup>4</sup> The Guam Supreme Court has held that "final resolution" under § 5425(g) may extend beyond the OPA proceedings and continue through judicial review in the Superior Court where a timely appeal is filed. *See Teleguam Holdings, LLC v. Territory of Guam*, 2015 Guam 13 ¶¶ 24-32.

1 governs the OPA's review of SID determinations. It provides that if a protest "is  
2 pending" before the OPA, the Public Auditor's confirmation of the SID is required to lift  
3 the automatic stay. See 5 GCA § 5425(g)(3). This provision notably does not require a  
4 prior adjudication that the OPA possesses appellate jurisdiction over the merits of the  
5 underlying protest appeal before a SID determination is submitted for confirmation.  
6 Instead, the Public Auditor's confirmation is required whenever a protest is "pending"  
7 before the OPA. GPS cannot bootstrap appellate jurisdiction, which is expressly  
8 limited by statute, to the OPA's separate and limited authority to review and confirm a  
9 SID.

10  
11 Under GPS's theory, DPW would have been required to either withhold  
12 submission of the SID determination until after the OPA first resolved the jurisdictional  
13 validity of the underlying protest appeal, or effectively concede appellate jurisdiction by  
14 participating in the SID process. But § 5425(g)(3) imposes no such prerequisite.<sup>5</sup>

15 The SID mechanism exists for a distinct purpose unrelated to, and not  
16 dependent upon, the separate statutory requirements governing OPA's appellate  
17 jurisdiction over procurement protests. It permits expedited consideration of whether  
18 substantial interests of Guam require procurement activity to proceed while a protest  
19 remains unresolved. Indeed, both § 5425(g)(3) and 2 GAR Div. 4 Ch. 12 § 12115  
20 expressly contemplate OPA review of SID determinations even where no protest  
21 appeal is pending before the OPA. Those provisions separately authorize direct  
22 protest of a SID determination to the OPA where "no such protest is pending." 5 GCA  
23

24  
25 <sup>5</sup> The Guam Supreme Court has recognized that "the subject matter jurisdiction of an  
administrative agency ... may not be created through consent or waiver." *Port Auth. of Guam v.*  
*Civil Serv. Comm'n*, 2018 Guam 1 ¶ 18. Because "[t]he question of jurisdiction goes to an  
adjudicative body's very ability and authority to act," questions of subject matter jurisdiction  
should always be considered "when fairly in doubt." *Id.*

1 § 5425(g)(3); 2 GAR 4 Ch. 12 § 12115(a). SID review and appellate jurisdiction over  
2 the underlying protest are therefore distinct statutory processes. Because GPS had  
3 filed a Notice of Appeal, the matter was procedurally pending before the OPA for  
4 purposes of § 5425(g)(3).

5 It is therefore unremarkable that the SID proceedings were docketed under the  
6 same administrative caption. GPS's attempt to imbue jurisdictional significance into  
7 the common caption should be rejected. Administrative captioning and docketing  
8 conventions do not alter the distinct statutory bases governing SID review and  
9 appellate jurisdiction over GPS's protest, nor do they create subject matter jurisdiction  
10 where the governing statute does not confer it.  
11

12 Nor is GPS's claim that DPW failed to raise its jurisdictional concerns during the  
13 SID process correct. In transmitting the SID determination, DPW expressly stated that  
14 the determination was submitted for confirmation "in the event a protest or appeal  
15 regarding this project is deemed pending," and further provided that the submission  
16 was made "without waiving any jurisdictional rights of DPW in any forum." SID  
17 Transmittal Letter at 1. DPW therefore preserved its jurisdictional objections from the  
18 outset of the SID proceedings.

19 Participation in the SID process therefore did not waive, concede, or otherwise  
20 establish appellate jurisdiction over GPS's separate protest appeal.  
21

22 **D. GPS May Not Use a Premature Appeal to Obtain Mandamus-Like Relief**

23 GPS alternatively requests that the OPA compel DPW to issue written protest  
24 decisions by a date certain. Opp. at 9-10. DPW does not dispute that § 5425(c)  
25 imposes a statutory obligation to "promptly" issue written protest decisions where a  
protest is not resolved by agreement. But that obligation does not itself create

1 appellate jurisdiction where the Legislature expressly conditioned OPA review on  
2 “receipt by the protestant of the notice of decision.” 5 GCA § 5425(e).

3 GPS’s requested relief does not fall within the appellate review authorized by §  
4 5425(e). Rather, GPS effectively asks the OPA to compel DPW to perform an alleged  
5 ministerial duty notwithstanding the absence of a ripe protest appeal. Guam law  
6 already provides a mechanism for such relief. Under 7 GCA § 31202, courts may  
7 issue writs compelling performance of acts “which the law specially enjoins, as a duty  
8 resulting from an office, trust, or station.” If GPS believes DPW has unlawfully failed to  
9 perform its statutory duty under § 5425(c), the appropriate remedy is to seek relief  
10 through an original writ proceeding.  
11

12 GPS’s proposed approach would effectively permit protestors to bypass §  
13 5425(e)’s written-decision requirement by filing concededly premature appeals for the  
14 purpose of invoking OPA processes and obtaining relief not otherwise available under  
15 the OPA’s limited appellate jurisdiction. That result would substantially undermine the  
16 Legislature’s decision to condition appellate review on issuance of a written protest  
17 decision before OPA jurisdiction attaches.

18 Nor does *Pacific Data Systems* support GPS’s position. In *Pacific Data*  
19 *Systems*, the Public Auditor expressly dismissed the appeal because no written  
20 protest decision had issued and the matter was therefore “not properly before the  
21 Public Auditor.” *Pacific Data Systems* at 1. Although the Public Auditor subsequently  
22 directed the agency to issue a written protest decision, that directive did not alter the  
23 dismissal itself or create appellate jurisdiction over the unresolved protest.<sup>6</sup> If anything,  
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<sup>6</sup> In *PDS*, the Public Auditor asserted authority to compel issuance of a protest decision under 5 GCA § 5703 and 2 GAR Div. 4 Ch. 12 § 12103(a), reasoning that those provisions authorize the Public Auditor to compel production of documents and “promote the integrity of the procurement process.” *PDS* at 2. But neither provision expressly authorizes the Public Auditor to compel issuance of adjudicative agency decisions after concluding that a protest appeal is not properly before the OPA under § 5425(e).  
*REPLY IN SUPPORT OF MOTION TO DISMISS (2 GAR DIV 4 § 12104 (c)(9))*  
APPEAL NO. OPA-PA-26-001  
Page 9 of 11

1 PDS demonstrates how susceptible the statutory process would become to procedural  
2 manipulation if protestors could use concededly premature appeals as a shortcut to  
3 mandamus-like relief compelling agency action.

4 Most importantly, dismissal of this appeal would not extinguish GPS's protest  
5 rights or eliminate the automatic stay under § 5425(g). As discussed above, GPS's  
6 underlying protests remain pending before DPW unless and until resolved in  
7 accordance with the Procurement Code. GPS therefore retains both the protections  
8 afforded by the statutory stay provisions and the right to seek appellate review upon  
9 issuance of a written protest decision under § 5425(c). The absence of appellate  
10 jurisdiction under § 5425(e) therefore does not leave GPS without a remedy. It simply  
11 requires GPS to pursue relief through the procedural mechanisms authorized by  
12 Guam law.

14 OPA should therefore decline GPS's invitation to expand its limited statutory  
15 appellate jurisdiction in order to provide relief Guam law assigns to other procedural  
16 mechanisms.

17 **III. CONCLUSION**

18 For the foregoing reasons, the Office of Public Accountability lacks jurisdiction  
19 over this matter. The Notice of Procurement Appeal filed by Appellant General Pacific  
20 Services, LLC on January 28, 2026 should be dismissed, and the OPA should decline

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1 to grant relief beyond the limited appellate jurisdiction conferred by 5 GCA § 5425(e).

2 Respectfully submitted this 22nd day of May, 2026.

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5 **OFFICE OF THE ATTORNEY GENERAL**  
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8 By:

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