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TRANSMITTAL

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	Mr. Patrick Lalor, Esq. Office of the Attorney General 134 W. Soledad Avenue, 4 th Floor, Suite 412 Hagåtña, Guam 96910 Phone: (671) 475-2709 Email: plalor@oagguam.org	Pages:	6 (including cover page)
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Re: OPA-PA-26-001 Decision Dismissing Appeal Without Prejudice

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com

I. INTRODUCTION

This is the undersigned hearing officer's decision dismissing Guam Pacific Services LLC's ("GPS") appeal without prejudice for lack of jurisdiction.¹ An examination of the text of the Public Auditor's (*also* referred to hereinbelow as the "Office of Public Accountability's" or "OPA's") enabling law, relevant and applicable Procurement Law and regulations, as well as Guam Supreme Court caselaw, compels dismissal because there has been no decision by the Department of Public Works ("DPW") to be appealed to the OPA and because there is no provision in the relevant statutory or regulatory authorities giving the OPA the extraordinary relief for which GPS prays.

II. RELEVANT BACKGROUND

On Mar. 21, 2025, Purchasing Agency DPW issued Project No. 730-5-1059-L-YIG to solicit proposals for finance, demolish, design, build, leaseback, insure and maintain the new Simon Sanchez High School ("SSHS"). On Nov. 19, 2025, and twice on Dec. 12, 2025, GPS lodged protest letters with DPW.² The basis for GPS' protests were (i) that the Interested Party Core Tech International Corporation's ("CTIC's") bid was non-responsive, (ii) the procurement record was insufficient for the project, (iii) the demolition contract was separate even though demolition was contemplated in the Mar. 2025 solicitation, and (iv) CTIC's proposal amount exceeded the amount found in Title 5 of the Guam Code Annotated (GCA) § 58D108.³ DPW did not issue decisions on any of GPS' protests, and so, on Jan. 28, 2026, it appealed to the OPA.⁴ On Feb. 12, 2026, DPW moved, under Title 2 of the Guam Administrative Rules and Regulations (GARR) Division (Div.) 4 § 12104 (c) (9), to dismiss the matter for lack of

¹ The Public Auditor recused on Feb. 16, 2026 and appointed and designated the undersigned to hear this appeal. Recusal of Public Auditor and Order Appointing and Designating Hearing Officer to Preside over Appeal.

² Notice of Procurement Appeal; Alternative Motion to Compel Agency Decision Exhibits F, I and J.

³ *See, id.*, 6-9.

⁴ *Id.*

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1 jurisdiction.⁵ On May 7, 2026, CTIC joined in DPW's motion.⁶ The parties briefed the issue,
2 and presented their arguments on June 2, 2026. This decision follows.

3
4 **III. LAW**

5 Protests must be submitted within 14 days that an aggrieved person knew or should have
6 known of the facts giving rise to the protest. 5 GCA § 5425 (a); *Guam Imaging Consultants, Inc.*
7 *v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15 ¶ 25; *DFS Guam LP*, 2020 Guam 20 ¶ 77.
8 Aggrieved bidders must raise issues with a solicitation, evaluation, or award through
9 administrative review so as to allow the OPA to fulfill its statutory mandate. *DFS Guam LP v.*
10 *A.B. Won Pat Int'l Airport Auth.*, 2020 Guam 20 ¶ 74. A decision by the Chief Procurement
11 Officer, Director of Public Works, or head of a purchasing agency may be appealed to the OPA
12 within 15 days of receipt of the decision. 5 GCA § 5425 (e); *see also* 1 GCA § 1909 (k).
13

14
15 **IV. DISCUSSION**

16 The OPA's authority is limited to the powers delineated within its enabling statute.
17 *Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 9; *SH Enters., Inc. v. Guam*, 2025 Guam 10 ¶ 23.
18 The boundaries of the OPA's jurisdiction over properly submitted procurement matters are
19 delineated in 5 GCA § 5703. *Id.*; 2025 Guam 10 ¶ 23.

20 Section 5703 does not expressly state that the OPA has power or authority to compel an
21 agency decision. Under subsection 5703 (d), the OPA has authority to compel attendance,
22 testimony, and production of documents from purchasing agencies. In connection with the
23 OPA's Public Auditor duties, where an auditee fails to implement corrective action, fails to
24 explain the reason for such failure, or the OPA disagrees with the auditee's reasons, the OPA
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⁵ Motion to Dismiss; Memorandum of Points and Authorities (2 GAR Div. 4 § 12104 (c) (9)).

⁶ Interested Party Core Tech International Corporation's Joinder in DPW's Motion to Dismiss; Supplemental memorandum of Points and Authorities in Support of DPW's Motion to Dismiss.

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1 may apply for an extraordinary writ at the Superior Court Guam to compel the Governor, the
2 Legislature’s Committee on Rules, or the Chief Justice of the Supreme Court of Guam to
3 implement corrective action. *Id.* § 1913.⁷ And, although the OPA has jurisdiction to review the
4 debarment of a bidder or prospective bidder, it does not have authority to review decisions not to
5 debar. *SH Enters.*, 2025 Guam 10 ¶¶ 22-29. Importantly, the OPA may not even infer power or
6 authority, in the absence of structure or legislative history showing it, where no such power or
7 authority expressly exists in statute. *Id.* ¶¶ 30-37.

9 Plain reading of statutory text is that a § 5425 (c) protest decision from the purchasing
10 agency is a prerequisite to a § 5425 (e) appeal by the protestant, and only when one is issued will
11 there be jurisdiction under § 5703 to decide properly submitted matters in an appeal. In *Town*
12 *House Dep’t Stores, Inc. v. Dep’t of Educ.*, 2012 Guam 25, instead of promptly awarding a
13 contract, the Guam Department of Education (“GDOE”) issued another solicitation for similar
14 services, the appellant appealed the no-decision to the OPA, and the OPA directed the agency to
15 rule on the protest. *Id.*, ¶ 3. The Guam Supreme Court decided that case by finding that the
16 appellant failed to file a proper civil action. *Id.*, ¶ 36. However, no party challenged, at appeal to
17 the Guam Supreme Court, the OPA’s jurisdiction to order the agency to issue a decision in the
18 absence of one, leaving the issue undecided to this point. Such an order would not be on firm
19 ground here given *SH*’s requirement that jurisdiction be grounded on textual support, structure,
20 and legislative history. *See SH Enters.*, 2025 Guam 10 at ¶ 17. More textually supported; even
21 where the OPA had the power to compel an agency to review the propriety of terms and
22 conditions of a solicitation, determine whether a bidder was qualified, and to revise the
23 solicitation to comply with law, *See Data Management Resources v. Office of Public*
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⁷ It is unclear whether or how a court in the Superior Court of Guam, which is subject to supervision by the Supreme Court of Guam, would issue an order compelling action by the Chief Justice.

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1 *Accountability and Guam Department of Education*, 2013 Guam 27 ¶ 49, there was a decision
2 denying the protest. *See id.*, ¶ 8.

3 Statutes governing the OPA's appellate jurisdiction are to be strictly construed. *SH*
4 *Enters.*, 2025 Guam 10, ¶ 23. It is abundantly clear that the properly submitted matter at an
5 appeal to the OPA pursuant to § 5425 (e) is the § 5425 (c) decision by the correct official. There
6 being no decisions by DPW on GPS' three protest letters, no appeal lies to the OPA. The OPA,
7 therefore, has no jurisdiction over this appeal.
8

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10 **V. CONCLUSION**

11 GPS' appeal is DISMISSED WITHOUT PREJUDICE for lack of a decision by DPW on
12 its three protest letters.

13 Each party shall bear its own attorneys' fees and costs.

14 This is a Final Administrative Decision. The Parties are hereby informed of their right to
15 appeal the Hearing Officer's Decision to the Superior Court of Guam in accordance with Part D
16 of Article 9 of 5 GCA §5481 (a) within fourteen (14) days after receipt of a Final Administrative
17 Decision. A copy of this Decision shall be provided to the Parties and their respective attorneys,
18 in accordance with 5 GCA §5702, and shall be made available for review on the OPA website at
19 www.opaguam.org.
20

21
22 **SO DECIDED** this 17th day of June 2026 by:

23
24 /s/

25 _____
26 **JOSEPH B. MCDONALD**
27 **Hearing Officer**
28



Jerrick Hernandez <jhernandez@guamopa.com>

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Jerrick Hernandez <jhernandez@guamopa.com>

Wed, Jun 17, 2026 at 2:10 PM

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Hafa Adai,

Please see attached Decision Dismissing Appeal Without Prejudice for OPA-PA-26-001. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you

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Best Regards,



Jerrick J.J.G. Hernandez, MA, CIA, CGFM, CFE, CICA, CGAP
Accountability Auditor

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