



**Filed**

Supreme Court of Guam, Clerk of Court

**SUPREME COURT CASE NO. CVA25-016  
SUPERIOR COURT CASE NO. CV0290-25**

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**IN THE SUPREME COURT OF GUAM**

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**LOURDES A. LEON GUERRERO, I MAGA'HAGAN  
GUAHAN, GOVERNOR OF GUAM, In her Official Capacity,  
Plaintiff – Appellee,**

**vs.**

**DOUGLAS B. MOYLAN, ATTORNEY GENERAL OF GUAM,  
In his official Capacity,  
and the OFFICE OF THE ATTORNEY GENERAL OF GUAM,**

**Defendants – Appellants.**

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**On Appeal from the Superior Court of Guam  
Superior Court Case No. CV0290-25  
Hon. Elyze M. Iriarte**

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**DEFENDANTS – APPELLANTS' REPLY BRIEF**

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**DOUGLAS B. MOYLAN  
ATTORNEY GENERAL OF GUAM**

**WILLIAM LYLE STAMPS  
Assistant Attorney General  
Office of the Attorney General  
Civil Division  
134 W. Soledad Ave., Suite 302  
Hagåtña, Guam 96910, USA  
(671) 475-3324**

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## **Table of Contents**

<b>Table of Authorities .....</b>	<b>ii</b>
<b>Reply Argument .....</b>	<b>1</b>
1. ORAC is an Agent of the Guam Legislature Created to Receive & to Appropriate Settlement Funds, then Dissolve. ....	1
2. The TPH Contract was Procured by the ORAC, through its Agent, the AG .....	3
3. The TPH Contract does Not Require the Governor's Signature .....	5
4. Guam's Procurement Law was Substantially Followed and the TPH Contract Ratified Pursuant to the GPL .....	7
<b>Conclusion.....</b>	<b>11</b>
<b>Certificate of Compliance.....</b>	<b>13</b>
<b>Certificate of Service.....</b>	<b>14</b>

## Table of Authorities

### Cases

<i>Cristobal v. Siegel</i> , 2018 Guam 29 .....	8
<i>Hobbs v. McLean</i> , 117 U.S. 567, 576, 6 S.Ct. 870, 29 L.Ed. 940 (1886) .....	4
<i>Mandel Bros., Inc. v. FTC</i> , 254 F.2d 18, 22 (7th Cir. 1958) .....	3
<i>Mandel Bros., Inc. v. FTC</i> , 359 U.S. 385, 79 S.Ct. 818, 3 L.Ed.2d 893 (1959) .....	3
<i>Mobil Oil Guam, Inc. v. Tendido</i> , 2004 Guam 7 .....	10
<i>Office of Personnel Management v. Richmond</i> , 496 U.S. 414, 110 S.Ct. 2465, 110 L.Ed.2d 387 (1990) .....	3
<i>Pac. Rock Corp. v. Dep't of Educ.</i> , 2001 Guam 21 .....	6
<i>Pangelinan v. Gutierrez</i> , 2004 Guam 16 (Guam Sept. 9, 2004) .....	8
<i>Shimizu v. Gov't of Guam</i> , 1982 WL 30772, at *2 (D. Guam App. Div. July 2, 1982) .....	5
<i>Sumitomo Const., Co. v. Gov't of Guam</i> , 2001 Guam 23, (Guam Nov. 7, 2001) .....	3

### Statutes

5 GCA § 5121 .....	4, 6
5 GCA § 5451 .....	11
5 GCA § 5452 .....	11
18 GCA § 85102 .....	10
5 GCA § 221701 .....	1
5 GCA § 221702 .....	2, 4, 10
5 GCA § 221702(a) .....	2
5 GCA § 221702(e) .....	10
5 GCA § 221704(b) .....	1, 10
5 GCA § 221704(b)(1) .....	10
5 GCA § 22601 .....	1, 2, 4
5 GCA § 30118.1(a) .....	10

5 GCA §§ 30109(i), (j) and (l) .....	10
Guam Public Law No. 31-153:1 .....	4
<b>Other Authorities</b>	
5 Am.Jur.2d <i>Appeal and Error</i> §§ 548–49 (1962) .....	8
<b>Rules</b>	
GRAP 7(b)(3).....	8

## **Reply Argument**

### **1. ORAC is an Agent of the Guam Legislature Created to Receive & to Appropriate Settlement Funds, then Dissolve.**

The lower court erred in not appreciating the unique nature of the Opioid Recovery Advisory Council (“ORAC”). The Governor fails to appreciate in its opening brief the independent and separate non-executive type function of ORAC. The Governor’s argument that the ORAC has no power to spend the funds allocated to it by legislative appropriation is meritless. Appellee’s Br. at 19-21, fn. 7.

ORAC is an agent of the Guam Legislature performing a legislative function receiving and appropriating settlement funds. It is comprised of members of all 3 branches of government, and created for a limited appropriation function and limited duration.

*See* 5 GCA § 221704(b) (two members appointed by the Guam Legislature; two appointed by governor; two members of the Governor’s cabinet, the Administrator of the Courts, etc.). One need not go further in legal analysis, including interpreting either 5 GCA § 22601 or the Guam Procurement Law (“GPL”) given ORAC’s unique legislative function. ORAC will cease to exist and expire upon depletion of the Opioid Settlement funds that are to be awarded to this jurisdiction. 5 GCA § 221701, et. al. ORAC was given the power to “use” the

funds allocated to, and contrary to the Governor's argument, the ORAC funds are administered by the Attorney General, not the Department of Administration. The Attorney General was expressly appointed to "administer the Fund," and act on its behalf. 5 GCA § 221701(e).

While the Attorney General agrees with the Governor that the GPL applies to the use of ORAC funds, they are not subject in the manner suggested by the Governor. For example, the Guam Legislature expressly established that ORAC funds must comply with the terms of any settlement agreement from which the funds originated, but did not include they were subject to the CAA and the need for the Governor's signature. In fact, the legislature expressly excluded the precluded the Governor from interfering with ORAC's operations. 5 GCA §221702 (funds held "separate and apart" from the General Fund; "Not be subject to further appropriation,"; "not be subject to any transfer authority of the Governor").

Where the Guam Legislature expressly created an independent Trustee to administer the trust fund, ORAC maintains a fiduciary duty over the funds, which are held in trust. 5 GCA § 221702 (Opioid Recovery Trust Fund) and 5 GCA § 221702(a) (*Fund shall not be subject to the transfer by the Governor*). As a trustee, ORAC maintains a duty not to allow anyone but its members decide how the Opioid Funds are to be spent, thereby taking it outside the Governor's purview under 5 GCA § 22601. Any other finding would create an absurd result,

frustrating the express intent and plain language of the ORAC statute. *See Sumitomo Const., Co. v. Gov't of Guam*, 2001 Guam 23, ¶ 17 (Guam Nov. 7, 2001) (courts avoid absurd results when interpreting legislative intent).

## **2. The TPH Contract was Procured by the ORAC, through its Agent, the AG**

The Governor argues that The Palm Hotel (“TPH”) Contract is void and the injunction proper because the AG’s Office and not the ORAC procured the contract. Response Br. at 17-20. The Governor’s argument is legally and factually incorrect. As a matter of law, a government agency, such as ORAC, just like a corporation, must (and can only) act through its authorized agents. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 110 S.Ct. 2465, 110 L.Ed.2d 387 (1990) (government acts, and is bound, through executives, officials or other authorized agents); *Mandel Bros., Inc. v. FTC*, 254 F.2d 18, 22 (7th Cir. 1958), *rev'd on other grounds*, 359 U.S. 385, 79 S.Ct. 818, 3 L.Ed.2d 893 (1959) (elementary rule of law that a corporation “can act only through its agents.”).

In this case, as the Governor admits, ORAC’s August 29, 2024 authorizing resolution directed the AG act as its agent for “the implementation and execution of program design elements of the Dignity Project.” Response Br. at 6. The Attorney General did just that, acted as the ORAC’s agent in procuring the TPH contract. Accordingly, whether the contract designates it is between the AG’s

Office, or the ORAC and TPH is not material, because the AG acted on behalf of the ORAC as authorized. Once the TPH contract is properly seen as the actions of ORAC, which was properly and expressly authorized to act as it has by the Guam Legislature, and the Attorney General properly and expressly authorized to act on behalf of ORAC by the Guam Legislature, then no further analysis is necessary, and the TPH Contract should be upheld. *See* Appellant's Br. at 13-17. *See also Hobbs v. McLean*, 117 U.S. 567, 576 (1886) ("[W]here a contract is fairly open to two constructions, by one of which it would be lawful and the other unlawful, the former must be adopted.").

The Attorney General is "*head of a purchasing agency*," namely the Attorney General's Office, pursuant to 5 GCA § 5121(c) (*head of purchasing agency*), 5 GCA §§ 30109(i), (j) and (l) (*AG approving authority for funds for AG's Office, and programs*), 5 GCA § 30118.1(a) (*AG's Office in charge of its own operational matters*), and Guam Public Law No. 31-153:1. The Guam Legislature also designated the Attorney General as the chairperson of the ORAC and to "administer" the Fund. 5 GCA § 221702(e). When administering the Fund on behalf of the ORAC, the Attorney General is thus also acting as the "head," or "chairperson," of ORAC as a purchasing agency. 5 GCA 221704(b)(1). The Opioid Council's Dignity Project contract as a procurement contract is *not* subject to the requirements of 5 GCA § 22601.



### 3. The TPH Contract does Not Require the Governor's Signature

“All” contracts have not required the Governor’s signature, at least since 1982. ER 1055-1583 at 1056, (¶ 4, Nishihira Decl.) (“I testified that such was not the case that the Governor signs contracts arising from Guam’s Procurement Law.”). The Governor wholly fails to mention, let alone address, the binding precedent of *Shimizu* set forth in Appellant’s brief, where it has already been determined that the Governor’s signature is not required on “all” contracts. See Appellant’s Br. at 18; 26-27. *Shimizu v. Gov’t of Guam*, 1982 WL 30772, at \*2 (D. Guam App. Div. July 2, 1982) (“The [GPL] was promulgated to address specifically problems such as this [procurement contracts], and there is no need to look beyond it.”).<sup>1</sup> In *Shimizu*, the issue was whether a settlement agreement, as a government contract, had to be approved by the Governor, pursuant to the “contract statute,” before it became enforceable, or whether the “specific provisions of the Claims Act,” controlled. The *Shimizu* Court correctly upheld the Superior Court, which ruled that “the more specific and more recent section

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<sup>1</sup> While *Shimizu* is not binding upon the Supreme Court of Guam, it was binding upon the Superior Court that issued the erroneous opinion on appeal. While this court clearly has the power and authority to overrule *Shimizu* and reach a contrary holding, such would have a deleterious impact on the rule of law and empower the trial courts in Guam to disregard any decision from the Appellate Division, which this court has expressly ruled are binding upon the Superior Courts. *People v. Quenga*, 1997 Guam 6, fn. 4 (Guam May 18, 1997) (“decisions of the Appellate Division” are “precedent that is binding upon the trial courts of Guam.”). The Attorney General respectfully submits that this case is not the appropriate vehicle to reconsider *Quenga*.

6500.17 was controlling rather than the older and more general section 6107.” *Shimizu*, 1982 WL 30771 at \*1. See also *Pac. Rock Corp. v. Dep't of Educ.*, 2001 Guam 21 ¶ 36 n.6 (GPL is a “comprehensive remedial scheme”); *Teleguam Holdings II*, 2018 Guam 5 ¶ 12 (“[P]rocurement law is a unique statutory scheme.”).

Having failed to distinguish binding precedent, and rather than accept the current practice of Government of Guam agencies since 1982 and accept the plain language of 5 GCA § 22601 and § 5121 of the Guam Procurement Law (“GPL”) which are clearly in conflict with each other under the Governor’s interpretation, the Governor argues instead that the AG’s statutory construction is “incomplete and disjointed.” Appellee’s Br. at 21-26. The Governor then proceeds to provide an “incomplete and disjointed” statutory construction by arguing that 5 GCA §§ 22601 and 5121 are both statutes *in pari materia*, but then also arguing that they “govern different subject matters” because 5 GCA § 22601 is only about contract execution while § 5121 is about “how” agencies contract. *Id.* at 24. However, the Governor’s Brief clearly highlights that they are both contract statutes, as “Section 5121(c), by contrast, addresses contract execution within the procurement framework” while also admitting that “Section 22601 governs how CAA-governed agencies execute contracts.” *Id.* The Governor’s argument must fail because as their own brief admits, the two statutes both govern contract execution, and the

earlier general contract statute cannot demand the Governor's signature while the latter specific statute does not, and unless the statute are reconciled as indicated by the Compiler's note, which while not law does expressly demonstrate not just the legislative history, but the actual practice of government agencies since the passage of the GPL. The Governor also wholly fails to address the dangerous legal interpretation that requiring the Governor's signature would have upon the thousands of procurement contracts that to date lacked this and past Governors signatures, effectively making them ineffective and unenforceable.

#### **4. Guam's Procurement Law was Substantially Followed and the TPH Contract Ratified Pursuant to the GPL**

The Governor claims that the AG's Office did not comply with the procedural or substantive requirements for sole source procurement, yet ignores that detailed factual record regarding the efforts engaged in by the AG's Office on behalf of ORAC in securing the TPH Contract. Appellee's Brief at 26-41.

As an initial matter, the Governor purports to file a "motion to strike," yet only includes the "motion" in its brief without filing a separate motion. Setting this aside, the Governor seeks to win the appeal by its inaction and by ignoring the express command of the Court's July 14, 2025 Order. While the Court determined that it would follow the Attorney General's request for a privately prepared transcript, in order to expedite the appeal, the Order also required the Governor, if

she “considers it necessary to have a transcript or other parts of the proceedings, she shall have the opportunity to either order such transcripts,” after the filing of the Attorney General’s statement of issues under GRAP 7(b)(3). *See* July 14, 2025 Order. After the Attorney General filed a statement of issues, which expressly raised the alleged factual “deficiencies in the procurement process,” the Governor then chose not to order the transcripts. Where neither party ordered transcripts, it would be inequitable to dismiss the substance of the appeal, as set forth in the statement of issues required by the July 14 Order, or preclude meaningful review of the Superior Court’s Order on the basis of there being no submitted transcript. *Cristobal v. Siegel*, 2018 Guam 29 ¶ 11 (“a party who prevents the fulfillment of a condition may not take advantage of this act, therefore excusing the condition.”).

Similarly, the Governor’s brief brazenly tip-toes around its duty of candor to this Court regarding the failure of her administration to implement a Procurement Advisory Council (“GPAC”) as required by statute, (“the Governor allegedly failed to convene”) to declare the issue waived. Such an argument also ignores that “[q]uestions necessarily involved in issues raised and litigated in the trial court are open for consideration on appeal or review, even though they were not specifically raised below.” *Id.* (quoting 5 Am.Jur.2d *Appeal and Error* §§ 548–49 (1962)). This is especially the case “where the matter in question affects the public interest.” *Id.*” *Pangelinan v. Gutierrez*, 2004 Guam 16 (Guam Sept. 9, 2004) (overruled on

other grounds). The Attorney General respectfully submits that duly authorized ORAC expenditures to address Guam's opioid epidemic sufficiently affect the public interest to defeat any waiver argument. Accordingly, the Attorney General respectfully requests that the Governor's "motion" be denied in its entirety.

The Governor's brief correctly states that sole source procurements are only available in limited circumstances. The facts cited by the Governor's brief highlight that these limited circumstances were met, undercutting the Governor's argument completely. Appellee's Brief at 6. First, the RFP process only had one respondent, who refused to meet the "one night," requirement. ER Vol. 9 at 2528. Second, despite a bid extension, no bids were then submitted when the GSA issued IFB No. GSA-014-25. *Id.* Having determined that competition was not feasible, and the failed RFP and IFB process serving as *de facto* documentation for a sole source procurement, the Attorney General's Office contacted three potential vendors, only one of which was interested, and which resulted in the TPH Contract. Contrary to the Governor's argument, the "record shows that the AG's Office" substantially or fully complied with these requirements.

Upon learning of the alleged deficiencies, the Attorney General properly ratified the TPH Contract pursuant to the Legislature's Guam Procurement Law provisions. *See* App. Br. at 41-44; ER 1807-1809, Procurement Ratification and Affirmation. The Attorney General is the "head of the purchasing agency,"

whether that is (i) the Attorney General's Office or (ii) the ORAC. 5 GCA §§ 30109(i), (j) and (l) (the Attorney General is the *approving authority for funds for AG's Office, and programs* and 5 GCA § 30118.1(a). The Attorney General is also the Chairperson of ORAC, and the Guam Legislature expressly designated the Attorney General to "administer" the Trust Funds, not the Governor (and not subject to Governor's transfer authority). 5 GCA § 221702(e). When administering the Fund on behalf of ORAC, the Attorney General is thus also acting as the "head," or "chairperson," of ORAC as a purchasing agency and as the head of the Attorney General's Office. 5 GCA § 221704(b)(1). *See also* App. Br. at § II(c) and III(b). Any other finding would frustrate the express intent and plain language of the ORAC statute, and frustrate legislative intent.

This procedure was proper as set forth in the Appellant's brief. First, as a matter of law, the TPH Contract was not "pre-award," but was already awarded. A contract is enforceable after offer and acceptance. Under Guam law, a valid contract requires "an offer, acceptance, and consideration." *Mobil Oil Guam, Inc. v. Tendido*, 2004 Guam 7 ¶ 34 (citing 18 GCA § 85102). The only basis to call the TPH Contract as "pre-award," are the alleged "deficiencies," such as the Governor's signature. As the Governor's signature was not required, the parties to the contract, namely the ORAC (through the Attorney General) and the TPH, both signed the TPH Contract. The contract became enforceable upon the AG's

signature. Where the Superior Court opinion that the contract had not been awarded relied upon the finding that the Attorney General was not the head of a purchasing agency and required the Governor's signature, then the decision to use 5 GCA § 5451 instead of § 5452 was in error.

## **Conclusion**

This appeal occurred because Appellee sought to stop a Trustee's decision (ORAC) on spending opioid trust funds. That decision was *legislative* in nature to decide how funds should be appropriated and spent, not *executive*. In asserting § 22601 gives Appellee the right to stop all procurements, Appellee failed to recognize the unique nature the Guam Legislature created in ORAC, which is a trustee over a trust fund, much alike to that of the Chamorro Land Trust Commission. Both trust funds have their boards deciding how to spend their money and fulfill their fiduciary mandates, and the Governor's only role is selecting their members, as was the case herein. Neither the Governor's signature, nor Governor's discretion is allowed for ORAC's actions in receiving and deciding how to spend opioid settlement funds due Guam.

Secondarily, Appellee opened a virtual *Pandora's Box* by arguing in essence that no procurement contract is enforceable that does not have Appellee Governor's signature. Appellee cannot argue that of all the contracts Appellee has

not signed, that those are enforceable, and this one cannot be because it does not have Appellee's signature. The argument is legally untenable. It's an "*all or nothing*" legal interpretation. In fact, most contracts, including purchase orders, for the past 40 years, since the Guam Procurement Law was enacted in 1984, have not had the Governors signatures on them. They did not have them affixed because the Guam Procurement Law did not require the signatures to make them enforceable.

Finally, the Guam Legislature provided for a clear procedure to save important contracts that benefit our government and People. The Tropical Guam Hotel contract was properly ratified and is now enforceable without Appellee's signature. Accordingly, the preliminary injunction should properly be vacated.

**Respectfully submitted** this 9<sup>th</sup> day of December, 2025.

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

*W. Lyle Stamps*  
\_\_\_\_\_  
**WILLIAM LYLE STAMPS**  
**Assistant Attorney General**



## **Certificate of Compliance**

This brief complies with the type-volume limitation of Rule 16(a)(7)(B) because this brief contains 2706 words, excluding the parts of the brief otherwise exempted from Rule 16(a)(7)(B)(iii).

**Respectfully submitted** this 9th day of December, 2025.

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

*W. Lyle Stamps*

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**WILLIAM LYLE STAMPS**  
**Assistant Attorney General**

## **Certificate of Service**

I hereby certify that on this date I caused to be electronically filed the foregoing document with the Supreme Court of Guam by using the Judiciary of Guam's electronic filing system and that the following parties through their counsel of record were thereby served through the Judiciary of Guam's electronic system:

Leslie Travis, Esq.  
*Leslie.travis@guam.gov*  
Jeffrey A. Moots, Esq.  
*Jeffrey.moots@guam.gov*  
Office of the Governor of Guam  
Ricardo J. Bordallo Governor's Complex  
Adelup, Guam 96910  
Post Office Box 2950  
Hagåtña, Guam 96932  
Attorneys for Plaintiff-Appellee

I declare under penalty of perjury that the foregoing is true and correct.

**Respectfully submitted** this 9th day of December, 2025.

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

*W. Lyle Stamps*  
\_\_\_\_\_  
**WILLIAM LYLE STAMPS**  
**Assistant Attorney General**