NO. CVA25-016

IN THE SUPREME COURT OF GUAM

LOURDES A. LEON GUERRERO, *I MAGA'HÅGAN GUÅHAN*, 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,

Defendant-Appellant

Appeal from Superior Court of Guam
Case No. CV0290-25

RESPONSE BRIEF OF APPELLEE LOURDES A. LEON GUERRERO, *I MAGA'HÅGAN GUÅHAN,* GOVERNOR OF GUAM

LESLIE A. TRAVIS
JEFFREY A. MOOTS
OFFICE OF THE GOVERNOR OF GUAM
Ricardo J. Bordallo Governor's Complex
Adelup, Guam 96910
P.O. Box 2950, Hagåtña, Guam 96932
Office: (671) 473-1117 | Fax: (671) 477-4826

Attorneys for Appellee

CERTIFICATE AS TO INTERESTED PARTIES

Pursuant to Rule 13(j) of the Guam Rules of Appellate Procedure, the undersigned counsel of record for Appellee, Lourdes A. Leon Guerrero, *I Maga'hågan Guåhan*, Governor of Guam, certifies that there are no known interested parties other than the parties and attorneys participating in the case.

Counsel also certifies that the Honorable Elyze M. Iriarte presided over the Superior Court of Guam case from which Appellant appeals, Case No. CV0290-25. No Justice of this Court participated in the case.

Respectfully submitted this 10th day of November, 2025.

OFFICE OF THE GOVERNOR OF GUAM
Office of Legal Counsel
Attorneys for Appellee
Governor Lourdes A. Leon Guerrero

By: /s/ *Leslie A. Travis*
LESLIE A. TRAVIS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

This appeal arises from the Attorney General's attempt to perform a contract worth over One Million dollars ($1,000,000.00) without procuring or executing it in compliance with Guam law.

The Superior Court properly enjoined performance of the April 15, 2025 contract ("TPH Contract") between the Office of the Attorney General ("OAG") and the Tropical Palm Hotel ("TPH") because the OAG lacked statutory authority to procure the non-professional services provided therein, failed to comply with mandatory requirements for sole source procurement of the contract, and executed the contract without Governor Leon Guerrero's approval, as required by 5 GCA § 22601. ER Vol. 9 at 2537–47 (Dec. & Order). The court further held that the OAG could not ratify a contract it lacked authority to award, and that ratification was not an available remedy because the contract was never validly "awarded" in the first place. *Id.* at 2548-49.

On appeal, instead of seeking to enforce the law, the Attorney General advances several theories—many raised for the first time—that would allow him to circumvent the law. These arguments have no merit. The Attorney General is not above the law.

The injunction entered by the Superior Court properly preserves the status quo and prevents an unlawful procurement from taking effect while the court resolves the legal questions at issue. Because the Superior Court applied the appropriate statutory framework, correctly concluded that Appellants violated Guam law requiring the Governor's approval on their contracts, and properly enjoined performance of the contract pending review, its order should be affirmed.

II. STATEMENT OF JURISDICTION

On June 9, 2025, the Superior Court issued its Decision and Order Granting Preliminary Injunction and Denying Motions to Dismiss; Preliminary Injunction. ER Vol. 9 at 2524 (Dec. & Order). The Attorney General filed his Notice of Appeal on June 17, 2025, within thirty (30) days of the entry of the Preliminary Injunction. ER Vol. 9 at 2552 (Notice of Appeal).

The Superior Court of Guam had jurisdiction under 7 GCA §§ 4101(a) and 4104, which confer original jurisdiction over all civil actions, including those seeking declaratory and injunctive relief involving questions of statutory authority among executive officers of the Government of Guam.

This Court has appellate jurisdiction over this matter pursuant to 48 U.S.C. § 1424-1(a)(2) and 7 GCA §§ 3107, 3108, and 25102(f). Under § 25102(f), an appeal may be taken from "[a]n order granting, dissolving, or refusing to grant or

dissolve an injunction." Because the order appealed from granted a preliminary injunction, this appeal is properly before the Court.

III. STATEMENT OF ISSUES

1. Whether the Superior Court abused its discretion in granting a preliminary injunction enjoining performance of the April 15, 2025 Agreement between the Office of the Attorney General and the Tropical Palm Hotel, where (a) the Office of the Attorney General lacked authority to execute the contract without the Governor's approval under 5 GCA § 22601; (b) procurement of the contract violated Guam procurement law and regulations; and (c) the Attorney General's attempted ratification could not cure those statutory defects.

IV. STATEMENT OF THE CASE

The underlying litigation arises out of Appellants' unlawful procurement and execution of the TPH Contract. On April 25, 2025, Governor Leon Guerrero initiated a special proceeding before the Superior Court through a Complaint for Declaratory and Injunctive Relief, seeking to enjoin performance of the contract, including payments contemplated therein. ER Vol. 1 at 1 (Compl.).

On June 9, 2025, the Superior Court issued its Decision and Order Granting Preliminary Injunction and Denying Motions to Dismiss, and entered a Preliminary Injunction. ER Vol. 9 at 2524 (Dec. & Order).

This appeal followed.

V. STATEMENT OF FACTS

Guam Public Law No. 36-064 established the Opioid Recovery Advisory Council ("ORAC") to provide for the use of dedicated revenue for the treatment and prevention of opioid use disorders and co-occurring disorders. 5 GCA § 221704, *et seq*. The ORAC consists of eleven (11) members, including the Attorney General, as the non-voting chairperson; two private individuals appointed by the Governor subject to enumerated qualifications; and one member each from the Guam Behavioral Health and Wellness Center ("GBHWC"), the Department of Public Health and Social Services ("DPHSS"), and the Guam Memorial Hospital Authority ("GMHA").[1] 5 GCA § 221704.

The ORAC determines the use of funds within the Opioid Recovery Trust Fund (the "Fund"), a continuing fund containing proceeds received on behalf of Guam from any judgment or settlement relating to manufacture, marketing,

[1] In their Opening Brief, Appellants assert that the ORAC "is made up of no fewer than five (5) agents of [Governor Leon Guerrero] (of 9 voting members)." Opening Br. at 4. Governor Leon Guerrero denies that any of the ORAC members are her "agents" for any purpose related to this matter. In its Decision and Order, the Superior Court denied Appellants' motion to dismiss the matter below based on arguments that Governor Leon Guerrero waived her right to object to procurement of the TPH Contract because five (5) members of the ORAC were appointed by the Governor or part of her Administration. ER Vol. 9 at 2536-7 (Dec. & Order). The Superior Court found that neither the relevant statutes nor the Governor herself delegated her contract-approval authority to any ORAC appointees. Appellants did not appeal this aspect of the Superior Court's decision, and the Court should reject any attempt by Appellants to belatedly seek review of the issue in this Appeal.

distribution, promotion, or dispensing of opioids, whether received by verdict or settlement. 5 GCA § 221702(b).[2] Guam law provides that the Office of the Attorney General ("OAG"), in consultation with the ORAC, shall administer the Fund, and that monies therein shall be expended to mitigate the impacts of the opioid epidemic on Guam, including, but not limited to, expanding access to prevention, intervention, treatment, and recovery services for opioid use disorder. 5 GCA §§ 221702(e) and 221703.

On August 28, 2024, AG Moylan presented the concept for the Dignity Project to the ORAC, along with a project prospectus stating that the project would "provide a safe space for an evening so a person can receive a meal, place to shower and sleep, and a morning refreshment," along with access to emergency assistance, job placement support, the assignment of a case and social worker, peer support specialists, transportation services, a hotline, and security services. ER Vol. 9 at 2527 (Dec. & Order).

The ORAC voted to approve the Dignity Project, and adopted a resolution on August 29, 2024, memorializing its decision. *Id.* The resolution stated that "the

[2] In their Opening Brief, Appellants suggest that the Legislature may have delegated power to the ORAC to "appropriate" monies from the Fund. *See* Opening Br. at 1, 3, and 13. However, nothing in the law establishes that the Legislature has (or that it even can) delegate its power over legislative appropriations. It is more accurate to say that ORAC is authorized to "determine the allocation or expenditures of the Fund." 5 GCA § 221704(a).

Council majority voted to approve an award of $1,497,997.22 to the AG's Office for the implementation and execution of program design elements of the Dignity Project subject to review of the Request for Proposal ("RFP") by GBHWC, DPHSS, and any willing committee member."[3] *Id.* The resolution made no reference to pursuing a procurement through an Invitation for Bids ("IFB") or a sole source procurement. *Id.*

On September 13, 2024, the OAG issued RFP No. 005-2024, which was ultimately canceled on November 26, 2024. ER Vol. 9 at 2528 (Dec. & Order). One vendor, WestCare, attempted to negotiate the terms of the RFP but was unable to meet the program's "one night" requirement. *Id.* After encountering difficulties with the RFP, the OAG removed the professional services component from the procurement and proceeded to procure a vendor to manage hotel and meal aspects of the Dignity Project through an Invitation for Bids. *Id.*

On February 7, 2025, the OAG, through the General Services Agency ("GSA"), issued IFB No. GSA-014-25, soliciting hotel lodging and

[3] In their Opening Brief, Appellants claim that ORAC "required two of [Governor Leon Guerrero's] own cabinet members overseeing the AG's selection of the vendor to provide social services." Opening Br. at 5. The record does not support this claim. Rather, as discussed, the August 29th resolution provides that approval of the ORAC award for the Dignity Project was subject to review of the RFP by GBHWC, DPHSS, and any willing committee member. ER Vol. 9 at 2527 (Dec. & Order). Nothing in the record ORAC members oversaw the OAG's selection of vendors.

accommodations.[4] *Id.* No bids were submitted, and the IFB was extended for a period of two (2) weeks. *Id.* When no bids were received after the extension, the IFB was canceled on March 14, 2025. *Id.*

After encountering difficulties with the IFB process, the OAG proceeded to procure the non-professional services through a "sole source procurement." *Id.* The OAG contacted at least three potential vendors about providing hotel lodging and accommodations for the Dignity Project. *Id.* TPH expressed interest in providing the services after being contacted by the OAG. *Id.*

On April 15, 2025, the OAG and TPH signed the TPH Contract, under which TPH agreed to provide guest room accommodations, common facilities, meals, and security services for the Dignity Project in an amount not to exceed $1,131,500. *Id.* The TPH Contract was signed by AG Moylan, Chief Deputy Attorney General Joseph A. Guthrie as the OAG Certifying Officer, and Deepak Dwan, general manager of TPH. *Id*.

On or about April 15, 2025, the OAG delivered a copy of the TPH Contract to the Department of Administration ("DOA") for registration. ER Vol. 9 at 2529

[4] In their Opening Brief, Appellants assert that, following cancellation of the RFP, the OAG issued an Invitation for Bids "with the same RFP services to Guam's homeless and poor." Opening Br. at 6. The record does not support this claim. As discussed, and as the Superior Court held, "[a]fter the difficulties with the RFP, the OAG decided to remove the professional services from the procurement" and "would procure a vendor to manage the hotel and meal aspects of the Dignity Project through an IFB." ER Vol. 9 at 2528 (Dec. & Order).

(Dec. & Order). On or about April 17, 2025, the DOA declined to register the TPH Contract because it was not signed by Governor Leon Guerrero as required by 5 GCA § 22601, which provides that "[a]ll contracts shall, after approval of the Attorney General, be submitted to the Governor for [her] signature. All contracts of whatever nature shall be executed upon the approval of the Governor." *Id.*

On April 23, 2025, a letter purportedly signed by Assistant Attorney General Ramiro Orozco was sent to DOA General Accounting Supervisor John Camacho, titled "Notice of Violation of Law; Registering Dignity Project Contract; Request to Immediately Cure." ER Vol. 9 at 2529-30 (Dec. & Order). The letter stated that if Camacho did not "immediately accept [the TPH Contract] for processing/registering by 12:00 p.m. tomorrow, April 24, 2025," he would be charged with "official misconduct (4 GCA § 49.90), obstructing government function (9 GCA § 55.45), as well as possibly other crimes." *Id.* at 2530. The letter further stated that the OAG intended to "also seek personal monetary damages against [Camacho] for the damages that the Council faces pursuant to the before cited criminal statutes." *Id.* Following receipt of the letter, on April 23, 2025, Camacho registered the TPH Contract. *Id.*

On April 25, 2025, Governor Leon Guerrero sued AG Moylan and the OAG, seeking injunctive relief to enjoin performance of the TPH Contract on

grounds that it violated Guam procurement law and the fiscal policies and controls section of Title 5, Guam Code Annotated. ER Vol. 9 at 2529-30 (Dec. & Order).

During the evidentiary hearing on Governor Leon Guerrero's Motion for Preliminary Injunction, OAG General Accounting Supervisor Thomas Paulino testified that he oversaw the sole source procurement of the TPH Contract. ER Vol. 9 at 2530 (Dec. & Order). Paulino admitted that he did not include in the procurement record a report "signed by the person or persons conducting the market research and analysis," and that he also failed to include a writing by "the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or a designee of either officer above the level of the Procurement Officer" determining "that the contract price is fair and reasonable and consistent with applicable regulations." *Id.*

Additionally, the Procurement Record the OAG prepared for the TPH Contract does not include a written determination that there is only one source for the procurement. Nor does it indicate that the OAG prepared a package to market and present to prospective vendors, based on the determination of need and market research, containing, among other things, the description of services, evaluation factors, and delivery or performance schedule, as required by Guam procurement law. ER Vol. 2 at 501 (Procurement Record).

The Procurement Record also indicated that the OAG had failed to publish notice of the TPH Contract within fourteen (14) calendar days after the contract was signed, as required by 5 GCA § 5214, which provides that "the purchasing agency shall publish a notice in a newspaper of general circulation on Guam, and on its website, within fourteen (14) calendar days of awarding any contract under this Section, in excess of Fifty Thousand dollars ($50,000). The notice shall include the names of the purchasing agency and awardee(s), the contract award amount, term, and the nature of the contract." ER Vol. 2 at 501 (Procurement Record).

On May 15, 2025, the day after Paulino's testimony, AG Moylan executed a "Procurement Ratification and Affirmation," purporting to "ratify and affirm" the TPH Contract. ER Vol. 7 at 1807-09 (Procurement Ratification and Affirmation), ER Vol. 9 at 2531 (Dec & Order). AG Moylan testified that after hearing Paulino's testimony about potential issues with the sole source procurement, he conducted an internal review, found no evidence of fraud, and weighed what he described as "minor infirmities" in the record against the "good that comes from the project." He concluded that the benefits outweighed the infirmities and purported to ratify the contract. *Id.* at 2531.

The Superior Court subsequently issued its Decision and Order on June 9, 2025, granting Governor Leon Guerrero's motion for a preliminary injunction and denying Appellants' motions to dismiss. ER Vol. 9 at 2524 (Dec. & Order).

VI. SUMMARY OF THE ARGUMENT

This appeal arises from the Attorney General's effort to evade the statutes that govern him. After executing the TPH Contract without the Governor's approval in direct violation of Section 22601, AG Moylan doubled down when confronted, offering a series of novel and legally unsound theories to justify conduct the law simply does not allow. Appellants' arguments on appeal – exemption, repeal, ratification – share the same premise: that the Attorney General may disregard the law when it is inconvenient for him. This case demonstrates a textbook example of why procurement and fiscal policies exist and should be enforced.

The Superior Court correctly held that the TPH Contract was never validly awarded because the OAG executed it without the Governor's approval. ER Vol. 9 at 2539–42 (Dec. & Order). Title 5 GCA § 22601 conditions valid execution of contracts subject to the CAA on the Governor's approval and signature. Section 22601 is outside of and independent of Guam procurement law and serves a completely different purpose: to grant the Governor oversight over contracts subject to the CAA.

Appellants' effort to evade § 22601 by invoking procurement law has no basis in the law. The procurement law neither repeals nor overrides the Governor's approval requirement in Section 22601. Guam law requires harmonizing statutes wherever possible, and nothing in the procurement law conflicts with 22601 such that it creates a procurement-contract exception to or implied repeal of § 22601.

Importantly, the TPH Contract does not merit the Governor's approval. The OAG lacked statutory authority to procure the non-professional services offered in the contract, a finding made by the Superior Court that Appellants do not challenge in this appeal. Even if the OAG did have authority to procure the services provided in the contract, it failed to comply with virtually every requirement for a sole source procurement. Instead of canceling or amending the procurement as the law requires, Appellants seek to cure their deficiencies after the fact through the ratification process, which is not an available remedy for pre-award contracts under the law.

Because Appellants' arguments rest on incomplete and disjointed statutory construction, and because the Governor's approval is a mandatory prerequisite to contract effectiveness, the preliminary injunction should be affirmed.

VII. MOTION TO STRIKE

A. Appellants' Factual Assertions Cannot Be Considered Because They Failed to Provide Transcripts

Rule 7(b)(2) of the Guam Rules of Appellate Procedures requires an appellant to provide "a transcript of all evidence relevant to [the challenged] finding or conclusion." Supplying selected declarations – or any portion of the evidentiary record short of the *entire* body of evidence the trial court considered – does not meet GRAP 7(b)(2)'s requirement.

Here, Appellants ordered no transcripts whatsoever, despite repeatedly contesting the Superior Court's factual determinations. In lieu of transcripts, Appellants rely on declarations describing purported "decades-long practice" in which past administrations allegedly did not require gubernatorial approval of procurement contracts. Opening Br. at 10-12, 19, 20, 29, 30, 40, and 47. Their reliance on isolated declarations, none of which purport to capture the entirety of the evidence before the trial court, fails as a matter of law.

Such factual assertions cannot be considered on appeal because Appellants failed to include the corresponding hearing transcripts required by GRAP 7(b)(2). *See J.J. Moving Servs., Inc. v. Sanko Bussan (Guam) Co*., 1998 Guam 19 ¶ 10 ("[A]ppellant…has the responsibility of ordering the appropriate transcripts of the proceedings at issue. This means the appellant must place into the record all

evidence, good and bad, material to the point he wishes to raise and necessary for the determination of the issues presented on appeal."); *McGhee v. McGhee,* 2008 Guam 17 ¶ 14 ("It is impossible for us to determine whether the trial court's factual findings were clearly erroneous, giving due regard to the trial court's judgment about the credibility of the witnesses, without transcripts presenting us with the oral testimony of those witnesses."); *Lamb v. Hoffman*, 2008 Guam 2 ¶ 57 (failure to provide transcripts may require dismissal). Because Appellants did not provide the transcripts underlying their declarants' testimony, their assertions regarding alleged historical practice cannot be considered on appeal, and under GRAP 7(b)(2), all such factual assertions must be disregarded, and the Superior Court's findings must be presumed correct. Alternatively, because the Court cannot fully review the entire body of evidence, including witness testimony on these allegations, the Court should dismiss the case in its entirety.

VIII. ARGUMENT

A. Standard of Review

A trial court's decision to grant or deny a preliminary injunction is reviewed for abuse of discretion. *Sananap v. Cyfred, Ltd.*, 2009 Guam 13 ¶ 13; *Sule v. Guam Bd. of Examiners for Dentistry*, 2011 Guam 5 ¶ 8. A trial court's exercise of discretion should not be disturbed unless the reviewing court has "a definite and firm conviction that the court below committed a clear error of judgment in the

conclusion it reached upon a weighing of the relevant factors." *Santos v. Carney*, 1997 Guam 4 ¶ 4 (citation omitted); *Midsea Indus., Inc. v. HK Eng'g, Ltd.*, 1998 Guam 14 ¶ 4 (quoting *Lynn v. Chin Hueng Int'l, Inc.*, Civ. No. 85-0066A, 1986 WL 68916, at *2 (D. Guam App. Div. Oct. 22, 1986), aff'd, 852 F.2d 1221 (9th Cir. 1988)). A trial judge abuses discretion only when the decision is based on an erroneous conclusion of law or where the record contains no evidence upon which the judge could have rationally based her decision. *Midsea*, 1998 Guam 14 ¶ 4; *see also San Miguel v. Dep't of Pub. Works*, 2008 Guam 3 ¶ 18 ("A court abuses its discretion by basing its decision on an erroneous legal standard or clearly erroneous factual findings, or if, in applying the appropriate legal standards, the court misapprehended the law with respect to the underlying issues in the litigation.").

Additionally, a "trial court's interpretation of the underlying legal principles is subject to de novo review and a trial court abuses its discretion when it makes an error of law." *Guerrero v. Santo Thomas*, 2010 Guam 11 ¶ 8. The Superior Court's factual findings are reviewed for clear error. *Lujan v. Tebo* 2024 Guam 15. "A factual finding is 'clearly erroneous' when the reviewing court is 'left with the definite and firm conviction that a mistake has been committed' after reviewing all the evidence." *Id.*

Accordingly, this Court reviews the Superior Court's decision for abuse of discretion, deferring to its factual determinations and equitable judgment absent a clear error of law. Applying that deferential standard, the record amply supports the Superior Court's conclusion that injunctive relief was warranted.

B. <u>The Superior Court Properly Granted Injunctive Relief</u>

The Superior Court acted well within its discretion in granting a preliminary injunction. A preliminary injunction is an equitable remedy designed to maintain the status quo and prevent irreparable harm while the legality of the challenged action is adjudicated. The injunction here merely prevents performance under an unlawfully procured and executed contract, preserving public funds and the integrity of Guam's procurement system and central accounting regime until final resolution of the issues.

To obtain injunctive relief, a party must demonstrate: (1) a likelihood of success on the merits; and (2) irreparable harm in the absence of relief. *San* Miguel, 2008 Guam 3 ¶ 19. [5] As discussed below, the Superior Court correctly

[5] The Superior Court did not apply or discuss the four-factor federal test for preliminary injunctions, because Guam law does not require it. *See San Miguel*, 2008 Guam 3 ¶ 20. Because the likelihood of success on the merits and irreparable harm are the only factors recognized under Guam law, the Superior Court properly confined its analysis to them. In an abundance of caution, the Governor addresses the additional federal factors below to the extent the Court deems them relevant.

found that the Governor satisfied these factors when it enjoined performance of the TPH Contract.

1. The Governor Demonstrated a Strong Likelihood of Success on the Merits.

The record supports the Superior Court's determination that the Governor was likely to prevail on the merits. The court identified multiple, independent statutory violations—each sufficient to render the TPH Contract void and to justify injunctive relief.

a. The OAG Lacked Authority to Execute the TPH Contract Without the Governor's Approval Under 5 GCA § 22601.

The Superior Court correctly concluded that the Governor was likely to prevail on her claim that the OAG lacked authority to execute the TPH Contract without her approval under 5 GCA § 22601. The statute requires the Governor's signature on all contracts executed by agencies subject to the Central Accounting Act, following the Attorney General's approval as to form and legality. Determining whether § 22601 applies here turns on two related questions: which entity actually procured and executed the contract, and whether that entity falls within the Central Accounting Act.

i. The TPH Contract was Procured by the OAG, Not the ORAC

Appellants argue that AG Moylan procured the TPH Contract "on behalf of" ORAC and that the contract should therefore be treated as an ORAC procurement exempt from 5 GCA § 22601. Opening Br. at 18–23. The record does not support this characterization.

ORAC did not solicit, evaluate, select, or contract with any vendor. It approved a grant of funds to the OAG, and the OAG, as the grantee, conducted every aspect of the procurement and executed the contract in its own name.[6] Nothing in the ORAC Resolution, the procurement file, or the TPH Contract itself suggests that ORAC exercised procurement authority, procured services for the Dignity Project, or designated the OAG as its contracting agent.

The ORAC's August 29, 2024 Resolution approved an award of $1,497,997.22 to the OAG for "the implementation and execution of program design elements of the Dignity Project," and directed that the funds be transferred to the OAG. ER Vol. 9 at 2533. The Resolution did *not* indicate that ORAC would conduct a solicitation or procurement. Instead, the Resolution approved a transfer

[6] If adopted, Appellants' position would produce untenable results. If procurement authority depended on the origin of the funds rather than on the entity that actually conducts the procurement, then any local procurement funded in whole or in part through federal grants would become a "federal procurement," exempt from Guam's procurement laws and fiscal controls. Guam law has never adopted such an interpretation, and it would yield an objectively absurd result. *See Sumitomo Const. Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17 (rejecting statutory interpretations that lead to absurd results).

of funds to the OAG, which thereafter conducted the procurement. *Id.* at 2528–29. The OAG thereafter issued the solicitations, communicated with vendors, evaluated responses, canceled the RFP, pursued the sole source procurement, and executed the contract.

The contracting documents reinforce this reality. AG Moylan and Chief Deputy Joseph Guthrie signed the TPH Contract as the contracting officials. The ORAC is not listed as a party, procuring agency, or approving authority for the contract. The sole reference to ORAC in the TPH Contract appears in a recital acknowledging that the OAG initiated the project "through funding awarded by the ORAC," a statement that accurately reflects ORAC's role as a grantmaking body, not a procurement entity. *See* ER Vol. 9 at 2528–29 (Dec. & Order).

The Superior Court correctly found that ORAC's role ended with the grant of funds. It did not conduct the procurement, did not approve a vendor, and did not execute the TPH Contract. As a result, even assuming *arguendo* that the OAG possessed authority to conduct this procurement, which the Governor disputes, the OAG was still required to obtain the Governor's approval under 5 GCA § 22601 before attempting to execute any contract funded through the ORAC award.[7]

[7] Appellants also argue that the Legislature "placed no restrictions" on ORAC expenditures beyond the Council's enabling statute. That position is untenable. ORAC's enabling law does not function as a fiscal free-pass, and nothing in it

Accordingly, Appellants' effort to launder the OAG's deficient procurement through ORAC to evade applicable procurement and fiscal laws should be rejected. Having acted in its own capacity, the OAG remains bound by the legal statutory that governs its fiscal operations.

ii. The OAG falls within the Central Accounting Act and its contracts are subject to 5 GCA § 22601.

The Attorney General's Office is subject to the CAA. Under 5 GCA § 22401, the DOA maintains the government's central accounting system and exercises accounting control over all appropriations and funds "except as otherwise provided by law." The OAG's appropriations are disbursed through the DOA and accounted for within this centralized system, and no statute exempts the OAG from the CAA's fiscal controls. Although the Attorney General has statutory authority to make independent personnel and management decisions under 5 GCA § 30118.1(b), that autonomy does not extend to the fiscal administration of the office, which remains governed by the CAA.

---

exempts ORAC or its grantees from generally applicable government-wide financial controls. Even the Attorney General concedes that ORAC-funded procurements are subject to the Procurement Act, which itself imposes mandatory statutory restrictions on how public funds are solicited, awarded, and committed. The same principle applies to the Central Accounting Act. Funds administered by the DOA remain subject to the Legislature's fiscal-control framework unless expressly exempted, and no such exemption exists for ORAC. Appellants' suggestion that ORAC expenditures are insulated from all other statutory constraints is incompatible with both their own concessions express Guam law.

Section 22601 of the Government Code applies directly to such agencies subject to the CAA, providing that "[a]ll contracts shall, after approval of the Attorney General, be submitted to the Governor for [her] signature. All contracts of whatever nature shall be executed upon the approval of the Governor." 5 GCA § 22601. As the Court clarified in *In re Leon Guerrero*, 2024 Guam 18 ¶ 23, this provision applies to all agencies subject to the CAA. Because the OAG's funds are administered, accounted for, and audited under the same centralized fiscal framework, its contracts fall squarely within the scope of Section 22601. Unlike GPA or GWA, the OAG is not established as an autonomous or public corporation with separate governance or accounting authority. Accordingly, its contracts are subject to Governor's approval.[8]

Further, as the Superior Court correctly recognized, the Governor's approval under Section 22601 is not ministerial. The Organic Act charges the Governor with "supervis[ing] and control[ling]" executive agencies—including the DOA, which administers the CAA—and ensuring the "faithful execution of

[8] Appellants argue that requiring the Governor's approval under Section 22601 would in effect allow her to decide how ORAC funds are spent. Opening Br. at 9, 16, 33. That framing is incorrect. Section 22601 does not regulate policy choices about programmatic use of opioid funds; it regulates the legality of contract execution for agencies subject to the CAA. The Governor is not seeking to "veto" or "override" lawful expenditures. Her role under § 22601 is a fiscal-control safeguard, not a policy override, and she has never objected to ORAC's award of funds to the OAG.

the laws." Her approval therefore functions as a substantive safeguard to preserve the integrity of the government's centralized fiscal system and ensure lawful expenditure of public funds. *See Huntt v. Gov't of the Virgin Islands*, 382 F.2d 38, 46–47 (3d Cir. 1967); *Ellison v. Oliver*, 227 S.W. 586, 589 (1921); *State v. Smith*, 57 P. 449, 451 (1899). These authorities confirm that when a statute requires the governor's approval of government contracts, she exercises discretionary judgment as a check on the actions of subordinate entities, not a perfunctory act of endorsement.

Because the OAG is subject to the CAA, its contracts cannot lawfully be executed without the Governor's approval. By unilaterally executing the TPH Contract without obtaining the Governor's approval, AG Moylan has not complied with Section 22601, and the TPH Contract remains ineffective and unenforceable.

iii. Procurement Contracts Are Not Exempt from 5 GCA § 22601, and Enactment of the Guam Procurement Law Did Not Repeal § 22601's Governor-Approval Requirement

Having failed to show that either the OAG or ORAC is exempt from the CAA, Appellants advance an even bolder statutory argument: that § 22601 does not apply to procurement contracts *at all*, either because procurement law creates an implied "procurement contract exception" or because it implicitly repealed § 22601 as applied to such contracts. Opening Br. at 11, 18–29. Appellants base

these conclusions on incomplete statutory construction based on two specific canons: (1) that a later-passed statute controls over an earlier one; and (2) that a specific statute controls over a general one. Opening Br. at 22.

Appellants have entirely skipped the predicate question that even allows a court to consider whether one statute governs over another: the statutes must actually conflict. Only where provisions are in irreconcilable conflict, or where a later statute clearly supplants an earlier one, may a court find implied repeal or treat one provision as superseding another. *See Sumitomo*, 2001 Guam 23 ¶ 16; *Matter of Estate of Leon Guerrero*, 2023 Guam 10 ¶ 50. Here, there is no conflict to resolve. The Procurement Act and § 22601 regulate different subjects—procurement method on one hand, execution and fiscal control on the other—and they operate in parallel exactly as the Legislature designed.

Appellants' attempt to manufacture conflict rests not on statutory text, but on a policy preference: they believe procurement should operate without § 22601's fiscal oversight. That is not the law. Guam's rules of statutory construction require courts to harmonize statutes whenever possible and "give effect to all provisions." *In re Request of Liheslaturan Guåhan*, 2014 Guam 24 ¶ 13; *People v. Taisacan*, 2023 Guam 19 ¶ 19. Because the statutes readily coexist—and because the Legislature never stated any intention to repeal or limit § 22601—the Court should reject Appellants' argument outright.

Repeals by implication are strongly disfavored. *Lujan v. Lujan*, 2000 Guam 21 ¶ 11; *People v. Quinata*, 1982 WL 30546, at *2 (D. Guam App. Div. June 29, 1982). An implied repeal exists only in two narrow circumstances: "(1) where provisions in the two acts are in irreconcilable conflict," or "(2) if the later act covers the whole subject of the earlier one and is clearly intended as a substitute." *Quinata*, 1982 WL 30546, at *2; see also *Topasna v. Superior Court*, 1996 Guam 5 ¶ 13.

These authorities render Appellants' arguments untenable. The statutes govern different subject matters and operate at different stages of the contracting process. The procurement law governs *how* agencies procure goods and services.[9] Section 22601 governs how CAA-governed agencies execute contracts and obligate public funds, a fiscal-control provision embedded in the government's centralized accounting structure.[10]

---

[9] Appellants' reliance on the 1979 ABA Model Procurement Code (Opening Br. at 22) is likewise misplaced. Nothing in the MPC addresses fiscal execution or gubernatorial approval. The MPC was designed as a model for procurement procedures, not as a substitute for each jurisdiction's fiscal-oversight statutes.

[10] Even if Appellants could show a genuine conflict between § 22601 and § 5121(c), the specific-over-general canon would lead to the opposite conclusion. Section 22601 governs a *particular subset* of contracts: those executed by CAA-governed agencies and those obligating public funds under the centralized accounting system. Section 5121(c), by contrast, addresses contract *execution* generally within the procurement framework, not approval under the CAA. Where two *in pari materia* statutes conflict, "the more specific statute will operate as an exception to, or qualification of, the general statute." *Topasna v. Gov't of Guam*,

Nothing in the procurement law identifies § 22601, mentions gubernatorial approval, or suggests an intent to displace the fiscal-oversight regime the Legislature established decades before. Because the statutes can be harmonized, and because the Legislature never expressed an intent to repeal § 22601 or to create an exception for procurement contracts, the Court should decline to adopt an interpretation that rewrites the statutory scheme as Appellants urge.

Appellants argue that a compiler's note to 5 GCA § 5121 "qualifies and limits § 22601," suggesting that procurement contracts are exempt from gubernatorial approval because the Compiler of Laws believed that the Legislature's committee "determined that neither the Attorney General nor the Governor should be required to sign procurement contracts" and that § 5121(c) "must state when procurement contracts are executed" because "existing law states that all contracts are not executed until signed by the Governor." Opening Br. at 19-21. This reliance is misplaced. Compiler's notes are not law and cannot amend statutory text. *See* 1 GCA § 101(a) ("Annotations and comments are not part of the law."). Nor does the Compiler have the power to "qualify" or "limit" laws. *See* 1 GCA § 1606 (listing Compiler's powers, which include administrative and publication duties). The § 5121 note does not identify § 22601, does not

---

2021 Guam 23 ¶¶ 17-18 (citing *Morton v. Mancari*, 417 U.S. 535, 550–51 (1974)). Thus, even under Appellants' flawed premise, § 22601 would control.

purport to repeal it, and does not contain any language removing the Governor's approval requirement for contracts executed by agencies subject to the Central Accounting Act. A non-binding editorial comment cannot displace the Legislature's unambiguous directive that such contracts "shall be executed upon the approval of the Governor." 5 GCA § 22601.

Appellants' reliance on the Compiler's commentary cannot override the statutory text, create an exception the Legislature did not enact, or supply the clear legislative intent required for a repeal by implication.

b. <u>The OAG's procurement of the TPH Contract violated Guam Procurement Law, and the Governor Properly Declined to Execute an Unlawful Contract.</u>

The Governor's refusal to execute the TPH Contract was not an act of obstruction, but a necessary exercise of her duty to ensure compliance with Guam's procurement laws.

i. **<u>The OAG Lacked Authority to Procure Non-Professional Services, and Appellants Waived Any Challenge to the Superior Court's Ruling</u>**

The Superior Court held that the OAG lacked statutory authority to procure non-professional services under Guam's procurement law, because procurement of such services is centralized in the GSA absent express delegation. ER Vol. 9 at 2545–46. Appellants do not challenge this determination in their Statement of the

Issues or Opening Brief,[11] and have therefore waived the issue. *See In re Estate of Concepcion*, 2003 Guam 12 ¶ 10 (issues not raised in the opening brief are waived) (citing *Brooks v. United States*, 64 F.3d 251, 257 (7th Cir. 1995); *Headrick v. Rockwell Int'l Corp.*, 24 F.3d 1272, 1277–78 (10th Cir. 1994); *Thompson v. C.I.R.*, 631 F.2d 642, 649 (9th Cir. 1980)). Accordingly, the court's finding that the OAG was not the "head of a purchasing agency" for purposes of conducting a sole source procurement under 5 GCA § 5214 is conceded and is final for purposes of this Appeal.

The record independently supports the Superior Court's conclusion that the OAG exceeded its authority when it attempted to sole source non-professional services for the Dignity Project directly, rather than through the GSA as Guam law requires.

As discussed, the initial RFP for the Dignity Project sought to procure professional human services providers to deliver comprehensive, wraparound support for homeless and opioid-affected individuals, including case management, social work, peer recovery support, transportation coordination, and behavioral-health intervention. ER Vol. 2 at 364 (RFP). Guam law authorizes

[11] In their Opening Brief, Appellants reference the term "purchasing agency" only in the context of their ratification argument, asserting that the OAG may ratify the TPH Contract as the head of a purchasing agency. *See* Opening Br. at 36. They do not argue that the OAG was a purchasing agency authorized to conduct the sole source procurement for the TPH Contract.

governmental bodies, including the OAG, to act as purchasing agencies and contract on their own behalf for such *professional services*. 5 GCA § 5121(a).

In contrast, Guam law does not authorize agencies to serve as purchasing agencies for *non-professional* services, instead centralizing procurement of such services through the GSA. Title 5 GCA § 5113 provides that the Chief Procurement Officer ("CPO") of the GSA "shall serve as the central procurement officer of Guam with respect to supplies and services," unless the CPO delegates such authority to another agency, or Guam law otherwise provides. 5 GCA § 5114.

When the Dignity Project RFP failed to result in a contract, the OAG shifted to an IFB for non-professional components of the project, including hotel accommodations, meals, and security. ER Vol. 2 at 461. Consistent with Section 5113, the OAG procured these services through the GSA. ER Vol. 2 at 424.

However, after the IFB was cancelled, the OAG unilaterally proceeded to procure the same *non-professional* services through a sole source procurement, without the GSA's involvement. The OAG directly contacted vendors regarding the provision of hotel lodging and accommodations for the Dignity Project. The TPH expressed interest in providing the services after being contacted by the

OAG, leading to further discussions about providing those services. ER Vol. 9 at 2528.[12]

However, shifting to a less competitive procurement process does not expand the OAG's non-existent statutory authority to procure goods or services. An agency authorized to procure only professional services may not, by invoking sole source procedures, procure non-professional services that fall exclusively within the jurisdiction of the GSA.

This conclusion is reinforced by the procurement law's definition of a "purchasing agency." Under 5 GCA § 5001(q), a purchasing agency is a governmental body "authorized by this Chapter or its implementing regulations, or by way of delegation from the Chief Procurement Officer, to enter into contracts." An entity is therefore a purchasing agency *only* for the categories of contracts it is authorized to procure. Because the OAG's statutory authority to procure is limited to professional services, it is *not* a purchasing agency with respect to non-professional services and has no authority to solicit, award, or execute contracts for them.

[12] As discussed below, the OAG's actions did not comply with the procedural or substantive requirements for sole source procurement under 5 GCA § 5214. Among other defects, the OAG did not obtain a written determination by the Chief Procurement Officer or other authorized official, conduct market research, or publish notice of award as the statute mandates.

The sole source procurement statute, 5 GCA § 5214, is purely procedural and does *not* expand the procurement authority provided in the law. It sets out the findings and documentation required before an agency may procure without competition. It does *not* create independent authority to procure where none otherwise exists. The statute presupposes that the "head of a purchasing agency" or other official invoking it *already* has statutory power to conduct that category of procurement. The authority to contract for goods and non-professional services, whether competitively or by sole source, rests exclusively with the GSA, the only entity empowered to conduct such procurements absent a statutory delegation.

Because the OAG lacked statutory authority to procure non-professional services, the Court should affirm the Superior Court's ruling that the OAG's procurement of the TPH Contract violated Guam law.

ii. Appellants' Newly Raised § 5141(b) "Impossibility" Argument Is Waived and Fails on the Merits

The Superior Court held that ORAC's sole source procurement was defective in part because AG Moylan and his staff had not completed the mandatory procurement-officer training required by 5 GCA § 5141(b). ER Vol. 9 at 2546. The court cited testimony from AG Moylan, Deputy Attorney General Nishihara, and the OAG's accounting supervisor, Thomas Paulino, each of whom admitted they had not completed the required procurement training modules. *Id.*

The court concluded that "without meeting the statute's training requirements, these individuals were not permitted to engage in procuring goods or services." *Id.* The Decision & Order expressly treated this lack of training as one of several statutory violations supporting the Governor's likelihood of success on the merits. ER Vol. 9 at 2544–47.

In their Opening Brief, Appellants contend that the Superior Court erred in relying on Section 5141(b), arguing that the statute's mandatory training requirement cannot be satisfied because the Governor allegedly failed to convene the Guam Procurement Advisory Council, GPAC has not met in years, and GCC/GPA training modules do not exist. Opening Br. at 36–39. They assert that because compliance is "impossible," the court should not have treated lack of § 5141(b) certification as a procurement defect. *Id.* The Court should reject this argument.[13]

[13] Appellants also argue that the Governor prevented the OAG from fulfilling their responsibility, excusing the requirement through the "prevention doctrine." Opening Br. at 38 (citing *Cristobal v. Siegel*, 2018 Guam 29 ¶ 11). However, the prevention doctrine applies strictly in the context of contracts to excuse one party from a condition precedent when the other party hinders fulfilment of that condition, thereby preventing the mutual intent of parties from being realized. Obviously, on its face, this doctrine has no application in the context of this case, because Appellants and Governor Leon Guerrero are not parties to a contract. If Appellants believed the Governor was required to convene the GPAC for training to be conducted, certainly they could have filed a petition for mandamus relief to prompt such action.

First, Appellants have waived argument regarding their Section 5141 violation because they never presented the argument to the Superior Court. The Record on Appeal contains no indication that Appellants ever presented their "prevention" or "impossibility" argument to the Superior Court. Nothing in their motions, briefs, evidentiary submissions, or any portion of the Record on Appeal reflects an argument that the Governor's alleged failure to convene the Procurement Advisory Council or the unavailability of training modules excused their noncompliance with § 5141(b). As this Court has repeatedly emphasized, "as a general rule, this court will not address arguments raised for the first time on appeal." *Dumaliang v. Silan*, 2000 Guam 24 ¶ 12; *McCurdy v. Chamorro Equities, Inc.*, 2021 Guam 29 ¶ 23.

This case fits squarely within that rule. As in *Linsangan v. Government of Guam*, Appellants seek to advance a "new legal theory" on appeal that was never raised below, and is therefore waived. 2020 Guam 27 ¶ 23. Further, consistent with the Court's reasoning in *Harper v. Min*, the absence of any record supporting this argument forecloses appellate review—where "nothing in the record" shows that a party raised an issue in the trial court, this Court "is not inclined to address [the] issue for the first time on appeal." 2021 Guam 11 ¶ 18.[14]

[14] While the Court retains discretion to consider issues raised for the first time on appeal, it exercises such discretion only in narrow, extraordinary circumstances such as preventing a miscarriage of justice, addressing an intervening change in

Because Appellants' § 5141(b) "impossibility" theory was never presented to the Superior Court and does not fall within any recognized exception, it is waived and should not be considered.

Though the record is clear that Appellants failed to preserve their § 5141(b) "impossibility" argument, even if they had, the Court still could not reach it because the argument depends on *factual* assertions nowhere found in the Record on Appeal. Appellants ask the Court to assume, for the first time on appeal, that the Procurement Advisory Council never met, that the Governor failed to convene it, that the requirement is "widely ignored" by government agencies, and that no procurement-training modules existed—all factual allegations that were never presented to or considered by the Superior Court.

The Court has emphasized that when a party advances a new legal theory on appeal that relies on facts not developed below, review is inappropriate because there is no "complete and factually developed trial court record" on which the appellate court can rely. *Linsangan*, 2020 Guam 27 ¶ 28; *see also Guam Election Comm'n v. Responsible Choices for All Adults Coal.*, 2007 Guam 20 ¶ 99; *San*

---

law, or resolving a pure question of law. See *Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.,* 2005 Guam 7 ¶ 80 (citing *Dumaliang,* 2000 Guam 24 ¶ 12 n.1); *McCurdy*, 2021 Guam 29 ¶ 23. These exceptions are disjunctive and applied sparingly, typically only where an "extraordinary reason" explains the failure to raise the issue below. *Tanaguchi-Ruth,* 2005 Guam 7 ¶ 82. No such circumstance is present here.

Union, Inc. v. Arnold, 2017 Guam 10 ¶ 19. As in *Linsangan*, reaching Appellants' new theory here would require the Court to "resort to speculation and conjecture" over factual matters never litigated and not contained in the record. *Linsangan*, 2020 Guam 27 ¶ 28. For this reason, the Court should decline to consider Appellants' new § 5141(b) theory.

Finally, Appellants' new "impossibility" argument also fails because it is directly contrary to the statute. Section 5141 makes procurement training *mandatory* for "all government of Guam personnel tasked with the responsibility of purchasing or otherwise procuring goods, or services, or construction." 5 GCA § 5141(b). The statute is unambiguous: an employee "*may not participate* in purchases" unless the employee has completed the required training or an approved equivalent. *Id.* (emphasis added). The Superior Court therefore correctly treated the OAG's admitted noncompliance with Section 5141(b) as one of several statutory violations the OAG committed related to procurement of the TPH Contract. *See* ER Vol. 9 at 2544–47.

Appellants argue that the Guam Community College ("GCC") was required to consult with the Guam Procurement Advisory Council ("GPAC") in offering training and continuing education required under Section 5141(b), such that the failure of the GPAC to convene automatically prevents GCC from offering training. Opening Br. at 37.

However, Section 5141 assigns all procurement training responsibilities to GCC, which must establish, administer, and certify the training curriculum; develop prerequisites; conduct examinations; and maintain training records. 5 GCA § 5141(a), (d)–(m). GPAC's role is purely advisory, and is limited to consultation "*to the extent of its resources*." 5 GCA § 5141(c) (emphasis added). The statute does not condition the availability of procurement training on GPAC convening, meeting, or approving modules, or require the GPAC to convene at all in order for GCC to provide procurement training. Nothing in Section 5141 makes training "impossible" when GPAC is inactive, and nothing in Section 5141 excuses the failure of OAG procurement personnel, including the Attorney General, to obtain required certification.

The OAG's noncompliance is exactly the kind of statutory violation the Legislature intended § 5141(b) to prevent and for good reason—training may have alerted Appellants to recent updates to the sole source procurement law, and the limitations on their authority to procure non-professional services. Appellants' failure to complete procurement training does not insulate them from the statute's operation.

Because § 5141(b) both imposes mandatory training requirements and prohibits untrained personnel from participating in procurement, and because the OAG admittedly failed to comply with those requirements, the Superior Court

properly relied on that statutory violation in assessing the legality of the procurement.

iii. The OAG Failed to Comply with Statutory and Regulatory Requirements for Sole Source Procurement

In addition to the OAG's lack of procurement authority and lack of the required training to conduct procurements, the OAG completely mishandled the sole source procurement for the Dignity Project. The Superior Court correctly held that the OAG failed to comply with the mandatory requirements governing sole source procurement. See ER Vol. 9 at 2544–47. Sole source procurement is permissible only in narrow circumstances and only when the procuring agency makes the written findings required by 5 GCA § 5214: that a single source exists, that competition is not feasible, and that the agency has documented the basis for invoking the rare exception to competitive bidding. *Id.* The record shows that the OAG failed to satisfy these mandatory requirements and preconditions.

The Superior Court found, based on uncontroverted testimony,[15] that the OAG failed to (1) provide written justification for proceeding by sole source, (2)

[15] On page 40 of their Opening Brief, Appellants argue that the Superior Court erred in this determination, detailing various documents from the Excerpts of Record that purportedly contradict the Superior Court's findings. Opening Br. at 40. However, as discussed above, because Appellants failed to order transcripts as required by GRAP 7(b), they cannot challenge the Superior Court's factual findings.

conduct the required market survey, (3) perform necessary price analysis, and (4) generate documentation demonstrating that there was only one qualified provider for the services sought. ER Vol. 9 at 2537–38. Instead, after canceling the RFP, the OAG simply "decided to sole source" without making any of the findings required by § 5214 or maintaining the documentation mandated by 5 GCA § 5631. Id. OAG personnel in fact *admitted* that the sole source procurement file lacked the required market research, price analysis, and written findings, and the Superior Court relied on that testimony in concluding that the agency failed to comply with the statutory and regulatory requirements governing sole-source procurement. ER Vol. 9 at 2537–38.

In their Opening Brief, Appellants attempt to minimize these statutory violations, characterizing them as "technical," "minor," "procedural," and "*de minimis*," and claiming they "substantially complied" with procurement laws. Opening Br. at 30–36. But the record reflects the opposite. There is no evidence in the procurement record or the record on appeal that the OAG satisfied *any* of the mandatory prerequisites for invoking § 5214. The OAG provided no written justification, conducted no market research, performed no price analysis, and produced no contemporaneous documentation showing that a sole source existed.

Even if Appellants had fulfilled some of the requirements, the law does not award partial credit. Guam law does not recognize "substantial compliance" as a

substitute for actual compliance in this context. Sole source procurement is an exception to competition. Because it dispenses with the core safeguard of competitive bidding, the statutory prerequisites in § 5214 operate to ensure transparency, fairness, and value for the public in lieu of competitive bidding. When an agency elects to avoid competition, it must strictly comply with these safeguards, lest the exception swallow the rule. Holding agencies to the statutory requirements is essential to preserving the integrity and purpose of Guam's procurement laws.

Because the OAG failed to comply with the mandatory requirements of Section 5214, the resulting procurement was unlawful, and the Superior Court properly relied on these violations as an independent basis supporting the Governor's likelihood of success. The Superior Court's ruling should therefore be affirmed.

c. <u>The OAG did not properly ratify the TPH Contract.</u>

In their Opening Brief, Appellants contend that any defects in the Dignity Project sole source procurement were cured through AG Moylan's May 15, 2025 purported ratification. They assert that the Attorney General, as the "head of the procuring agency," possessed authority to ratify the TPH Contract and that ratification is available because the procurement is supposedly in a post-award posture. Opening Br. at 36–39.

Appellants are wrong on both the law and the facts. The Superior Court recognize that ratification is unavailable for two reasons: the OAG lacked statutory authority to procure non-professional services, and the TPH Contract was never validly awarded because the procurement was unlawful from the start. ER Vol. 9 at 2548–49.

i. AG Moylan Lacked Authority to Ratify the TPH Contract

The Superior Court correctly found that AG Moylan lacked authority to ratify the TPH Contract because the OAG itself never had statutory authority to procure non-professional services. ER Vol. 9 at 2548–49. Ratification under Guam law is available only to officials who possessed procurement authority over the type of contract at issue. Because the OAG lacked authority to solicit, award, or execute a contract for non-professional services, it likewise lacked authority to ratify one.

The procurement regulations confirm this structure. Under 2 GAR Div. 4 § 9106(b), only the Chief Procurement Officer, the Director of Public Works, or the head of a purchasing agency may ratify or affirm a contract awarded in violation of law. As discussed, a "purchasing agency" is a governmental body authorized by statute, regulation, or delegation from the CPO "to enter into contracts" for the category of procurement at issue. 5 GCA § 5001(q). Ratification authority

therefore tracks procurement authority, and an official may ratify only the type of contract the official was empowered to procure.

AG Moylan is only the head of a purchasing agency for purposes of procuring *professional* services. His limited role does not confer authority to procure any other category of goods, services, or construction. Because the TPH Contract involved non-professional services, the OAG lacked authority to procure it and AG Moylan likewise lacked authority to ratify it.

ii. Ratification is Unavailable Because the TPH Contract Was Pre-Award

The Superior Court correctly found that the TPH Contract was never validly awarded in the first place, and, being "pre-award," could not be ratified. ER Vol. 9 at 2548-49. A procurement award is not complete until *all* statutory prerequisites have been satisfied, including approval by the Governor under 5 GCA § 22601 for agencies governed by the CAA. Because the OAG executed the TPH Contract without obtaining the Governor's approval, the contract never became effective and no lawful "award" occurred.

Guam procurement law draws a bright line between pre-award and post-award violations and prescribes distinct remedies for each. Section 5451 governs pre-award violations and limits available remedies to cancellation or revision of the solicitation or proposed award. Section 5452 applies only after an award, and

authorizes ratification or affirmation subject to conditions. Ratification is therefore a post-award remedy and presupposes the existence of a valid award.

Because the OAG did not satisfy § 22601's condition precedent to contract formation, the TPH Contract never reached post-award status. The violation was not merely procedural but went to the legal existence of the contract. As the Superior Court correctly held, this placed the matter squarely within § 5451, not § 5452, and ratification is not available to cure the significant violations of the procurement.

2. Appellants Have Waived Any Challenge to Remaining Factors for Injunctive Relief

Appellants do not meaningfully challenge[16] the Superior Court's findings on the remaining injunction factors. Appellants' Opening Brief confines their argument on appeal to likelihood of success and offers no developed analysis, record citations, or legal authority addressing the remaining elements. Because Appellants have failed to contest the Superior Court's findings on irreparable harm, those findings stand and independently support affirmance of the injunction.

[16] Appellants' Opening Brief does mention the term "public interest" once. This is not sufficient to perfect an argument on appeal. See *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("A skeletal argument, really nothing more than an assertion, does not preserve a claim… Judges are not like pigs, hunting for truffles buried in briefs.").

a. The Governor Established Irreparable Harm Absent Injunctive Relief and Appellants Do Not Meaningfully Contest It.

The Superior Court correctly found that the Governor demonstrated irreparable harm. *See* ER Vol. 9 at 2549-2550. Observing that "[n]umerous other courts have recognized that the violation of a statute constitutes an irreparable injury for the purposes of preliminary injunctions," the court determined that irreparable injury would result absent injunctive relief here, based on the fact that the TPH Contract violates Guam law. *Id.*

The court's findings are well-founded and supported by substantial authority. Performance of the TPH Contract would strip the Governor of her statutory oversight under the CAA by allowing execution and performance of a contract that did not obtain her approval as required by 5 GCA § 22601, a right that exclusively vests in the Governor. *See Pub. Serv. Co. of Oklahoma v. Duncan Pub. Utilities Auth.*, 248 P.3d 400, 403 (Okla. Civ. App. 2010) ("Violation of a statutory right…constitutes irreparable harm."); *Wyland v. W. Shore Sch. Dist.*, 52 A.3d 572, 583 (Pa. Commw. Ct. 2012) ("Deprivation of a statutory right constitutes irreparable harm…Failure to comply with a statute is sufficiently injurious to constitute irreparable harm."); *Fleet Nat. Bank v. Burke*, 727 A.2d 823, 829 (Conn. Super. Ct. 1998) (..."[It must be observed that the violation of a statute ordinarily presumes irreparable harm.").

If not enjoined, Appellants' actions would result in an unchecked expenditure of CAA funds, and obligation of public funds under an invalid procurement, which is not compensable by money damages and would be difficult, if not impossible, to undo once payments to TPH are commenced. The preliminary injunction preserves the status quo and the integrity of Guam's centralized fiscal controls while the Court resolves the merits. On this record, the likelihood of ongoing statutory violations and the nonrecoverable nature of the injuries satisfy irreparable harm.

Appellants' actions would deprive Governor Leon Guerrero of both her Organic Act authority to supervise and control executive branch agencies and to ensure faithful execution of the law, and her statutory authority to exercise oversight over Guam's centralized accounting regime.

Because Appellants do not challenge irreparable harm, and because the Superior Court's findings are well supported, the Court should affirm the injunction.

b. The Balance of Equities and Public Interest Strongly Maintaining the Injunction

Assuming *arguendo* that the balance of equities or public interest are relevant factors, they strongly support maintaining the injunction. The Governor does not dispute the importance of providing services would benefit Guam's

homeless population and individuals struggling with addiction. But the significance of a social program does not authorize an agency to disregard mandatory procurement procedures or critical oversight over central accounting. The ends do not justify the OAG's unlawful means, and good intentions cannot validate its *ultra vires* procurement.

Preventing an agency from acting outside its statutory authority imposes no legally cognizable harm. In contrast, allowing performance of a contract the OAG was never authorized to procure or execute would undermine the CAA, circumvent the CPO's statutory role, and permit the obligation of public funds without legislative safeguards. These are precisely the consequences the Legislature sought to prevent.

Nor does possible "hardship" to Appellants alter the analysis. The OAG identifies no equitable interest in moving forward with a contract that was never validly awarded and was never effective under Guam law. Any claimed harm is speculative at best and self-inflicted at worst. Maintaining the injunction preserves the status quo while the legality of the procurement is reviewed.

Finally, to the extent the public interest is relevant, it favors compliance with statutes specifically designed to preserve the integrity of government procurement and fiscal processes. There is no public interest in allowing an unlawful procurement to proceed.

Courts have long recognized that unlawful government action cannot be defended on the ground that it would produce beneficial results. *See Pennsylvania Pub. Util. Comm'n v. Israel*, 52 A.2d 317, 321 (Pa. 1947) ("When the Legislature declares conduct unlawful, it is tantamount to calling it injurious to the public."); *Louisiana v. Biden*, 55 F.4th 1017, 1035 (5th Cir. 2022) ("[T]here is generally no public interest in the perpetuation of unlawful agency action.").

Accordingly, even under the federal four-factor test, which Guam does not apply, both the balance of harms and the public interest independently support affirmance of the preliminary injunction.

VIII. CONCLUSION

The Superior Court properly enjoined performance of the TPH Contract. The Attorney General executed a contract he had no authority to procure, no authority to award, and no authority to make effective without obtaining the Governor's approval under § 22601.

For the foregoing reasons, this Court should affirm the preliminary injunction.

//

//

//

Respectfully submitted this 10th day of November, 2025.

OFFICE OF THE GOVERNOR OF GUAM
Office of Legal Counsel
Attorneys for Appellee
Governor Lourdes A. Leon Guerrero

By: /s/ *Leslie A. Travis*
LESLIE A. TRAVIS
JEFFREY A. MOOTS

STATEMENT OF RELATED CASES

Pursuant to Rule 13(l) of the Guam Rules of Appellate Procedures, the undersigned hereby certifies that she is unaware of any cases related to the instant matter.

Respectfully submitted this 10th day of November, 2025.

OFFICE OF THE GOVERNOR OF GUAM
Office of Legal Counsel
Attorneys for Appellee
Governor Lourdes A. Leon Guerrero

By: /s/ *Leslie A. Travis*
LESLIE A. TRAVIS

CERTIFICATE OF COMPLIANCE

This brief complies with the type volume limitation of Rule 16(a)(7)(B) because this brief contains 8,882 number of words, excluding the parts of the brief otherwise exempted from Rule 16(a)(7)(B)(iii).

Respectfully submitted this 10th day of November, 2025.

OFFICE OF THE GOVERNOR OF GUAM
Office of Legal Counsel
Attorneys for Appellee
Governor Lourdes A. Leon Guerrero

By: /s/ *Leslie A. Travis*
LESLIE A. TRAVIS

CERTIFICATE OF SERVICE

I, LESLIE A. TRAVIS, hereby certify that on the 10th day of November, 2025, I caused the Response Brief of Appellee Lourdes A. Leon Guerrero, *I Maga'hågan Guåhan*, Governor of Guam, to be filed via the Supreme Court of Guam's electronic filing system. I further certify that I will cause copies of the Response Brief of Governor Leon Guerrero to be served on the following party:

Norman L. Miller, Jr.
Deputy Attorney General
Office of the Attorney General of Guam
Civil Litigation Division
134 W. Soledad Ave., Ste. 302
Hagåtña, Guam 96910

Respectfully submitted this 10th day of November, 2025.

OFFICE OF THE GOVERNOR OF GUAM
Office of Legal Counsel
Attorneys for Appellee
Governor Lourdes A. Leon Guerrero

By: /s/ *Leslie A. Travis*
LESLIE A. TRAVIS