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Re: OPA-PA-26-001 Hearing Officer's Review of DPW's Substantial Interest Determination (2 GARR Div. 4 § 12115)

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Thank you,
 Jerrick Hernandez, Auditor
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**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

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7 In the Appeal of) **Appeal No: OPA-PA-26-001**
8 General Pacific Services, LLC,)
9) **HEARING OFFICER'S REVIEW**
10 Appellant.) **OF DPW'S SUBSTANTIAL INTEREST**
) **DETERMINATION (2 GARR DIV. 4 § 12115)**
)

11 To: **Purchasing Agency:**
12 Department of Public Works
13 C/O Patrick Lalor, Esq.
14 Assistant Attorney General
15 Office of the Attorney General
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I. INTRODUCTION

Purchasing Agency Department of Public Works (“DPW”) on February 6, 2026 made the determination pursuant to 5 GCA § 5425 (g) that, award of the contract for Request for Proposal for Project No. 730-5-1059-L-YIG without delay was necessary to protect substantial interests of Guam (hereinafter DPW’s “Substantial Interest Determination” or “SID”). Offeror Guam Pacific Services LLC (“GPS”) protested the SID on February 9, 2026. DPW, GPS and Awardee-Interested Party Core Tech International Corporation (“CTIC”) submitted their respective briefs then made their arguments at a hearing held on March 20, 2026 on Zoom. Under Procurement Law (5 GCA Ch. 5) Section 5425 (g) and Procurement Regulations (2 GARR Div. 4) Sec. 12115 (b) the Public Auditor is to review and confirm or reject substantial interest determinations. The undersigned hearing officer rejects DPW’s Substantial Interest Determination because it was not signed by the Guam Department of Education (“GDOE”) Superintendent and because the SID failed to show that award without delay is necessary to protect the substantial interests of Guam.¹

II. RELEVANT BACKGROUND

A. Solicitations pursuant to the *Ma Kåhat* Act of 2013

Guam has been attempting to build a new Simon Sanchez High School (“SSHS”) for more than a decade. On June 15, 2015, DPW issued Request for Proposals (“RFP”) No. 730-5-1055-L-YIG for financing, design, renovation, construction, collateral equipment, maintenance and insurance as mandated by P.L. 32-120 and P.L. 32-121 (the *Ma Kåhat* Act of 2013) for a total of 36 schools with SSHS as a priority, as well as for development of a Comprehensive Capital improvement Plan (hereinafter, the “Original RFP”). Consolidated OPA-PA-16-007 and OPA-

¹ On Feb. 16, 2026, the Public Auditor recused and appointed the undersigned hearing officer to this appeal. OPA-PA-26-001, Recusal of Public Auditor and Order Appointing and Designating Hearing Officer to Preside Over Appeal.

1 PA-16-011, Decision, at 3. CTIC protested then appealed, and the OPA partially granted CTIC’s
2 appeals. *Id.*, 2.

3 On Mar. 21, 2025, the Governor and Lt. Governor through DPW issued the RFP for Project
4 No. 730-5-1059-L-YIG for the new SSHS’ Finance, Demolition, Design, Build, Lease/Leaseback,
5 and Insure/Capital Maintenance (FDDBLM) (hereinafter, the “2025 SSHS RFP”). Procurement
6 Record, 2025 3 SSHS Master RFP_Final.pdf, at 1-3.² The 2025 SSHS RFP resulted from the
7 passage of P.L. 37-22, which amended the *Ma Kåhat* Act of 2013 as codified at 5 GCA CH 58D.
8 *See id.*, 1 Bill 94-37.pdf, 1.

9
10 By June 17, 2025, DPW selected the highest ranked offeror for the 2025 SSHS RFP, *id.*,
11 2025 5 May – June Correspondence.pdf, 910, and through internal meeting minutes, it appears that
12 CTIC was selected. *See id.*, 2025 5 May – June Correspondence.pdf, 903 (memorializing a
13 negotiation meeting with CTIC). In a letter dated July 7, 2025, CTIC was invited to begin
14 discussions on its proposal. *See id.*, 2025 6 July Correspondence.pdf, 179. On Sep. 22, 2025,
15 DPW and the Guam Department of Education (“GDOE”) Superintendent informed CTIC that its
16 proposal was conditionally accepted. *Id.*, 2025 11 Draft P3 Contracts.pdf, 4-5. On Oct. 20, 2025,
17 an evaluation committee for the 2025 SSHS RFP made a determination that CTIC was the most
18 qualified and responsive offeror, with GPS ranked second and Guam Educational Finance
19 Foundation III, Inc. (“GEFF”), ranked third. The determination also recommended CTIC, being
20 the most qualified and responsive proposer, is given “first opportunity to negotiate a contract
21 pursuant to the RFP and the *Ma Kåhat* Act” *Id.*, 2025 10 November Correspondence.pdf, 401-
22 403. On Oct. 27, 2025, DPW notified CTIC, GPS and GEFF that it intended to award the project
23 to CTIC. *Id.*, 2025 10 November Correspondence.pdf, 404, 406, 408.

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² On Feb. 5, 2026, DPW submitted the procurement record in an electronic disc. The record, which appears to be a compilation of documents in the procurement file at the time of its submission, did not comply with 2 GARR Div. 4 § 12104 (c) (3), which required that it be in chronological order, numbered, sequentially tabbed, and indexed.

1 **B. GPS’ protests and appeal**

2 On Nov. 19, 2025, GPS protested that the record could not support the selection and award
3 to CTIC. *Id.*, 2025 10 November Correspondence.pdf, 372-374. On Dec. 12, 2025, GPS protested
4 that CTIC’s principal financing exceeded the amount authorized in the *Ma Kāhat* Act. Notice of
5 Appeal Procurement Appeal; Alternative Motion to Compel Agency Decision, Attachment I. Also
6 on Dec. 12, 2025, GPS protested any award, notice to proceed, or demolition that was incompliant
7 with the Procurement Law, including 5 GCA § 5249. *Id.*, Attachment J.³

8 On Jan. 28, 2026, GPS, not having received DPW’s decisions on its protests, appealed what
9 it contends were constructive denials of the protests to the OPA. Notice of Appeal, 2. GPS in its
10 Notice of Appeal seeks alternative relief and moves the Public Auditor to compel agency decisions
11 on its protests. *Id.*, 10.

12 **C. DPW’s Substantial Interest Determination**

13 On Feb. 5, 2026, DPW filed the procurement record with the OPA. On Feb. 6, 2026, DPW
14 filed a cover letter and a memo to the procurement file.⁴ The memo to the procurement file was
15 titled “Written Determination Pursuant to 5 GCA § 5425(g)(1) Simon Sanchez High School
16 Finance, Demolition, Design, Build, Lease/Leaseback & Insurance/Capital Maintenance
17 (FDDBLM) Project No. 730-5-1059” (hereinafter the “Written Determination”) and provided
18 seven Findings of Urgency and Public Interest:
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- 22 1) Ongoing Educational Disruption to students, faculty and staff because of double
23 sessions, abnormal instruction hours, and non-standard classroom arrangements due to
24 project delays.

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³ GPS’ two Dec. 12, 2025 protest letters do not appear in the procurement record.

⁴ For the purposes of this review, those filings comprise the SID. *See* IV. A. 2 *infra*.

1 constitutionally valid on rational basis review.” *Crawford v. Antonio Won Pat Int’l Airport Auth.*,
2 *Guam* 2017 WL 3736645 * 9 (D. Guam 2017). However, rational basis for review for Guam’s
3 local courts have thus far been applied only in review of criminal jury verdicts, *see, e.g., People v.*
4 *Soram*, 2024 *Guam* 10 ¶ 12; *People v. Campos*, 2015 *Guam* 11 ¶ 41, and in dicta discussing
5 legislative facts. *Guam Election Com’n v. Responsible Choices for Adults Coalition*, 2007 *Guam*
6 20 ¶ 100 and Note 66. Still, when conducting a rational basis review, the record is reviewed *de*
7 *novo*. *Campos* ¶ 41.

9 In federal administrative cases, when an agency seeks to avoid an automatic administrative
10 stay imposed by rule or regulation, a four-factor test is applied to the agency’s determination on
11 avoiding the stay. *See Comprehensive Health Services LLC v. United States*, 151 Fed.Cl. 200, 206
12 (Fed. Ct. Cl. 2020) (weighing 1) protestor’s success on the merits; 2) whether protestor will suffer
13 irreparable harm if there is no stay; 3) whether the harm will outweigh the harm to the government
14 and third parties; and 4) whether injunctive relief serves the public interest; *see also Supreme*
15 *Foodservice GmbH v. United States*, 109 Fed.Cl. 369, 383 (Fed. Ct. Cl. 2013). The court gives
16 deference to the agency decision but looks to whether the agency had a rational basis for overriding
17 the stay, *Supreme Foodservice*, 382, and will disturb the override if the agency’s decision is
18 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *STG LLC v.*
19 *United States*, 147 Fed.Cl. 790,799-804 (2020).

22 Notwithstanding the foregoing, statutory text, structure and legislative history determine
23 the OPA’s authority in deciding procurement matters. *SH Ent., Inc. v. Territory of Guam*, 2025
24 *Guam* 10 ¶ 17. Procurement Reg. § 12115 states that the Public Auditor is to confirm or reject a
25 determination made under Procurement Law § 5425 (g). The statutory text plainly states that “The
26 Public Auditor shall have the power to review and determine *de novo* any matter properly
27 submitted to her or him.” Procurement Law § 5703 (a); *see also SH Ent., Inc. v. Territory of*
28

1 *Guam*, 2025 Guam 10 ¶ 21 (Public Auditor’s standard of review in a debarment or suspension
2 decision); *DFS Guam LP v. A.B. Won Pat Int’l Airport Auth. Guam*, 2020 Guam 20 ¶ 42 (Public
3 Auditor’s standard of review in a procurement protest). Furthermore, the Guam Supreme Court
4 has emphasized that, in review of matters, the Public Auditor must substantively engage the
5 evidence in the record. *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5 ¶ 35.

7 Unlike federal law, the Procurement Law does not afford deference by the Public Auditor
8 to agency decisions or determinations. The only provision that comes close to some deference is
9 § 5704 (b), which states that the Public Auditor’s “determination regarding the application or
10 interpretation of the procurement law or regulations, shall be entitled to great weight and the
11 benefit of reasonable doubt, although it shall not be conclusive on any court having competent
12 jurisdiction.” Accordingly, the text and structure of the Procurement Law show that no deference
13 is owed to agency decisions or determinations.

15 There being no binding authority to the contrary, the text and structure of the Procurement
16 Law yield the conclusion that the OPA’s review of determinations made pursuant to § 5425 (g) is
17 *de novo*. *SH Ent., Inc.*, 2025 Guam 10 ¶¶ 17, 21.

18 IV. DISCUSSION

19 A. OPA review of substantial interest determinations

20 1. Parameters of the review.

21 Procurement Law § 5425 (g) provides as follows:

22
23 In the event of a timely protest under Subsection (a) of this Section or under
24 Subsection (a) of § 5480 of this Chapter, Guam shall not proceed further with the
25 solicitation or with the award of the contract prior to final resolution of such protest,
26 and any such further action is void, unless:

- 27 (1) The Chief Procurement Officer or the Director of Public Works after
28 consultation with and written concurrence of the head of the using or
purchasing agency and the Attorney General or designated Deputy Attorney
General, makes a written determination that the award of the contract
without delay is necessary to protect substantial interests of Guam

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2 A procurement ceases on a timely protest unless the Chief Procurement Officer (“CPO”) or DPW
3 Director in consultation with the agency head and the Attorney General (“AG”) or designee
4 concurs determines that it is necessary to award the contract without delay to protect Guam’s
5 substantial interests. The Procurement Regulations provide guidance on the filing of the
6 substantial interest determination and authorize the Public Auditor to review and confirm or reject
7 a determination made pursuant to § 5425 (g):

8
9 **Review of Award Pending Protest or Appeal.** (a) Any protestor may protest a
10 determination by the Chief Procurement Officer or the Director of Public Works
11 pursuant to 5 GCA § 5425(g) that award of a contract without delay pending Appeal
12 is necessary to protect the substantial interests of the government of Guam. Said
13 protest must be filed in writing at the Office of the Public Auditor within two (2)
14 days of receipt by protestor of the notice of determination. The Public Auditor shall
15 either confirm or reject the determination.

16
17 (b) After an Appeal is filed with the Public Auditor relative to method of selection,
18 solicitation, or award pursuant to 5 GCA § 5425(e) and § 9301 of this Chapter, the
19 Public Auditor shall review and confirm or reject any determination by the Chief
20 Procurement Officer or the Director of Public Works pursuant to 5 GCA § 5425(g)
21 that award of a contract without delay pending Appeal is necessary to protect the
22 interests of the government.

23
24 (c) The Chief Procurement Officer and the Director of Public Works shall file with
25 the Office of the Public Auditor a copy of all determinations made pursuant to 5
26 GCA § 5425(g) on the date of issuance, together with any information used or
27 considered by the agency in making that determination

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29 2 GARR Div. 4 § 12115 (a), (b) and (c).⁵

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⁵ While *I Liheslaturan Guåhan* adopted broad policy findings and authorized lease-leaseback financing for a new SSWS, the procurement record appears not to contain a contemporaneous determination of need (“DON”) by DPW and GDOE demonstrating that the specific design, capacity, and functional program were derived from a comprehensive analysis of GDOE’s requirements. This absence may simply be a gap in completing the record. Nonetheless, in the absence of a written DON, it may be difficult to show that the solicitation’s specifications reflect the specified needs of the end-user agency. Thus, a finding that award without delay was necessary to protect the substantial interests of Guam presupposes a prior, fact-based understanding of GDOE’s needs as well as how the specific SSWS design and specifications address those needs. More relevant to this review, as Procurement Regs. § 12115 requires the DPW Director to file all determinations made pursuant to 5 GCA § 5425(g), it is reasonable for the Public Auditor, when reviewing a substantial interests determination, to expect that the record contains a DON reflecting GDOE’s specifications. In that way, there is a fact-based bridge between the end-user’s requirements and a determination’s conclusion that award without delay is necessary to protect Guam’s substantial interests.

1 Our Supreme Court in its only review to-date of a substantial interests determination
2 examines it for a showing of necessity. *Guam Imaging Consult., Inc. v. Guam Mem. Hosp. Auth.*,
3 2004 Guam 15 ¶ 41.

4 The most current version of the Model Procurement Code (hereinafter, the “MPC”) retains
5 the provision allowing determinations of substantial interest. *See* American Bar Association, *The*
6 *2000 Model Procurement Code for State and Local Governments* (Chicago: ABA Section of Public
7 Contract Law & Section of State and Local Government Law 2000) §9-101 (6) available at
8 [https://publicprocurementinternational.com/wp-content/uploads/2019/04/2000-ABA-Model-](https://publicprocurementinternational.com/wp-content/uploads/2019/04/2000-ABA-Model-Procurement-Code.pdf)
9 [Procurement-Code.pdf](https://publicprocurementinternational.com/wp-content/uploads/2019/04/2000-ABA-Model-Procurement-Code.pdf) last visited Apr. 3, 2026. Comment (4) to the 2000 MPC § 9-101 explains
10 how the provision works:
11

12 In general, the filing of a protest should halt the procurement until the
13 controversy is resolved. In order to allow essential governmental functions to
14 continue, Subsection (6) provides that the [State] may proceed with the solicitation
15 or award of the contract, despite the protest, upon a determination in writing by the
16 Chief Procurement Officer or the head of the Purchasing Agency that such action
is necessary. It is expected that such a determination will occur only in those few
circumstances where it is necessary to protect a substantial interest of the [State].

17 *CARL Corp. v. Hawaii*, 946 P.2d 1, 24 (Haw. 1997) explains that the determination must
18 specifically identify the interests involved and articulate why it is necessary to award the contract
19 without delay to protect those interests (holding that a substantial interest determination “must
20 specifically identify the State interests involved and articulate why it is necessary for the protection
21 of those interests that the contract be awarded without delay”). The government cannot, however,
22 invoke the exception when its own failures have caused the urgency. *GTECH Corp. v.*
23 *Pennsylvania*, 965 A.2d 1276, 1287 (Pa. Commonw. Ct. 2009).
24

25 From the foregoing, the parameters of the OPA’s *de novo* review for confirmation or
26 rejection of a substantial interests determination are as follows. The general rule is that a protest
27 halts procurements. A substantial interest determination is confirmable where a contract is so
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1 essential to government operations that it cannot wait several months for the protest to be resolved
2 without suffering severe harm to its capacity to function. The determination must (a) identify the
3 specific interests involved and (b) articulate the need to award the contract without delay in order
4 to protect those interests. The determination is valid only in those few circumstances where it is a
5 necessary but narrow safety valve but is not to be used as a routine administrative tool. However,
6 the determination may not be used when the reason for the delay arises from governmental failure.
7

8 **2. Post-hoc rationalizations may not to be considered in the review but post-hoc**
9 **explanations may be considered.**

10 Procurement Reg. § 12115 (c) provides:

11 The Chief Procurement Officer and the Director of Public Works shall file with the
12 Office of the Public Auditor a copy of all determinations made pursuant to 5 GCA
13 § 5425 (g) **on the date of issuance**, together with any information used or
14 considered by the agency in making that determination.

15 (Emphasis supplied). Use of “on the date of issuance” in the regulation appears to require that any
16 information used or considered by the agency in making the determination be filed as of the date
17 of the determination. Otherwise, it is easy to see how the purchasing agency could continue to pad
18 the determination with more and more supporting information and reasoning, all the way up to the
19 time for review by the OPA. In so doing, there is a risk the agency during litigation would unfairly
20 transform an otherwise deficient determination into a confirmable one.

21 Indeed, the general rule is that administrative records supporting agency action are frozen
22 as of the date the agency determines an issue. In *Citizens to Preserve Overton Park, Inc. v. Volpe*,
23 401 U.S. 402 (1971) (abrogated on other grounds by *Califano v. Sanders*, 430 U.S. 99 (1977)), the
24 United States Supreme Court reviewed a decision of the Secretary of Transportation to allow
25 funding where neither a rulemaking nor adjudicatory matter was at issue. When the case was
26 brought to judicial review, the trial court based its decision by relying on litigation affidavits. The
27 Supreme Court rejected this approach because it could lead to “‘post-hoc’ rationalizations,”
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1 traditionally found as inadequate bases for review. 401 U.S. at 419-420. Review of the Secretary’s
2 funding decision was, therefore, to be made based on the “full administrative record that was
3 before the Secretary at the time he made his decision.” *Id.*, 420. Thus, the courts have required
4 agencies to defend their actions on the basis on which they were originally taken, not on new ones
5 developed in litigation to justify its decision. *Motor Vehicle Mfr. Ass’n v. State Farm Mutual Auto*
6 *Ins. Co.*, 463 U.S. 29, 50 (1983); *see also Walter O. Boswell Mem. Hosp v. Heckler*, 749 F.2d 788,
7 792 (D.C. Ct. App. 1984) (warning against the need to have administrators with prescience in their
8 decision making or making post-hoc rationalizations when the record is over or under inclusive).
9

10 While post-decision supplementation is not allowed to introduce post-hoc rationalizations,
11 it may be permitted for post-hoc explanations that discuss rationale put forth at the time the
12 decision was taken. *National Oilseed Processors Ass’n v. Browner*, 924 F.Supp. 1193, 1204 –
13 1205 (D.D.C. 1996). As explained in *National Oilseed*,

14
15 The rule against post-hoc rationalizations does not prevent a court from
16 considering a more detailed explanation of an agency's action in response to a legal
17 challenge. As long as the agency does not present a new basis for its action, it may
18 supply a clearer or more detailed explanation. *Methodist Hosp. of Sacramento v.*
19 *Shalala*, 38 F.3d 1225, 1233 n. 11 (D.C.Cir.1994) (court rejected plaintiffs'
20 argument that position taken by agency in litigation was a post hoc rationalization,
21 even though agency “could have placed a finer point” on the issue in its explanation
22 in the record); *International Ladies Garment Workers' Union v. Donovan*, 722 F.2d
23 795, 814 (D.C.Cir.1983) (a court will “uphold a decision of less than ideal clarity
24 if the agency's path may be reasonably discerned.”) (quoting *Bowman Trans. Inc.*
25 *v. Arkansas–Best Freight Sys., Inc.*, 419 U.S. 281, 286, 95 S.Ct. 438, 442, 42
26 L.Ed.2d 447 (1974)), *cert. denied*, 469 U.S. 820, 105 S.Ct. 93, 83 L.Ed.2d 39
27 (1984).

28 The key distinction is the difference between a post hoc rationalization,
which is a new rationale for an agency action, and a post hoc explanation, which is
an agency's discussion of the previously-articulated rationale for the challenged
action. Post hoc rationalizations are precluded; post hoc explanations are not. *See*
e.g. Sierra Club v. Marsh 976 F.2d 763, 774–75 (1st Cir.1992) (holding that “the
district court properly accepted the post-hoc explanations of the decisionmakers'
action” because the agencies' explanations were supported by evidence in the
administrative record) (relying on *Citizens to Preserve Overton Park v. Volpe*, 401
U.S. 402, 420, 91 S.Ct. 814, 825, 28 L.Ed.2d 136 (1971)).

1 *Id.* Notwithstanding the foregoing explanation of the contours of the rule, it is clear that to avoid
2 post-hoc rationalization, review of the DPW SID must be based on what is in the record at the time
3 of the decision. Accordingly, this review examines the procurement record and other information
4 submitted by the parties after the date of the SID’s issuance that supplies a clearer or more detailed
5 explanation of a previously articulated rationale in the determination, so long as the supplemental
6 information is in the record.
7

8 **B. Hearing officer’s Procurement Reg. § 12115 review**

9 **1. Because the GDOE head did not concur on the SID, DPW does not meet**
10 **the necessity requirement under *Guam Imaging*.**

11 Procurement Law § 5425 (g) (1) requires the DPW Director to obtain the written
12 concurrences from the head of the purchasing agency and the Attorney General or his designee.
13 Procurement Law § 5030 (q) defines the purchasing agency as “any governmental body other than
14 the Chief Procurement Officer or the Director of Public Works which is authorized by this Chapter
15 or its implementing regulations, or by way of delegation from the Chief Procurement Officer, to
16 enter into contracts.” Public Law 37-22 § 58D102 (b) states that the contract arising from the *Ma*
17 *Kâhat* Act is to be between GDOE and the contractor for financing, construction, providing and
18 installing fixtures, furniture and equipment, and insurance and maintenance services. The 2025
19 SSHS RFP provides for these services, consistent with P.L. 37-22.
20

21 Insofar as the Superintendent, who is appointed by the GDOE Board and serves as its Chief
22 Executive Officer, with responsibility *inter alia* for administering the agency, approving the
23 expenditure of funds, and appointing persons to GDOE employment—that official would appear
24 to serve as GDOE’s agency head. *See* 17 GCA § 3103 (providing for certain powers and
25 authorities of the GDOE Superintendent). This conclusion is confirmed when observing that the
26 Superintendent has the authority to appoint Deputy Superintendents. *See* 17 GCA § 3125. Thus,
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1 the Superintendent appears to be the appropriate official to serve as the purchasing agency head of
2 GDOE for purposes of § 5425(g).

3 Although the DPW Director's transmittal letter states that the GDOE Superintendent
4 concurred on the determination, nowhere does her signature appear on the written determination
5 itself. It was in fact signed by the Deputy Superintendent for Finance and Services in that capacity,
6 with a "cc" addressed to the GDOE Superintendent. Furthermore, although the GDOE
7 Superintendent provided a declaration supporting the SID, nowhere in it does she plainly state her
8 concurrence. Nor does DPW's reply brief state her concurrence. Where a substantial interest
9 determination fails to include the concurrence required under § 5425 (g) (1), the determination
10 does not satisfy the requirements of the Procurement Law as held in *Guam Imaging. Guam*
11 *Imaging Consult., Inc. v. Guam Mem. Hosp. Auth.*, 2004 Guam 15 ¶ 41; *see also CARL Corp. v.*
12 *Hawaii*, 946 P.2d 1, 22-23 (Haw. 1997) (determining that failure to have the appropriate official
13 issue a substantial interest determination renders it procedurally deficient). As the Deputy
14 Superintendent is not the GDOE head, he was not lawfully authorized to concur on the SID.
15 Procurement Law § 5425 (g); *Id.* 2004 Guam 15. The SID thus fails the requisite necessity under
16 *Guam Imaging*.

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19 **2. The Written Determination does not specifically identify Guam's**
20 **substantial interests, nor does it articulate why award of the contract is necessary to protect**
21 **those interests.**

22
23 The determination in CARL described the following interests and impairment:

24 (1) the current vendor, whose contract expired in June 1995, might suddenly cease
25 service at any time; (2) the new system would allow redeployment of fifteen library
26 employees currently involved in maintaining the old system; (3) without the
27 immediate award of the contract, the simultaneously awarded contracts for
28 collections (Baker & Taylor) and on-line serials (Information Access Company)
would be delayed; (4) free Internet access would be delayed; (5) recabling the
libraries and installation of the frame relay system were underway and would have
to be paid for when complete, regardless of whether the automation services were

1 available; and (6) new administrative rules to provide services and user fees were
2 dependant (*sic*) on the new automation system for implementation.

3 ...

4 [and (7)] the fact that the proposals were scored by an independent evaluation team
5 was an additional reason “why the substantial interests of the State will be protected
6 by awarding the contract ...”.

7 946 P.2d at 6. *CARL* concluded that the determination failed to identify the substantial interests
8 of the state and failed to articulate how those interests would be impaired by delay. *Id.* at 23
9 (requiring identification of specific state interests implicated and how interests would be impaired
10 by delay).

11 Careful reading of *CARL* yields that the determination there conflated the merits of the
12 protest with the separate question whether award without delay was necessary to protect substantial
13 state interests. *Id.*, 24 (observing that, if contracting officials may both deny a protest and override
14 the stay based on their own view of the merits, the statutory stay protection becomes meaningless).
15 Additionally, the interests identified in the *CARL* determination, apart from the possibility of a
16 complete cessation of library automation services, were largely operational conveniences, not
17 concrete substantial interests endangered by delay, as they merely described how the library would
18 be inconvenienced by maintaining the status quo during any delay in performing the contract but
19 identified no substantial interest of the state that would suffer. *See id.* (cessation of library services
20 the only argument that approaches impairment of a state interest).

21 Even as to the arguably substantial interest of continuity of automation services, the *CARL*
22 record showed that immediate award was not necessary to protect that interest. The Library’s own
23 witness testified that the existing vendor was willing to continue services on a month-to-month
24 basis and that the maintenance contract automatically renewed if both sides agreed. On that
25 evidence, it was held that continued performance on the contract pending resolution of the protest
26 was not necessary to protect substantial State interests because interim measures could maintain
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1 the status quo. *Id.* In other words, the substantial-interest determination failed to show that award
2 of contract without delay was necessary to protect substantial interests.

3 *CARL's* substantial interests determination plainly contained no findings identifying
4 specific interests, nor did it show impairment from a delayed award.

5
6 DPW's Findings of Urgency and Public Interest mirror, almost point-for-point, the defects
7 identified in *CARL*. DPW's findings are framed at a high level and are not stated as specific,
8 clearly defined substantial interests of Guam. The findings describe generalized harms and effects
9 of delay, as well as policy objectives and concerns, but they do not identify concrete, clearly
10 defined substantial interests of Guam, or show that award of the 2025 SSHS RFP contract without
11 delay is necessary to protect such interests. They do not explain how maintaining the status quo
12 until GPS's protests are resolved is insufficient. The SID describes consequences, such as double
13 sessions, abnormal instruction hours, and rising costs, but it does not specifically identify
14 governmental interests like the provision of adequate secondary education, protection of student
15 safety, preservation of fiscal capacity, or fulfillment of statutory mandates. The deficient
16 identification of substantial interests here is analogous to the *CARL* court's conclusion that the
17 determination there failed to identify the substantial interests of the state.
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19
20 Although the Written Determination on its face is lacking, the declarations from DPW and
21 CTIC as well as CTIC's exhibits, may be included in the analysis of the SID if they provide clearer
22 or more detailed explanations of rationales already articulated in the SID and are not new
23 substantive justifications. From those filings, it may be possible to discern what substantial
24 interests of Guam are at stake.
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1 **a. Ongoing Educational Disruption, Prolonged Temporary Conditions**
2 **and Material Educational harm (SID findings 1-3): Guam’s substantial interest in adequate,**
3 **stable secondary educational facilities**

4 Written Determination Findings 1–3 refer to ongoing educational disruption, prolonged
5 temporary arrangements, and material harm to the educational mission of SSSH and John F.
6 Kennedy High School (“JKHS”).

7
8 The Superintendent’s declaration supplies detailed facts about the educational disruption
9 that the SID mentions only in general terms. She states that SSSH serves students primarily from
10 northern Guam, including Yigo and Dededo; that, its prior Yigo campus had been operating in
11 deteriorating conditions before being severely damaged by Typhoon Mawar in 2023; and that, as
12 a result, the SSSH community has not had access to a permanent campus in its home village. Won
13 Pat Decl. ¶¶ 2, 3. She explains that SSSH students have been operating under a double-session
14 arrangement with JKHS for approximately three school years, with the two school populations
15 sharing one campus at different portions of the day. *Id.* ¶¶ 3, 4. SSSH currently serves 1,342
16 students, with enrollment around 1,500 in the 2023–2024 and 2024–2025 school years, and double
17 sessions affect approximately 3,000 students and 282 faculty and staff across both schools. *Id.*, ¶¶
18 5, 16. Under the current schedule, instructional periods extend later than a traditional school day,
19 with classes running until approximately 5:50 p.m. *Id.* ¶¶ 7, 17. The compressed schedule limits
20 students’ ability to participate in dual-enrollment courses, career and technical education
21 internships, and community partnership programs that typically occur during normal school hours.
22 *Id.* ¶¶ 8, 32. The shared campus arrangement also constrains extracurricular activities as SSSH
23 athletic teams and clubs have difficulty securing practice facilities and some activities occur late
24 in the evening due to limited availability. *Id.* ¶ 9.

1 The declaration further states that instructional time has decreased, teacher preparation
2 time is limited because JFKHS teachers must leave immediately and SSHS teachers cannot come
3 on campus early, and in-person credit recovery cannot be offered by either SSHS or JFKHS
4 because of the double-session structure. *Id.* ¶¶ 17–18, 21. Testing schedules are broken up by
5 double sessions which violate test procedures and break up testing days, and SSHS has lost roughly
6 250 students to other schools because of its half-day schedule. *Id.* ¶¶ 22–23.

8 For students with disabilities, the Superintendent describes compressed and rescheduled
9 special education services, with service providers working longer and different hours, teletherapy
10 that must be conducted at abnormal times and locations (often at home with parents rather than at
11 school), and the need to redeploy limited in-house speech therapists to double-session schools,
12 thereby reducing service elsewhere. *Id.* ¶¶ 24–27. She concludes that double sessions undermine
13 quality and accessibility of services for students with disabilities, which significantly hinders
14 academic progress, social-emotional development, and equitable access to education compared to
15 peers. *Id.* ¶¶ 27–28.

17 The amended *Ma Kåhat* Act legislation was included with the procurement record
18 submitted by DPW. After its amendment, the Legislative Committee on Infrastructure, Economic
19 Development, Simon Sanchez High School, Disability Services, Self-Determination and Historic
20 Preservation, Public Accountability and the Guam Buildup held a Town Hall Meeting. The
21 declaration supporting CTIC’s brief included as an exhibit the Committee Report from the May 1,
22 2024 Town Hall. The exhibit provided over fifty student letters and testimony describing
23 educational harms. Tang Decl., Exh. 2. Students gave statements that they lost significant amounts
24 of instructional time which hinders their growth and development and prevents them from fully
25 experiencing courses at the intended level. *Id.* at 0100–0101. Students gave statements that double
26 sessions mean shorten school hours, leaving them with little time to do homework because of late
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1 dismissals and long commutes. *Id.* at 0101, 0129–0131. Students described lack of access to labs,
2 libraries, and specialized classrooms, curtailed or cancelled school events, and the difficulty of
3 planning activities on a borrowed campus. *Id.* at 0119–0120, 0154–0156. One student noted that
4 clubs fundraising was negatively impacted and that long-standing events were cancelled or
5 constrained, affecting school culture and opportunities for leadership and engagement. *Id.* at
6 0154–0156. Others emphasized that their high-school experience has never been normal, citing
7 pandemic-era distance learning, cohorts, half-days and double sessions. *Id.* 2 at 0121.

9 The declarations and exhibits do not introduce a new category of interest. They explain
10 and substantiate the SID’s first findings by providing specific facts and testimony about
11 educational disruption, prolonged temporary conditions, and material educational harm. They
12 qualify as post-hoc explanations and are properly considered. These portions of the declarations
13 and exhibits do not attempt to justify the SID on a wholly different substantive ground. They can
14 fairly be understood as invoking Guam’s substantial interest in providing adequate, stable
15 secondary education to students assigned to those schools. That interest includes sufficient
16 instructional time, access to core and specialized programs, reasonably regular schedules, and a
17 predictable school environment. They can fairly be understood as invoking Guam’s substantial
18 interest in providing adequate, stable secondary education to students assigned to those schools.

20 The DPW Director’s declaration provides some explication of what substantial interest is
21 at stake. He identifies the 2025 SSHS RFP as the “Project”, Arriola Decl. ¶ 4, then attests that a
22 new school serves important public purposes, although he describes not a purpose but a modern
23 and permanent educational facility. *Id.*, ¶ 13. To the extent it clarifies the Written Determination,
24 then, it may be reasonably discerned that Guam has a substantial interest in adequate, stable
25 secondary educational facilities.
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1 Still, the SID must articulate how award of the contract without delay is necessary to protect
2 that educational interest. The SID itself asserts urgency but does not distinguish between the harms
3 of ongoing disruption and the specific incremental harms that would occur if the project were
4 delayed by the several months normally associated with protest resolution. The Superintendent
5 acknowledges that GDOE is planning interim measures including relocating SSHS students to the
6 Tiyan campus as an interim measure to eliminate double sessions and constructing temporary
7 facilities in Yigo, with a view to moving SSHS students there while the permanent facility is built.
8 Won Pat Decl. ¶¶ 33–36. The Committee Report and CTIC’s reply further discuss these plans,
9 including capacity constraints at Tiyan and logistical questions raised at the Mar. 9, 2026
10 legislative oversight hearing. Tang Decl. Ex. 2 at 0149–0151, 0158–0160; CTIC Reply Mem. in
11 Support of Determination of Substantial Interest at 15–18. Nevertheless, even if the feasibility of
12 those plans is in doubt and even if they do not cure all educational harms, their existence indicates
13 that the government has identified and is pursuing alternatives to mitigate educational disruption
14 while construction proceeds. The SID does not analyze why those interim measures do not
15 sufficiently protect Guam’s interest in adequate, stable secondary education during the protest
16 period or why a protest delay would cause educational impairment that cannot be addressed
17 through such measures.
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21 Thus, while the generous reading of the SID, supported by the declarations and exhibits,
22 describes Guam’s substantial interest in adequate, stable secondary educational facilities, it does
23 not demonstrate that award without delay, as opposed to award after resolution of protests with
24 interim mitigation, is necessary to protect Guam’s interest in adequate, stable secondary education
25 for SSHS and JFKHS students.
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1 **b. Safety and Facility Concerns: Guam’s substantial interests in Student**
2 **Safety and Welfare**

3 The Written Determination describes that prolonged reliance on temporary or shared
4 facilities raises ongoing concerns of facility adequacy and student welfare.

5 The Superintendent attested that many SSHS students live in northern villages and must
6 travel significant distances to the shared campus, often relying on school buses and limited family
7 transportation. Won Pat Decl., ¶¶ 10, 14. The highly inconvenient schedule and extracurricular
8 activities means that some students do not get home until approximately 9:30 p.m., while students
9 without activities often arrive home around 7:00 p.m. *Id.* ¶¶ 11, 12. She notes that many secondary
10 roads in northern Guam are not well lit, raising safety concerns for students traveling from their
11 bus stops, and that the risk has caused increased anxiety and changes in student behavior. *Id.* ¶¶
12 11, 12. The Superintendent further explained that double sessions disrupt normal sleep and eating
13 schedules, affecting their mood and well-being. *Id.* ¶20, 38. She also noted that double sessions
14 increase GDOE expenses due to bus-driver overtime and additional landlord charges for extended
15 facility use. *Id.* ¶29.

16 Students described having to catch buses early in dark morning hours (for JFKHS), or
17 travel home after dark (for SSHS), raising safety concerns and health issues, particularly on poorly
18 lit roads. Tang Decl. Ex. 2, 0148–0149. They reported overcrowded buses, students running to
19 buses before the bell to secure seats, and police officers stationed to manage dismissal traffic and
20 crowds. *Id.*, 0149–0151. One student observed that the health and safety of SSHS and JFKHS
21 students are at risk with a new SSHS. *Id.*, 0148–0149.

22 These facts further explain the SID’s safety and facility concerns and therefore qualify as
23 post-hoc explanations. They clarify how the temporary shared-facility arrangement affects student
24 safety and health. To the extent broader interests unrelated to these facility-based safety issues,
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1 those would lie outside the SID's safety and facility concerns and are post-hoc rationalizations,
2 therefore, this review does not take systemic criminal-justice or public-order interests into account.

3 Accordingly, it is reasonably discernible that Guam has a substantial interest in the safety,
4 health, and welfare of SSHS and JFKHS students and staff. However, the SID does not articulate
5 why award of the contract without delay is necessary to protect this interest. The SID does not
6 identify any specific, imminent safety deadline, such as expiration of building permits, closure of
7 the shared campus, or a known structural hazard, that would make prolonged use of the current
8 arrangement uniquely dangerous during the protest period. Instead, the record shows serious but
9 chronic safety burdens that have existed for years but which may be mitigated through operational
10 changes, e.g. adjusted bus schedules, increased supervision, relocation, better lighting, pending
11 construction.

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14 Thus, even with generous reading and detailed explanations, Guam's interest in student
15 safety and welfare may be discerned, but the SID does not demonstrate that only immediate award,
16 as opposed to ordinary protest-period delay with interim mitigation, is necessary to protect that
17 interest.

18 **c. Rising Costs and Fiscal Impact: Guam's substantial interest in**
19 **avoiding unnecessary fiscal loss**

20
21 The Written Determination observes that Guam's construction costs continue to increase,
22 notes risk of cost escalation and pressure on public resources.

23 In his declaration, the DPW Director plainly states that the government (as opposed to
24 Guam) has interests in timely completion of the Project, advancing the construction of critical
25 public infrastructure, delivering a permanent school facility, and avoiding operational
26 consequences associated with delay of the Project. Arriola Decl. ¶¶ 27, 28. These were not
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1 specifically identified in the Written Determination and will not be considered to the extent they
2 are given as post-hoc rationalizations.

3 The DPW Director does, nonetheless, attest that the Project is a major public infrastructure
4 project intended to provide a permanent educational facility and that CTIC was determined to be
5 the most qualified proposer. *Id.* ¶¶ 4–7, 13. He states that negotiations regarding construction
6 pricing have been completed and that negotiations concerning the lease-leaseback structure, capital
7 maintenance obligations, insurance requirements, and related terms were ongoing until the
8 protests. *Id.* ¶ 7. The Director explains that construction projects are susceptible to cost escalation
9 when timelines are extended and that delay increases risk of higher labor and material costs,
10 subcontractor pricing, and contractor unavailability. *Id.* ¶¶22–23. He observes that delay may
11 affect the contractor’s ability to maintain current pricing, staffing, and subcontractor commitments,
12 potentially requiring renegotiations that increase costs or introduce uncertainty. *Id.* ¶¶ 24–26.

13 CTIC’s reply notes that Okkodo High School was built in 2006 for approximately \$40
14 million, whereas the current SSSHS project is structured at approximately \$150 million in
15 construction financing and about \$166 million overall. CTIC Reply Mem. at 20–2 and n.25. This
16 support illustrates the cumulative fiscal price of delayed school construction, strengthening the
17 SID’s general assertion that rising costs burden public resources and function as post-hoc
18 explanations because they provide detail about the nature and magnitude of the risk of cost
19 escalation and tying it to the Project’s advanced stage.

20 The record thus supports a finding that Guam has a substantial interest in avoiding
21 unnecessary fiscal loss on this Project and that delay carries a real risk of cost escalation. However,
22 the SID and declarations do not identify any specific contract or financing-related deadline whose
23 breach during the expected protest period would cause a non-mitigable fiscal impairment. There
24 is no evidence that the negotiated pricing is set to expire on a fixed date overlapping with protest
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1 resolution, that financing commitments will lapse absent immediate award, or that legislative
2 appropriations will lapse if award is delayed. Instead, the testimony speaks in terms of general
3 risk that delaying the award increases the risk of higher costs. More than a general assertion that
4 delay is financially undesirable is required. A showing must be made that award of the contract
5 without delay is necessary to protect Guam's substantial interests. On the record here, while it
6 may be reasonably discerned that Guam has a substantial interest in avoiding unnecessary fiscal
7 loss, the SID does not articulate that a stay during protest resolution will produce a specific fiscal
8 harm that cannot be averted or managed without overriding the automatic stay.
9

10 **d. Legislative intent: Guam's substantial interest in fulfilling executive**
11 **and legislative mandates to construct a new SSHS**

12 The Written Determination finds that delay of the award frustrates the legislative purpose
13 in the (amended) *Ma Kåhat* Act to facilitate timely delivery of major public infrastructure projects.
14

15 The declaration supporting CTIC's brief includes as an exhibit the Governor's July 5, 2023
16 transmittal letter for the amended *Ma Kåhat* Act, in which she describes the law as a critical step
17 toward finally building the new SSHS, simplifying the procurement process, and issuing the SSHS
18 solicitation within 90 days. Tang Decl., Ex. 1. The Committee Report on the May 1, 2024 Town
19 Hall documents legislative focus on the new SSHS, providing updates on it, and the presence of
20 both public officials discussing project timelines and expectations. *Id.*, Ex. 2 at 0003–0008, 0132–
21 0135, 0139–0146. Students noted broken promises and urged officials to rebuild SSHS. *Id.*, Ex.
22 2 at 0121 to 0122, 0125, 0131, 0153–0156. This support does not add a new substantive interest
23 but illustrates the legislative and executive commitments to timely deliver the new SSHS and
24 substantiate the SID's reference to legislative purpose. They are therefore permissible post-hoc
25 explanations.
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1 The record, therefore, supports a finding that Guam has a substantial interest in carrying
2 out the mandates of the *Ma Kâhat* Act as amended by a procurement for timely construction of a
3 new SSHS. However, CARL and the MPC commentary make clear that substantial interests must
4 still be linked to necessity; legislative purpose alone does not automatically warrant overriding an
5 automatic stay built into the same statutory scheme. The SID does not identify any specific
6 statutory deadline or sunset in P.L. 37-22 that would be frustrated should the procurement be
7 stayed during protest resolution, nor does it explain why the protest resolution procedures in the
8 Procurement Law would frustrate legislative intent.

9
10 On this record, the legislative-purpose interest is substantial but not shown to be at risk in
11 a way that only immediate award can prevent. The SID, therefore, does not show why award is
12 necessary to fulfill legislative intent.

13
14 **e. Public Interest Balance: balance of the foregoing interests against the**
15 **public’s interest in the procurement system.**

16 The Written Determination contains the conclusion that the Project serves the public
17 interest when considering how it would restore normal school operations, mitigate educational
18 harm and reduce foreseeable costs while preserving GPS’ appeal rights.

19 Approximately 1,500 SSHS students and approximately 200 faculty and staff are directly
20 affected by the timing of the Project’s completion, and additional students and staff at JFKHS and
21 Tiyan High School are affected by temporary arrangements. Arriola Decl. ¶¶ 14, 15, 16.
22 Continued delay requires GDOE to maintain temporary operational arrangements, prolonging
23 disruption to students and educational programs. *Id.* ¶¶ 15, 20, 21, 27, 28. SSHS would not be a
24 luxury but a foundation of Guam’s public educational structure, and timely construction of a
25 permanent SSHS restores stable educational operations for students and families. Won Pat Decl.
26 ¶¶ 38, 39. The SSHS community has already endured serial temporary arrangements, including
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1 double sessions, awaiting a permanent facility. *Id.* ¶¶ 3, 4, 37. There is, as well, strong community
2 sentiment that a new SSHS is essential to student well-being, academic performance, and
3 community identity, and that further delay deepens student distrust in government. Tang Decl.,
4 Ex. 2 at 0119–0127, 0131, 0153–0156. Students do not have a school to call their own, and are
5 emotionally affected by ongoing displacement. *Id.*, Ex. 2 at 0119–0123, 0153–0156.

7 This support adds detail to the Project-completion side of the balance and constitute post-
8 hoc explanations. Since the amended *Ma Kāhat* Act did not narrow or affect protest rights,
9 language in DPW’s and CTIC’s briefs about Guam’s interests in procurement efficiency and
10 limiting litigation costs go beyond Written Determination’s language and would be post-hoc
11 rationalizations not relied upon here.

12 Thus, it is reasonably discernible that a new SSHS Project and restoration of normal school
13 operations serves the public interest, while, at the same time, the Procurement Law reflects a
14 co-equal public interest in fair, lawful procurement, including due process protest rights enforced
15 through an automatic stay that is overridden only in narrow, demonstrated necessity.
16 Unfortunately, the SID does not meaningfully grapple with that balance. It merely asserts that the
17 public interest in completing the Project outweighs GPS’s appeal rights but does not analyze the
18 nature and strength of the procurement-law interests at stake in preserving the stay, especially
19 where the protests allege serious legal defects and where the statute itself presumes a stay unless
20 the parameters of a substantial interests determination is met. An override of the stay must be
21 reserved for those limited circumstances in which a contract is so essential that it cannot wait for
22 protests to be resolved, the SID, even as generously read and supplemented by permissible
23 explanations, fails to show that this is such a case. It establishes that completion of the Project is
24 important and delay is harmful, but it does not demonstrate that preserving the stay through normal
25 protest resolution would so impair the identified interests that immediate award.
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V. CONCLUSION

The undersigned hearing officer, having reviewed the SID, rejects it because it fails to show necessity as it did not contain the GDOE Superintendent’s written concurrence. Rejection is further warranted because, although the SID fails to specifically identify Guam’s substantial interests, even when reasonably discerned, it fails to articulate why award without delay is necessary to protect Guam’s substantial interests.

Each party shall bear their own attorneys’ fees and costs.

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

SO DECIDED this 28th day of April 2026 by:

/s/

JOSEPH B. MCDONALD
Hearing Officer



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-26-001 Hearing Officer's Review of DPW's Substantial Interest Determination (2 GARR Div. 4 § 12115)

1 message

Jerrick Hernandez <jhernandez@guamopa.com>

Tue, Apr 28, 2026 at 1:33 PM

To: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, Patrick Lalor <plalor@oagguam.org>, Joyce Tang <jtang@civilletang.com>
Cc: Joy Esperanza <jesperanza@guamopa.com>, Sirena Cassidy <spcassidy@civilletang.com>, Vince Arriola <vince.arriola@dpw.guam.gov>, eservice <eservice@rwtguam.com>, Tawnia Katsuren <tkatsuren@civilletang.com>

Hafa Adai,

Please see the attached Hearing Officer's Review of DPW's Substantial Interest Determination (2 GARR Div. 4 § 12115) for OPA-PA-26-001. This email will serve as an official notice in lieu of a transmittal via Fax.

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

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Best Regards,



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

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