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In the Appeal of ASC TRUST, LLC and The Government of Guam Retirement Fund, Docket No. OPA-PA-25-007

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Hafa Adai Mr. Hernandez and Attorney Brennan,

Attached, please find the following for filing:

1. The Government of Guam Retirement Fund's Motion to Dismiss

Thank you,

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THE GOVERNMENT OF GUAM RETIREMENT FUND

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL
TERRITORY OF GUAM**

In the Appeal of

ASC TRUST, LLC,

Appellant

and

THE GOVERNMENT OF GUAM
RETIREMENT FUND

Purchasing Agency.

Docket No. OPA-PA-25-007

**THE GOVERNMENT OF GUAM
RETIREMENT FUND'S MOTION TO
DISMISS**

I. INTRODUCTION

The Government of Guam Retirement Fund (“GGRF”), by and through its attorneys, hereby moves to dismiss this Appeal for lack of jurisdiction. Appellant ASC Trust, LLC (“ASC”) failed to timely protest, and consequently, the Office of Public Accountability (“OPA”) has no jurisdiction over this Appeal.

II. RELEVANT BACKGROUND

On March 17, 2025, the GGRF issued RFP No. GGRF-002-25, seeking a provider for Plan Administration Services related to the Defined Contribution Retirement System (401(a) Plan), 457(b) Deferred Compensation Plan, and Welfare Benefit Plan. *See* GGRF PR00056 – PR000225; GGRF PR000231 – PR000241. The solicitation did not contain any local preference provision.

On March 31, 2025, ASC submitted a formal written question to the GGRF raising this specific issue. *See* GGRF PR000279. On April 10, 2025, the GGRF issued written responses to questions, reaffirming the RFP’s terms and making no changes regarding local preference. *See* GGRF PR000243 – GGRF PR000246. On April 16, 2025, ASC protested the procurement in its first protest letter dated April 16, 2025. GGRF PR000248 – PR000252. On April 23, 2025, the GGRF issued a Notice to All Prospective Offerors that a Stay of Procurement has been issued. GGRF PR000257. GGRF issued Amendment No. 2 on April 23, 2025. GGRF PR000259 – PR000260. ASC protested the procurement in its second protest letter dated April 25, 2025. GGRF PR000262 – PR000264. The GGRF issued a Notice to All Prospective Offerors that a Stay of Procurement was issued. GGRF PR000269. The GGRF issued Amendment No. 3 on April 28, 2025. GGRF PR000271 – PR000272. The GGRF denied ASC’s first protest by letter dated April 23, 2025. GGRF Procurement Record GGRF PR000254 – PR000255. ASC’s notice

of appeal from the GGRF's denial of its April 16, 2025, protest was filed with the OPA on April 30, 2025, in OPA-PA-25-007. *See* GGRF PR000284.

III. **LEGAL STANDARD: 5 GCA § 5425(a) – TIMELINESS AS A JURISDICTIONAL PREREQUISITE**

Section 5425(a) of Title 5 Guam Code Annotated provides that:

“Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to … the head of a purchasing agency. *The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto.*”

5 GCA § 5425(a)(emphasis added).

The statute establishes a clear and strict 14-day window for submitting such protests, and failure to do so renders the protest jurisdictionally barred. The Guam Supreme Court in *DFS Guam L.P.* reaffirmed this principle, stating that “timeframes set forth in the Procurement Code are jurisdictional in nature.” *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Authority*, 2020 Guam 20 ¶ 77 (citing *Teleguam Holdings II*, 2018 Guam 5 ¶¶ 20-21).

IV. **ARGUMENT**

A. ASC's Protest Was Untimely Under 5 GCA § 5425(A).

In its Motion to Dismiss, the GGRF argues that the OPA lacks jurisdiction to hear this appeal because ASC failed to file its protest within the fourteen days when they knew or should have known of the alleged basis for its protest, required under 5 GCA § 5425(a). ASC alleges that the GGRF violated Guam procurement law, 5 GCA § 5008, by omitting a local preference evaluation factor when it issued the RFP on March 17, 2025.

The GGRF cites March 31, 2025 —the date ASC raised this specific issue in writing —as the date ASC knew or should have known the basis for its protest. Under 5 GCA § 5425(a), ASC had until April 14, 2025, to file its protest, however, ASC filed its protest on April 16, 2025—

two days after the deadline. Because the statute imposes a jurisdictional time limit, ASC's protest is untimely and legally barred.

B. Guam Supreme Court Precedent Confirms Timeliness Is Jurisdictional

The case law in Guam is clear: "The timeframes set forth in the Procurement Code are jurisdictional in nature—i.e., the failure to abide by these timeframes will deprive the Superior Court of jurisdiction." *DFS Guam L.P.*, 2020 Guam 20, ¶ 77 (citing *Teleguam Holdings II*, 2018 Guam 5 ¶¶ 20-21). The Court further explained: "The time runs from the date on which the protesting party first learned of the purported misconduct." *Id.* ¶ 89.

In line with the Guam Supreme Court's opinion, ASC must have filed its protest no later than fourteen days after it became aware that the GGRF omitted the local preference language from the RFP. ASC learned of the absence of the 5 GCA § 5008 provision as early as March 17, 2025, when it received the RFP, and no later than March 31, 2025, when it raised the issue in writing. Fourteen days after March 31, 2025, would have been April 14, 2025. However, ASC filed its letter of protest on April 16, 2025; therefore, their protest is untimely.

C. OPA Precedent Confirms Protest Deadline Runs from the Date of Knowledge

The OPA similarly held that a protestor's knowledge of the basis for protest controls the jurisdictional deadline under 5 GCA § 5425(a). In OPA-PA-24-004, the OPA found that Data Management Resources, LLC ("DMR") filed its protest on July 12, 2024, within fourteen days of the Notice Award. However, the Public Auditor found that the defect in the procurement was apparent as of the bid opening on June 12, 2024. *See generally OPA-PA-24-004, Decision, and Order re Motion to Dismiss* (Dec. 6, 2024). The OPA found that DMR's protest was filed untimely because they "knew or should have known" the issue on June 12, 2024. *Id.* at pp. 3–

4. Despite being within 14 days of the Notice of Award, the protest was dismissed because

DMR had failed to act within 14 days of becoming aware of the relevant facts.

ASC, like DMR, knew of the basis for its protest by March 31, 2025, but did not file until April 16, 2025. Following the precedent set by the Supreme Court and the OPA, this delay is jurisdictionally fatal.

D. Jurisdiction cannot be waived and may be raised at any time

Even if the GGRF had not raised this objection, it would not waive the jurisdictional defect. It is a foundational legal principle that subject matter jurisdiction is non-waivable and may be raised at any stage of a proceeding.

The Guam Supreme Court reaffirmed this principle in *Port Authority of Guam v. Civil Service Commission*, noting that “even in the context of agency administrative proceedings—the question of subject matter jurisdiction may be raised at any time.” *Port Auth. of Guam v. Civ. Serv. Comm'n*, 2018 Guam 1, ¶ 18. As such, the OPA, an administrative body, must dismiss this protest for lack of jurisdiction, even if neither party raised the issue in the initial stages of the proceedings.

V. CONCLUSION

For the foregoing reasons, the GGRF respectfully requests that the OPA dismiss this Appeal for lack of jurisdiction under 5 GCA § 5425(a). ASC filed its protest more than 14 days after it knew or should have known of the alleged violation of 5 GCA § 5008. Pursuant to the holding in *DFS Guam L.P.*, untimeliness is a jurisdictional bar, and no equitable extension is available.

In the Appeal of ASC Trust, LLC
Office of Public Accountability Docket No. OPA-PA-25-007
GGRF MOTION TO DISMISS

Respectfully submitted this 24th day of June, 2025.

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