



Jerrick Hernandez <jhernandez@guamopa.com>

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

Trevor-Jon Ada Ybarra <tybarra@camachocalvo.law>

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To: "jhernandez@guamopa.com" <jhernandez@guamopa.com>

Cc: "Arsima A. Muller" <amuller@carlsmith.com>, "Joanne L. Grimes" <jgrimes@carlsmith.com>, Vince Camacho <vcamacho@camachocalvo.law>, "wbrennan@arriolafirm.com" <wbrennan@arriolafirm.com>, "attorney@arriolafirm.com" <attorney@arriolafirm.com>

Hello Jerrick,

Please see the attached for filing:

1. Government of Guam Retirement Fund's Reply Memorandum in Support of Motion to Dismiss

Thank you,

TREVOR-JON ADA YBARRA

Legal Assistant/Paralegal | CC Law Group LLC



356 E. Marine Corps Drive, Suite 201

Hagatna, GU 96910

Tel: 671.472.6813 **Ext.** 327 **Fax:** 671.477.4375

tybarra@camachocalvo.law

www.camachocalvo.law

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 **Government of Guam Retirement Fund's Reply Memorandum in Support of Motion to Dismiss.pdf**
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CARLSMITH BALL LLP

JOANNE L. GRIMES
jgrimes@carlsmith.com
ARSIMA A. MULLER
amuller@carlsmith.com
1001 Bishop Street, Suite 2100
Honolulu, HI 96813
Telephone No. 808.523.2500
Facsimile No. 808.523.0842.

CAMACHO CALVO LAW GROUP LLC
VINCENT C. CAMACHO
vcamacho@camachocalvo.law
356 E. Marine Corps Drive, Suite 201
Hagåtña, Guam 96910
Telephone No. 671.472.6813
Facsimile No. 671.477.4375

Attorneys for
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

**GOVERNMENT OF GUAM
RETIREMENT FUND'S REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

**GOVERNMENT OF GUAM RETIREMENT FUND'S REPLY MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS**

I. INTRODUCTION

The Government of Guam Retirement Fund (“GGRF”), by and through its attorneys, hereby submits this Reply Memorandum in support of its Motion to Dismiss filed June 24, 2025 (the “Motion”), and in response to Appellant ASC Trust, LLC’s (“ASC”) Opposition to GGRF’s Motion to Dismiss filed July 1, 2025 (the “Opposition”).

II. ARGUMENT

The Office of Public Accountability (“OPA”) should dismiss ASC’s appeal for failure to comply with the jurisdictional time limit. ASC’s protest was untimely under 5 GCA § 5425(a) and under established precedent, including *Teleguam Holdings LLC v. Territory of Guam* and *Johndel Int’l v. Office of Public Accountability*, which provide that an aggrieved party must submit a protest within fourteen (14) days after the aggrieved individual knows or should know the facts giving rise to a protest. *See* 5 GCA § 5425(a); *see also*, *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5; *Johndel Int’l v. Office of Pub. Accountability*, CV0095-22 (Guam Super. Ct. September 22, 2022) (Decision and Order). The 14-day protest period requires bidders to act promptly upon actual knowledge or when facts supporting a potential protest are reasonably discoverable, not when the agency later confirms those facts. In *Johndel Int’l*, the Superior Court of Guam emphasized that the key question is when the protester becomes aware of the facts supporting the protest, confirming that the statutory deadline runs from that *awareness*, not from the final agency statement. *See Johndel Int’l*, CV0095-22 at 6.

In this case, there is no dispute that the RFP was issued on March 17, 2025. *See* GGRF PR00056 – PR000225; GGRF PR000231 – PR000241. The Evaluation Factors were set forth in the RFP. *See* GGRFPR00045. There is nothing in the Evaluation Factors specifying that Guam-

based offerors would be receiving any additional points. Yet, ASC claims that it did not know whether Guam-based offerors would be receiving any preference in the evaluation scoring until it received confirmation from GGRF. *See Opp.* at 4. ASC's claim is wholly nonsensical. The Evaluation Factors could not be any clearer. They state what factors will be considered and how much percentage points will be allocated to each factor. None of the factors relate to geographical location. In addition, contrary to ASC's insinuation, there is nothing in the Procurement Code requiring GGRF to confirm a potential violation of the statute for the clock to start running. ASC's argument that it could not be an "aggrieved" party until after GGRF's April 10, 2025 response is inconsistent with the statutory purpose of 5 GCA § 5425(a), which mandates prompt resolution of procurement disputes once a protester knows or should know the facts giving rise to a protest. The Superior Court in *Johndel Int'l* rejected similar arguments, emphasizing that the clock begins when a protester becomes aware of the facts supporting the protest, thus confirming that the statutory deadline runs from that awareness, not from the final agency statement. *Johndel Int'l*, CV0095-22 at 6. On March 31, 2025, when ASC submitted its question in writing to GGRF, it demonstrated that it was already *aware* of the issue that is the basis for its protest. Thus, the 14-day clock was clearly triggered as of that day, and ASC had until April 14, 2025 to file its protest. It failed to do so because it did not file its protest until April 16, 2025, two (2) days after the deadline passed.

Even had ASC timely filed its protest, and even assuming that 5 GCA § 5008 applied to this RFP, the underlying basis for ASC's protest is without merit. Section V of the RFP required offerors submitting proposals to attest to minimum requirements, such as: "Upon award of the contract but before the commencement of services, if later, the successful firm must be duly licensed to conduct business in the Territory of Guam." GGRF PR000120 – PR000121. In

addition, section V.B.10 of the RFP also requires that “[t]he firm must have at least three (3) individuals located on the island to assist in participant enrollment and engagement. At least two (2) individuals must be appropriately credentialed and licensed to provide investment and distribution advice to GGRF participants.” GGRF PR000120 – PR000121. These provisions are consistent with 5 GCA § 5008, which states, in pertinent part: “All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam[.]” The RFP on its face ensures that the awarded contractor will be consistent with the economic objectives of 5 GCA § 5008. *See* 5 GCA § 5008; *see also*, GGRF PR000120 – PR000121. Accordingly, ASC’s allegations of prejudice or competitive disadvantage are without merit, as the procurement process ensures meaningful local business participation, regardless of the initial domicile of offerors.

ASC’s reliance on *DFS Guam L.P. v. A.B. Won Pat Int’l Airport Authority* is misplaced. In *DFS*, the Supreme Court ruled that the protest clock did not start until the purchasing agency made a definitive decision, as the agency’s position remained uncertain until a subsequent meeting. *See DFS Guam L.P. v. A.B. Won Pat Int’l Airport Authority*, 2020 Guam 20 ¶ 105–07. Here, in contrast, the requirements expressed in the RFP made clear that Guam-based offerors would not be receiving any additional points in the Evaluation Factors. They also made clear that before the commencement of services, the contractor would be obligated to obtain a Guam business license and establish a local office with personnel assigned to service the plans. *See* GGRF PR000120 – PR000121. These obligations were apparent when the RFP was issued, meaning ASC knew or should have known the relevant facts immediately, with no uncertainty requiring confirmation. Thus, ASC’s awareness of these requirements should have led it to recognize whether it had a proper basis for a protest under 5 GCA § 5008 upon issuance of the

RFP. Even if ASC was not aware at that time, it was certainly aware at the time that it raised this issue in a written question to GGRF on March 31, 2025. The fact that there was a written question on this issue confirms that ASC was at least *aware* of this being an issue, thus triggering the 14-day appeal period.

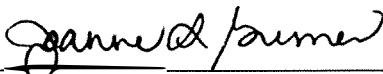
ASC's attempt to distinguish *In re Appeal of Data Management Resources, LLC*, overlooks the consistent principle established in the statute and case law: the protest period begins when a protester knows or should know the facts giving rise to a protest. *See In the Appeal of Data Management Resources, LLC*, OPA-PA-24-004. In this case, it is evident that ASC was at least aware of its concern relating to the RFP on March 31, 2025, when ASC submitted its question in writing to GGRF. Given this, the 14-day clock started on this day, which meant that ASC was required to submit its protest on April 14, 2025. ASC did not file its protest until two (2) days later, on April 16, 2025. Thus, its protest was untimely. As timeliness is jurisdictional, ASC's protest is legally barred and the OPA must dismiss the protest.

III. CONCLUSION

ASC knew or should have known the basis for its protest when the RFP was issued on March 17, 2025, and certainly when it submitted its question in writing to GGRF on March 31, 2025. As of March 31, 2025, it was clear that ASC was aware of the facts supporting its potential protest, thus triggering its duty to file a protest within 14 days of that awareness. ASC's protest, filed on April 16, was beyond the statutory timeline, whether measured from the time the RFP was issued on March 17, 2025, or when ASC submitted its question on March 31, 2025. As ASC's protest was untimely, the OPA should grant GGRF's Motion.

Respectfully submitted this 8th day of July, 2025.

CARLSMITH BALL LLP



JOANNE L. GRIMES
ARSIMA A. MULLER

Attorneys for
THE GOVERNMENT OF GUAM
RETIREMENT FUND

CAMACHO CALVO LAW GROUP LLC



VINCENT C. CAMACHO FOK

Attorneys for
THE GOVERNMENT OF GUAM
RETIREMENT FUND