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**In the Appeal of ASC TRUST, LLC and The Government of Guam Retirement Fund,
Docket No. OPA-PA-25-00**

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Hafa Adai Jerrick,

Please see the attached for filing:

1. The Government of Guam Retirement Fund's Hearing Brief

Thank you,

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The Government of Guam Retirement Fund's Hearing Brief.pdf

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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 HEARING
BRIEF**

THE GOVERNMENT OF GUAM RETIREMENT FUND'S HEARING BRIEF

I. INTRODUCTION

The Government of Guam Retirement Fund ("GGRF"), by and through its attorneys, hereby submits its Hearing Brief addressing two issues:

1. The Office of Public Accountability ("OPA") lacks subject matter jurisdiction because ASC failed to file its protest within the statutory deadline under 5 GCA § 5425(a).
2. Even if the protest were timely, GGRF's Request for Proposals ("RFP") complied with 5 GCA § 5008(d) & (e) by ensuring that any successful offeror would be a locally licensed business with a staffed office in Guam. – fully advancing the legislative intent behind the procurement preference statute.

II. BACKGROUND FACTS

On March 17, 2025, GGRF issued RFP No. GGRF-002-25, involving a procurement for professional services, specifically seeking a provider of Plan Administration Services related to the Defined Contribution Retirement System (401(a) Plan), 457(b) Deferred Compensation Plan and Welfare Benefit Plan (the "RFP"). *See* GGRF PR000156 – PR000225; GGRF PR000231 – PR000241. GGRF published Responses to Questions dated April 10, 2025. *See* GGRF PR000243 – PR000246. On April 16, 2025, ASC protested the procurement in its (first) protest letter dated April 16, 2025. *See* GGRF PR000248 – PR000252. On April 23, 2025, GGRF issued a Notice to All Prospective Offerors that a Stay of Procurement has been issued. *See* GGRF PR000257. GGRF issued Amendment No. 2 on April 23, 2025. *See* GGRF PR000259 – PR000260. ASC protested the procurement in its second protest letter dated April 25, 2025. *See* GGRF PR000262 – PR000264. GGRF issued a Notice to All Prospective Offerors that a Stay of Procurement was issued. *See* GGRF PR000269. GGRF issued Amendment No. 3 on April 28,

2025. *See* GGRF PR000271 – PR000272. GGRF denied ASC's first protest by letter dated April 23, 2025. *See* GGRF Procurement Record GGRF PR000254 – PR000255. ASC's notice of appeal from GGRF's denial of its April 16, 2025, protest was filed with the OPA on April 30, 2025, in OPA-PA-25-007. GGRF filed the Procurement Record with the OPA on May 8, 2025.

GGRF filed its Motion to Dismiss on June 24, 2025, which ASC opposed on July 1, 2025. The matter was heard on July 11, 2025, after GGRF filed its reply memorandum on July 8, 2025. To date, the OPA has not yet ruled on whether it has jurisdiction to hear ASC's appeal.

III. LEGAL ARGUMENT

On appeal from GGRF's denial of ASC's protest, ASC contends that GGRF failed to apply the local procurement preference in 5 GCA § 5008, which provides, 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[.]"

GGRF's motion to dismiss for untimeliness (heard on July 11, 2025) remains under advisement, and should be addressed by the OPA before ASC's appeal is heard (at 9:00 a.m. on September 29, 2025), so that the OPA's jurisdiction over ASC's appeal is established. GGRF submits that ASC's appeal should be dismissed because ASC's protest was untimely under 5 GCA § 5425(a) and 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.

ASC should have known of any alleged defect in the RFP on March 17, 2025, when it first received the solicitation. Under 5 GCA § 5425(a), the 14-day period to protest any defects apparent on the face of the RFP began running on that date, which would have required a protest by March 31, 2025. ASC failed to file by that deadline. Further, ASC's actual knowledge of the alleged procurement defect was confirmed on March 31, 2025, when it submitted a written vendor question to GGRF specifically inquiring about the application of 5 GCA § 5008 in the RFP evaluation. By posing this targeted question, ASC demonstrated that it was aware of the very issue it now protests. Fourteen days from March 31, 2025, is April 14, 2025. ASC did not file until April 16, 2025—two days after the deadline.

The Guam Supreme Court has held that the statutory deadlines under 5 GCA § 5425 are mandatory and jurisdictional. In *DFS Guam L.P. v. Guam International Airport Authority*, 2020 Guam 20 ¶¶77-83, the Court held that statutory deadlines in procurement protests are mandatory and jurisdictional in nature; failure to comply deprives the reviewing body of the authority to hear the protest. This principle is binding on the OPA and confirms that an untimely protest strips it of subject matter jurisdiction. Here, ASC filed its protest more than fourteen (14) days after it knew, or should have known, of the alleged procurement violation—namely, the purported omission of a § 5008 scoring preference in the published RFP evaluation criteria. Under *DFS*, the OPA lacks the authority to consider the protest and must dismiss it without examining the merits.

Applying *DFS*, 2020 Guam 20, the relevant inquiry is when ASC first had actual or constructive knowledge of the alleged defect. The RFP, issued on March 17, 2025, plainly disclosed the evaluation criteria and did not include a numerical § 5008 preference scoring mechanism. Any alleged noncompliance with § 5008 was therefore apparent upon issuance. Whether measured from March 17, 2025, or from March 31, 2025, ASC's filing on April 16, 2025, exceeds the fourteen (14) day limit under § 5425(a), depriving the OPA of jurisdiction.

Assuming the OPA determines that it has jurisdiction, then GGRF's position is that 5 GCA § 5008 is incompatible with the legal framework for soliciting professional services proposals under the competitive selection procedures for services in 5 GCA § 5216 and the implementing rules under 2 GAR § 3114, where qualifications are assessed before price negotiations commence with the most qualified offeror. Assuming, *arguendo*, that Section 5008 can be reconciled generally with such competitive selection procedures, then it appears that ASC and GGRF disagree on what stage of the procurement process the local procurement preference should be assessed and weighed. ASC's position is that the preference must apply at the evaluation phase, and because it does not, the RFP has violated Section 5008. In contrast, GGRF's (alternative) position is that even if Section 5008 applied to competitive selection procurements for professional services, then compliance with Section 5008 should be assessed at the time of contracting, when services are to commence, and not during the evaluation stage.

GGRF's (alternative) position is that its underlying RFP would not violate Section 5008 because the terms of the underlying RFP require that the ultimate contractor must have a business license and maintain an office on Guam staffed by local employees. *See*, RFP Section V.B.4: "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." and RFP

Section V.B.10: "The firm must have at least three individuals located on 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."

See also, RFP Section VI.D:

The contract will be conditionally awarded to the successful offeror subject to the requirement that within eight (8) weeks from the date of the award, or within such extended time period, if any, as the Board in its discretion may allow, and in all events prior to the successful offeror commencing work hereunder, the successful offeror shall be duly registered as an Investment Advisor pursuant to the provisions of the Guam Uniform Securities Act (Title 22, Chapter 46, Article 2 of the Guam Code Annotated), and a copy of the registration notification issued to the successful offeror by the office of the Administrator of the Guam Uniform Securities Act shall be provided to the Purchasing Agent. In addition, the successful offeror shall be duly registered to conduct business on Guam.

RFP Section VI.D.

Thus, the issue on appeal (should the OPA have jurisdiction) is whether Section 5008 can apply to the underlying competitive selection process for professional services, and if so, whether the requirements of the RFP have met Section 5008's local preference, because the ultimate contractor must necessarily be local as defined in Section 5008 before performing the services described in the RFP. ASC offers no practical solution for a viable process to implement Section 5008 in a competitive selection process during the evaluation stage described in 5 GCA § 5216. For example, if three firms are ranked higher than an existing "local firm" based on professional qualifications, then Section 5008 could not reasonably operate without invalidating the statutory and regulatory ranking procedures governing competitive selection for professional services. As such, 5 GCA § 5216 and 2 GAR § 3114 must control for the competitive selection process for professional services.

Requiring licensing and an office on Guam to be eligible to submit a proposal for

professional services would significantly reduce the pool of potential professional service offerors, to the detriment of the Purchasing Agency, and would be contrary to the purposes and policies of Guam's Procurement Code. *See, e.g.*, 5 GCA § 5001(b) ("The underlying purposes of this Chapter [5] are: . . . (6) to foster effective broad-based competition within the free enterprise system[.]") The underlying purposes and policies can be met by conducting 5 GCA § 5008 eligibility after evaluations have resulted in selection and ranking of qualified offerors, such as during negotiations on terms of contract including pricing, and certainly before contracts are executed.

But before ASC's grounds for appeal can be addressed, the OPA must first decide whether it has jurisdiction over ASC's appeal. GGRF submits it does not, as argued on July 11, 2025, at the hearing on GGRF's motion to dismiss. Additionally, ASC cites no authority requiring the RFP to expressly disclose that GGRF would comply with 5 GCA § 5008, if applicable; indeed, if such a disclaimer were needed, then ASC's protest would be untimely because the absence of such a provision would trigger the start of the 14-day protest period under 5 GCA § 5425(a).

Even if the OPA were to reach the merits, the RFP's requirements that the awarded vendor possess a Guam business license and maintain a staffed local office directly implement the statutory policy in 5 GCA § 5008(d) & (e) to promote local participation and ensure substantial on-island performance. This structure achieves the local preference objectives without resorting to a numerical preference scoring system, consistent with the flexibility afforded to procuring agencies under Guam law.

IV. CONCLUSION

GGRF properly denied ASC's first protest because ASC's interpretation of 5 GCA §

5008 is incompatible with the competitive selection process for professional services under the structured procurement process in 5 GCA § 5216 and 2 GAR § 3114. ASC's protest was based on an alleged defect readily apparent in the solicitation and was therefore required to be filed within 14 days of either March 17 or March 31, 2025. ASC cannot meet its burden of showing that it submitted its protest in a timely manner.

For the reasons set forth above and in GGRF's motion to dismiss, ASC's protest was untimely under 5 GCA § 5425(a). Under the binding precedent of *DFS Guam L.P. v. GIAA*, the OPA lacks subject matter jurisdiction and must dismiss this appeal without reaching the merits. Alternatively, should the OPA proceed to the merits, the RFP fully complies with the policy objectives of 5 GCA § 5008(d) & (e), and the protest should be denied in its entirety.

Respectfully submitted this 19th day of August, 2025.

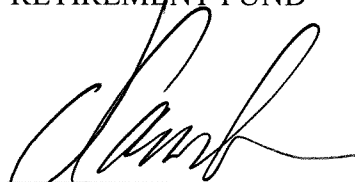
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