



Jerrick Hernandez <jhernandez@guamopa.com>

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

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

Fri, Sep 26, 2025 at 10:37 AM

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

Cc: Vince Camacho <vcamacho@camachocalvo.law>, William Brennan <wbrennan@arriolafirm.com>, "Arsima A. Muller" <amuller@carlsmith.com>, "Joanne L. Grimes" <jgrimes@carlsmith.com>, Maryann Manglona <mmanglona@guamopa.com>, Arriola Law Firm General Information <attorneys@arriolafirm.com>

Hello Jerrick,

Please see the attached regarding GGRF's Supplemental Exhibits T-X:

1. GGRF Supplemental Exhibits T-X

[Quoted text hidden]

 **GGRF Supplemental Exhibits T-X.pdf**
2256K

EXHIBIT T

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

Docket No. OPA-PA-25-007

AGENCY STATEMENT

Purchasing Agency

AGENCY STATEMENT

Purchasing Agency, the Government of Guam Retirement Fund (“GGRF”), by and through its undersigned attorneys, hereby submits its Agency Statement, pursuant to 2 GAR Div. 4 § 12105, as part of its Agency Report concurrently filed herein.

RELEVANT BACKGROUND

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 May 1, 2025, in OPA-PA-25-007.

RESPONSE TO PROTEST

I. ASC’s Grounds for Protest Lacked Merit and was Properly Denied.

On appeal, ASC contends that GGRF failed to comply with 5 GCA § 5008, which provides, in pertinent part:

§ 5008. Policy in Favor of Local Procurement.

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, whenever a business that is willing to be a contractor is:

* * *

(d) A service business actually in business, doing a substantial portion of its business on Guam and hiring at least 95% U.S. Citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

Procurement of supplies and services from off Guam may be made if no business for such supplies or services may be found on Guam or if the total cost F.O.B. job site, unloaded, of procurement from off island is no greater than eighty-five percent (85%) of the total cost F.O.B. job site, unloaded of the same supplies or services when procured from a business licensed to do business on Guam that maintains an office or other facility on Guam that is one of the above-designated businesses entitled to preference.

5 GCA § 5008. Notably, ASC's protest was based on alleged violations of statute (5 GCA § 5008), and not on any alleged violations of the RFP. ASC's protest appears to be based on its unsubstantiated position that ASC is a Section 5008(d) business that is willing to be a contractor, and therefore GGRF must screen and appropriately weigh proposals from offerors who do not have a Guam business license and maintain an office or other facility on Guam (and conversely, weigh more favorably the proposals from Section 5008(d) businesses. Assuming, for purposes of argument, that ASC indeed meets the requirements of 5 GCA § 5008(d), there still is no support for ASC's protest, as discussed below.

A. Section 5008 "Local" Status Applies to Contractors, Not Offerors, and Need Not Be Assessed During Evaluations of Qualifications Under a Competitive Selection Process.

GGRF properly denied ASC's allegation that GGRF failed to comply with 5 GCA § 5008 because GGRF's disclosed evaluation scoring did not include a "local preference" requirement

for offerors of professional services. GGRF's position is that for purposes of submitting an offer to provide professional services to GGRF as Purchasing Agency under Section 5216 (and under 2 GAR § 3114), an offeror is not required to first prove that it has a license to do business and maintain an office or other facility on Guam – those requirements are to be met before contracting, as so stated in RFP No. GGRF-002-25 at Section V.B.4 (GGRF PR000170 ("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 implicitly in 5 GCA § 5004.¹ ASC contends that GGRF failed to comply with 5 GCA § 5008 because of GGRF's Response to Question 15, which states:

Response to Question 15: Minimum qualifications are addressed in Section V.B. and Evaluation Factors are addressed in Section VI.C. of the RFP. The evaluation criteria do not include any geographic preference or scoring advantage based on the offeror's location. Therefore, no additional documentation related to Guam-based status is required for evaluation purposes."

See GGRF PR000246.

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.

¹ 5 GCA § 5004(a) states: "General Application. This Chapter applies only to contracts . . ." (emphasis added.)

B. Qualification-Based Selection of Professional Service Providers Precedes Negotiations on Price and Other Contract Terms.

The services procured under RFP No. GGRF-002-25 for plan administration and recordkeeping, which are professional services governed by 5 GCA § 5216 and the implementing rules under 2 GAR § 3114. These provisions require the Purchasing Agency to evaluate and rank offerors based solely on qualifications, and to then negotiate with the most qualified firm first. If negotiations fail, the Purchasing Agency may then proceed to negotiations with the next most qualified offeror.

Reading Section 5008 to require awarding a contract to a lower-ranked § 5008 firm based solely on price would directly conflict with the structured competitive selection process mandated under Section 5216. For example, if three firms are ranked higher than a § 5008 firm based on professional qualifications, then Section 5008 could not reasonably operate without invalidating the statutory and regulatory ranking procedure. As such, 5 GCA § 5216 and 2 GAR § 3114 must control for the competitive selection process for professional services.

II. GGRF has Exclusive Authority to Approve and Execute All Contracts for the Procurement of Professional Services Associated with the Operation of the Fund.

Notwithstanding any other provision of law, the Board of Trustees of the Government of Guam Retirement Fund shall have exclusive authority to approve and execute all contracts for the procurement of professional services associated with the operation of the Fund. 5 GCA § 5121(e). Accordingly, GGRF has the authority to determine whether a potential contractor meets the requirements of 5 GCA § 5008 before a contract is approved and executed. The determination of Section 5008 eligibility is not required at the evaluation stage in a competitive selection process, as ASC suggests. GGRF did not include such a requirement at the evaluation stage in the RFP, and it was not required to do so under 5 GCA § 5008. During the pre-contract phase of the procurement, no potential contractor has been identified that cannot

meet Section 5008's requirements; therefore, no violation of Section 5008 has occurred.

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

The communications log reveals that ASC had been reviewing the solicitation for a potential violation of Section 5008, as ASC submitted its written question on March 31, 2025, asking, "Will Guam-based offerors receive any preference in evaluation scoring?" (GGRF PR00279). ASC's written question confirms that ASC had noticed the alleged omission in the RFP's evaluation criteria and suspected it was intentional.

Under Guam procurement law, timeliness is not merely procedural—it is jurisdictional. 5 GCA § 5425(a) imposes a timeliness requirement: "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."

GGRF acknowledges that ASC's protest was submitted on April 16, 2025, prior to the proposal deadline of April 24, 2025. However, ASC's protest was not submitted within fourteen (14) days after ASC knew or should have known of the facts giving rise to the alleged solicitation defect.

A. ASC's Protest Involves an Alleged Solicitation Defect

ASC challenges GGRF's failure to apply a local preference under 5 GCA § 5008 in its evaluation criteria. But this alleged defect was apparent from the face of the RFP, which ASC received on March 17, 2025, and which contains no reference to 5 GCA § 5008 or any geographic scoring advantage in Section VI (Evaluation Criteria). This was not a hidden or technical error. The evaluation scheme was presented clearly. If ASC believed that the RFP was defective for failing to include local preference scoring, it was required to protest within fourteen (14) days after ASC knew or should have known of the facts giving rise to the alleged

solicitation defect, consistent with 5 GCA § 5425(a). As the Guam Supreme Court explained in *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam*, 2020 Guam 20: “Section 5425(a) speaks not in terms of what is being protested but in terms of knowledge of the facts giving rise to a protest.” (¶ 87) “How a protest is framed by the aggrieved bidder—including whether they frame the protest as a challenge to the solicitation, the evaluation, or the award—does not dictate when the time period to file a protest begins to run.” (¶ 86) Thus, the test is not when ASC alleged that a violation occurred, but when ASC knew or should have known the factual basis of its claim. That occurred on March 17, 2025, the day the RFP was issued.

B. ASC’s Protest is Time-Barred and Cannot be Salvaged

In *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth.*, Guam, 2020 Guam 20, the Court held: “Section 5425(a) speaks not in terms of what is being protested but in terms of knowledge of the facts giving rise to a protest.” Further, “A protest filed more than 14 days after the disappointed offeror or bidder had notice of the grounds for the protest is barred as untimely.” (2020 Guam 20 ¶ 87).

In this case, ASC contends that it became aware of GGRF’s non-compliance with Section 5008 on April 10, 2025, the date on which GGRF issued its response to written questions, including the question: “Will Guam-based offerors receive any preference in evaluation scoring?” which was answered: “The evaluation criteria do not include any geographic preference or scoring advantage based on the offeror’s location.”

Yet GGRF’s April 10th response did not reveal any new facts—it confirmed what was already evident in the RFP: that no § 5008 preference would be applied in evaluation scoring. The Guam Supreme Court has rejected similar attempts to reset the clock based on later clarifications: “[A] protest filed more than 14 days after the disappointed offeror or bidder had

notice of the grounds for the protest is barred as untimely. This is true even if no contract has yet been awarded [...] and even if the protestant did not subjectively understand or appreciate the ground for protest.” (*DFS Guam*, 2020 Guam 20 ¶ 87).

In short, April 10 was not the trigger date under 5 GCA § 5425(a). At best, it only confirmed what ASC had already known since March 31—or perhaps earlier, on March 17. Therefore, under the 14-day standard, ASC was not entitled to wait until April 16 to submit its protest.

IV. Conclusion

GGRF properly denied ASC’s first protest because 5 GCA § 5008 does not apply to the evaluations of potential professional service providers under the structured procurement process in 5 GCA § 5216 and 2 GAR § 3114. ASC’s protest was based on an alleged defect 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.

Authority. Pursuant to 5 GCA § 5425(e) a protestor may Appeal a decision under 5 GCA § 5425(c) relative to the protest of a method of selection, a solicitation, and award of a contract, or a decision under 5 GCA § 5425(h) regarding entitlement to costs, within fifteen (15) days of receipt by protestor of the decision. The Public Auditor shall determine whether a decision on the protest of method of selection, solicitation or award of a contract, or entitlement to costs is in accordance with the statutes, regulations, and the terms and conditions of the solicitation.

2 GAR § 12112 (Appeal to Public Auditor Relative to Method, Solicitation, or Award).

GGRF respectfully requests that the Office of Public Accountability affirm the Purchasing Agency’s denial of ASC’s protest or dismiss the appeal for lack of jurisdiction.

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

Respectfully submitted this 15th day of May, 2025.

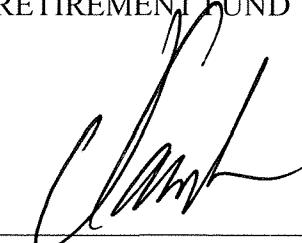
CARLSMITH BALL LLP



JOANNE L. GRIMES
ARSIMA A. MULLER

Attorneys for
THE GOVERNMENT OF GUAM
RETIREMENT FUND

CAMACHO CALVO LAW GROUP LLC



VINCENT C. CAMACHO

Attorneys for
THE GOVERNMENT OF GUAM
RETIREMENT FUND

EXHIBIT U

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

**GGRF'S REBUTTAL TO ASC'S
COMMENTS TO GGRF'S AGENCY
STATEMENT**

I. INTRODUCTION

The Government of Guam Retirement Fund (“GGRF”), by and through its Counsel, hereby submits its Rebuttal to ASC’s Trust, LLC’s (“ASC”) Comments on the Agency Statement, with respect to ASC’s (first) protest and subsequent appeal filed in connection with RFP No. GGRF-002-25. Specifically, this Rebuttal outlines why ASC’s protest was untimely under 5 GCA § 5425(a), thus depriving the Office of Public Accountability (OPA) of jurisdiction to review GGRF’s denial of ASC’s protest. The Rebuttal further draws upon the Supreme Court of Guam’s decision in *DFS Guam L.P. v. A.B. Won Pat Int’l Airport Authority*, 2020 Guam 20, as a binding authority that underscores the jurisdictional consequences of an untimely procurement protest. Alternatively, if the OPA determines it has jurisdiction, GGRF asserts that its solicitation and procurement practices complied fully with Guam procurement law, including 5 GCA § 5008.

II. 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 § 52425(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: “Timeliness is an essential component of the procurement protest framework, and it functions as a jurisdictional bar if not satisfied.” *DFS Guam L.P.* at 2020 Guam 20 ¶77.

III. RELEVANT FACTUAL BACKGROUND: ASC's Knowledge of Protest Basis

March 17, 2025 – RFP No. GGRF-002-25 was issued. GGRF PR000156 and GGRF PR000277. The solicitation did not contain any local procurement preference clause under 5 GCA § 5008.

March 31, 2025 – ASC submitted a written question to GGRF explicitly noting the absence of a local preference provision. GGRF PR000279 and GGRF PR000249.

April 10, 2025 – GGRF issued written responses to questions (GGRF PR000279), reaffirming the RFP's terms and making no changes regarding local preference (GGRF PR000246 and GGRF PR000250)).

April 16, 2025 – ASC filed its protest with GGRF. (GGRF PR000249-252; GGRF PR000280).

IV. ARGUMENT

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

ASC's protest was untimely and legally barred under 5 GCA § 5425(a):

"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).

ASC alleges that GGRF violated Guam procurement law by omitting a local preference evaluation factor required by 5 GCA § 5008. However, the absence of any such local preference language was apparent in the RFP issued on March 17, 2025 and ASC should have then known of the alleged basis for its protest. On March 31, 2025, ASC had submitted a formal written question to GGRF, raising this specific issue and thereby confirming its actual knowledge and awareness of the alleged basis for its protest.

Accordingly, under § 5425(a), ASC had 14 calendar days from March 31, 2025, to file its protest. That deadline fell on April 14, 2025. Yet ASC did not file its protest until April 16, 2025—two days late. 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 Guam Supreme Court has made clear that strict compliance with § 5425(a) is a jurisdictional prerequisite. In *DFS Guam L.P.*, the Court held: “A protest that challenges the content of an RFP must be filed within 14 days of when the protestor knew or should have known of the basis of protest.” *DFS Guam L.P.* at 2020 Guam 20, ¶ 77.

The Court further explained: “The time runs from the date on which the protesting party first learned of the purported misconduct.” — *Id.*, ¶ 89.

Here, ASC learned of the absence of the § 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. The Supreme Court's reasoning in *DFS Guam L.P.* squarely applies: knowledge of the defect triggers the 14-day deadline, not the date of the proposal deadline or the issuance of any agency response. Moreover, *DFS Guam L.P.* rejected the notion that ongoing communications or proposal deadlines reset the statutory clock. The protestor must act promptly upon discovering the alleged impropriety.

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—not the timing of contract award—controls the jurisdictional deadline under § 5425(a). In *OPA-PA-24-004*, the protestor, Data Management Resources, LLC (“DMR”), filed its protest on July 12, 2024, within 14 days of the Notice of 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 finds “... that the date of when DMR ‘knew or should have known’ the issue to be June 12, 2024... [and] finds that DMR’s protest was therefore untimely.” *Id.*, at pp. 3–4.

Despite being within 14 days of the award, the protest was dismissed because DMR had failed to act within 14 days of becoming aware of the relevant facts. That ruling mirrors the analysis in *DFS Guam L.P.* and directly supports GGRF’s position here.

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

D. Jurisdiction Cannot Be Waived and May Be Raised at Any Time.

Even if 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*, “It is well settled that a lack of subject matter jurisdiction may be raised at any time during the proceedings and may even be raised by the court *sua sponte*.” *Port Authority of Guam v. Civil Service Comm'n*, 2018 Guam 1, ¶ 18

This rule applies equally to administrative bodies such as the OPA. In *DFS Guam L.P.*, the Court emphasized that the 14-day protest rule under § 5425 is not a procedural formality but a jurisdictional threshold. *See generally, DFS Guam L.P.*, 2020 Guam 20.

As such, the OPA must independently dismiss this protest for lack of jurisdiction—even if neither party raised the issue in the initial stages.

V. ALTERNATIVE ARGUMENT: NO VIOLATION OF 5 GCA § 5008

Should the OPA determine that it has jurisdiction, GGRF asserts that the solicitation was lawful and consistent with Guam procurement statutes and regulations.

A. Section 5008(e) Encourages Local Preference but Does Not Mandate It.

Section 5008(e) of Title 5 Guam Code Annotated requires that solicitation terms “be drafted to promote participation in the solicitation by local bidders and offerors to the maximum extent practicable consistent with the needs of Guam.” 5 GCA §5008(e). The statute further clarifies that no specification “shall require off-island experience” unless justified in writing—but does not mandate that solicitations must include a local preference evaluation factor. *Id.*

B. Separate Qualifications-Based Criteria govern Professional Services Procurements.

RFP No. GGRF-002-25 was issued for plan administration services, which qualifies as procurement of professional services under 5 GCA § 5216 and 2 GAR § 3114. These regulations prioritize qualifications, competence, and performance history—not price preference—in selecting providers. 5 GCA § 5216; 2 GAR § 3114. Accordingly, omitting a local preference factor in this context was appropriate and legally permissible.

C. Commentary to § 5008 Supports Balanced Discretion.

The legislative comment to § 5008 acknowledges that while local business participation should be encouraged, it should not come at undue cost to the general treasury. The statute was not intended to compel automatic application of local preferences, particularly where government needs—such as experience and expertise in regulated plan administration—require broader considerations. 5 GCA §5008 cmt.

D. Emissions Technology Case Is Factually and Legally Distinct

ASC's reliance on *In the Appeal of Emissions Technology*, OPA-PA-07-002, is misplaced, because ASC does not allege that GGRF failed to comply with the terms of the RFP, as GPA had done in the underlying procurement. The OPA's decision in *In the Appeal of Emissions Technology*, OPA-PA-07-002, involved a protest concerning a Guam Power Authority (GPA) procurement for emissions testing services. In that case, Emissions Technology—a Guam-based vendor holding a valid Guam business license—submitted a timely and compliant proposal. However, GPA awarded the contract to TRC Solutions, an off-island firm that lacked a Guam business license at the time of proposal submission, as explicitly required by the RFP. The Public Auditor found that GPA's inconsistent application of this threshold eligibility requirement violated 5 GCA § 5008, resulting in preferential treatment of a non-compliant off-island vendor and the exclusion of a fully qualified local offeror. *Id.*

In contrast, GGRF's RFP No. GGRF-002-25 did not impose any threshold licensing or eligibility requirement that would exclude local or off-island vendors. The solicitation was issued as a qualifications-based procurement for professional services under 5 GCA § 5216 and 2 GAR § 3114 and applied neutral evaluation criteria across all offerors. No vendor was barred or disadvantaged based on licensure status, place of business, or other exclusionary terms.

Although GGRF's solicitation did not include a local preference factor under § 5008, this provision is discretionary and not mandatory in the context of professional services procurements, where selection is based on technical competence and experience—not solely on pricing. GGRF's approach preserved maximum participation by all qualified vendors and aligned with the statutory goal of promoting local engagement without contravening procurement law.

Accordingly, unlike *Emissions Technology*, there was no facial disqualification, unequal treatment, or selective enforcement of mandatory requirements in GGRF's RFP. The procurement was lawful, inclusive, and compliant with 5 GCA § 5008, and presents no basis for reversal under OPA's precedent.

E. Local Preference May Be Applied Only After Offerors Are Ranked in a Qualifications-Based Procurement

In qualifications-based procurements—such as GGRF's RFP No. GGRF-002-25—the primary goal is to select the best qualified offeror based on technical expertise, relevant experience, and past performance rather than on price. Pursuant to 5 GCA § 5216 and 2 GAR § 3114, GGRF is required to first evaluate and rank proposals based solely on these qualifications before entering into price negotiations or awarding cost-related points. 5 GCA § 5216; 2 GAR § 3114.

Because this evaluation framework does not involve a traditional lowest price determination, the only practicable way to apply a local preference under 5 GCA § 5008—if at all—is after the initial qualification ranking is complete. Any earlier application of a local firm preference would be inconsistent with the regulatory model governing professional services and could improperly skew the qualifications assessment.

Accordingly, GGRF's neutral position in this RFP—omitting a local preference factor while maintaining open eligibility—preserved the integrity of the qualifications-based process. Should a local firm emerge as a top-ranked best qualified offeror, GGRF retains the discretion to award the contract in complete alignment with both § 5008 and the procurement regulations. Thus, GGRF's approach is not only lawful but structurally designed to maximize both compliance and competition.

As GGRF noted in its Agency Statement, it would have been inconsistent to apply a local price preference before initial ranking, given the qualifications-based nature of the RFP governed by 5 GCA § 5216 and 2 GAR § 3114. *See GGRF Agency Stmt. 4-5, May 15, 2025.* The RFP was structured deliberately to maintain neutrality and maximize competition from all qualified providers, whether local or off-island at the time of their proposals. *Id.* The Agency Statement further affirms that the application of the local preference under § 5008 is not mandatory in all cases, particularly where it would conflict with the statutory framework for professional service procurements. *Id.*

This approach ensures both legal compliance and robust competition. By keeping the RFP open to all potentially qualified providers, GGRF preserved the fairness and objectivity of the selection process. Accordingly, GGRF's decision to omit a § 5008 local preference from the initial evaluation criteria reflects a neutral and legally sound approach.

VI. CONCLUSION

GGRF respectfully requests that OPA dismiss ASC's appeal for lack of jurisdiction under 5 GCA § 5425(a). ASC filed its protest more than 14 days after it known or should have known of the alleged violation of 5 GCA § 5008. Pursuant to the holding in *DFS Guam L.P.*, 2020 Guam 20, untimeliness is a jurisdictional bar, and no equitable extension is available.

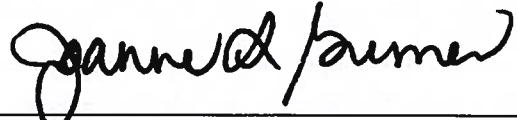
Alternatively, should OPA determine it has jurisdiction, the protest should still be denied on the merits. GGRF's RFP was issued in full compliance with Guam procurement law, including 5 GCA § 5008 and applicable regulations governing professional services.

OPA must decline to hear or otherwise deny this protest in its entirety.

In the Appeal of ASC Trust, LLC
Office of Public Accountability Docket No. OPA-PA-25-007
GGRF REBUTTAL TO ASC's COMMENTS ON GGRF'S AGENCY STATEMENT

Respectfully submitted this 3rd day of June 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

Attorneys for
THE GOVERNMENT OF GUAM
RETIREMENT FUND

EXHIBIT V

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

**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.

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

Attorneys for
THE GOVERNMENT OF GUAM
RETIREMENT FUND

EXHIBIT W

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.

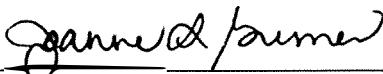
ASC's attempt to distinguish *In re Appeal of Data Management Resources, LLC*, overlooks the consistent principle established in the statute and case law: the protest period begins when a protester knows or should know the facts giving rise to a protest. *See In the Appeal of Data Management Resources, 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

EXHIBIT X

CARLSMITH BALL LLP

JOANNE L. GRIMES

jgrimes@carlsmith.com

ARSIMA A. MULLER

amuller@carlsmith.com

ASB Tower, Suite 2100

1001 Bishop Street

Honolulu, HI 96813

Tel 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 Defendant

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.

CARLSMITH BALL LLP



JOANNE L. GRIMES
ARSIMA A. MULLER

Attorneys for
THE GOVERNMENT OF GUAM
RETIREMENT FUND



VINCENT C. CAMACHO

Attorneys for
THE GOVERNMENT OF GUAM
RETIREMENT FUND

CAMACHO CALVO LAW GROUP LLC