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

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Good Afternoon Mr. Hernandez,

Please see the attached for filing:

The Government of Guam Retirement Fund's Proposed Findings of Fact and Conclusion of Law

Thank you,

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THE GOVERNMENT OF GUAM RETIREMENT FUND

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

In the Appeal of
ASC Trust, LLC,

Appellant

and

THE GOVERNMENT OF GUAM
RETIREMENT FUND

Purchasing Agency.

APPEAL NO. OPA-PA-25-007

**THE GOVERNMENT OF GUAM
RETIREMENT FUND'S PROPOSED
FINDINGS OF FACT AND CONCLUSION
OF LAW**

**THE GOVERNMENT OF GUAM RETIREMENT FUND'S PROPOSED FINDINGS OF
FACT AND CONCLUSION ON LAW**

A. INTRODUCTION

This procurement appeal was heard by the Public Auditor, Benjamin J.F. Cruz, on September 29, 2025. Attorney William Brennan appeared on behalf of Appellant ASC Trust, LLC ("ASC"). Attorney Vincent C. Camacho appeared at the hearing on behalf of appellee, the Government of Guam Retirement Fund ("GGRF"), accompanied by GGRF's Executive Director, Ms. Paula Blas ("Ms. Blas"). After reviewing the testimony, the evidentiary record, and the applicable law, the Public Auditor hereby issues these Findings of Fact and Conclusions of Law, together with the Decision.

B. FINDINGS OF FACT

Having reviewed the testimony and evidence presented at the hearing on September 29, 2025, together with the record in this matter, the Public Auditor finds the following facts:

1. On March 17, 2025, GGRF issued Request for Proposals No. GGRF-002-25 seeking professional services for Plan Administration related to the Defined Contribution Retirement System (401(a) Plan), 457(b) Deferred Compensation Plan, and Welfare Benefit Plan ("RFP").

2. The RFP was publicly posted and competitively solicited, and no vendor was excluded from participating or prevented from submitting a proposal. Multiple prospective offerors, including Guam-based firms, registered interest, confirming that the RFP promoted full and open competition consistent with Guam procurement policies and the underlying purpose of 5 G.C.A. § 5008.

3. On March 31, 2025, ASC submitted a written question to GGRF through the RFP process, concerning the RFP, asking: "Will Guam-based offerors receive any preference in evaluation scoring?" On April 10, 2025, GGRF responded: "The evaluation criteria do not include any geographic preference or scoring advantage based on the offeror's location."

4. On April 16, 2025, ASC filed a formal protest with GGRF, asserting that 5 G.C.A. § 5008(d) requires GGRF to apply a preference for local businesses meeting certain statutory qualifications.

5. On April 23, 2025, the GGRF issued: (1) a Notice to All Prospective Offerors that a Stay of Procurement has been issued, (2) Amendment No. 2; and (3) a written denial of ASC's protest.

6. The GGRF issued Amendment No. 3 on April 28, 2025.

7. On April 30, 2025, ASC appealed GGRF's denial to the Office of Public Accountability ("OPA") under Procurement No. GGRF-002-25, asserting that GGRF's RFP violated 5 G.C.A. § 5008(d).

8. On June 24, 2025, GGRF filed a Motion to Dismiss, arguing that OPA lacked jurisdiction because ASC's protest was untimely under 5 G.C.A. § 5425(a)'s 14-day rule.

9. 5 G.C.A. § 5425(a) provides:

"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."

10. ASC opposed GGRF's Motion to Dismiss on July 1, 2025.

11. GGRF filed its Reply in Support of the Motion to Dismiss on July 8, 2025.

12. A hearing on the Motion to Dismiss was held on July 11, 2025, before the Public Auditor. ASC was represented by counsel William Brennan, and GGRF was represented by counsel Arsima Muller.

13. The issue presented was whether ASC's protest was timely filed under the 14-day requirement of 5 G.C.A. § 5425(a). ASC argued that the 14-day period commenced on the date GGRF issued its answer on April 10, 2025. GGRF asserted that it began on March 17, 2025, when the RFP was issued, and no later than March 31, 2025, when ASC submitted its written questions.

14. The matter proceeded to a hearing on the merits on September 29, 2025, during which the Public Auditor ruled from the bench, orally denying GGRF's Motion to Dismiss, finding that ASC's protest was timely filed.

15. GGRF's position is that 5 G.C.A. § 5008 does not require a weighted evaluation preference factor in a professional-services procurement governed by 5 G.C.A. § 5216 (competitive selection of professional services) and 2 G.A.R. § 3114, which mandate selection based solely on qualifications before any discussion of price or licensing status. Nothing in § 5008 overrides that statutory structure. Rather, § 5008's local preference is fully achieved at the contracting stage, where the RFP requires the selected firm to obtain a Guam business license and maintain a staffed office in Guam before contract execution, ensuring that the contract is ultimately awarded to and performed by a qualified Guam-licensed business.

16. 5 G.C.A. § 5008(d) states:

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 nation's 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.

17. Specifically, GGRF cited the RFP's provisions requiring:

a. That the successful offeror, before commencement of services, be duly licensed to conduct business in Guam (RFP § V.B.4);

b. That the successful offeror maintains at least three individuals on the island, including at least two appropriately credentialed and licensed to provide investment and distribution advice (RFP § V.B.10); and

c. That within eight weeks of award, the successful offeror be duly registered as an Investment Advisor under the Guam Uniform Securities Act and registered to conduct business in Guam (RFP § VI.D).

18. ASC's position is that 5 G.C.A. § 5008(d) requires a numeric (weighted) evaluation preference for Guam-based businesses to be applied during the initial qualifications evaluation of a professional-services procurement. However, § 5008 does not impose any such scoring requirement, and ASC's interpretation is irreconcilable with the statutory mandate of 5 G.C.A. § 5216 and 2 G.A.R. § 3114, which require evaluation solely on competence and qualification prior to any cost or licensing considerations. The RFP already ensures full compliance with § 5008's

policy objective by requiring that, before award and performance, the selected offeror obtain a Guam business license and maintain a staffed local office. ASC's relief, to rewrite the RFP to impose a numerical local-preference scoring formula, would improperly override the statutory framework governing the competitive selection of professional services.

19. ASC does not contend that the RFP is defective for failing to expressly reference or cite to § 5008. In its own filings, ASC acknowledges that § 5008 applies by operation of law, regardless of citation. Thus, the only dispute concerns the timing of the § 5008 application—not its applicability.

20. ASC called one witness, Ms. Paula Blas, GGRF's Executive Director, whose testimony affirmatively established that GGRF consistently complied with Guam procurement law and that governing RFP requirements. Ms. Blas testified that:

a. The Office of the Attorney General reviewed the RFP before issuance and raised no concerns regarding the treatment of 5 G.C.A. § 5008 in this professional services procurement;

b. The RFP did not expressly cite to 5 G.C.A. § 5008 because, under 5 G.C.A. § 5216 and 2 G.A.R. § 3114, local participation requirements are appropriately addressed during the contracting stage rather than as a scored evaluation factor;

c. Consistent with statute, the GGRF did not consider licensing or office presence during qualification evaluations, because those requirements are mandatory pre-contract conditions ensuring compliance with § 5008's policy objectives; and

d. No proposal has been opened, evaluated, or considered for award since the protest and appeal were filed, meaning the procurement remains stayed; as a result, ASC has

suffered no competitive injury, has not been aggrieved in connection with the solicitation, and cannot demonstrate prejudice under the standards applied by the Public Auditor.

21. Ms. Blas confirmed that GGRF has not opened, scored, negotiated, or otherwise considered any offer for award. Accordingly, no consideration for award of any proposal has occurred, and § 5008's requirement of contracting with a Guam licensed firm remains fully protected.

22. Ms. Blas further testified that GGRF's interpretation of "local preference" under 5 G.C.A. § 5008 is entirely consistent with the statutory framework governing professional services procurements: local participation requirements are satisfied during the contracting stage, where the successful offeror must obtain a Guam business license and operate a staffed office in Guam before contract execution and performance. Ms. Blas confirmed that neither § 5008 nor any other Guam procurement authority requires numerical "preference points" or scoring advantages during the qualifications-based evaluation process mandated by § 5216 and 2 G.A.R. § 3114.

23. Ms. Blas confirmed that the RFP maintained a fully transparent and equal-access communications process requiring any questions from prospective offerors to be submitted in writing by March 31, 2025, and ensuring that all responses were compiled and issued simultaneously to all offerors in a written Q&A memorandum. She further testified that the RFP did not expressly cite 5 G.C.A. § 5008 by number; it incorporated all applicable procurement statutes; and it already implements § 5008's local participation requirement through its mandatory pre-contract licensing and staffed-office provisions.

24. The record establishes that GGRF consistently followed the same qualification-based procurement structure in prior solicitations for plan administration services (including the

2022 procurement in which ASC itself participated). In those procurements, no numerical scoring preference was applied during the evaluation, while licensing and staff-office requirements were imposed prior to contract. This history shows that ASC was fully aware of and successfully operated under the same approach it now challenges, and confirms that the GGRF's current RFP reflects a long-standing, legally vetted practice, not any deviation or error.

25. Ms. Blas testified that GGRF reads the phrase "notwithstanding paragraph (d)" in 5 G.C.A. § 5008(d) in a manner entirely consistent with the Legislature's established procurement framework for professional services; the statute requires that local participation be ensured by the time of contract, but it does not mandate point-scoring or geography preference during the qualifications-based evaluation stage governed by § 5216 and 2 G.A.R. § 3114. She explained that GGRF's interpretation harmonized these statutory provisions, ensuring that the selected firm is both the most qualified and ultimately a properly licensed Guam-based provider before contract execution.

26. As of the date of the hearing, the RFP process remained stayed pursuant to the statutory automatic stay triggered by ASC's protest and appeal. No aspect of the procurement advanced, further ensuring that ASC has suffered no competitive prejudice and is in the same position as all other prospective offerors pending resolution of this matter.

27. The record contains no evidence of bad faith. On the contrary, GGRF structured this procurement in accordance with statutory requirements, obtained OAG review, responded transparently to vendor inquiries, and immediately stayed the RFP upon the filing of ASC's protest, maintaining the integrity of the competitive process pending this appeal.

28. Under Guam procurement law, the Public Auditor may grant relief in a procurement appeal only if (1) a violation of statute or regulation occurred, and (2) the protestor is an aggrieved party who has suffered competitive prejudice. *See* 4 G.C.A. § 5425(a); *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth.*, 2020 Guam 20.

C. CONCLUSIONS OF LAW

Guam's Procurement Law is grounded in principles of fair treatment, full and open competition, and integrity in the expenditure of public funds. *See* 5 G.C.A. § 5001(b)(4), (6). Within this framework, procurement policy favors awarding contracts to Guam-licensed businesses when such businesses are available and capable of meeting the government's requirements. *See* 5 G.C.A. § 5008(a), (d).

At the same time, the Legislature enacted 5 G.C.A. § 5216 and 2 G.A.R. § 3114 to govern professional-services procurements, expressly requiring that offerors be ranked solely on qualifications before any discussion of price or other contracting conditions. These provisions reflect the Legislature's explicit decision to shield professional services evaluations from non-qualification factors.

Nothing in 5 G.C.A. § 5008(d) creates or requires a numerical (weighted) scoring preference. The statute must be construed in harmony with other provisions of Guam's Procurement Code, including 5 G.C.A. § 5216, which governs the procurement of professional services. Section 5216 requires that selection be based on qualifications before any discussion of price. By design, non-qualitative factors, such as geography, price, or local status, may not influence the ranking of offerors at the evaluation stage. Under the established rules of statutory construction, § 5216 governs the evaluation stage, and § 5008(d) regulates awardee eligibility at

the contracting stage. The Public Auditor has confirmed in multiple decisions that Guam's procurement statutes operate harmoniously, not in conflict. *See e.g., RadioCom* (OPA-PA-06-003)(local participation achieved through full and open competition); and *Emission Technologies* (OPA-PA007-002)(licensing before award when required by the solicitation).

These authorities support GGRF's approach. The RFP gives full effect to § 5008(d)'s policy without distorting the evaluation process mandated by § 5216. To impose a numerical "local preference" during evaluation, as ASC urges, would directly conflict with 5 G.C.A. § 5216's qualifications-based process. It would inject a non-qualitative factor into the selection phase, distort the merit-based ranking required by law, and create an unlawful conflict with § 5216's mandatory sequencing. No OPA precedent has required such a scoring method in professional-services procurement.

The statutes must therefore be read in a manner that allows each to operate within its intended sphere: 5 G.C.A. § 5216 governs the evaluation of professional services, while 5 G.C.A. § 5008(d) governs the eligibility of the awardee at the contracting stage.

GGRF's RFP achieves this statutory balance. It applies § 5008(d) substantively, at the proper time, as a condition of contract. The credible and unrebutted testimony of Ms. Paula Blas established that the RFP requires any successful offeror to:

- Be duly licensed to conduct business in Guam before commencement of services. RFP § V.B.4;
- Maintain at least three on-island employees, two of whom must be credentialed investment advisors. RFP § V.B.10; and
- Obtain registration as an investment advisor under Guam's Uniform Securities Act within eight weeks of award. RFP § VI.D.

These provisions operationalize 5 G.C.A. § 5008(d) by ensuring that the entity performing the work qualifies as a "local business." The testimony of Ms. Blas corroborates that these

provisions were intentionally drafted to ensure compliance with 5 G.C.A. § 5008 at the contracting stage. Ms. Blas testified that: GGRF's position is that 5 G.C.A. § 5008(d) applies notwithstanding paragraph (d), meaning that GGRF does apply it, but only when GGRF is ready to contract, not when GGRF is scoring proposals. If GGRF were to use § 5008 and price as a ranking method, that would conflict with the professional-services process, since GGRF evaluates qualifications first.

Ms. Blas further testified that these provisions were reviewed and approved by the "Office of the Attorney General" before the issuance of the RFP, and that no objection was raised to § 5008. She stated that "for at least twenty years, GGRF has applied § 5008 the same way," ensuring the chosen firm becomes locally licensed and staffed before work begins. She also confirmed that due to ASC's protest and appeal, no proposals have been opened or evaluated, and the procurement remains stayed.

Importantly, Ms. Blas testified that **ASC itself participated in a prior procurement for the third-party administrator over the last 20-some years, and most recently in 2022 under the same framework.** Ms. Blas noted that ASC was deemed qualified and that GGRF applied § 5008 after evaluation then, just as it is doing now. This testimony establishes both **consistency in GGRF's interpretation** and **notice to ASC**, which had successfully operated under the same procurement framework without objection.

The Public Auditor finds Ms. Blas's testimony credible and unrebutted. The RFP's statutory and regulatory provisions confirm that GGRF's interpretation of § 5008(d) is a pre-existing, legally vetted practice, not a post-hoc justification, that was developed in consultation with the Attorney General and applied identically in prior procurements, including ASC's own 2022 participation. The statutory and regulatory provisions of the RFP confirm that interpretation.

ASC's contention that 5 G.C.A. § 5008(d) compels GGRF to award numerical scoring points for "local businesses" during the evaluation stage is legally untenable. That interpretation is contrary to the text, structure, and purpose of Guam's Procurement Code and has never been adopted as precedent. ASC's own briefing concedes that § 5008(d) applies by operation of law and does not need to be expressly cited in a solicitation to be enforceable. Thus, ASC's position does not challenge § 5008's applicability, but instead seeks to impose a scoring methodology that the statute does not contain.

Nothing in § 5008(d) mandates a local-preference scoring system, and requiring such a method would directly conflict with the qualifications-based procurement framework of § 5216 and 2 G.A.R. § 3114 by injecting a non-qualitative factor into the evaluation process.

The Public Auditor has previously declined to adopt such a reading. In *In re Appeal of Emission Technology Group*, OPA-PA-07-002 (2007), the Public Auditor emphasized that compliance with the substantive intent of 5 G.C.A. § 5008, ensuring preference for businesses licensed in Guam, is essential, regardless of whether the solicitation expressly cites the statute. The same principle applies here. The RFP achieves functional compliance with § 5008(d) by requiring the successful contractor to meet all statutory qualifications, even though it does not cite the statute by number.

Furthermore, ASC's proposed construction would yield absurd results. If 5 G.C.A. § 5008(d) were applied as a scoring criterion, agencies could not lawfully evaluate professional services based on competence and qualification as 5 G.C.A. § 5216 mandates. Instead, they would be compelled to assign weighted points for physical presence in Guam regardless of technical merit. Such a result would undermine the qualifications-based selection process and contravene

the Procurement Code's policy "to foster effective broad-based competition within the free enterprise system." 5 G.C.A. § 5001(b)(6).

Accordingly, the Public Auditor concludes that GGRF's interpretation--applying § 5008(d) post-evaluation and before contract execution--is legally correct, administratively sound, and consistent with *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth.*, 2020 Guam 20.

Under Guam procurement law, relief may be granted only where the protestor is aggrieved and can demonstrate competitive prejudice resulting from a procurement violation. *See DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth.*, 2020 Guam 20, ¶84 (a party becomes aggrieved only when entitled to a remedy); *see also* 5 G.C.A. § 5425(a) limiting protests to aggrieved bidders). Thus, the Public Auditor may grant relief only upon a showing that (1) a procurement violation occurred and (2) the protestor suffered prejudice as a result. Neither element is met here. The record contains no evidence of unlawful conduct by GGRF. To the contrary, the evidence, particularly Ms. Blas's testimony, demonstrates that GGRF structured its solicitation in full conformity with 5 G.C.A. § 5216, ensured compliance with § 5008(d) at the contract stage, and suspended all procurement activity pending this appeal.

Ms. Blas further confirmed that GGRF's actions did not disadvantage ASC or any other offeror: No one has been excluded, and no one has been scored. GGRF has not even opened the proposals. Absent prejudice, there is no remedial foundation for sustaining the protest.

Because GGRF fully complied with Guam procurement law, and because ASC has suffered no competitive prejudice and is not an aggrieved protestor, the Public Auditor lacks any legal basis to grant relief in this matter.

D. DECISION AND DECLARATORY GUIDANCE

1. DECISION

Based upon the entire record, including the pleadings, exhibits, and testimony presented at the hearing on September 29, 2025, and upon the Findings of Fact and Conclusions of Law stated herein, the Public Auditor makes the following determinations:

a. The protest of ASC Trust, LLC concerning GGRF RFP No. GGRF-002-25 was timely filed under 5 G.C.A. § 5425(a).

b. The Public Auditor concludes that 5 G.C.A. § 5008(d) does not require a numerical or scoring preference during the evaluation phase of professional-services procurements conducted pursuant to 5 G.C.A. § 5216 and 2 G.A.R. § 3114.

c. The Public Auditor further concludes that GGRF's solicitation substantively complies with § 5008(d) by requiring that the successful offeror be duly licensed to conduct business on Guam and maintain an on-island, locally staffed office as a mandatory condition of award and performance.

d. ASC Trust LLC has not demonstrated any competitive prejudice or shown that it is an aggrieved offeror within the meaning of 5 G.C.A. § 5425(a). No proposals have been opened, evaluated, or awarded, and ASC remains in the same competitive position as every other offeror.

e. Moreover, ASC's requested remedy, to rewrite the RFP that remains fully compliant with Guam law and has not advanced to evaluation, would improperly disrupt a lawful procurement with no corresponding benefit to the competitive process.

2. DECLARATORY AND PROSPECTIVE GUIDANCE

To promote continued clarity and reduce unnecessary protests. The Public Auditor reiterates that § 5008(d) applies to all procurements, including those for professional services. Compliance may appropriately occur prior to contracting, provided that no contract is executed with a firm lacking the required Guam license or staffed Guam office.

Agencies may choose to state this sequencing expressly in future solicitations to enhance transparency. However, there is no statutory requirement to include a specific reference to § 5008(d) or to assign a local preference score during evaluations in a § 5216 procurement.

E. CONCLUSION

Accordingly, ASC Trust LLC's appeal is DENIED in its entirety.

Respectfully submitted this 28th day of October, 2025.

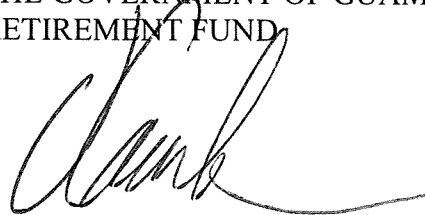
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