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OPA-PA-25-007 In the Appeal of ASC Trust, LLC

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Hafa Adai,

Please see the following attached for filing:

- ASC Trust LLC's Remedies Brief
- ASC Trust LLC's Proposed Findings of Fact and Conclusions of Law

Regards,

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2 attachments

ASC Remedies Brief 10.28.pdf
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ASC Proposed Findings of Fact and Conclusions of Law 10.28.pdf
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**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

ARRIOLA LAW FIRM HAGÅTÑA, GUAM 96910

In the Appeal of)	Docket No. OPA-PA-25-007
)	
)	ASC TRUST, LLC'S PROPOSED
ASC TRUST, LLC,)	FINDINGS OF FACT AND CONCLUSIONS
)	OF LAW
)	
Appellant.)	
)	

COMES NOW, ASC Trust, LLC (“ASC”) through the undersigned counsel, who submits ASC’s Proposed Findings of Fact and Conclusions of Law in this matter.

INTRODUCTION

This Matter came before the Public Auditor for hearing on September 29, 2025 at 10:00 a.m. Appellant ASC was represented by Attorney William B. Brennan. The Government of Guam Retirement Fund (“GGRF”) was represented by Director Paula Blas and Attorney Vincent C. Camacho. At the hearing, the Public Auditor denied GGRF’s Motion to dismiss this matter and set forth its analysis concerning the same, on the record. Upon considering the testimony and evidence presented at the hearing and the record in this matter, the Public Auditor enters these findings of facts and conclusions of law. As discussed further herein, ASC’s appeal is sustained and GGRF’s decision denying ASC’s protest concerning the local procurement preference is reversed and vacated. Pursuant

to 5 G.C.A. Section 5451, since ASC’s protest was timely and pre-award, GGRF is ordered to cancel GGRF-RFP-002-25 or to revise it to comply with 5 G.C.A. Section 5008(d), as discussed herein.

FINDINGS OF FACT

1. On March 17, 2025, GGRF issued a request for proposal, seeking a provider of Plan Administration Services related to the Defined Contribution Retirement System 457(b) Deferred Compensation Plan and Welfare Benefit Plan, GGRF-RFP-002-25 (the “RFP”).
2. On March 31, 2025, ASC timely submitted the following question to GGRF: “Will Guam-based offerors receive any preference in evaluation scoring?” Notice of Appeal, Ex. A at p. 1 (April 30, 2025).
3. GGRF responded on April 11, 2025: “[t]he evaluation criteria do not include any geographic preference or scoring advantage based on the offeror’s location.” Notice of Appeal, Ex. A at p. 1-2 (April 30, 2025).
4. On April 16, 2025, ASC filed a protest alleging *inter alia* that Guam law requires that GGRF give preference to local businesses that meet certain requirements pursuant to 5 G.C.A. Section 5008(d). Notice of Appeal, Ex. A. at p. 3 (April 30, 2025).¹
5. GGRF denied ASC’s protest on April 23, 2025 concerning 5 G.C.A. Section 5008(d). GGRF posited it would not apply the local preference in this procurement for professional services. See Notice of Appeal, Ex. B at p. 1-2 (“Reading § 5008(d) to require awarding a contract to a lower ranked firm based solely on price would directly conflict with the structured process mandated under Section 5216. . . As such Section 5216 and 2 GAR Section 3114 must control the selection process for professional services.”). GGRF did not

¹ ASC included a second basis of protest, that certain transition-related-criteria that would be used in GGRF’s ranking of offerors, gave the incumbent an unfair advantage over other offerors. GGRF accepted this separate basis of ASC’s protest in its April 23, 2025 decision, and did not assert this separate basis of protest was untimely.

assert that ASC's local preference related protest was untimely in its April 23, 2025 decision on ASC's protest.

6. ASC subsequently appealed GGRF's denial of its protest to the Public Auditor on April 30, 2025 in this appeal.
7. GGRF responded to ASC's Appeal, asserting *inter alia* and for the first time, that ASC's protest concerning GGRF's failure to apply the local preference to the RFP, was untimely. GGRF Agency Statement at p. 6 (May 15, 2025).
8. On June 24, 2025, GGRF moved the Public Auditor to dismiss this appeal, on the timeliness issue.
9. After briefing and argument, before the hearing on September 29, 2025, the Public Auditor orally denied GGRF's motion to dismiss.
10. At the hearing, the Parties' Counsel examined GGRF Director Paula Blas and made arguments on the merits of this appeal. The relevant portions of Ms. Blas' testimony are as follows:
 - a. GGRF is a quasi-autonomous agency, with its own procurement authority under the Guam Procurement Law as well as a delegation from the Chief Procurement Officer for the Government of Guam.
 - b. Ms. Blas, in her position, is the head of the purchasing agency for GGRF, as contemplated by the procurement law.
 - c. ASC and GGRF litigated a separate issue for an earlier version of this procurement in 2023, in ASC-PA-23-006 and ASC-PA-23-005, which were consolidated and settled by the Parties before reaching the merits of ASC's claims in those appeals.

- d. GGRF has offered different arguments concerning the local preference at different stages in these proceedings. First at the protest stage, GGRF posited that the local preference does not apply to professional services procurement. Then in response to the appeal, GGRF contended that the local preference is discretionary and not mandatory. At the hearing, GGRF through Ms. Blas offered that the local preference is discretionary and only applies to a business license and local office requirement, at the time of award.
- e. After clarifying GGRF's different positions from the protest to appeal stage of these proceedings, Director Blas testified that her interpretation of Section 5008 as of the hearing date only requires that an ultimate awardee have a Guam business license and Guam office at the time of award. She further testified that GGRF RFPs do not calculate a points basis during the evaluation phase of an RFP and therefore GGRF would apply the local preference after evaluations, but pre-award in its discretion. Director Blas offered that GGRF would apply the business license and office in Guam requirement pre-award, but would not apply Section 5008 and specifically subsection (d) any further.
- f. On questioning from the Public Auditor, Director Blas conceded that GGRF's ultimate decision not to apply Section 5008(d) was due in part because it is not clear what "substantial portion of its business on Guam." Instead, she said, GGRF would only apply the first sentence of Section 5008, by requiring a Guam business licenses and office in Guam at the time of award. She acknowledged that the application she articulated ignores part of the statute at subsection (d).

g. Ms. Blas finally admitted that GGRF had never publicized its position on Section 5008(d) and its application to professional services procurements before responding to ASC's March 31, 2025 question. She conceded that local preference was not something that normally was included in GGRF RFPs.

h. She further admitted that ASC could not have known GGRF's position concerning 5008(d) prior to GGRF responding to ASC's March 31, 2025 question, because GGRF had never faced this issue before, and now that they had, it is something they had to refer to counsel.

11. The Public Auditor took this matter under advisement at the conclusion of the testimony, and ordered the parties to submit proposed findings of fact and conclusions of law.

CONCLUSIONS OF LAW

I. Guam law requires a local preference in procurements for professional services.

5 G.C.A. Section 5008(d) in relevant part states:

"All procurement of supplies *and services* shall be made from among business licensed to do business on Guam and that maintain an office or other facility on Guam, wherever 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 and that is one of the above-designated businesses entitled to preference."

5 G.C.A. § 5008 (emphasis added). The procurement law makes clear that “services” is an all-encompassing-term, and includes as an example, those professional services provided by consultants and attorneys which would fall under Section 5216 and 5121. See 5 G.C.A. § 5030, Cmt 1.

Thus, based on the foregoing plain language of the Procurement Law, in the RFP context, if one or more local² offeror(s): (1) is a service business actually in business, (2) doing a substantial portion of its business on Guam, (3) hiring at least 95% [specifically listed persons], and (4) (a) if that offeror offers the services sought or (b) no off island vendor offers the services at less than 85% of the local offeror(s), then the local offeror(s) is entitled to a preference in the procurement. Section 5008 can therefore be harmonized with the qualifications process under Section 5216 and 5121 for procurement of professional services. An offeror who is qualified and who is entitled to local preference must be preferred over those offerors who are not entitled to local preference for services under Section 5008(d). GGRF’s arguments to the contrary that price is the only basis to apply the local preference is contrary to the plain language of Section 5008(d) and is also an unreasonable limitation on Section 5008(d) that the Legislature did not intend. GGRF’s flip flopping throughout these proceedings is also a compelling reason to decide this appeal in ASC’s favor, and order GGRF to state clearly if and how Section 5008(d) is to be applied to the RFP.

OPA precedent confirms that the local procurement preference is applicable in the RFP context. See OPA-PA-07-002, In re Emission Technologies, Inc., Decision (August 1, 2007) (hereinafter “Emission Technologies”). In Emission Technologies, the Guam Power Authority (“GPA”) issued an RFP for professional services, seeking “Annual Emission Testing for GPA Power Generating Units”. After hearing, the Public Auditor determined that Emission Technologies qualified for local preference at the time of proposal, and “[a]ward to an off-island vendor without a comparison to the

² Meaning they are licensed in Guam and maintain an office in Guam as required by 5 G.C.A. Section 5008.

price *or availability* of local vendors is inconsistent with 5 G.C.A. Section 5008. OPA-PA-07-002, Emission Technologies, Decision at p. 12. (August 1, 2007).³ Emission Technologies makes clear: (1) the local preference applies to the procurement of professional services under 5 G.C.A. Sections 5216 and 5121 and (2) Government agencies are required to conduct the local preference analysis during the procurement process. Emission Technologies, Decision at p. 12 (“Award to an off-island vendor without a comparison to the price *or availability* of local vendors is inconsistent with 5 G.C.A. Section 5008. . . .” (*emphasis added*)).⁴

This interpretation of 5 G.C.A. Section 5008 is supported by the Legislature’s clear intent to apply the local preference to *all* procurements for supplies and services, when viewing the Legislature’s creation of the other procurement preferences in the Guam Procurement Law. See 5 G.C.A. Section 5011 (recognizing procurement policy in favor of awarding procurements to service-disabled veteran owned businesses “*except for professional services*” (*emphasis added*)); see also, 5 G.C.A. Section 5013 (recognizing procurement policy in favor of awarding procurements to women-owned businesses for “any supply or service”). The Committee Report on Bill 71-36,⁵ later Public Law 36-26, which adopted the women-owned business preference, demonstrates the Legislature made a clear choice. In adopting the women-owned business preference, which initially omitted

³ Overruled on jurisdictional grounds in SP0160-07, TRC Environmental Corporation v. Office of the Public Auditor (Nov. 24, 2008).

⁴ See also, OPA-PA-06-003, In re Appeal of L.P. Ganacias Enterprise, Inc., dba Radiocom, Findings and Recommendations of Hearing Officer at pp. 16-17 (Mar. 12, 2007) (“There is no evidence in the record that any attempt was made prior to the procurement to determine if a local business for this particular supply or service existed, except for the assurance of the awardee that it is the only one. The record does not indicate that any price comparison was done in the course of this procurement between the awardee’s product and the product of any local business. The Hearing Officer agrees with the CPO that some needs of the government must be procured from off-island. However, these must be justified by a significantly lower price or by a determination that no business for such supplies or services may be found on Guam.”).

⁵ See P.L. 26-36, Bill 71-36, Committee Report at pp. 34-52, available at: [https://archives.guamlegislature.gov/36th_Guam_Legislature/Committee_Reports_36th/Committee%20Report%20on%20Bill%20No.%2071-36%20\(COR\)%20As%20amended%20by%20the%20Committee.pdf](https://archives.guamlegislature.gov/36th_Guam_Legislature/Committee_Reports_36th/Committee%20Report%20on%20Bill%20No.%2071-36%20(COR)%20As%20amended%20by%20the%20Committee.pdf)

professional services similar to the service-disabled veteran owned business preference, the original Bill included the language “except for professional services”. Id. After some discussion at the Public Hearing, the final bill deleted the language exempting professional services from the women-owned business preference. Id. The legislature clearly intended that the local procurement preference, like the woman-owned business preference, applies to professional services procurements. This GGRF’s denial of ASC’s protest was not in accordance with Guam laws. Further, GGRF’s failure to apply 5 G.C.A Section 5008 (d) renders its RFP in violation of Guam law.

ORDER

Based on the foregoing, the OPA finds that:

1. This is a pre-award matter, as ASC timely⁶ filed its protest before GGRF made an award related to the procurement at issue, within 14 days of when ASC knew or should have known of the facts giving rise to its protest.
2. ASC’s protest is sustained and GGRF’s decision denying the protest concerning the local procurement preference is reversed and vacated, and this matter is remanded to GGRF.
3. Guam law requires GGRF to apply the local preference at 5 G.C.A. Section 5008 to the RFP;
4. GGRF is ordered pursuant to 5 G.C.A. Section 5451 to cancel the RFP, or revise it to comply with the law.
5. This is a Final Administrative Decision for Appeal No. OPA-PA-25-007. The Parties are hereby informed of their right to appeal the Public Auditor’s Decision to the Superior Court of Guam in accordance with Part D of Article 9 of 5 G.C.A. Section 5481(a) within fourteen (14) days after

⁶ In finding ASC’s protest was timely and further that this appeal was within the Public Auditor’s jurisdiction, the Public Auditor orally announced a decision on the Motion to Dismiss on September 29, 2025 beginning at minute mark 1:20-6:20 of the hearing recording. The Public Auditor emphasized that the date ASC knew or should have known of its basis for protest concerning the local preference, was April 10, 2025, when GGRF responded to ASC’s written questions concerning the RFP.

receipt of a Final Administrative Decision. A copy of this Decision shall be provided to the Parties and their respective attorneys, in accordance with 5 G.C.A. Section 5702, and shall be made available for review on the OPA website at www.opaguam.org.

Dated this ____ day of _____, 20____.

HON. BEJAMIN J.F. CRUZ
Public Auditor

Respectfully submitted this 28th day of October, 2025.

ARRIOLA LAW FIRM, LLC
Attorneys for ASC Trust, LLC

By: _____


WILLIAM B. BRENNAN