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OFFICE OF PUBLIC ACCOUNTABILITY - GUAM

IN THE APPEAL OF
ASC TRUST CORPORATION,

Appellant.

APPEAL NO. OPA-PA-09-010

**AGENCY REBUTTAL TO
APPELLANT'S SUPPLEMENTAL
COMMENTS ON AGENCY REPORT**

I. INTRODUCTION

The Government of Guam Retirement Fund (the "Fund" or "GGRF" as the Purchasing Agency) submits this Agency Rebuttal to Appellant's Supplemental Comments on Agency Report filed by Appellant ASC Trust Corporation ("ASC") on December 2, 2009. The OPA's Decision in *In the Appeal of Guam Community Improvement Foundation, Inc.*, OPA-PA-09-005 ("Appeal of GCIF"), cited by ASC actually provides the legal authority for the OPA to dismiss ASC's appeal of the Fund's proper denial of ASC's protest, on the grounds of ASC's untimely protest. The date on which ASC "knew or should have known" of the facts giving rise to its protest was October 6, 2009, the date on which ASC first obtained the evaluation sheets.

Instead, it was, at the latest, the July 6, 2007 date on which ASC received the Agency Report describing GWRS' pricing proposal which then triggered the 14-day time period to file a protest and then request information to support the protest. The policy underlying procurement laws do not excuse a protestor from its own lack of diligence or failure to act timely.

II. SUPPLEMENTAL REBUTTAL

A. **Decision in *Appeal of GCIF* Confirms that the Fund's Rejection of ASC's Protest As Untimely Was Proper.**

As first discussed in the Fund's Agency Statement, Guam's Procurement Regulations require that a protest be "submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto." 5 G.C.A. § 5425(a). "Protests filed after the 14 day period shall not be considered." 2 G.A.R. Div. 4 § 9101(c)(1)(Emphasis added). The Procurement Regulations also contemplate that a protestor may not have all of the documents or information to support its protest within the 14-day time period; thus, although a protestor must generally file supporting exhibits, evidence or documents to substantiate its claims, the rule is flexible and excepts failure to file such evidence in the event they are "not available within the filing time in which case the expected availability date shall be indicated."¹ Based on the OPA ruling in *Appeal of GCIF*, the fact that ASC had not obtained the evaluation sheets is irrelevant to determining whether it filed its protest timely.

The OPA's Decision in *Appeal of GCIF* supports the Fund's position that ASC should have filed its protest in 2007, because that was when ASC first knew that it was *not* rated the best qualified offeror and when GWRS's pricing was publicly disclosed in the Agency Report filed in the GWRS appeal. Thus, ASC knew of the facts giving rise to its protest grounds in 2007, *even if it didn't have the evaluation sheets*. ASC should have filed its protest at that time,

¹ 2 G.A.R. Div. 4 § 9101(c)(3). See discussion in Agency Statement.

and requested the evaluation sheets thereafter. In the *Appeal of GCIF*, the OPA found that GCIF's protest was filed timely despite not having been "substantiated with supporting exhibits, evidence and documents," and articulated its ruling as follows:

Generally, a protest shall include a statement of reasons for the protest and supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated. 2 G.A.R., Div. 4, Chap. 9, §9101(3)(c) and (d). Here, GCIF's August 5, 2009 protest alleges that IBC did not comply and cannot comply with the RFP's financing requirements and that DPW has improperly amended the RFP to include the provisions requiring the successful offeror to provide one hundred percent of the financing for the project. [Footnote omitted.] However, it does not include any supporting exhibits, evidence, or documents to substantiate these allegations. The Public Auditor notes that GCIF did not have access to IBC's proposal at the time it filed its protest, and that it will only have access to said document if and when DPW awards the contract to IBC. Thus, the Public Auditor finds that GCIF's protest could not contain supporting exhibits or documents because it had no access to IBC's proposal.²

The OPA has, therefore, already ruled that a protest, filed without substantiating evidence is not violative of the Procurement Rules, but rather contemplated therein. In the instant appeal, ASC asks the OPA to excuse it from having to file a timely protest, claiming that such a ruling would lead to a "fishing expedition to determine if there were any such facts . . .".³ In fact, what ASC characterizes as a "fishing expedition" is far preferable to the proposed "wait and see" approach ASC has taken and wishes the OPA to bless. If ASC had timely filed a protest, requested the evaluation sheets, and used them to support its claim of arbitrariness, the Fund would have been on notice of a potential procurement issue, which the Fund could have promptly investigated and addressed. In the course of the investigation, the Fund would have had the opportunity to control the pace of the procurement, could have delayed the procurement, and could have halted the further expenditure of fees and costs in connection with negotiations with GWRS. The "fishing expedition" described by ASC is in fact precisely what the law requires -- the government agency must be alerted as soon as possible of any potential

² *Appeal of GCIF*, pp. 10 -11.

³ Appellant's Comments on Agency Report, p. 7.

procurement protest so that the issue(s) can be promptly addressed and resolved, in the best interests of the government.

In the present case, ASC did, indeed, *have* the facts, i.e. it already knew that it was not ranked the best qualified offeror and that GWRS's pricing was higher than its own. There would be no "fishing expedition" if ASC had simply requested the documents as an "interested party," as opposed to pursuant to a Freedom of Information Act ("FOIA") request. In response to ASC's request as an "interested party" under Section 9101(f) of the Procurement Regulations, the "head of a Purchasing Agency shall upon written request make available to any interested party information submitted that bears on the substance of the protest except where information is proprietary, confidential or otherwise permitted or required to be withheld by law or regulation." ASC essentially claims that a non-FOIA request for the evaluation sheets would have been futile and that "ASC could not have obtained these documents any earlier."⁴ This argument is pure speculation and unsupported in the record. In fact, ASC's assertion that the evaluation sheets in the GWRS appeal were "confidential and/or proprietary" is baseless. While certain documents may have been labeled "confidential and/or proprietary" in connection with the GWRS appeal, the evaluation sheets that ASC claims to have needed could have been obtained by ASC if only ASC had requested them as part of its own protest, outside the GWRS appeal. Simply stated, ASC failed to exercise requisite diligence to preserve its right to protest; and it is ASC, not the Fund, that should bear the consequences.

The Comptroller General has considered similar timeliness issues and has placed the onus upon the protestor to be diligent in its investigation into whether it has grounds to advance a protest. In a case involving the question of whether a protest was timely when it was filed in the General Accounting Office ("GAO") several months after the contract had been

⁴ ASC's Supplemental Comments to Agency Report, p.3.

awarded, the Comptroller General ruled as follows:

It is incumbent upon potential protesters ... to diligently pursue the information necessary to determine their basis of protest. [Citation omitted]. Protesters do not meet this obligation simply by waiting to file in our Office when they happen to learn of a basis for their objections. Here, had Dand diligently made any inquiries at all regarding Sealcraft's bid once it was advised that award had been made to Sealcraft, it could have discovered the basis for its protest. ... Since there is no evidence in the record that the protester met its obligation to ascertain whether a basis for its protests existed during the 5 months after it learned that the Army awarded the contracts to Sealcraft, its protests, separately filed in our Office on May 28 and 30, 1991, respectively, are dismissed as untimely.

Matter of Dand Industries, 1991 WL 177315 at pp. *2 - *3 (Comp. Gen. 1991).

Similarly, in the case of *Matter of General Offshore Corporation*, 1994 WL 129008 at fn. 5 (Comp. Gen. 1994), the Comptroller General found that a protest based on the successful bidder's qualifications (or lack thereof) was filed untimely by a protester "because it was not filed within 10 working days of when [the protester] knew, or should have known, this protest ground. 4 C.F.R. § 21.2(a)(2)(1993) (Additional citations omitted)." *General Offshore Corporation* involved facts similar to the instant protest in that the condition being protested -- lack of qualifications of the successful bidder -- was part of the Agency Report and thus triggered the time for when the protester knew or should have known of the ground of protest. In that case, the Comptroller General ruled as follows:

On November 9, 1993, GOC's attorneys received a copy of MAR's proposal ***with the agency report***, including a copy of the employee's AMI diploma. However, GOC did not raise this issue until December 30, more than 10 working days later. While GOC argues that it was unaware of the significance of the AMI certificate until shortly before December 30, when it interviewed the employee, we believe the protester had sufficient information to raise the issue within 10 days of receipt of the proposal.⁵

Similarly, ASC had information about GWRS's pricing when its attorney was served with the Agency Report, at the very latest, on July 6, 2007. This information, coupled with the information that it was not ranked the best qualified offeror gave ASC the requisite knowledge to bring a protest timely. However, as discussed thoroughly in the Agency Statement

⁵ *Id.* (Emphasis added).

and Agency Rebuttals previously submitted to the OPA, ASC did not diligently pursue its rights and, instead, adopted a "wait and see" attitude during the GWRS appeal.

B. The Allegations of the Evaluator's Arbitrariness are Not Properly Before the OPA.

The OPA's Decision in *Appeal of GCIF* is also significant because the OPA ruled that a matter was not properly before it when the agency did not render a decision on a matter during the protest stage holding as follows:

The Public Auditor's jurisdiction is limited to reviewing DPW's August 11, 2009 and August 14, 2009 Decisions denying GCIF's August 5, 2009 Protest. 5 G.C.A. § 5425(e). The issue of whether the lease or lease back agreements violated any of the RFP requirements or whether CaPFA was properly licensed was not raised in GCIF's August 5, 2009 protest or DPW's August 11, 2009 and August 14, 2009 decisions denying the protest. As a result, **there is simply no decision concerning the issue of whether the lease or leaseback agreements violated the RFP requirements or whether the CaPFA was properly licensed for the Public Auditor to review. Thus, the Public Auditor finds that she does not have the jurisdiction to hear these issues because they are not properly before her.**⁶

As in the instant appeal, the Fund ruled on ASC's protest, rejecting it on the basis of its untimeliness, as follows:

This letter is in response to the protest submitted by ASC Trust Corporation ("ASC") to the Government of Guam Retirement Fund on October 15, 2009. ASC protests the ratings it received from the evaluation panel with regard to the aforementioned Request for Proposal. ASC claims that it did not review its evaluation sheets until October 6, 2009. However, because a timely protest should have been submitted no later than fourteen days after May 7, 2007, May 11, 2007, July 6, 2007, or at the latest, September 4, 2009, the Retirement Fund hereby declines to consider the Protest on the grounds of untimeliness.⁷

Because the Fund did not rule on the issue of whether the evaluation was "arbitrary and capricious," but, instead complied with the Procurement Regulations and did not consider the untimely protest, the issue of arbitrariness is not properly before the OPA on appeal. The only appropriate conclusion following the OPA's ruling in *Appeal of GCIF* is that the OPA

⁶ *Appeal of GCIF*, p. 11 (Emphasis Added).

⁷ Letter from Paula M. Blas to David J. John dated October 26, 2009, *Exhibit 2 to Notice of Appeal* filed on October 29, 2009.

does not have jurisdiction to hear the issue as it is not properly before the OPA.

C. Evaluation of the Proposals Was Consistent with the Process Set Forth in the RFP.

1. *Guam Procurement Law and the Decision in Appeal of GCIF supports the evaluations of the offers based on factors set forth in the RFP.*

RFP No. GGRF-028-06 sets forth specifically the factors to be considered by the Selection Panel in evaluating the proposals "based upon technical merits and price" and enumerates and apportions value to the factors as follows:

1. The plan for performing the required services (.15)
2. Ability to administer the plan and benefits administration process in a cost-effective manner (.15)
3. Breadth and depth of experience, specialized training and industry recognition of professional staff (.15)
4. Ability to be responsive and accessible to the Retirement Fund and to DCRS and Deferred Compensation plan participants (.10)
5. Knowledge of legislative, operational and legal aspects of Guam public pensions funds, as well as federal laws pertinent to the investment management and plan administration of the DCRS and Deferred Compensation plan (.10)
6. Ability to improve participant satisfaction and benefits administration services received from the Retirement Fund (.10)
7. Educational resources and ability to provide ongoing training (.10)
8. Record of past performance of similar work (.10)
9. Other factors (.05)
10. Based on the factors above, the proposals will be initially evaluated. Then the price proposals will be opened and the price proposals will be incorporated into the evaluation effort. **The price proposal will count for 40% of this evaluation and the technical merits will count for 60% of this evaluation. Based on the combination of the scores assigned from the technical merit and pricing, the GGRF will enter into negotiations**

with the company with the highest combined score. If these negotiations do not result in a successful contract, then the GGRF will enter into negotiations with the next highest ranked company.⁸

Using a weighted scoring system, with a specific weight given to each evaluation factor, each member of the selection panel scored each offeror and its proposal. Based on the scoring, GWRS was chosen as the best qualified offeror with an average total score of 22.42. ASC and Lincoln received scores of 21.64 and 18.76, respectively. ASC complains, however, that a single evaluator's score on the pricing portion of the evaluation "skewed the results in favor of GWRS" and "that giving a lower evaluation score to a pricing proposal that was *objectively* more favorable to the Fund and its members was irrational and thus, as a matter of law, necessarily arbitrary and capricious."⁹ ASC provides no citation for the concept that as a matter of law in an RFP for professional services (not for goods under a sealed bidding process), lower pricing automatically requires a higher evaluation score. In fact, the purpose of a negotiated procurement involving professional services is to assess price in relation to value. The RFP contemplated that the pricing "will be incorporated into the evaluation effort" and that pricing would be weighted less than the technical evaluation. The RFP does not require the evaluators to rank the price proposals according to numerical order, as ASC contends should have occurred.

Indeed, in considering the offers, the RFP allows the evaluator to rank offerors' price proposals relative to the value of the services, experience and overall technical merits of the offerors or according to any other methodology, as permitted in the RFP. As discussed in the Agency Rebuttal, with regard to the evaluator who rated ASC lower in pricing than GWRS, this evaluator's score sheets included written comments about ASC's pricing ("concerns w/

⁸ Section VI (C) of the RFP, p. 29 (Emphasis added).

⁹ ASC's Supplemental Comments to Agency Report, p. 2.

methodology”) and about GWRS’ pricing (“got one price ↑ but good disclosure opt. 2 – NO”). (Tab #7 of the Procurement Record (“P.R.”) filed with the OPA on November 9, 2009). Offerors who receive similar scores for different pricing proposals may have received similar scores for example, simply because their respective price-to-value may have been considered to be comparable. There is ample support for the Fund’s position that the evaluation was consistent with the process set forth in the RFP and ASC has not provided any kind of evidence to the contrary to meet its burden of proof.

The OPA’s Decision in *Appeal of GCIF* also requires a finding that the evaluation of the proposals was not arbitrary or capricious. There, GCIF complained that the successful offeror did not or could not have complied with the RFP’s financial requirements and pulled a “bait and switch” after the evaluations had been conducted which should change the outcome of the evaluations and that the evaluators should have “significant financial background” because the evaluation attributed a “70% financing and 30% construction weighting” to the proposals submitted.¹⁰

The OPA, in its Decision in *Appeal of GCIF*, ruled that the evaluation committee properly selected the “best qualified offeror based on IBC’s proposal and the RFP’s evaluation criteria” and reasoned as follows:

Generally, proposals shall be evaluated only on the basis of evaluation factors stated in the request for proposals. 5 G.C.A. §5216(e) and 2 G.A.R., Div. 4, Chap. 3, §3114(f)(2). The evidence described above indicates that the Evaluation Committee, in its judgment, selected IBC as the best qualified offeror based on IBC’s proposal and the RFP’s evaluation criteria.¹¹

Additionally, the OPA articulated the benefit of the RFP-type solicitation as the negotiation process following the evaluation because negotiations allow for further discussions with the best

¹⁰ Notice of Appeal, *In the Appeal of Guam Community Improvement Foundation, Inc.*, OPA Appeal No. OPA-PA-0-005, Exhibit 1 and 2 (Aug. 26, 2009).

¹¹ Decision, *Appeal of GCIF*, p. 18.

qualified offeror to reach an agreement that is “fair and reasonable.” In this regard, the OPA stated as follows:

The RFP method of solicitation allows for a potential increase in financing costs. Generally, award shall be made to the offeror determined to be the best qualified based on evaluation factors stated in the request for proposals and negotiation of compensation determined to be fair and reasonable. 5 G.C.A. §5216(e) and 2 G.A.R., Div. 4, Chap. 3, §3114(11). Further, if compensation, contract requirements, or contract documents cannot be agreed upon with the most qualified offeror, then the purchasing agency must terminate the negotiations and begin negotiations with the next most qualified offeror. 5 G.C.A. §5216(e) and 2 G.A.R., Div. 4, Chap. 3, §3114 (14). The request for proposal procedure was suitable for this procurement because negotiation would be required to minimize uncertainty. [Footnote omitted].¹²

Perhaps most importantly, despite finding that the evaluation committee in *GCIF* should have been given more time to conduct its evaluation, in a very detailed discussion of the process followed by the evaluators, the OPA found the committee to have acted properly and upheld the determination, by the evaluation committee of *GCIF* as the “best qualified offeror”:

The Evaluation Committee was given little if any guidance concerning the evaluation criteria by DPW or GEDA. ... Geraldine James did not review the RFP or the proposals until the day of the evaluation and she only had a half an hour to conduct such a review. (Footnote omitted). Gayle Hendricks stated that no one briefed her about the RFP or proposals until the day of the evaluation; that DPW representatives answered some questions concerning the RFP and proposals; and that she understood that financing was seventy percent of the evaluation. (Footnote omitted). Eunice Aflague testified that DPW told her to rate the proposals in accordance with the RFP’s evaluation criteria. (Footnote omitted). Doreen Crisostomo stated that she did not receive the RFP or the proposals until the day of the evaluation and that she had the opportunity to ask about these documents. (Footnote omitted). The Public Auditor finds that the Evaluation Committee members relied on the RFP’s evaluation criteria to make their selection of the best qualified offeror and that they received little or no guidance by DPW or GEDA as to how to make their evaluation.

The Evaluation Committee’s selection of IBC as the best qualified offeror was in accordance with the Guam Procurement Law and Regulations. DPW gave the Evaluation Committee only one day to conduct the review and submit its scores. In contrast, DPW took over 48 days to approve the Evaluation Committee’s recommendations. (Footnote omitted). The Public Auditor finds that DPW should have given the Evaluation Committee more time to conduct the evaluation, considering the magnitude and importance of the JFK reconstruction project. Despite this, the Evaluation Committee did its job. The Evaluation Committee reviewed the RFP and the proposals, the members asked questions, and they heard presentations by all the offerors concerning the offerors’ respective proposals, and

¹² Decision, *Appeal of GCIF*, p. 18 (Emphasis added).

the committee scored all the proposals after the presentations.¹³

In the instant appeal, the Procurement Record unequivocally establishes that the evaluations of the offerors were conducted as required under the RFP; that the negotiations commenced with GWRS who was properly ranked the best qualified offeror under the evaluation factors set forth in the RFP; that, during the negotiations, an agreement could not be reached and that the Fund then terminated negotiations with GWRS and began negotiations with ASC as the next most qualified offeror; that, but for GWRS's appeal and the OPA's earlier Decision in the *Appeal of GWRS*, OPA-PA-07-006 requiring the Fund to resume negotiations with GWRS, the Fund would have continued its negotiations with ASC. What is clearly missing from the Procurement Record is any evidence that the evaluations were arbitrary or capricious, as asserted by ASC without legal authority or evidentiary basis.

2. ***Federal case law is in accord.***

The RFP-type of solicitation, as employed in this procurement, is, by definition, a negotiated procurement rather than one based primarily on the lowest price offer. In this type of solicitation, the Comptroller General has held that the government is not required to make an award of the contract to the firm offering the lowest cost unless the RFP specifies that cost will be the determinative factor.¹⁴ The Comptroller General also concludes that it is not the function of the General Accounting Office to reevaluate technical proposals, since the determination of the government's needs and the best method of accommodating those needs is primarily the responsibility of the procuring agency. *Id.*¹⁵ Thus, the Comptroller General will only examine an evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria.

¹³ Decision, *Appeal of GCIF*, pp. 17-18. (Emphasis Added)

¹⁴ *BDM Management Services Co.*, 1988 WL227028 (Comp.Dec. 1988) (citing *University of Dayton Research Institute*, 1987 WL 102782 (Comp.Dec. 1987)).

¹⁵ *Id.*

Id.¹⁶. The procuring agency has the discretion to select a more highly rated technical proposal if doing so is in the government's best interest and is consistent with the evaluation scheme set forth in the solicitation. Id.¹⁷

In *United Telecontrol Electronics, Inc.*, 1989 WL 241333 (Comp.Gen. 1987), ("UTE"), the Comptroller General denied a protest where UTE asserted that the evaluation and award decisions were not conducted according to the RFP's evaluation scheme because the awardee's evaluated total price was significantly higher than UTE's evaluated total price. The Comptroller General held that the agency's cost/technical tradeoff was rational and consistent with the RFP's evaluation criteria, and, thus the contracting officer had a reasonable basis for awarding the contract. The RFP stated that the evaluation of the offerors would be weighed as follows: 60% for technical factors and 40% for price. The Comptroller General held that in negotiated procurements, unless the RFP so specifies, there is no requirement that the award be based on lowest cost.¹⁸ Rather, the procuring agency has the discretion to select a more highly rated technical proposal if doing so is reasonable and is consistent with the evaluation scheme set forth in the RFP. Id.¹⁹ Similarly, in the case of *BDM Management Services, Co.*, 1988 WL 227028, p.*3 (Comp.Gen. 1988), the Comptroller General upheld an award to higher rated offerors with significantly higher proposed costs where it was determined that the cost premium was justified considering the significant technical superiority of the selected proposal.

Similar to the case at bar, the RFP states that "the price proposal will count for 40% of the evaluation and the technical merits will count for 60% of the evaluation."²⁰ Based on the combination of scores assigned from the technical merits and pricing, the GGRF will enter into

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *United Telecontrol Electronics, Inc.*, 1989 WL 241333, p.*8 (Comp. Gen. 1989)(citing to *Comarco, Inc.*, 1987 WL 101632 p.4 (Comp.Gen. 1987)).

¹⁹ *Id.*

²⁰ See GGRF RFP No. GGRF-028-06 p. 29.

negotiations with the company with the highest combined score. *Id.* ASC argues that its lowest price offer should have automatically warranted its proposal to be the best offeror. Specifically, ASC argues that there is no rational basis for ranking GWRS's price higher than ASC's price solely on the basis that its price was lower.²¹

ASC's argument completely ignores the fact that the RFP does not mandate that a lower price proposal be given a higher rank in the evaluation process and further disregards the purpose for negotiated procurements as recognized in the Guam Procurement Laws and as articulated by the OPA in *Appeal of GCIF* to "minimize uncertainty" by entering into discussions regarding a final contract memorializing terms and price. In fact, ASC clearly understood this process, in that it clearly and carefully, exhibited the difference in pricing structure in its appeal to make the point that because their proposal cost was lower, it should have been granted more points in regards to the cost.²² However, ASC continues to argue that since its price was lower all the evaluators should have ranked its price proposal with a greater number of points and that would have made its proposal the best qualified offeror.²³ This argument is not only baseless but it goes against the policy of negotiated procurements. While ASC provides that one evaluator provided GWRS's pricing proposal greater points although ACS's price was lower, ASC fails to provide a proper legal basis to view this fact as improper.

III. CONCLUSION

ASC's Supplemental Comments on Agency Report is enlightening for several reasons:

First, ASC identifies precedent in this administrative process by citing to *Appeal of GCIF* which supports the Fund's position that ASC's right to protest arose years ago, in 2007, at the latest, when ASC's attorney had been served with the Agency Report in the GWRS appeal. By

²¹ ASC Notice of Appeal, p. 8.

²² ASC's Notice of Appeal, pp. 4-5.

²³ Appellant's Supplemental Comments on Agency Report, pp. 1-2.

that time, ASC knew (1) that it was not ranked the best qualified offeror and (2) that its pricing proposal was less than that of GWRS, who was ranked the best qualified offeror. At that time, it should have investigated whether it had grounds to protest the determination and it should have filed its protest before it had completed its investigation, i.e., *whether or not it had the evaluation sheets.*

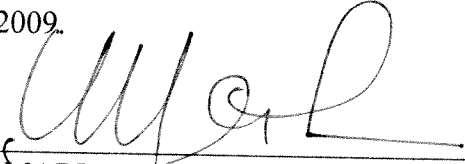
Second, *Appeal of GCIF* supports a ruling that the issue of whether an evaluator's ranking of ASC was "arbitrary and capricious" is not properly before the OPA because the Agency determination rejecting the protest was based only on its untimeliness. Plainly stated, the Procurement Regulations require that the Fund not consider untimely protests; as such, there is no decision before the OPA on whether or not the evaluator acted arbitrarily. Consequently, the OPA has no jurisdiction over the issue of arbitrariness, and it must not be considered under *Appeal of GCIF.*

Third, *Appeal of GCIF* confirms that evaluations conducted within the scope of the RFP are proper and supports a ruling that the evaluations conducted by the Fund were consistent with the factors and considerations contained in the RFP and, therefore, GWRS was properly determined to be the best qualified offeror.

For all of the foregoing reasons and the reasons described in the documents filed with the OPA, the Fund submits that ASC's Appeal should be denied.

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