

Suite 401 DNA Building  
238 Archbishop Flores St.  
Hagåtña, Guam 96910



# TRANSMITTAL

<b>To:</b>	<b>Ms. Paula Blas</b> <b>Director</b> Government of Guam Retirement Fund 424 Route 8 Maite, Guam 96910 Phone: (671) 475-8900/01 Fax: (671) 475-8922 Email: <a href="mailto:pmblas@ite.net">pmblas@ite.net</a>	<b>From:</b>	<b>Benjamin J.F. Cruz</b> <b>Public Auditor</b> Office of Public Accountability
		<b>Pages:</b>	9 (including cover page)
<b>CC:</b>	<b>Mr. William B. Brennan, Esq.</b> <b>Attorney for Appellant ASC Trust, LLC</b> Arriola Law Firm 259, Martyr Street, Suite 201 Hagåtña, Guam 96910 Phone: (671) 477-9730/33 Fax: (671) 477-9734 Email: <a href="mailto:attorneys@arriolafirm.com">attorneys@arriolafirm.com</a> ; <a href="mailto:w Brennan@arriolafirm.com">wbrennan@arriolafirm.com</a>	<b>Date:</b>	May 1, 2025
		<b>Phone : Fax:</b>	(671) 475-0390 x. 204 (671) 472-7951

**Re:** OPA-PA-25-007 Notice of Receipt of Appeal

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Thank you,

Jerrick Hernandez, Auditor

[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)



## OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910  
Phone: (671) 475-0390 / FAX: (671) 472-7951

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May 1, 2025

Paula Blas  
Director  
Government of Guam Retirement Fund  
424 Route 8  
Maite, Guam 96910

VIA EMAIL: [pmbblas@ite.net](mailto:pmbblas@ite.net)

Re: Notice of Receipt of Appeal – OPA-PA-25-007

Dear Ms. Blas,

Please be advised that ASC Trust, LLC (hereinafter referred to as “ASC”) filed an appeal with the Office of Public Accountability (OPA) on April 30, 2025, regarding the Government of Guam Retirement Fund (GGRF)’s denial of its protest decision related to the procurement for Plan Administration Services related to the Defined Contribution Retirement System 457(b) Deferred Compensation Plan and Welfare Benefit Plan (GGRF RFP-002-25). OPA has assigned this appeal case number OPA-PA-25-007.

Immediate action is required of GGRF pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at [www.opaguam.org](http://www.opaguam.org). The first six pages of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeal. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Thursday, May 8, 2025**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Thursday, May 15, 2025**, ten work days following receipt of this notice.

When filing all required documents with our office, please provide one original and one copy to OPA (**electronic filings will be acceptable and highly encouraged, and can be emailed to [jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)**), and serve a copy to ASC.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at [jhernandez@guamopa.com](mailto:jhernandez@guamopa.com) or 475-0390 ext. 204 should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz  
Public Auditor

Enclosure: First six pages of the Notice of Appeal – OPA-PA-25-006

Cc: William B. Brennan, Esq., Attorney for ASC

**WILLIAM B. BRENNAN, ESQ.**  
**ARRIOLA LAW FIRM, LLC**  
259 MARTYR STREET, SUITE 201  
HAGATNA, GUAM 96910  
TEL: (671) 477-9730/33  
[attorneys@arriolafirm.com](mailto:attorneys@arriolafirm.com)

Attorneys for Appellant  
*ASC Trust, LLC*

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

**PART I**

**In the Appeal of**

Docket No. OPA-PA-25-\_\_\_\_\_

**ASC TRUST, LLC,**

**NOTICE OF APPEAL**

Appellant.

**COMES NOW**, ASC Trust, LLC (“ASC”), through the undersigned counsel, to give notice of its appeal from the Government of Guam Retirement Fund’s (“GGRF”) April 23, 2025 denial of a procurement protest.

**PART II – Appellant Information**

Appellant’s Name	ASC Trust, LLC
Appellant’s Mailing Address	120 Father Duenas Avenue Suite 110 Hagatna, Guam 96910
Appellant’s Business Address	120 Father Duenas Avenue Suite 110 Hagatna, Guam 96910
Email Address:	<a href="mailto:candy.okuhama@asctrust.com">candy.okuhama@asctrust.com</a>

Please direct all correspondence regarding this matter to ASC Trust, LLC’s counsel, the Arriola Law Firm, LLC at 259 Martyr St., Ste. 201, Hagatna, Guam 96910, [attorneys@arriolafirm.com](mailto:attorneys@arriolafirm.com).

### **PART III – Appeal Information**

- A. Purchasing Agency: Government of Guam Retirement Fund (“GGRF”)
- B. Procurement Number: GGRF RFP-002-25 seeking a provider of Plan Administration Services related to the Defined Contribution Retirement System 457(b) Deferred Compensation Plan and Welfare Benefit Plan (“RFP”).
- C. The decision being appealed was provided to Appellant on April 23, 2025. The Decision was made by the Executive Director of the GGRF Ms. Paula Blas.

*Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.*

- D. Appeal is made from the decision to deny ASC’s Protest of Method, Solicitation or Award of the RFP.
- E. Names of Competing Offeror known to Appellant: unknown at this time.

### **PART IV – Form and Filing**

#### **A. GROUNDS FOR APPEAL**

#### **BACKGROUND**

On March 17, 2025, GGRF issued the RFP, seeking a provider of Plan Administration Services related to the Defined Contribution Retirement System 457(b)Deferred Compensation Plan and Welfare Benefit Plan.

ASC timely submitted the following two written questions on March 31, 2025:

1. Will Guam-based offerors receive any preference in evaluation scoring? If so, how will such preference be quantified, and what documentation is required?
2. Will the incumbent’s exemption from transition requirements (due to existing systems and data integration) be considered an evaluation advantage? If so, how will GGRF balance that against innovation or service improvements proposed by other bidders?

On April 11, 2025, GGRF responded to question 1: that “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.”

GGRF responded to question 2: “Transition plans are not part of the formal evaluation criteria and will not be scored. However, non-incumbent offerors are required to provide a general outline of their proposed transition approach to demonstrate their ability to assume services effectively, if awarded the contract. The incumbent's exemption from this requirement – due to existing systems and data integration – will not be considered an evaluation advantage. All proposals will be evaluated strictly based on the established evaluation criteria, ensuring a level playing field for all offerors including consideration of innovation and service improvements.”

ASC subsequently protested the procurement, alleging (1) that the transition planning components of the required proposal unfairly advantaged the incumbent, and (2) that Guam law requires that GGRF give preference to local businesses that meet certain requirements. Ex. A. Procurement Protest (April 16, 2025).

On April 23, 2025, GGRF issued a decision on ASC's protest. GGRF amended the RFP to remove the transition planning related requirements. GGRF denied ASC's protest related to the local preference. GGRF also set an updated proposal submission deadline for April 28, 2025.<sup>1</sup>

## **PROTEST**

### **1. GGRF's failure to apply the local procurement preference violates Guam law.**

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<sup>1</sup> ASC subsequently protested GGRF's Addendum issued on April 23, 2025, setting a proposal submission deadline for violating the automatic stay imposed by ASC's April 16, 2025 protest. Ex. C. GGRF subsequently vacated the April 28, 2025 proposal submission deadline, affirming ASC's position in protest 2. See GGRF response to ASC Protest #2 attached hereto as Exhibit D. notwithstanding that its protest was not finally resolved.

The Guam legislature has codified a policy in favor of local procurement at 5 G.C.A. Section 5008. The law requires that procurement of supplies and services shall be made from businesses: (1) licensed to do business in Guam, (2) that maintain an office or other facility in Guam, (3) whenever a business that is willing to be a contractor is (*inter alia*): “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 from “off Guam” is only allowed when “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(d). The procurement regulations confirm the local preference in the Guam procurement law. 2 GAR. Div. 4, Section 1104.

The procurement law recognizes that “services” includes those provided by consultants and attorneys. See 5 G.C.A. Section 5030, Comment 1.

Here, GGRF posits that the local preference does not apply to the qualifications-based selection process for professional services. Ex. B, Dec. on Procurement Protest (April 23, 2025). GGRF ignores that the Legislature is aware of how to excise professional services related solicitations from preference policies. See e.g., 5 G.C.A. Section 5011 (recognizing procurement policy in favor of awarding procurements to service-disabled veteran owned businesses “except for professional

services”). In contrast, the local procurement policy speaks to “all procurement of supplies and services . . . .”. GGRF also ignores the comment to the definition of services at Section 5030.

Additionally, GGRF advances an unreasonable interpretation of 5 G.C.A. Section 5008 where it concludes that Section 5008 is a price-based statute only. For a service-related business to meet the requirements of that section, the service-related business must:

- (1) be licensed to do business in Guam,
- (2) must maintain an office or other facility in Guam, and
- (3) must hire 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.”

5 G.C.A. Section 5008(d). If those requirements are met, Section 5008 mandates that the agency procuring supplies *or services* apply the local preference. GGRF’s determination that its RFP for professional services is not required to comply with the policy in favor of local procurement is therefore contrary to law.

## **B. STATEMENT SPECIFYING THE RULING REQUESTED**

Based on the foregoing, ASC requests that the OPA find that: that GGRF’s RFP is not consistent with Guam law, specifically 5 G.C.A. Section 5008. ASC requests that the OPA order GGRF to reform the RFP to include and apply Guam’s policy in favor of local procurement at 5 G.C.A. Section 5008. In the alternative, ASC requests that the OPA order GGRF to cancel and resolicit the RFP in accordance with Guam law.

## **C. SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS**

The following Exhibits are referenced in this notice of appeal and are attached hereto:

1. Exhibit A. ASC’s April 16, 2025 protest to GGRF.
2. Exhibit B. GGRF’s April 23, 2025 decision on ASC’s protest.



3. Exhibit C. ASC's April 25, 2025 protest to GGRF.
4. Exhibit D. GGRF's response to ASC's April 25, 2025 protest.

#### **PART V – Declaration re Court Action**

Pursuant to 5 G.C.A. Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 30th day of April, 2025.

Respectfully submitted,  
**ARRIOLA LAW FIRM, LLC**

By: \_\_\_\_\_

  
**WILLIAM B. BRENNAN**

ARRIOLA LAW FIRM, LLC HAGÁTÑA, GUAM 96910



Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

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## OPA-PA-25-007 Notice of Receipt of Appeal

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**Jerrick Hernandez** <jhernandez@guamopa.com>

Thu, May 1, 2025 at 12:59 PM

To: Paula Blas &lt;pmbblas@ite.net&gt;

Cc: William Brennan &lt;wbrennan@arriolafirm.com&gt;, Arriola Law Firm General Information &lt;attorneys@arriolafirm.com&gt;

Hafa Adai,

Please see the attached Notice of Receipt of Appeal for OPA-PA-25-007. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Best Regards,



Jerrick J.J.G. Hernandez, MA, CGFM, CFE, CICA, CGAP  
*Accountability Auditor*

**Office of Public Accountability**

+1 671 475 0390 (ext. 204)

[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)<https://www.opaguam.org/>

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