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GOVT. OF GUAM  
RETIREMENT FUND

OFFICE OF THE PUBLIC AUDITOR  
GUAM

IN THE APPEAL OF  
GREAT-WEST RETIREMENT SERVICES,  
Appellant.

DOCKET NO. OPA-PA-07-006  
AGENCY REPORT

INTRODUCTION

Pursuant to 2 GAR, Div. 4, Chapter 12 §§ 12104-12105, the Government of Guam Retirement Fund ("GGRF") hereby submits its Agency Report answering all allegations set forth in the Appeal filed by Great-West Retirement Services ("Great-West"). All documents required under 2 GAR, Div. 4, Chapter 12 § 12105 were submitted to the Office of the Public Auditor as part of the official procurement record.

BACKGROUND

On September 28, 2006, GGRF issued RFP No. GGRF-028-06 in search of professional services related to providing Investment Management and Plan Administration Services related to the 401(a) Defined Contribution Plan, 457 Deferred Compensation Plan and Welfare Benefit Plan, to GGRF as described in detail under Section IV, Scope of Work of RFP No. GGRF-028-06. (See Tab #1 of the Procurement Record.)

On November 6, 2006, the RFP closed with a total of three (3) proposals submitted to GGRF. All submitted proposals met the deadline stated in the RFP. After reviewing the three (3) proposals, the Procurement Officer determined that all three (3) offerors met the qualifications and were eligible for further evaluation. On January 23, 2007, the selection panel of the GGRF conducted individual discussions with all offerors regarding their proposals.

At noon on February 7, 2007, the selection panel met to evaluate the offerors based on technical merits and price. Using a weighted scoring scheme, with a specific weight given to each evaluation factor, each member of the selection panel scored each offeror. Based on the scoring, Great-West was chosen as the best qualified offeror. The meeting of the selection panel concluded at 2:50 p.m.

GGRF notified Great-West that it was chosen as the best qualified offeror by letter dated March 6, 2007. The letter also requested that Great-West submit pricing data for negotiation, specifically including the following information:

1. the independent custodian selected to provide trust services, preferably a local trust company;
2. that no fees would be assessed to participant account balances;
3. that Great-West's fee would be .25% of the total assets; and
4. that all re-allowances and rebates of 12b-1 fees received from the investment option managers would be remitted to GGRF.

Great-West responded by letter dated March 12, 2007 to GGRF's requests. This letter was deemed non-responsive as it did not sufficiently address any of the four (4) items requested by GGRF. The letter did not confirm an independent custodian licensed on Guam to provide trust services; it did not specifically address the fees for participant account balances under "Option 1" of its proposals; it simply re-stated its prior offer of fees at .27-.33%, basing such fees on assumptions that were not part of its original proposal; and it did not indicate remittance of re-

allowances and 12b-1 fee rebates to GGRF.

By letter dated March 18, 2007, GGRF notified Great-West that its pricing had not been accepted, and requested Great-West's "best and final offer" in an attempt to reach a successful negotiation. In Great-West's response letter dated March 21, 2007, it again ignored three of the four requests made by GGRF and simply reiterated a fee of .27% of total plan assets.

After considering Great-West's responses, GGRF's selection panel decided to terminate negotiations on April 27, 2007 because it deemed the offer not fair or reasonable given the estimated value, scope, complexity, and professional nature of the services required. Immediately upon making said decision, a letter was drafted and dated April 27, 2007 notifying Great-West of GGRF's decision. Great-West acknowledged receipt of this letter by fax on April 30, 2007.

Great-West submitted a protest on May 9, 2007 asserting that it is the number one provider of services to U.S. states and territories, that its pricing is "fair and reasonable" based on comparison with services it renders in the State of Montana, and that GGRF did not provide a factual basis for its decision to terminate negotiations. The protest was fully considered and denied by Paula Blas at GGRF on June 1, 2007. Great-West filed its Notice of Appeal as to Ms. Blas' decision with the Office of the Public Auditor on June 22, 2007.

#### **RESPONSE TO STATED GROUNDS FOR APPEAL**

a. **GGRF conducted proper price analysis of the fees offered by Great West and found them not to be fair or reasonable:** On page four (4) of its Appeal, Great-West states that GGRF "did not make any specific finding that the cost and pricing data submitted by GWRS, ... was inaccurate, incomplete, or non-current." It cites 2 G.A.R., Div. 4, Chap. 3, § 3118(f) to support its assertion that such findings be made. This support is misplaced. 2 G.A.R., Div. 4, Chap. 3, § 3118(f) applies to adjustments in contract prices which have already been

awarded if certified cost or pricing data is later found to be inaccurate, incomplete, or non-current. As the contract has never been awarded, this regulation does not apply.

The applicable regulation to price analysis is 2 G.A.R., Div. 4, Chap. 3, § 3118(g). When considering pricing, the agency should look at various factors, including but not limited to, the price submission of other bidders, prices in catalogue or price lists, prior quotes of the bidder, prices available on the open market and in-house estimates. 2 G.A.R., Div. 4, Chap. 3, § 3118(g). Great-West would like GGRF to ignore all of the pricing elements other than its own prior price quotes or contract prices.

Instead, GGRF conducted extensive research into the marketplace, using both in house resources and price lists from industry organizations of which it is a member. (See Tab #11 of the Procurement Record.) These price lists and in-house resources reflected the going-rate for the services sought on the open market. Furthermore, GGRF determined that transparency would be one of their primary goals under the new contract and having a clearly delineated fee structure is a major part of accomplishing this goal. Based upon the performance of GGRF's past investment, they determined it would no longer be necessary to charge fees to participant accounts. This too became part of the negotiation. Finally, GGRF considered the pricing quotes of the remaining bidders. As these bids remain proprietary and confidential, they cannot be disclosed to Great-West or the public at large at this time; however, they can be submitted to the Auditor for confidential, in camera review upon request.

Based on the price analysis factors, GGRF decided that Great-West's price quote was not fair and reasonable. Award of a contract under 5 GCA § 5216(e) and 2 G.A.R., Div. 4, Chap. 3, § 3114(k) requires two elements: (1) a determination that an offeror is the best qualified and (2) successful negotiation of a fair and reasonable compensation. If a successful negotiation does

not occur, the statute provides that negotiation will be terminated and negotiations will begin with the next best qualified offeror. *Id.* Because it was obvious that negotiations would not be successful with Great-West, GGRF terminated negotiations and sought to begin negotiations with the next best qualified offeror.

**b. GGRF afforded Great-West the opportunity to negotiate, but Great-West failed to properly respond to GGRF's requests and negotiate a fair and reasonable fee:** Although Great-West was chosen as the best qualified offeror initially, they were unresponsive to requests made in negotiations. In particular, although GGRF specifically requested cost or pricing data on four items, Great-West failed to address these four items and instead re-submitted its initial proposal. As stated in the background facts, no option under Great-West's proposal addressed all four items concurrently as requested. Great-West submitted two pricing options. Pricing Option One did not meet any of the four items requested as it included a fee to participant accounts, did not remit 12(b)(1) fees to GGRF, and stated a fixed fee. (See Tab #6 of Procurement Record.) Although Pricing Option Two did propose a zero fee to participant accounts, it conditioned this not only on not remitting 12(b)(1) fees, but also required GGRF or its plan participants to make up any short fall in one of several listed ways, including charging participant accounts. *Id.*

While Great-West accuses GGRF of not negotiating, the fact is that Great-West was given multiple opportunities to respond with pricing data and information supporting their quote, but instead chose to be non-responsive by either ignoring the request or re-submitting quotes nearly identical to their initial proposal. No option presented by Great-West addressed all of the requests by GGRF and those options presented did not move toward accomplishing GGRF's goals for its plan administration in the coming years.

Furthermore, negotiations come in many varieties. Negotiation does not necessarily mean that a fair and reasonable price is somewhere in the middle of the initial quotes of each party. Negotiation also contemplates affording a qualified, but over-priced competitor the opportunity to make a more reasonable and competitive offer. Unfortunately, Great-West did not seize their opportunity to negotiate and apparently assumed that they would be awarded the contract because they were chosen as the initial best qualified offeror. While it is unfortunate that Great-West misjudged their position in these negotiations, Guam's procurement law clearly states that the award of the contract is based on successful negotiations. GGRF indicated the prior offer was unacceptable and requested a "best and final offer", Great-West made its final offer, which was basically unchanged from its previous unacceptable offer. Therefore, it risked the fact that it may be rejected and negotiations terminated as provided by law. This is, in fact, what happened.

c. **GGRF's actions are supported by the facts and the record:** GGRF's actions in terminating negotiations was not arbitrary or capricious, but based on research, the marketplace, and most importantly, the bids and pricing from the pool of other offerors. GGRF gave Great-West ample opportunity to negotiate. The fact that the negotiations were not successful does not indicate an arbitrary decision.

2 G.A.R., Div. 4, Chap. 3, (1)(4)(A) requires that upon deciding to terminate negotiations, the agency place a written record stating the reasons therefore in the file. It also requires the offeror to be notified of the termination within three days of such decision. The written record supporting GGRF's decision to terminate negotiations was placed in the file. (See Tab #10 of the Procurement Record.) Such statement is not required to be given to the offeror as it may contain proprietary information. The offeror only receives notice of the termination itself,

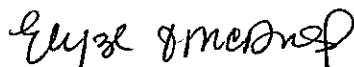
not the statement of supporting reasons. The decision to terminate negotiations was made on April 27, 2007 and a letter notifying Great-West of the termination was sent on that same day. Not only was notification sent within three days of the decision to terminate in accordance with the statutory requirement, it was received by Great-West within three days, as evidenced by GGRF's fax confirmation dated April 27, 2007, attached hereto as Exhibit A.

After notifying Great-West that negotiations had been terminated and prior to receiving Great-West's protest, GGRF notified the next best qualified offeror, ASC Trust Corporation ("ASC"), that it intended to begin negotiations with ASC and requested the same pricing data it had previously requested from Great-West. (See Tab #12 of the Procurement Record.) GGRF has received an initial response from ASC which, although confidential at present, is more favorable to GGRF than Great-West's "best and final offer."

d. **Conclusion:** All of GGRF's decisions and actions are well-documented, supported by factual evidence, and in accordance with Guam's procurement procedures. GGRF acted in good faith in initially choosing Great-West and in its later termination of negotiations. Therefore, Great-West's Appeal should be denied.

SUBMITTED this 6th day of July, 2007, Hagåtña, Guam.

CARLSMITH BALL LLP



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CAREY MCALISTER AUSTIN

Attorneys for Appellee  
GOVERNMENT OF GUAM RETIREMENT  
FUND

# **EXHIBIT A**



Confirmation Report - Memory Send

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Date & Time: Apr-27-07 04:26pm  
Line 1 : +6714779491  
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Job number : 378  
Date : Apr-27 04:25pm  
To : 8101648319494741707  
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Start time : Apr-27 04:25pm  
End time : Apr-27 04:26pm  
Pages sent : 002  
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\*\*\* SEND SUCCESSFUL \*\*\*

424 Route 8  
Maite, Guam 96910  
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Fax: 671.475.8922



# Fax Transmittal

<b>To:</b>	Gregory E. Seller	<b>From:</b>	Debbie Ulloa
	Great-West Retirement Services		
<b>Fax:</b>	949.474.1707	<b>Date:</b>	April 27, 2007
<b>Phone:</b>	800.933.9808	<b>No. of Pages:</b>	Two (2)
<b>Re:</b>	RFP No. GGRF-028-06		
<input checked="" type="checkbox"/> Urgent	<input checked="" type="checkbox"/> For Review	<input type="checkbox"/> Please Comment	<input type="checkbox"/> Please Reply

● Message:

Dear Mr. Seller:

Please find copy of letter regarding RFP No. GGRF-028-06 for Investment Management and Plan Administration Services related to the 401(a) Defined Contribution Plan, 457 Deferred Compensation Plan and Welfare Benefit Plan. Original letter will be mailed to your office.

Thank You,  
*Debbie Ulloa*  
Debbie Ulloa  
Administrative Assistant

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