



OFFICE OF THE PUBLIC AUDITOR

March 13, 2008

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Messers & Mses Tarpley, McDonald, Blas and Arriola,

Transmitted herewith is a copy of the Decision and Findings of Fact on appeal OPA-PA-07-006 in the appeal of Great West Retirement Services relative to the procurement of RFP No. GGRF-028-06 Government of Guam Retirement Fund Investment Management and Plan Administration related to the 401(a) Defined Contribution Plan, 457 Deferred Compensation Plan and Welfare Benefit Plan.

A complete copy of the Decision and Findings of Fact will be posted on our website within the next day and available for public view at www.guamopa.org.

Senseramente,


Doris Flores Brooks, CPA, CGFM
Public Auditor

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THOMAS MCKEE TARPLEY



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CARLSMITH BALL
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Transmitted herewith is a copy of the Decision and Findings of Fact on appeal OPA-PA-07-006 in the appeal of Great West Retirement Services relative to the procurement of RFP No. GGRF-028-06 Government of Guam Retirement Fund Investment Management and Plan Administration related to the 401(a) Defined Contribution Plan, 457 Deferred Compensation Plan and Welfare Benefit Plan.

A complete copy of the Decision and Findings of Fact will be posted on our website within the next day and available for public view at www.guamopa.org.

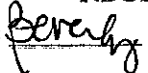
Senseramente,


Doris Flores Brooks, CPA, CGFM
Public Auditor

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MAR 13 2008

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BY:  TIME: 3:02 pm



OFFICE OF THE PUBLIC AUDITOR

March 13, 2008

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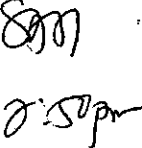
Transmitted herewith is a copy of the Decision and Findings of Fact on appeal OPA-PA-07-006 in the appeal of Great West Retirement Services relative to the procurement of RFP No. GGFR-028-06 Government of Guam Retirement Fund Investment Management and Plan Administration related to the 401(a) Defined Contribution Plan, 457 Deferred Compensation Plan and Welfare Benefit Plan.

A complete copy of the Decision and Findings of Fact will be posted on our website within the next day and available for public view at www.guamopa.org.

Senseramente,


Doris Flores Brooks, CPA, CGFM
Public Auditor

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OFFICE OF THE PUBLIC AUDITOR

PROCUREMENT APPEALS

IN THE APPEAL OF

GREAT WEST RETIREMENT SERVICES,

APPELLANT.

Appeal No. OPA-PA-07-006

DECISION

I. INTRODUCTION

This is a Decision by the Public Auditor on a procurement appeal filed on June 22, 2007, by Great-West Retirement Services (hereafter "GWRS"), regarding the Government of Guam Retirement Fund (hereafter "GGRF"). A formal hearing was held on January 21, 2008. Present and making arguments on behalf of their clients were Elyze J. McDonald, Esq., Carlsmith Ball, LLP, representing GGRF, Thomas M. Tarpley, Esq., representing GWRS, and Joaquin C. Arriola Jr. Esq., Arriola, Cowan & Arriola, representing Administrative Services Corporation, (hereafter "ASC").

II. FINDINGS OF FACT

In reaching this Decision, the Public Auditor has considered and incorporates by reference herein the findings of the Hearing Officer, ROBERT G.P. CRUZ, ESQ.

ORIGINAL

1 **II. ANALYSIS**

2 1. GWRS contends that GGRF was arbitrary and capricious in terminating negotiations
3 with GWRS. GGRF requested that GWRS provide its offer in a two-part format addressing
4 custodial arrangements and pricing data. GWRS submitted its response, which was not
5 satisfactory to GGRF which said that its proposal was not acceptable.
6

7 2 After being informed that its custodial and pricing proposal was not accepted, GWRS
8 submitted its best and final offer which was rejected by GGRF as not being fair and reasonable.
9 No analysis was provided by GGRF why GWRS's fee proposal of .27% of valued assets was not
10 fair and reasonable, while .25% of valued assets would be fair and reasonable.
11

12 3. GWRS's Motion to Lift Seal and Produce Documents was an inappropriate motion
13 during negotiations. Such details are normally public record after an award of a contract during
14 a procurement process, not during the negotiation stages. GWRS argued that the GGRF should
15 have revealed details of the procurement that were confidential during negotiations.
16

17 **IV. CONCLUSION**

18 Based on the above, the Public Auditor determines that:

19 1. GGRF analyzed bid documents, decided GWRS to be the best offeror, and initiated
20 negotiations. Award of a contract under 5 GCA Section 5216(3) and 2 GAR, Div. 4, Chap. 3,
21 Section 3114(k) requires two elements: a determination that the offeror is the best qualified, and
22 successful negotiations of fair and reasonable compensation.
23

24 2. GGRF appears to have been arbitrary and capricious in ending negotiations with
25 GWRS.
26

27 3. GGRF did not show that the best and final offer of GWRS was not fair and reasonable.
28

1 If GWRS's best and final offer is fair and reasonable compensation for the work to be
2 performed, then GWRS meets the requirements of law to be awarded the contract.

3
4 4. If GGRF did not show that it was reasonable to terminate negotiations with GWRS,
5 then it is not acceptable to begin negotiations with the next best offeror, ASC.


6 5. GWRS's Appeal is hereby sustained and GGRF's Decision denying GWRS's protest is
7 thus overruled.

8
9 6. GGRF should continue negotiating with GWRS in an attempt to reach an agreement to
10 provide Investment Management and Plan Administration Services related to the 401(a) Defined
11 Contribution Plan, 457 Deferred Compensation Plan and Welfare Benefit Plan.

12 7. In the event that renewed negotiations are terminated with GWRS, it should be noted
13 that the Chairman of the GGRF Fund has a conflict of interest. The Chairman serves on the
14 Board of Directors of the proposed Trustee for ASC. Therefore, he should not participate in
15 negotiations with ASC and a substitute negotiator should be appointed by GGRF.
16

17 This is a final administrative Decision. Parties are hereby informed of their right to
18 appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with
19 Part D of Article 9 of 5 GCA Section 5702. A copy of this Decision shall be provided to the
20 parties and their respective attorneys in accordance with 5 GCA Section 5702 and shall be made
21 available for review on the OPA website www.guamopa.org.
22

23
24 Dated this 13th day of March 2008

25
26 

27 **DORIS FLORES BROOKS, CPA, CGFM**
28 **PUBLIC AUDITOR**