

38

GOVT. OF GUAM  
RETIREMENT FUND

CARLSMITH BALL LLP

2007 AUG 17 PM 4:46

ELYZE J. McDONALD  
CAREY M. AUSTIN  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue, P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

RECEIVED  
SM

RECEIVED  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

AUG 17 2007

TIME: 4:25 pm  
BY: [Signature]  
FILE No. OPA-PA 07-006

Attorneys for Appellee  
Government 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

**APPELLEE GOVERNMENT OF  
GUAM RETIREMENT FUND'S  
OPPOSITION TO APPELLANT'S  
MOTION TO LIFT SEAL AND  
COMPEL PRODUCTION OF  
DOCUMENTS AND MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Appellee, the Government of Guam Retirement Fund ("GGRF"), by and through its undersigned counsel hereby submits its Opposition to Appellant's Motion to Lift Seal and Compel Production of Documents filed on August 13, 2007. Said Opposition is supported by the following Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**APPELLANT HAS NOT CITED PROPER AUTHORITY TO BRING ITS MOTION TO LIFT SEAL OR COMPEL PRODUCTION OF DOCUMENTS AS REQUESTED**

Appellant Great-West Retirement Service ("GWRS") brings its Motion to Lift Seal and Compel Production of Documents pursuant to 2 G.A.R. Div. 4, Chap. 12 § 12109(c). While 2

COPY

G.A.R. Div. 4, Chap. 12 § 12109(c) does give the Public Auditor the ability to compel production of documents for examination, this provision is applicable only if documents have not been submitted for examination. The Appellee, Government of Guam Retirement Fund ("GGRF") has already produced all proper documents for examination by the Public Auditor in accordance with law, only seeking that confidential documents which are not yet part of the public record be reviewed in camera and not disclosed to GWRS or the public at large. This was done properly by notation on the front page of the Procurement Record and in accordance with 2 G.A.R. Div. 4, Chap. 12 § 12106.

The Public Auditor may release such documents where an interested party requests such release in writing, *except* as to documents submitted as containing confidential or proprietary information. *Id.* The only procedure provided in a procurement appeal before the Public Auditor for compelling the production of documents is to make a request in writing in accordance with 2 G.A.R. Div. 4, Chap. 12 § 12106 cited above; and this request remains subject to the agency's request to maintain confidentiality. Therefore, GWRS's motion is not a proper filing or a proper request under the procurement regulations.

**EVEN IF THE PUBLIC AUDITOR MAY ENTERTAIN GWRS'S MOTION, SUCH MOTION SHOULD NOT BE GRANTED DUE TO THE CONFIDENTIAL INFORMATION CONTAINED IN THE DOCUMENTS.**

**A. GUAM'S PROCUREMENT LAWS AND REGULATIONS MANDATE NONDISCLOSURE OF THE REQUESTED DOCUMENTS AS THEY ARE NOT PART OF THE PUBLIC RECORD.**

GWRS complains on one hand that GGRF illegally disclosed information about it, but now seeks disclosure of confidential information pertaining to other offerors. GGRF has been extremely careful to protect the proprietary nature of all offerors during this appeal by submitting proprietary or confidential documents to the auditor for in camera review. It is by law GGRF's duty to maintain such confidentiality and thereby protect the integrity of the procurement

process. 2 G.A.R. Div. 4, Chap. 3, § 3114. Although GWRS cites 5 GCA § 5249 and § 5251 to support their argument that the procurement record is part of the public record, it fails to mention that 5 GCA §5252 makes it clear that the public record is subject to necessary protection of the bidding process and the protection of the confidentiality of trade secrets. Additionally, while the procurement record is generally a public record open for review and copying, 2 G.A.R. Div. 4, Chap. 3, § 12104(c)(6) states that if any portion thereof is considered to contain confidential information, the same may be withheld by affixing a statement to this effect on the front page of the document and noting the same wherever such document or information appears. GGRF followed the law exactly in submitting the procurement record, including the confidential portions thereof.

The fact is that the confidential material sought by GWRS will not become part of the public record unless and until the project has been awarded to ASC or the final awardee. 2 G.A.R. Div 4, Chap. 3, § 3114 governs the receipt and handling of proposals. 2 G.A.R. Div. 4, Chap. 3, § 3114(h)(1) states that the Register of Proposals becomes part of the public record only after the award of the contract and that the proposals of offerors who are not awarded the contract shall not be opened to public inspection. At this point no award has been made and the negotiations that have occurred between GGRF and GWRS and ASC contain proposals that GGRF is by law not at liberty to disclose.

Furthermore, 2 G.A.R. Div. 4, Chap. 3 § 3114(i)(2) requires that discussions with one offeror not be disclosed to another offeror and "the agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made. (Emphasis added.) At this point, disclosure of other offerors' proposals, even in the context of negotiation, could jeopardize the integrity of the procurement process. Just as

negotiations failed with GWRS, they could likewise fail with other qualified offerors. Revealing negotiations with other offerors before an award is made would give other offerors an unfair advantage in negotiations, to the detriment of GGRF, and is specifically prohibited by law. Likewise, disclosing GGRF's research regarding comparative third party fees also would compromise the process. Thus, to enable GGRF to obtain the best pricing for the services sought, it is critical for GGRF to maintain the confidentiality of all proposals, including those proposals made during negotiations, as well as the information and basis upon which GGRF bases its own negotiations such as the comparisons of other third party administrator fees. No award has been made and no proposals or information contained in any proposal from any offeror can be released as part of the public record until award is made. The nondisclosure of offeror information is so closely guarded that even after an award is made the release of certain information can be accomplished only with the prior written consent of the offeror. See 2 G.A.R. Div. 4, Chap. 3, § 3116(b).

**B. THE DOCUMENTS REQUESTED ARE EXPRESSLY PROTECTED BY LAW AND THEREBY EXEMPT FROM GUAM'S FREEDOM OF INFORMATION ACT.**

Appellant correctly states that Guam's Freedom of Information Act ("FOIA") allows for inspection by the public of public documents, *except* as otherwise expressly prohibited in law and *except* as provided in § 10108 of FOIA. Appellant's argument fails in its application because the documents requested are exempt from FOIA for two reasons: (1) they are not public documents; and (2) they are expressly protected by law.

First, as already discussed in detail above, the documents sought by Appellant are not yet part of the public record and so cannot be public documents. Should negotiations fail, some of these documents may never become part of the public record because proposals of offerors not awarded the contract are not open to public inspection. 2 G.A.R. Div. 4, Chap. 3, § 3114(h)(1).

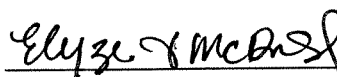
Second, as also discussed above, 2 G.A.R., Div. 4, Chap. 3, § 3114(i)(2) expressly prohibits the disclosures of any information pertaining to any proposal until after an award is made. This information is also expressly protected from disclosure by law under the mandate that government agencies properly handle proposals and information relayed to them in the procurement process so as to protect the integrity of the process. Although FOIA does have a broad application and seeks to make proper public documents accessible, it also contemplates exemption when a document is confidential because of either its content or because of timing and the process surrounding it. This can be seen in the express provision of exceptions to the FOIA disclosure provided in 5 GCA § 10103 and § 10108(i).

### CONCLUSION

GGRF has diligently complied with all procurement rules and regulations regarding the bidding process and the confidentiality of information submitted by bidders. GGRF also has abided by the procurement appeal procedures by providing these confidential documents to the Public Auditor for in camera review. The Public Auditor should assist GGRF in maintaining the integrity of the procurement process by maintaining the confidentiality of these documents and denying Appellants' Motion to Lift Seal and Compel Documents.

SUBMITTED this 17th day of August, 2007, Hagåtña, Guam.

CARLSMITH BALL LLP



---

ELYZE J. MCDONALD  
CAREY M. AUSTIN

Attorneys for Appellee  
GOVERNMENT OF GUAM RETIREMENT  
FUND

39

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

Phone: (671) 475-0390  
FAX: (671) 472-7951



OFFICE OF THE PUBLIC AUDITOR

# Fax

**To:** Elyze J. McDonald, Esq.  
Joaquin C. Arriola, Jr. Esq.

**From:** Theresa Gumataotao  
OPA Procurement Appeals

---

**Agency:** Carlsmith Ball LLP  
Arriola, Cowan, & Arriola

**Pages:** 2 (Including cover)

---

**CC:**

**Date:** Thursday - 1/10/08

---

**Fax:** 477-4375 / 477-9734

**Phone:** 472-6813 / 477-9730

---

**Re:** **Substitution of Counsel: OPA-PA-07-006**

---

Urgent     For Review     Please Comment     Please Reply     Please Recycle

•Comments:

See notice attached and please acknowledge receipt by re-sending this cover page with your firm's stamp, date, and initials. Thank you.

Theresa - 475-0390 [tgumataotao@guamopa.org](mailto:tgumataotao@guamopa.org)

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.



1 **LAW OFFICES OF SOMERFLECK & CAMACHO**  
 2 Suite 808, 8<sup>th</sup> Floor GCIC Building  
 3 414 West Soledad Ave.  
 4 Hagatna, Guam, 96913  
 Telephone: (671) 477-8051  
 Fax: (671) 477-5312  
 E-Mail: arcesq@hotmail.com

**RECEIVED**  
**OFFICE OF THE PUBLIC AUDITOR**  
**PROCUREMENT APPEALS**

JAN 09 2008

TIME: 12pm  
 BY: [Signature]  
 FILE No. OPA: 07-006

5 **ATTORNEYS FOR APPELLANT**  
 6 **Great-West Retirement Services**


7 **OFFICE OF THE PUBLIC AUDITOR**  
 8 **GUAM**

10 IN THE APPEAL OF ) Appeal No. OPA-PA-07-006  
 11 GREAT-WEST RETIREMENT )  
 12 SERVICES, ) **SUBSTITUTION OF COUNSEL**  
 13 Appellant. )

14 **COMES NOW**, Appellant **GREAT-WEST RETIREMENT SERVICES**, who hereby  
 15 substitutes **THE THOMAS McKEE TARPLEY LAW FIRM P.C.**, as its counsel of record in this  
 16 matter in the place and stead of **THE LAW OFFICES OF SOMERFLECK & CAMACHO**. All  
 17 correspondence and pleadings concerning this matter addressed to Appellant shall be sent to:

18 Thomas M. Tarpley, Jr., Esq.  
 19 GCIC Building  
 20 414 W. Soledad Avenue, Suite 904  
 21 Hagatna, Guam, 96910  
 Phone: (671) 472-1539  
 Fax: (671) 472-4526  
 E-mail: tarpley@guam.net

22 **RESPECTFULLY SUBMITTED AND APPROVED** this 8<sup>th</sup> day of January 2008 by

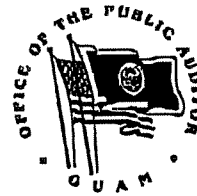
23  
 24  
 25   
 26 **THOMAS M. TARPLEY, JR., ESQ.**  
 Attorney for Appellant Great-West Retirement Services

27   
 28 **ANTHONY R. CAMACHO, ESQ.**

**ORIGINAL**

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

Phone: (671) 475-0390  
FAX: (671) 472-7951



OFFICE OF THE PUBLIC AUDITOR

# Fax

RECEIVED

2008 JAN 11 AM 10:10

GOVT OF GUAM  
OFFICE OF THE PUBLIC AUDITOR

**To:** Elyze J. McDonald, Esq.  
Thomas M. Tarpley, Esq.  
Joaquin C. Arriola, Jr. Esq.

**From:** Theresa Gumataotao  
OPA Procurement Appeals

**Agency:** Carlsmith Ball LLP  
Law Offices of Thomas M. Tarpley  
Arriola, Cowan, & Arriola

**Pages** 3 (Including cover)

**CC:** Paula Blas – GGRF Director

**Date:** Thursday – 1/10/08

**Fax:** 477-4375 / 472-4526 / 477-9734 / 475-8922

**Phone:** 472-6813 / 472-1539 / 477-9730 / 475-8950

**Re:** Notice of Hearing : OPA-PA-07-006

Urgent     For Review     Please Comment     Please Reply     Please Recycle

**•Comments:**

See Notice attached and please acknowledge receipt by re-sending this cover page along with the Notice. Pls. stamp both with your firm's stamp, date, and initials. Thank you.

 Theresa – 475-0390 [tgumataotao@guamopa.org](mailto:tgumataotao@guamopa.org)

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

**40**



OFFICE OF THE PUBLIC AUDITOR

PROCUREMENT APPEALS

In the Appeal of )  
 )  
 )  
 GREAT WEST RETIREMENT SERVICES, ) Appeal No. : OPA-PA-07-006  
 )  
 )  
 APPELLANT. )  
 )

TO:

Elyze J. McDonald  
 Carlsmith Ball LLP  
 Bank of Hawaii Bldg., Suite 401  
 134 West Soledad Avenue, P.O. Box BF  
 Hagatna, Guam 96932-5027  
 Attorneys for the Government of Guam Retirement Fund - Appellee  
 VIA FACSIMILE: 671-477-4375

Paula M. Blas  
 Director  
 Government of Guam Retirement Fund  
 424 Route 8 - Maite, Guam 96910  
 VIA FACSIMILE: 671-475-8922

Thomas M. Tarpley, Jr. Esq.  
 GCIC Building  
 414 W. Soledad Avenue, Suite 904  
 Hagatna, Guam 96910  
 Attorneys for Great-West Retirement Services – Appellant  
 VIA FACSIMILE: 671-472-4526

Joaquin C. Arriola, Jr., Esq.  
 Arriola, Cowan, & Arriola  
 259 Martyr Street, Suite 201  
 C&A Building  
 Hagatna, Guam 96932  
 Attorneys for Administrative Services Corporation – Interested Party  
 VIA FACSIMILE: 671-477-9734

Messers & Mscs McDonald, Blas, Tarpley, and Arriola,

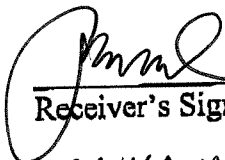
RECEIVED  
 2008 JAN 11 AM 10:10  
 GOVT OF GUAM  
 RETIREMENT FUND

ORIGINAL

You are hereby notified that a Hearing will be held on Monday January 21, 2008, at 10AM before the Public Auditor's representative Lourdes R. Perez and the appointed Hearing Officer for Procurement Appeals, Robert G.P. Cruz, relative to the above-referenced Procurement Appeal. The Hearing will be held at the Department of Integrated Services for Individuals with Disabilities (DISID), DVR Conference Room, located on the 6<sup>th</sup> floor of the Pacific News Building at 238 Archbishop Flores Street, Hagatna Guam 96910. You may be present at the Hearing, but may be or need not be represented by counsel and may present any relevant evidence. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the appointed Hearing Officer for Procurement Appeals at the Office of the Public Auditor.

This Notice of Hearing is issued this 10<sup>th</sup> day of January 2008, by the Office the Public Auditor. Please acknowledge receipt of this Notice and return to the Office of the Public Auditor.

**Acknowledged receipt:**

  
 \_\_\_\_\_  
 Receiver's Signature

PAULA M. BLAS  
 \_\_\_\_\_  
 Print Name

01-11-08  
 \_\_\_\_\_  
 Date

**ORIGINAL**

**41**

CARLSMITH BALL LLP

ELYZE J. McDONALD  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue, P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

Attorneys for Appellee  
Government of Guam Retirement Fund

GOVERNMENT OF GUAM  
RETIREMENT FUND  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT DIVISION  
RECEIVED  
FEB 19 2008  
RECEIVED  
Director's Office  
FEB 19 2008  
TIME: 2:45 PM  
BY: A. Camacho  
FILE No. OPA-PA-07-006

OFFICE OF THE PUBLIC AUDITOR  
GUAM

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

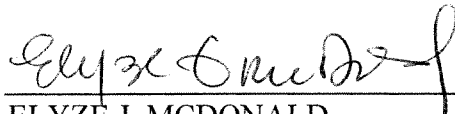
CIVIL CASE NO. OPA-PA-07-006

**NOTICE OF FILING UNDER SEAL -  
NOTICE OF FILING OF SECOND  
SUPPLEMENTAL PROCUREMENT  
RECORD AND CONFIDENTIAL  
PORTIONS OF PROCUREMENT  
RECORD**

The PRIVATE VERSION of Notice of Filing of Second Supplemental Procurement Record and Confidential Portions of Procurement Record are being filed under seal.

DATED: Hagåtña, Guam, February 19, 2008.

CARLSMITH BALL LLP

  
ELYZE J. MCDONALD  
Attorneys for Appellee  
Government of Guam Retirement Fund

**COPY**

CARLSMITH BALL LLP

ELYZE J. McDONALD  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue, P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

Attorneys for Appellee  
Government of Guam Retirement Fund

RECEIVED  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT RECORDS

FEB 19 2008

TIME: 2:45 PM  
BY: ACamarillo  
FILE No. OPA-07-006

OFFICE OF THE PUBLIC AUDITOR  
GUAM

GOVERNMENT OF GUAM  
RETIREMENT FUND  
FEB 19 2008  
RECEIVED  
Director's Office

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

CIVIL CASE NO. OPA-PA-07-006

**NOTICE OF FILING OF SECOND  
SUPPLEMENTAL PROCUREMENT  
RECORD AND CONFIDENTIAL  
PORTIONS OF PROCUREMENT  
RECORD**

Appellee Government of Guam Retirement Fund ("GGRF"), by and through undersigned counsel, hereby files with the Office of Public Auditor a second supplement to the complete copy of the procurement record relevant to the above-captioned appeal in the form prescribed by 2 GAR 12104(c)(3).

Appellee has furthermore separated, and submitted separately and under seal, portions of the record which are confidential and/or proprietary. The confidential portions are designated in italics in the below table of contents to the record.

**CHRONOLOGY OF EVENTS**

**TAB**

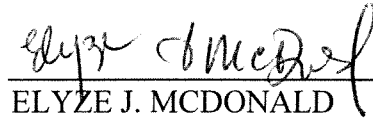
December 7, 2006	Log of Proposals	22
<i>February 7, 2007</i>	<i>Summary Evaluation Sheets</i>	23

**COPY**



DATED: Hagåtña, Guam, February 19, 2008.

CARLSMITH BALL LLP



---

ELYZE J. MCDONALD

Attorneys for Appellee

Government of Guam Retirement Fund

**GOVERNMENT OF GUAM RETIREMENT FUND**

**Registration of Proposals in Response to 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**

	Name of Offeror	Date/Time Packet Received	Date/Time Packet Opened	Modifications	Description of Services Offered
1.	Lincoln Financial Group / Bank of Hawaii	11-03-06 @ 10:25 a.m.	12-07-06 @ 4:45 p.m.	N/A	Provide investment management and plan administration services relating to the aspects of the Defined Contribution Retirement System (DCRS), 457 Deferred Compensation Plan and Welfare Benefit Plan.
2.	Great West Retirement Services	11-06-06 @ 11:25 a.m.	12-07-06 @ 5:05 p.m.	N/A	Provide investment management and plan administration services relating to the aspects of the Defined Contribution Retirement System (DCRS), 457 Deferred Compensation Plan and Welfare Benefit Plan.
3.	ASC Trust Corporation	11-06-06 @ 2:15 p.m.	12-07-06 @ 5:20 p.m.	N/A	Provide investment management and plan administration services relating to the aspects of the Defined Contribution Retirement System (DCRS), 457 Deferred Compensation Plan and Welfare Benefit Plan.

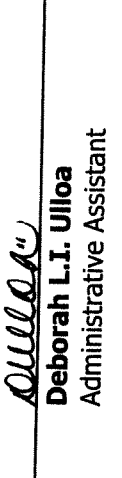
The aforementioned information was compiled upon the opening of proposals conducted at the Government of Guam Retirement Fund Office and witnessed by the below signed personnel of the Fund.

This Register of Proposals shall be open to public inspection only after the award of the contract for such services. The proposal of any offeror who is not awarded that contract shall not be open for public inspection.

12.07.06  
Date

  
Paula M. Blas  
Director

12.07.06  
Date

  
Deborah L.I. Ulloa  
Administrative Assistant

**GGRF RFP 028-06: INVESTMENT MANAGEMENT AND PLAN ADMINISTRATION SERVICES related to the 401(a) Defined Contribution Plan / 457 Deferred Compensation Plan and Welfare Benefit Plan**

Panel Member: Paula Blus  
Date: 12/7/06

Instructions: Please place a check mark in the appropriate box to indicate a 'YES' response.

**A. PROPOSAL REQUIREMENTS:**

- | Description   | Offeror                      |           |                | Remarks |
|---|------------------------------|-----------|----------------|---------|
|   | A<br>Lincoln Financial / BOH | B<br>GWRS | C<br>ASC Trust |         |
| 1. <u>Submission</u> : One(1) original and ten (10) copies  | YES                          | YES       | YES            |         |
| 2. <u>Cover Letter</u>  |                              |           |                |         |
| a. Is proposal signed by someone who is authorized to bind the offeror contractually?   | ✓                            | ✓         | ✓              |         |
| b. Is the firm's name, address, telephone/facsimilie numbers stated?  | ✓                            | ✓         | ✓              |         |
| c. Is the location of the firm's principal place of business listed?  | ✓                            | ✓         | ✓              |         |
| d. Did the offeror include a statement of interest in providing the required services described in the RFP?   | ✓                            | ✓         | ✓              |         |
| e. Names of individuals primarily responsible for the investment management services and plan administration services to be performed.  | ✓                            | ✓         | ✓              |         |
| f. Is the firm's federal EIN or TIN listed?   | ✓                            | ✓         | ✓              |         |
| g. Is the offeror a registered Investment Advisor under the Investment Advisor Act of 1940?   | ✓                            | ✓         | ✓              |         |
| h. Did the offeror provide a warranty that it has completed, obtained and performed all registrations, filings, approvals, authorizations, consents, or examinations required by governments and governmental authorities necessary to provide the services being offered under its proposal? | ✓                            | ✓         | ✓              |         |
| i. Did the offeror provide a warranty that it meets all of the minimum qualifications applicable to the person/firm under the RFP?  | ✓                            | ✓         | ✓              |         |

**GGRF RFP 028-06: INVESTMENT MANAGEMENT AND PLAN ADMINISTRATION SERVICES related to the 401(a) Defined Contribution Plan / 457 Deferred Compensation Plan and Welfare Benefit Plan**

Panel Member: P.B.L.S  
Date: 12/7/06

Instructions: Please place a check mark in the appropriate box to indicate a 'YES' response.

Offeror			
A	B	C	Remarks
Lincoln Financial / BOH	GWRS	ASC Trust	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

3. Statement attesting to the adherence and compliance with the minimum requirements.

**B. MINIMUM REQUIREMENTS:**

- a. Does the firm have 5 yrs. of experience administering directed DC Plans (401, 457, etc.)? And, is the firm currently providing single provider administration services to a minimum of 3 public or private pension plans?
- b. Does the firm have at least 3 years recordkeeping experience for approx. 5,000 participants?
- c. Did the offeror provide a seamless recordkeeping solution that would be easily used by participants and not adversely impact participants in any of the funds.
- d. Is the firm duly qualified to conduct business on Guam?
- e. Is stipulated that there will be no front-end charges, no back-end charges, or market value adjustments (MVA). There will be no liquidity restrictions or penalties on participant transfers or withdrawals, with the possible exception of stable value fund provisions and/or mutual fund specific short-term trading fees.
- f. Fully disclosed all fund expenses and revenue sharing arrangements associated with all funds made available to GGRF. This includes 12b-1 fees and any other fees. Did the firm disclose any proprietary interest in any of the funds being proposed?
- g. Is the fund's line-up of investment options in compliance with the Plan's Investment Policy Statement for the length of the contract?

**GGRF RFP 028-06: INVESTMENT MANAGEMENT AND PLAN ADMINISTRATION SERVICES related to the 401(a) Defined Contribution Plan / 457 Deferred Compensation Plan and Welfare Benefit Plan**

Panel Member: P. B. J. S.  
Date: 12/7/06

Instructions: Please place a check mark in the appropriate box to indicate a 'YES' response.

- h. Did the offeror demonstrate knowledge of and comply with all applicable Guam laws and federal laws and regulations regarding governmental retirement plans and investment options?
- i. Is the firm SEC registered or exempt from registration? If exempt, did the firm provide the nature of exemption?
- j. Are the terms outlined in this RFP guaranteed up to and through the negotiation of the final contract?
- k. Does the firm have any legal or other problems with SEC or any other regulatory agency?

**3. Disclosures:**

- a. Disclosure of Major Shareholders
- b. Representation regarding Gratuities and Kickbacks
- c. Prospective Representation regarding Contingent Fees
- d. Certification of Independent Price Determination
- e. Representation regarding Ethical Standards for Government Employees and Former Government Employees

**4. Contents of Proposal:** Are questions and answers submitted in numerical order?

Offeror				Remarks
A	B	C		
Lincoln Financial / BOH	GWRS	ASC Trust		
✓	✓	✓	✓	
✓	✓	✓	✓	
✓	✓	✓	✓	
✓	✓	✓	✓	
✓	✓	✓	✓	
✓	✓	✓	✓	
✓	✓	✓	✓	
✓	✓	✓	✓	
✓	✓	✓	✓	

**GGRF RFP 028-06: INVESTMENT MANAGEMENT AND PLAN ADMINISTRATION SERVICES related to the 401(a) Defined Contribution Plan / 457 Deferred Compensation Plan and Welfare Benefit Plan**

Panel Member: Debbie Lilloa  
Date: 12-07-06

Instructions: Please place a check mark in the appropriate box to indicate a 'YES' response.

**A. PROPOSAL REQUIREMENTS:**

1. Submission: One(1) original and ten (10) copies
2. Cover Letter
  - a. Is proposal signed by someone who is authorized to bind the offeror contractually?
  - b. Is the firm's name, address, telephone/facsimile numbers stated?
  - c. Is the location of the firm's principal place of business listed?
  - d. Did the offeror include a statement of interest in providing the required services described in the RFP?
  - e. Names of individuals primarily responsible for the investment management services and plan administration services to be performed.
  - f. Is the firm's federal EIN or TIN listed?
  9. Is the offeror a registered Investment Advisor under the Investment Advisor Act of 1940?
  - h. Did the offeror provide a warranty that it has completed, obtained and performed all registrations, filings, approvals, authorizations, consents, or examinations required by governments and governmental authorities necessary to provide the services being offered under its proposal?
  - i. Did the offeror provide a warranty that it meets all of the minimum qualifications applicable to the person/firm under the RFP?

Offeror				Remarks
A	B	C		
Lincoln Financial / BOH	GWRS	ASC Trust		
Yes.	Yes.	Yes.		
✓	✓	✓		
✓	✓	✓		
✓	✓	✓		
✓	✓	✓		
✓	✓	✓		
✓	✓	✓		
✓	✓	✓		
✓	✓	✓		
✓	✓	✓		
✓	✓	✓		

**GGRF RFP 028-06: INVESTMENT MANAGEMENT AND PLAN ADMINISTRATION SERVICES related to the 401(a) Defined Contribution Plan / 457 Deferred Compensation Plan and Welfare Benefit Plan**

Panel Member: Debbie Lilloa  
Date: 12-07-06

Instructions: Please place a check mark in the appropriate box to indicate a 'YES' response.

3. Statement attesting to the adherence and compliance with the minimum requirements.
- B. MINIMUM REQUIREMENTS:**
- a. Does the firm have 5 yrs. of experience administering directed DC Plans (401, 457, etc.)? And, is the firm currently providing single provider administration services to a minimum of 3 public or private pension plans?
  - b. Does the firm have at least 3 years recordkeeping experience for approx. 5,000 participants?
  - c. Did the offeror provide a seamless recordkeeping solution that would be easily used by participants and not adversely impact participants in any of the funds.
  - d. Is the firm duly qualified to conduct business on Guam?
  - e. Is it stipulated that there will be no front-end charges, no back-end charges, or market value adjustments (MVA). There will be no liquidity restrictions or penalties on participant transfers or withdrawals, with the possible exception of stable value fund provisions and/or mutual fund specific short-term trading fees.
  - f. Fully disclosed all fund expenses and revenue sharing arrangements associated with all funds made available to GGRF. This includes 12b-1 fees and any other fees. Did the firm disclose any proprietary interest in any of the funds being proposed?
  - g. Is the fund's line-up of investment options in compliance with the Plan's Investment Policy Statement for the length of the contract?

Offeror				Remarks
A	B	C	ASC Trust	
Lincoln Financial / BOH	GWRS			
✓	✓		✓	
✓	✓		✓	
✓	✓		✓	
✓	✓		✓	
✓	✓		✓	
✓	✓		✓	
✓	✓		✓	
✓	✓		✓	

**GGRF RFP 028-06: INVESTMENT MANAGEMENT AND PLAN ADMINISTRATION SERVICES related to the 401(a) Defined Contribution Plan / 457 Deferred Compensation Plan and Welfare Benefit Plan**

Panel Member: Debbie Ulloa

Date: 12-07-06

*Instructions:* Please place a check mark in the appropriate box to indicate a 'YES' response.

- h. Did the offeror demonstrate knowledge of and comply with all applicable Guam laws and federal laws and regulations regarding governmental retirement plans and investment options?
- i. Is the firm SEC registered or exempt from registration? If exempt, did the firm provide the nature of exemption?
- j. Are the terms outlined in this RFP guaranteed up to and through the negotiation of the final contract?
- k. Does the firm have any legal or other problems with SEC or any other regulatory agency?

**3. Disclosures:**

- a. Disclosure of Major Shareholders
- b. Representation regarding Gratuities and Kickbacks
- c. Prospective Representation regarding Contingent Fees
- d. Certification of Independent Price Determination
- e. Representation regarding Ethical Standards for Government Employees and Former Government Employees

**4. Contents of Proposal:** Are questions and answers submitted in numerical order?

Offeror			C		Remarks
A	B	GWRS	ASC Trust		
Lincoln Financial / BOH					
✓	✓		✓		
✓	✓		✓		
✓	✓		✓		
✓	✓		✓		
✓	✓		✓		
✓	✓		✓		
✓	✓		✓		
✓	✓		✓		
✓	✓		✓		
✓	✓		✓		
✓	✓		✓		
✓	✓		✓		



**42**

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

Phone: (671) 475-0390  
FAX: (671) 472-7951



OFFICE OF THE PUBLIC AUDITOR

GOVERNMENT OF GUAM  
RETIREMENT FUND

FEB 21 2008

RECEIVED  
Director's Office

# Fax

**To:** Elyze J. McDonald, Esq.  
Thomas M. Tarpley, Esq.  
Joaquin C. Arriola, Jr. Esq.

**From:** Theresa Gumataotao  
OPA Procurement Appeals

**Agency:** Carlsmith Ball LLP **Pages** 2 (Including cover)  
Law Offices of Thomas M. Tarpley  
Arriola, Cowan, & Arriola

**CC:** Paula Blas – GGRF Director **Date:** Wednesday – 2/20/08


**Fax:** 477-4375 / 472-4526 / 477-9734 / 475-8922 **Phone:** 472-6813 / 472-1539 / 477-9730 / 475-8950

**Re:** Status of Decision: OPA-PA-07-006

Urgent     For Review     Please Comment     Please Reply     Please Recycle

● **Comments:**

See status letter attached and please acknowledge receipt by re-sending this cover page with your firm's stamp, date, and initials. Thank you.

 Theresa – 475-0390 x. 207 [tgumataotao@guamopa.org](mailto:tgumataotao@guamopa.org)

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.



## OFFICE OF THE PUBLIC AUDITOR

February 20, 2008

Thomas M. Tarpley, Jr. Esq.  
 The Thomas M. Tarpley Law Firm  
 GCIC Building  
 414 W. Soledad Avenue, Suite 904  
 Hagatna, Guam 96910  
 Attorneys for Great-West Retirement Services – Appellant

VIA FACSIMILE: 671-472-4526

Elyze J. McDonald  
 Carlsmith Ball LLP  
 Bank of Hawaii Bldg., Suite 401  
 134 West Soledad Avenue, P.O. Box BF  
 Hagatna, Guam 96932-5027  
 Attorney for the Government of Guam Retirement Fund - Appellee

VIA FACSIMILE: 671-477-4375

Joaquin C. Arriola, Jr., Esq.  
 Arriola, Cowan, & Arriola  
 259 Martyr Street, Suite 201  
 C&A Building  
 Hagatna, Guam 96932  
 Attorneys for Administrative Services Corporation – Interested Party

VIA FACSIMILE: 671-477-9734

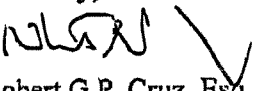
Messers &amp; Meses Tarpley, McDonald, and Arriola,

The Public Auditor has delayed the issuance of the decision on appeal OPA-PA-07-006.  
 In concluding our review we have sought additional information from the Government of Guam Retirement Fund to include:

- |                       |  |
|-----------------------|--|
| (1) December 7, 2006  | Log of Proposals                               |
| (2) February 7, 2007  | Selection Panel's Summary of Evaluation Sheets |
| (3) February 26, 2007 | Selection Panel's Summary of Evaluation Scores |

The above-mentioned documents were submitted to OPA under seal on February 19, 2008.  
 Following our review of these documents a decision will be forthcoming.

Sincerely,

  
 Robert G.P. Cruz, Esq.  
 Hearing Officer

**43**



OFFICE OF THE PUBLIC AUDITOR

PROCUREMENT APPEALS

IN THE APPEAL OF

GREAT WEST RETIREMENT SERVICES,

APPELLANT.

Appeal No. OPA-PA-07-006

FINDINGS AND RECOMMENDATIONS OF HEARING OFFICER

GOVERNMENT OF GUAM  
RETIREMENT FUND

MAR 13 2008

RECEIVED  
Director's Office

I. INTRODUCTION

A hearing on this procurement appeal was held on January 21, 2008. These are the findings of the Hearing Officer, Robert G.P. Cruz, Esq., on an appeal filed on June 22, 2007, by Great-West Retirement Services (hereafter "GWRS"), regarding the Government of Guam Retirement Fund's (hereafter "GGRF") procurement for Investment Management and Plan Administration related to the 401(a) Defined Contribution Plan, 457 Deferred Compensation Plan and Welfare Benefit Plan. Elyze McDonald, Esq., Carlsmith Ball, LLP, represented GGRF, Thomas M. Tarpley, Esq. represented GWRS, and Joaquin C. Arriola, Jr., Esq, Arriola, Cowan, Arriola, represented Administrative Services Corporation, (hereafter "ASC").

II. FINDINGS OF FACT

These findings of fact are based on the Procurement Record and all documents submitted by the parties in the appeal in addition to the oral argument.

1. GWRS submitted its proposal to GGRF and was found to be the best qualified offeror among those responding to the Request for Proposal (RFP) No. GGRF-028-06. It was so notified

1 letter dated March 6, 2007. The letter requested that GWRS submit custodial and pricing data for  
2 negotiation, specifically including the following information:

- 3 a. the independent custodian selected to provide trust services, preferably a local trust  
4 company;
- 5 b. that no fees would be assessed to participant account balances;
- 6 c. that GWRS's fee would be .25% (1/4 of 1) of the total assets; and
- 7 d. that all reallowances and rebates of 12b-1 fees received from the investment options  
8 managers would be remitted to GGRF.  
9

10  
11 2. GWRS responded in a letter dated March 12, 2007, and addressed the following: (1)  
12 that it would use Wells Fargo or another local firm as a Custodian, (2) that there would be no  
13 explicit fee deducted from participant accounts, (3) that a .33% to .27% fee would be offered  
14 depending on total plan assets, and (4) any excess funding from investment options (fixed and  
15 variable) would be refunded to the plan each year.  
16

17 3. GGRF in a March 18, 2007 letter did not accept GWRS' cost pricing submitted on  
18 March 12 and requested a best and final offer.

19 4. GWRS responded to GGRF on March 21, 2007, and modified their March 12th  
20 proposed fee to .27% of total plan assets.  
21

22 5. In an internal analysis dated April 27, 2007, an Administrative Assistant determined  
23 that the GWRS March 12, 2007 answers were non-responsive. This argument was repeated by  
24 the GGRF at the formal hearing. We disagree. Responses by GWRS addressed each item of  
25 interest of GGRF. They simply did not give the answer that GGRF sought in each category.  
26

27 6. On April 27, 2007 GGRF responded to GWRS' modified proposal and determined that  
28 their best and final offer was not fair and reasonable, terminated negotiations, and began

1 negotiations with the next best offeror, ASC. GGRF never adequately explained why the .25%  
2 that they sought was reasonable, but that the .27% GWRS offered somehow was neither  
3 reasonable nor acceptable. Reference is made to Tab # 11 of the Agency Record, but a review of  
4 the material is not helpful in discerning the importance of the .25% figure.

5  
6 7. GWRS filed a timely appeal on June 22, 2007 protesting the termination of its  
7 negotiations with GGRF. GWRS asserts that its best and final offer was “fair and reasonable”  
8 based upon a comparison of its offer to GGRF with participant fees charged for two categories of  
9 employee plans in various states. (Declaration of Kent Morris, Vice President, Western Region,  
10 GWRS). GWRS also argued that GGRF was arbitrary and capricious in comparing GWRS’s  
11 proposal to other bidders on Guam, rather than considering fees charged in other jurisdictions as  
12 GWRS wanted GGRF to do.

13  
14 8. Two pre-hearing conferences were held before the Hearing Officer. The first pre-  
15 hearing conference was held on December 18, 2007. It was agreed that there would be oral  
16 argument on GWRS’s Motion to Lift Seal and Compel Production of Documents at a second  
17 pre-hearing conference, on January 10, 2008. After studying the Motion, and the Response of  
18 GGRF, and considering the oral argument presented by all counsel, including ASC’s, the  
19 Hearing Officer orally denied the motion on January 10, 2008, as allowed by 2 GAR Division  
20 4, section 12109 (d).  
21  
22  
23

### 24 III. ANALYSIS

25 1. GWRS’s contention that GGRF was arbitrary and capricious in terminating  
26 negotiations with GWRS appears to be accurate. GGRF requested that GWRS provide its offer  
27 in a two-part format addressing custodial arrangements and pricing data. GWRS submitted its  
28 offer in the format required by GGRF. In our opinion, the March 12, 2007 response of GWRS





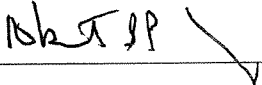
1 3. GWRS's contention that GGRF was arbitrary and capricious in terminating the  
2 negotiations with GWRS appears to be substantiated. GGRF did not respond to GWRS's request  
3 for an analysis why its 0.27% fee was not fair and reasonable.  
4

5 4. GGRF should continue its negotiations with the best qualified offeror, GWRS, in order  
6 to complete the procurement of Investment Management and Plan Administration related to the  
7 401(a) Defined Contribution Plan, 457 Deferred Compensation Plan and Welfare Benefit Plan.  
8

9 5. The Chairman of the GGRF serves on the Board of Directors of the proposed Trustee  
10 for ASC. Thus should renewed negotiations between GWRS and GGRF ultimately fail, the  
11 Chairman should find a replacement negotiator so that he is not involved in negotiating with  
12 ASC.

13 A copy of these Findings shall be provided to the parties and their respective attorneys,  
14 in accordance with 5 G.C.A. Section 5702, and shall be made available for review on the OPA  
15 website [www.guamopa.org](http://www.guamopa.org).  
16

17  
18 RESPECTFULLY SUBMITTED THIS 12th day of March, 2008

19  
20   
21 \_\_\_\_\_  
22 **ROBERT G.P. CRUZ, ESQ.**  
23 **Hearing Officer, Office of the Public Auditor**  
24  
25  
26  
27  
28

**44**



OFFICE OF THE PUBLIC AUDITOR

March 13, 2008

Thomas M. Tarpley, Jr. Esq.  
The Thomas M. Tarpley Law Firm  
GCIC Building  
414 W. Soledad Avenue, Suite 904  
Hagatna, Guam 96910  
Attorney for Great-West Retirement Services – Appellant

GOVERNMENT OF GUAM  
RETIREMENT FUND  
MAR 13 2008  
RECEIVED  
Director's Office

Elyze J. McDonald  
Carlsmith Ball LLP  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue, P.O. Box BF  
Hagatna, Guam 96932-5027  
Attorney for the Government of Guam Retirement Fund - Appellee

*J. Lopez*  
*SM*

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


Joaquin C. Arriola, Jr., Esq.  
Arriola, Cowan, & Arriola  
259 Martyr Street, Suite 201  
C&A Building  
Hagatna, Guam 96932  
Attorneys for Administrative Services Corporation – Interested Party

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. GGFRF-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](http://www.guamopa.org).

Senseramente,

  
Doris Flores Brooks, CPA, CGFM  
Public Auditor



OFFICE OF THE PUBLIC AUDITOR

PROCUREMENT APPEALS

IN THE APPEAL OF  
GREAT WEST RETIREMENT SERVICES,  
APPELLANT.

Appeal No. OPA-PA-07-006

DECISION

GOVERNMENT OF GUAM  
RETIREMENT FUND

MAR 13 2008

RECEIVED  
Director's Office

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.

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


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

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

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](http://www.guamopa.org).  
22

23  
24 Dated this 13<sup>th</sup> day of March 2008

25   
26 \_\_\_\_\_  
27 **DORIS FLORES BROOKS, CPA, CGFM**  
28 **PUBLIC AUDITOR**

**45**

CARLSMITH BALL LLP

ELYZE J. McDONALD  
CAREY M. AUSTIN  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue, P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

Attorneys for Appellee-Movant  
Government of Guam Retirement Fund

RECEIVED  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT AFFAIRS

MAR 20 2008  
TIME: 3:17 PM  
BY: T. Comstock  
FILE No. OPA-PA-07-006

GOVERNMENT OF GUAM  
RETIREMENT FUND

MAR 24 2008  
RECEIVED  
Director's Office  
3:50 PM

OFFICE OF THE PUBLIC AUDITOR  
GUAM

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

APPEAL NO. OPA-PA-07-006

**GOVERNMENT OF GUAM  
RETIREMENT FUND'S MOTION TO  
AMEND FINAL ADMINISTRATIVE  
DECISION**

**GOVERNMENT OF GUAM RETIREMENT FUND'S MOTION TO AMEND FINAL  
ADMINISTRATIVE DECISION**

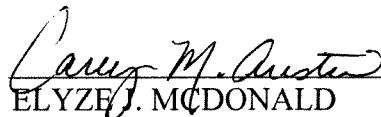
Appellee-Movant the Government of Guam Retirement Fund ("GGRF"), by and through its undersigned counsel, hereby GIVES NOTICE that on \_\_\_\_\_, at \_\_\_\_\_, or as soon thereafter as may be heard, the GGRF shall move the Office of the Public Auditor ("OPA"), pursuant to Title 2, Division 4, Chapter 12, Section 12109(c) of the Guam Administrative Rules, to amend its final administrative Decision hereunder dated March 13, 2008 ("Decision"). This Motion is based on the following Memorandum of Points and Authorities in Support of the GGRF's Motion to Amend Final Administrative Decision, and any oral arguments, testimony, or evidence brought at hearing in



this matter.

Respectfully submitted this 20th day of March, 2008:

CARLSMITH BALL LLP

  
ELYZE J. McDONALD  
CAREY M. AUSTIN  
Attorneys for Appellee-Movant  
Government of Guam Retirement Fund

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF THE GOVERNMENT OF GUAM RETIREMENT FUND'S  
MOTION TO AMEND FINAL ADMINISTRATIVE DECISION**

On March 13, 2008, the OPA issued its Decision hereunder. This Motion is brought by GGRF in the best interests of the GGRF and the government of Guam (i) for purposes of avoiding unnecessary delays and costs in the procurement process; (ii) in accordance with 5 G.C.A. §§ 5480 and 5481(a) and commentary thereto; and (iii) under the legal and equitable authority conferred by Title 2, Division 4, Chapter 12, of the Guam Administrative Rules. This Motion is not intended to delay the underlying procurement process, as the GGRF fully intends to proceed with negotiations in accordance with the Decision. For clarification and guidance in future procurements, the GGRF specifically requests amendment of the OPA's Conclusion No. 7 of the Decision at p. 2 so as to conform, and be limited to, the Conclusion No. 5 in the Findings and Recommendations of the Hearing Officer issued hereunder on March 13, 2008 ("Findings"), which states:

5. The Chairman of the GGRF serves on the Board of Directors of the proposed Trustee for ASC. Thus should renewed negotiations between GWRS and GGRF ultimately fail, the Chairman should find a replacement negotiator so that he is not involved in negotiating with ASC.

Findings at p. 5.

For the reasons set forth herein, GGRF respectfully requests the deletion of the following underscored clause in Conclusion No. 7 of the OPA's Decision, which clause was not contained in the Hearing Officer's above-quoted Conclusion Number 5:

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

Decision at p. 3 (emphasis added).

For purposes of this Motion and the underlying appeal hereunder, the Fund does not challenge: (i) the above-quoted Conclusion Number 5 reached by the Hearing Officer or (ii) the non-underscored portion of the above-quoted Conclusion Number 7 reached by the OPA; specifically, that the Chairman of the GGRF serves on the Board of Directors of the proposed Trustee for ASC.<sup>1</sup> In fact, as a practical matter to expedite the procurement process, GGRF already has appointed a substitute for the Chairman for purposes of continuing negotiation in the underlying procurement in RFP No. GGRF-028-06.

GGRF also concedes for purposes of argument and practicality that the Hearing Officer was authorized under Title 2, Division 4, Chapter 12, Section 12109(h)(4) of the Guam Administrative Rules, to take "official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice." Accordingly, GGRF acknowledges that the Hearing Officer could find, via official notice, that the Chairman of the GGRF sits on the Board of Directors of the proposed Trustee for ASC. Notwithstanding their authority under Section 12109(h)(4), however, the findings/conclusions reached by the Hearing Officer in his Findings and by the Public Auditor in her Decision should have been limited to the findings in the record or in findings that could be officially noticed, consistent with traditional matters of judicial notice.

In contrast, the first sentence of Conclusion Number 5 in the OPA's Decision reaches a determination of a legal issue -- a conflict of interest -- that was (a) not raised by any party to the appeal; (b) not briefed by any party to the appeal; (c) not based on any findings of fact in the record; and (d) not a material fact among traditional matters of judicial or official notice contemplated by Section 12109(h)(4). The Hearing Officer asked no questions designed to

---

<sup>1</sup> GGRF submits that the "conclusion" that the Chairman sits on the Board of ASC's proposed Trustee is not a "conclusion" but a "finding of fact" that was not based on any issue raised or briefed by any of parties at any stage of the appeal.

elicit answers to determine the existence of a conflict of interest. GGRF had no opportunity to address or challenge the OPA's determination that the Chairman had a conflict of interest solely because of his status as a Director on the Board of ASC's proposed Trustee. GGRF had no opportunity to present evidence that no party to the appeal had timely filed a protest or challenge to any actions taken by GGRF related to the underlying procurement based solely on the Chairman's role as a Director on the Board of ASC's proposed Trustee.

The OPA's conclusion that the Chairman has a conflict of interest may have significant consequences for the prior actions taken by GGRF in the course of the underlying procurement, if such a conflict were to exist. The Decision, therefore, should not contain a *sua sponte* conclusion that a conflict of interest exists, if such a conclusion is not based on any findings of clearly enumerated factors establishing an actual conflict of interest (for example, whether the Chairman would receive additional remuneration as a Director of the proposed trustee for ASC based on the final pricing of a contract between GGRF and ASC).

If the determination of a conflict of interest was in some way relevant to the underlying appeal (and GGRF submits it was not), then such a significant and material determination should have been raised in the appeal. It was not. No party to the appeal was given the opportunity to submit any evidence on the issue. No party was allowed to frame the relevant factors determinative of a conflict of interest, or the relevant context (e.g., a government procurement? a trust managed by trustees?) under which the factors should be assessed. The practical harm arising from unsolicited and unsupported conclusions in the Decision is that such conclusions could be construed as "final" and used collaterally even for purposes unrelated to the underlying appeal. Section 12111(c) (Standard of Review) states:

Any determination of an issue or a finding of fact by the Public Auditor shall be final and conclusive unless found by a court to be arbitrary, capricious, fraudulent, clearly erroneous, or contrary to

law. Any decision of the Public Auditor, including any determination regarding the application or interpretation of the procurement law or regulations, shall be entitled to great weight and the benefit of reasonable doubt, although it shall not be conclusive on any court having competent jurisdiction.

Title 2, Division 4, Chapter 12, Section 12109(h)(4) of the Guam Administrative Rules.

Although not briefed or litigated, the OPA's "final and conclusive" determination of a conflict of interest might adversely and unnecessarily impact the entire underlying procurement. GGRF believes that an appeal to the Superior Court (on the grounds of being arbitrary, capricious, clearly erroneous and not based on facts in the record or through official notice) on an issue not relevant or necessary to the underlying appeal, would be a waste of government resources, with the potential of delaying the procurement process, yet could be avoided with an amendment that deletes the underscored clause of the above-quoted Conclusion Number 7 at p. 3 of the Decision.


For all of the foregoing reasons, GGRF respectfully requests the granting of this motion and the amendment of the OPA's Conclusion Number 7 to read as follows:

7. In the event that renewed negotiations are terminated with GWRS, it should be noted that the Chairman serves on the Board of Directors of the proposed Trustee for ASC. Therefore, he should not participate in negotiations with ASC and a substitute negotiator should be appointed by GGRF.

Lastly, for purposes of facilitating the underlying procurement, GGRF seeks the Public Auditor's clarification of the appeals process following the Decision. In the Decision, the parties were informed of their right to appeal from a Decision by the Public Auditor to the Superior Court of Guam, in accordance with "Part D of Article 9 of 5 GCA Section 5702[.]" The cited statutory provision does not inform the parties of the time in which they may appeal. GGRF as the procuring agency has an interest in clarifying the time in which the parties may appeal the OPA's Decision (as may be amended) to the Superior Court.

RESPECTFULLY SUBMITTED this 20th day of March, 2008 by:

CARLSMITH BALL LLP

  
ELYZE J. MCDONALD  
CAREY M. AUSTIN  
Attorneys for Appellee-Movant  
Government of Guam Retirement Fund

**46**

**R**  
GOVERNMENT OF GUAM  
**RETIREMENT FUND**  
STABILITY · SECURITY · REWARDS

**Felix P. Camacho**  
Governor

**Michael W. Cruz, M.D.**  
Lieutenant Governor

**Paula M. Blas**  
Director

Trustees:

**Joe T. San Agustin**  
Chairman

**Wilfred P. Leon Guerrero, Ed.D.**  
Vice-Chairman  
Investment Committee, Chairman

**James J. Taylor, Ph.D.**  
Secretary  
Investment Committee, Vice-Chairman

**Gerard A. Cruz**  
Treasurer  
Audit & Operations Committee,  
Chairman

**George A. Santos**  
Members' & Benefits Committee,  
Chairman

**Katherine T.E. Taitano**  
Trustee

**Antolina S. Leon Guerrero**  
Trustee

April 2, 2008

Mr. Gregory E. Seller  
Senior Vice President, Government Markets  
GREAT WEST RETIREMENT SERVICES  
18111 Von Karman Avenue, Suite 560  
Irvine, CA. 92612

Re: RFP No. GGRF-028-06 – Investment Management and Plan Administration  
Services related to the 401(a) Defined Contribution Plan, 457 Deferred  
Compensation Plan and Welfare Benefit Plan

Dear Mr. Seller:


The Office of the Public Auditor issued the Decision and Findings of Fact on appeal OPA-PA-07-006 in the appeal of Great West Retirement Services relative to the referenced RFP No. GGRF-028-06. As a result of this decision, the Government of Guam Retirement Fund will continue negotiations with your firm.

To continue this process, please confirm if the GWRS offer outlined in the firm's March 12, 2007 letter and March 27, 2007 best and final offer remain valid or does GWRS intend to modify its best and final offer?

Please provide your response to the Retirement Fund by Friday, April 11, 2008.

If you require additional information or have any additional questions or concerns, please do not hesitate to contact me or Ms. Debbie I. Ulloa at (671) 475-8952/51 or by email at [dliulloa@ggrf.com](mailto:dliulloa@ggrf.com).

Sincerely,

  
PAULA M. BLAS  
Director

424 Route 8  
Maite, Guam 96910  
Tel: 671.475.8900  
Fax: 671.475.8922  
[www.ggrf.com](http://www.ggrf.com)



**47**

**CONFIDENTIAL**

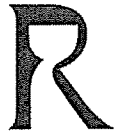
**48**

**CONFIDENTIAL**

49

**CONFIDENTIAL**

**50**



GOVERNMENT OF GUAM  
**RETIREMENT FUND**  
 STABILITY · SECURITY · REWARDS

Felix P. Camacho  
 Governor

Michael W. Cruz, M.D.  
 Lieutenant Governor

Paula M. Blas  
 Director

**BOARD OF TRUSTEES**  
**Regular Meeting**  
 Friday, July 31, 2009, 12:00 p.m.  
 Retirement Fund Conference Room

*Trustees:*

**Joe T. San Agustin**  
 Chairman

**Wilfred P. Leon Guerrero, Ed.D.**  
 Vice-Chairman  
*Investment Committee, Chairman*

**Antolina S. Leon Guerrero**  
 Secretary

**Gerard A. Cruz**  
 Treasurer  
*Audit & Operations Committee, Chairman*

**George A. Santos**  
*Members' & Benefits Committee, Chairman*

**Katherine T.E. Taitano**  
 Trustee

**Wilfred G. Aflague**  
 Trustee

MINUTES

**DEFINED CONTRIBUTIONS**

**I. ATTENDANCE, QUORUM, AND CALL TO ORDER**

After determining a quorum was present, the Retirement Fund Board of Trustees Regular Meeting for the Defined Contribution Plan was called to order at 12:25 p.m. Friday, July 31, 2009, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

**Board of Trustees Present:**

Joe T. San Agustin, Chairman  
 Wilfred P. Leon Guerrero, Vice-Chairman  
 Antolina S. Leon Guerrero, Secretary  
 Gerard A. Cruz, Treasurer  
 Wilfred G. Aflague, Trustee  
 George A. Santos, Trustee

**Board of Trustees Absent:**

Katherine T.E. Taitano, Trustee (*Excused*)

**Staff Present:**

Paula Blas, Director  
 Diana Bernardo, Controller  
 Rosalia Bordallo, General Accounting Supervisor  
 Jackie Blas, Recording Secretary  
 Mike Perez, Great-West Retirement Services

## II. REVIEW AND APPROVAL OF BOARD MINUTES

- A. February 27, 2009 and March 6, 2009 Reconvened Meetings, March 27, 2009, April 24, 2009, May 29, 2009 and June 26, 2009 Regular Meetings

On motion of Trustee George Santos, seconded by Trustee Antolina Leon Guerrero, and without objection, the Minutes of February 27, 2009 and March 6, 2009 Reconvened Meetings, March 27, 2009, May 29, 2009 and June 26, 2009 Regular Meetings were approved, subject to corrections. Motion passed.

Trustee George Santos, seconded by Trustee Antolina Leon Guerrero, moved to table the Minutes of April 24, 2009 Regular Meeting. Without objection, the motion passed.

## III. CORRESPONDENCE

None

## IV. INFORMATIONAL ITEMS

None

## V. DIRECTOR'S REPORT - EXECUTIVE SUMMARY

I. *Request for Proposal (RFP): Third Party Administrator (TPA)* – Director Paula Blas stated that the TPA agreements and the Service Level Agreement (SLA) have been finalized. Copies of the finalized agreements are attached and ready for signatures. Director Blas stated that Management and the Retirement Fund's Legal Counsel have extensively gone through the provisions in the agreements. Director Blas stated that the SLA is the administrative side between Great-West Retirement Services (Great-West) and the Retirement Fund. Director Blas stated that the SLA outlines their standards.

Director Blas stated that there are three parts to the TPA agreement: 1) the Investment Management and Plan Administration Services Agreement; 2) the Service Level Agreement; and 3) the Reality Investing Advisory Services Agreement which is the financial advice to be provided by Advised Assets Group, LLC (AAG). Director Blas stated that AAG will be providing financial advice to the participants.

Chairman San Agustin stated that the Retirement Fund should not be working directly with AAG. Mike Perez of Great-West stated that it should be the Plan Administrator; the Retirement Fund is the one that authorizes the offer of financial advice. Treasurer Gerard Cruz stated that AAG is being subcontracted by Great-West. Chairman San Agustin stated that the Retirement Fund provides a menu of funds and Great-West implements it. Trustee Antolina Leon Guerrero stated that Great-West can not give advice to the participants so the Retirement Fund needs a third party to give financial advice. Mr. Perez stated that Great-West can not give advice without the plan sponsor. Chairman San Agustin stated that this defeats the whole purpose of having a third party. Director Blas reiterated that the TPA can not provide financial advice.

Director Blas stated that last year the Retirement Fund asked for some sort of financial advice and what the cost would be. Director Blas stated that Mr. Perez then presented the managed accounts to the Retirement Fund and at that time the Retirement Fund said to hold off since there is a RFP out. Chairman San Agustin stated that he does not object to providing financial advice to the participants but that it should be between Great-West and AAG, not the Retirement Fund.

Controller Diana Bernardo stated that the Board should keep in mind that there are fees to be charged to participants in the AAG contract so if the AAG contract is incorporated into the TPA contract the Board should review/approve fees to be charged to participants. Chairman San Agustin stated that it is Great-West's responsibility to administer the Defined Contribution (DC) Plan. Director Blas stated that the financial advice could be separated from the TPA agreement. Trustee Leon Guerrero stated that we should then remove the provisions in the agreement regarding financial advice. Chairman San Agustin stated that it would be okay to sign the agreement without the financial advice. Director Blas reiterated that Chairman San Agustin is not opposed to the fact that financial advice should be available to the participants but that it should be Great-West's responsibility to hire someone to provide financial advice.

Trustee Leon Guerrero clarified that there is no problem with the first part of the contract. The Board will sign the contract with Great-West, but not with AAG. Director Blas stated that AAG does not provide administrative services. Mr. Perez suggested having the Retirement Fund's Investment Consultant look at this. Chairman San Agustin reiterated that it is not the Retirement Fund's responsibility. Trustee Leon Guerrero asked whether the Retirement Fund wants to remove this provision to offer financial advice to the participants. Chairman San Agustin replied, "No." Trustee Leon Guerrero asked how many participants asked for this service. Trustee Wilfred Aflague asked what is the cost for this service. Trustee Aflague asked whether there are any fee changes. Director Blas stated that there are no participant fees.

Vice-Chairman Wilfred Leon Guerrero asked what services are being offered to the participants. Mr. Perez stated that Great-West provides statements, educational programs, recommends profile and offers asset allocation options. Treasurer Cruz recommended tabling this item for further discussion during a working session. Chairman San Agustin asked what prompted Great-West to include this option. Treasurer Cruz stated that there was one point when the Board heard of the option of including a managed account option within the existing DC Plan for those with more complicated needs. Treasurer Cruz stated that further discussion on this was tabled because the Retirement Fund was close to the process of issuing an RFP and that it was something that could be included in the RFP. Chairman San Agustin asked what prompted this. Trustee Leon Guerrero stated that it is the members who were interested in investment options. Director Blas stated that she will get back to Legal Counsel and let them know that it can not be done separately; it must be embedded in Great-West's agreement.

Trustee Leon Guerrero, seconded by Trustee Santos, made a motion to remove any provision in the Agreement that refers to AAG providing investment management services. Trustee Aflague stated that he would like to have a work session on this item. Chairman San Agustin stated that he is not opposed to providing advice to the participants. Trustee Leon Guerrero stated that she would like to sustain her motion to approve the TPA Agreement without references to AAG providing investment management services.

**Trustee George Santos, seconded by Trustee Antolina Leon Guerrero, moved to approve to remove any provision in the Investment Management and Plan Administration Services Agreement related to Advised Assets Group, LLC (AAG) providing investment management services. With a unanimous vote of yes, the motion passed. Trustee Katherine Taitano was absent.**

2. **Hybrid Defined Benefit (DB)/Defined Contribution (DC) Plan** – Director Blas stated that at the April 24, 2009 Board meeting, Mr. Richard Wright of Milliman Consulting, Inc. (Milliman) provided options for a Hybrid Plan. Director Blas stated that Mr. Wright briefly discussed the advantages and disadvantages of a DB and DC plan. Director Blas stated that the Retirement Fund has requested for further analysis from Milliman regarding the costs associated with the alternative retirement plan designs. Director Blas stated that Vice-Chairman Leon Guerrero had recommended that this be referred to the Members and Benefits Committee.

### Financial Report

1. **Contributions** – Director Blas stated that as of July 28, 2009, all agencies are current with their Fiscal Year 2009 employee and employer contributions.

2. **Financial Statements** – Director Blas stated that the books for the month ending June 2009 were closed on July 15, 2009.

## **VI. THIRD PARTY ADMINISTRATOR'S REPORT**

Director Blas stated that Mr. Perez of Great-West has provided, at this meeting, the TPA Report for the month ending June 30, 2009 on the DC Retirement System 401(a) Plan and the 457 Deferred Compensation Plan. Mr. Perez stated that the asset for the DC Plan is \$3 Million. Rosalia Bordallo, General Accounting Supervisor, asked Mr. Perez whether there is an increase in payment-to-self versus hardship. Mr. Perez replied, "Yes."

Trustee Aflague asked whether the Retirement Fund has a policy of members coming back. Director Blas stated that there is no redeposit. Mr. Perez stated that 19 out of 252 DC retirees have returned to work.

Mr. Perez stated that Department of Labor, Guam Housing Corporation, Department of Corrections, Department of Agriculture, Department of Revenue and Taxation, Chamorro Affairs, and the Department of Parks and Recreation are not responding to the letters from Great-West.

## **VII. INVESTMENT COMMITTEE REPORT**

Vice-Chairman Leon Guerrero reported that the Investment Committee meeting was held on July 10, 2009. The Committee reviewed and approved the Investment Committee Minutes of June 12, 2009. Vice-Chairman Leon Guerrero reported on the following informational item:

1. **Hybrid Defined Benefit (DB)/Defined Contribution (DC) Plan** – Vice-Chairman Leon Guerrero stated that due to the impact of market volatilities on the DC Plan, the Investment Committee previously requested that Milliman provide an analysis/report of a Hybrid DB/DC Plan. Vice-Chairman Leon Guerrero stated that during the April 24, 2009 Board meeting, Mr. Richard Wright of Milliman discussed options for the Hybrid Plan. Vice-Chairman Leon Guerrero stated that Management indicated that Milliman is still reviewing other options, which will be discussed with the Board when the reports are completed.



**VIII. OLD BUSINESS**

**A. Contribution Report – June 2009**

Director Blas stated that Mr. Perez of Great-West submitted, for this meeting, a copy of the DC Plan and the Deferred Compensation (457) Plan report for the month of June 2009.

Mr. Perez's report shows that the DC Plan has 6,354 participants with a total contribution amount of \$871,612.12. The Deferred Compensation Plan (457) has 828 participants with a total contribution amount of \$98,552.30.

**IX. NEW BUSINESS**

None

**X. OPEN DISCUSSION / GENERAL PUBLIC INPUT**

None

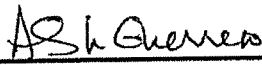
**XI. ANNOUNCEMENTS**

None

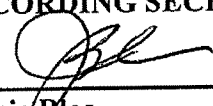
**XII. ADJOURNMENT**

There being no further business before the Board for the Defined Contribution Plan, on motion of Trustee George Santos, seconded by Treasurer Gerard Cruz, and without objection, the meeting was adjourned at 1:29 p.m. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of July 31, 2009 Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on August 28, 2009.

  
\_\_\_\_\_  
Antolina S. Leon Guerrero, Board Secretary

**RECORDING SECRETARY:**

  
\_\_\_\_\_  
Jackie Blas