

1 **LAW OFFICE OF ANTHONY R. CAMACHO, ESQ.**  
2 Suite 500T, 5<sup>th</sup> Floor GCIC Building  
3 414 West Soledad Ave.  
4 Hagatna, Guam, 96913  
5 Telephone: (671) 477-1389  
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7 E-Mail: arcesq@hotmail.com

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

JUN 22 2007

TIME: 1235 pm  
BY: Or  
FILE No. OPA-PA 02-001

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

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

9  
10 IN THE APPEAL OF ) Appeal No. \_\_\_\_\_  
11 GREAT-WEST RETIREMENT )  
12 SERVICES, )  
13 ) **NOTICE OF APPEAL**  
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Appellant. )

14 **COMES NOW**, Appellant GREAT-WEST RETIREMENT SERVICES (GWRS), by  
15 and through its counsel of record, ANTHONY R. CAMACHO, ESQ., and, pursuant to 2 GAR  
16 §12201, does hereby submit its appeal of the Government of Guam Retirement Fund's (GGRF)  
17 Procurement Protest Decision in RFP No. GGRF-028-06. Said appeal is as follows:

19 **APPELLANT INFORMATION**

21 Name: Great-West Retirement Services  
A Division of Great-West Life & Annuity Insurance Company  
22 Mailing Address: 18111 Von Karman Avenue, Suite 560  
23 Irvine, CA 92612  
24 Business Address: 424-B, Route 8  
Hagatna, Guam, 96910-2010  
25 Daytime Contact No: 475-8957/8958

27 **APPEAL INFORMATION**

28 A) Purchasing Agency: Government of Guam Retirement Fund

**ORIGINAL**

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

7 C) Decision being appealed was made on June 1, 2007 by Paula M. Blas, Director, Government  
8 of Guam Retirement Fund.

9 D) Appeal is made from a Decision on Protest of Method, Solicitation, or Award.

10 E) The names of the Competing Offerors are unknown to Appellant at this time.

11 **FORM AND FILING**

12 1. Grounds for Appeal:

13 **BACKGROUND**

14 On or before November 6, 2006, Appellant GREAT-WEST RETIREMENT SERVICES  
15 (GWRS) submitted an offer in response to RFP No. GGRF-028-06. On March 6, 2007, Appellee  
16 GOVERNMENT OF GUAM RETIREMENT FUND (GGRF) notified GWRS that it was  
17 selected as the best qualified offeror for the RFP and that GGRF had reviewed the cost and  
18 pricing data submitted by GWRS. See Letter by Paula M. Blas dated March 6, 2007 attached  
19 herein as Exhibit A. Despite their prior receipt and review of GWRS cost and pricing data,  
20 GGRF requested that GWRS submit additional cost and pricing data that included, in relevant  
21 part: (1) The non-assessment of a fee to the Participant account balances; and (2) A charge .25%  
22 of total assets as GWRS's fee; and (3) Provisions for all re-allowances and rebates of the 12b-1  
23 fees received from the investment option managers to be remitted to the Fund. See Exhibit A.  
24 On March 12, 2007, GWRS responded to GGRF's request by providing, in relevant part: (1)  
25 That there would be no explicit fee deducted from participant accounts (zero administrative fee);  
26 and (2) An Administrative Fee beginning at .33%, which, as assets grow, would be reduced to  
27 .27% of assets per annum; (3) Any excess funding from investment options (fixed and variable)  
28 in excess of the amounts stated (2) would be refunded to the Plan each year. See Letter by  
Gregory E. Seller dated March 12, 2007 attached herein as Exhibit B. On March 18, 2007,

4 GGRF informed GWRS that GGRF did not accept the cost pricing GWRS submitted, and GGRF  
5 ordered GWRS to submit its best and final offer no later than March 22, 2007. See Letter by  
6 Paula M. Blas dated March 18, 2007 attached herein as Exhibit C. On March 21, 2007, GWRS  
7 submitted its best and final offer which included a fee of .27% of total plan assets. See Letter by  
8 Gregory E. Seller dated March 21, 2007 attached herein as Exhibit D.

9 On April 27, 2007, GGRF informed GWRS that GGRF determined that GWRS' best and  
10 final offer is not fair and reasonable given the estimated value, scope, complexity and  
11 professional nature of the services to be rendered and that GGRF terminated negotiations with  
12 GWRS and would undertake negotiations with the next qualified firm to reach a contract at a fair  
13 and reasonable price. See Letter by Debbie I. Ulloa dated April 27, 2007 attached herein as  
14 Exhibit E. On May 9, 2007, GWRS protested GGRF's determination that GWRS' best and final  
15 offer was not fair and reasonable given the estimated value, scope, complexity and professional  
16 nature of the services to be rendered. See GWRS Procurement Protest Letter dated May 9, 2007  
17 attached herein as Exhibit F. On June 1, 2007, GGRF denied GWRS' Protest. See Procurement  
18 Protest Decision dated June 1, 2007 attached herein as Exhibit G.

19  
20 **GROUND FOR APPEAL**

21 **a. GWRS is the most qualified offer and its fee of .27% of plan assets is fair and**  
22 **reasonable given the estimated value, scope, complexity and professional nature of the**  
23 **services to be rendered in accordance with RFP:** Award shall be made to the best qualified  
24 offeror and negotiation of compensation determined to be fair and reasonable. 5 G.C.A. §5216(e)  
25 and 2 G.A.R., Div. 4, Chap. 3, §3114(k). As stated above, GGRF selected GWRS as the most  
26 qualified offeror. Further, based on GWRS's prior price quotations and contract prices, and  
27 prices available on the open market, GWRS fee of .27% of plan assets is fair and reasonable.  
28

4 Thus, GGRF's arbitrary and capricious decision to terminate negotiations with GWRS violates  
5 Guam Procurement Law and Regulations.

6 **b. GGRF refused to negotiate fair and reasonable compensation with GWRS for**  
7 **the services required by the RFP:** The head of the agency conducting the procurement or a  
8 designee of the same shall negotiate a contract with the best qualified offeror for the required  
9 services at compensation determined in writing to be fair and reasonable. 5 G.C.A. §5216(e) and  
10 2 G.A.R., Div. 4, Chap. 3, §3114(k). Such negotiation must include an exchange of information  
11 during which the offeror and the purchasing agency may alter or otherwise change the  
12 conditions, terms, and price of the proposed contract. 2 G.A.R., Div. 4, Chap. 3, §3101(4).  
13 Further, such negotiation must be directed toward agreeing upon compensation which is fair and  
14 reasonable taking into account the estimated value of the services, and the scope, complexity,  
15 and nature of such services. 2 G.A.R. Div. 4, Chap. 3, §3114(l)©. Here, GGRF did not  
16 negotiate with GWRS as required by Guam Procurement Law and Statutes and instead arbitrarily  
17 and capriciously demanded that GWRS accept GGRF's unfair and unreasonable "take it or  
18 leave" price of .25% of total assets as GGRF's fee. Further, GGRF refused to exchange any  
19 information with GWRS to show that GGRF's price of .25% was fair and reasonable. Thus,  
20 GGRF arbitrarily and capriciously refused to negotiate a fair and reasonable price with GWRS in  
21 violation of Guam Procurement Law and Regulations.

22 **c. GGRF failed or arbitrarily or capriciously refused to conduct a proper cost or**  
23 **price analysis of GWRS' fee of .027% of total plan assets.** An offeror's submission of cost or  
24 pricing data is made in accordance with 2 G.A.R., Div. 4, Chap. 3, §3118. 2 G.A.R., Div. 4,  
25 Chap. 3, §3114(k). Here, GGRF did not make any specific finding that the cost and pricing data  
26 submitted by GWRS, to include but not limited to GWRS's fee of .27% of total plan assets was  
27 overstated or defective because it was inaccurate, incomplete, or noncurrent. 2 G.A.R., Div. 4,  
28 Chap. 3, §3118(f). Further, GGRF refused to evaluate prices for the same or similar services, to

4 include the evidence of fees for comparable services and open market prices for similar services  
5 provided by GWRS, to determine whether GWRS's fee of .27% of plan assets was fair and  
6 reasonable. 2 G.A.R., Div. 4, Chap. 3, §3118(g). Instead, GGRF attempted to force GWRS to  
7 accept a .25% fee and exchanged no information with GWRS showing that said fee was fair and  
8 reasonable.

9 **d. GGRF failed to provide a written record stating the reasons compensation,**  
10 **contract requirements, or contract documents cannot be agreed upon with GWRS and**  
11 **GGRF failed to notify GWRS of its decision to terminate negotiations within three (3) days.**

12 If compensation, contract requirements, or contract documents cannot be agreed upon with the  
13 best qualified offeror, a written record stating the reasons therefore shall be placed in the file and  
14 the head of the purchasing agency or designee shall advise such offeror of the termination of  
15 negotiations within three days. 2 G.A.R. Div. 4, Chap. 3, §3114(1)(4)(B). Here, GGRF failed to  
16 provide the written record required by the said regulation and it failed to give GWRS notice of  
17 the termination of the negotiations within three (3) days.

18 **e. GGRF failed to act in good faith:** All parties involved in the negotiation of contracts  
19 shall act in good fath. 5 G.C.A. §5003. Here, as stated above, GGRF failed to negotiate with  
20 GWRS, GGRF failed or refused to conduct a proper cost or price analysis of GWRS .27% fee,  
21 and GGRF failed to provide GWRS with a written record of the reasons GGRF terminated its  
22 negotiations with GWRS as required by Guam Procurement Regulations. Thus, GGRF failed to  
23 act in good faith in violation of Guam Law.

24 **f. GWRS hereby asserts any violation of Guam Law or Regulations that it does not**  
25 **now know due but could know after it has been given access to the records in the possession**  
26 **or control of GGRF.**

27 3. Supporting Exhibits are as follows:

28 a. Exhibit A: Letter by Paula Blas dated March 6, 2007

- 4 b. Exhibit B: Letter by Gregory E. Seller dated March 12, 2007  
5 c. Exhibit C: Letter by Paula M. Blas dated March 18, 2007  
6 d. Exhibit D: Letter by Gregory E. Seller dated March 21, 2007  
7 e. Exhibit E: Letter by Debbie I. Ulloa Dated April 27, 2007  
8 f. Exhibit F: Procurement Protest Letter dated May 9, 2007  
9 g. Exhibit G: Procurement Protest Decision dated June 1, 2007  
10 h. Any exhibit that GWRS may have after being given access to the records in the  
11 possession or control of GGRF.

12 **DECLARATION RE COURT ACTION:** GWRS does hereby confirm that to the best of its  
13 knowledge, no case or action concerning the subject of this appeal has been commenced in court.  
14 All parties are required to and GWRS agrees to notify the Office of the Public Auditor within 24  
15 hours if court action commences regarding this Appeal or the underlying procurement action.

16  
17 **RESPECTFULLY SUBMITTED** this 22<sup>st</sup> day of June, 2007

18  
19  
20 By:

  
\_\_\_\_\_  
21 ANTHONY R. CAMACHO, ESQ.  
22 Attorney for Appellant Great-West Retirement Services  
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4  
5 **VERIFICATION**

6 I, the undersigned, being first duly sworn, declare that I am Appellant's duly authorized  
7 representative in the above-entitled action, and that the foregoing Appeal is true of my own  
8 knowledge, except as to such matters as are stated to be upon information and belief, and as to  
9 those matters I believe them to be true.

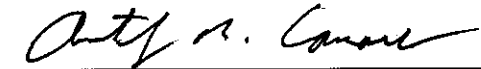
10  
11 **DATED** this 22<sup>nd</sup> day of June, 2007.

12  
13  
14 

15  
16 **MICHAEL J. PEREZ**  
17 Duly Authorized Representative for Appellant  
18 Great West Retirement Services

19 ISLAND OF GUAM )  
20 CITY OF HAGATÑA ) **ss:**

21  
22 **SWORN AND SUBSCRIBED** to before me this 22<sup>nd</sup> day of June, 2007 by:

23  
24 

25 **NOTARY PUBLIC**



**ANTHONY R. CAMACHO, ESQ.**  
**NOTARY PUBLIC**  
In and for Guam, U.S.A.  
My Commission Expires: Dec. 01, 2010  
Suite 500T, 5<sup>th</sup> Floor GCIC Building  
414 West Soledad Ave., Hagatna, Guam 96910

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

**Felix P. Camacho**  
Governor

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

**Paula M. Blas**  
Director

March 6, 2007

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

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:

Thank you for the submission of your proposal in response to the Government of Guam Retirement Fund's RFP for 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. Your firm has been evaluated and deemed to be the best qualified to provide the required services.

The cost pricing you submitted has been reviewed. In accordance with GAR §3114(k), please submit cost or pricing data inclusive of the following:

**Custodial Services:**

- 1) The Custodian selected by GWRS to provide the trust services must be independent of GWRS; and
- 2) A local Trust Company would be preferred.

**Pricing:**

- 1) GWRS would not assess a fee to the Participant account balances;
- 2) GWRS would charge 0.25% of total assets as their fee; and
- 3) All re-allowances and rebates of the 12b-1 fees received from the investment option managers shall be remitted to the Fund.

Please provide a response to the Retirement Fund no later than Tuesday, March 13, 2007.

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 [ddiulloa@ggrf.com](mailto:ddiulloa@ggrf.com).

Sincerely,

  
**PAULA M. BLAS**  
Director

**EXHIBIT**

A

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





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**Gregory E. Seller**  
Senior Vice President, Government Markets  
18111 Von Karman Avenue, Suite 560  
Irvine, California 92612  
800.933.9808.  
eFax: 949.315.3428  
Fax: 949.474.1707  
Email: [gregory.seller@gwrs.com](mailto:gregory.seller@gwrs.com)

March 12, 2007

Ms. Paula M. Blas  
Director  
424 Route 8  
Maite, Guam 96910

**RE: RFP #GGRF-028-06 Investment Management & Plan Administrative Services related to the 401(a) Defined Contribution Plan , 457 Deferred Compensation Plan and Welfare Benefit Plan**

Dear Ms. Blas:

Thank you for your letter of March 6, 2007 advising us that our firm has been deemed to be the most qualified firm to provide the services described in the above referenced RFP. It has been an honor and a privilege to serve GGRF for these past several years and we look forward to continuing to do so for a new contract term.

We are pleased to respond to your inquiry regarding our price proposal as follows:

**Custodial Services**

1. If GGRF desires a custodian that is independent of Great-West, we do have a relationship with Wells Fargo. Their custody services are available for an additional fee of \$5,000 per year, but we need to confirm with them that they are licensed to do custody business in Guam. We will have an answer for you regarding their licensing by March 13, 2007.

2. If Wells Fargo is not licensed in Guam, or if GGRF prefers a local institution, we can consider utilizing a local firm. However, a custodial relationship with a single institution that is used for only one plan will be expensive. GGRF may let us know how you would like us to proceed after we provide you with an answer regarding Wells Fargo.

## **Pricing**

1. Under Pricing Option (2) in our Cost Proposal, there will be no explicit fee deducted from participant accounts (zero administrative fee).
2. Revenue sharing is paid to the Plan in excess of the amounts below:
  - o The zero fee is possible due to the funding received from the investment options. While all funding from the mutual fund companies is fully disclosed to GGRF, the revenue is retained by Great-West to offset expenses of plan administration and communication. Other investment options may be substituted for those identified in Investment Platform Two, so long as they are a part of the Great-West Silver Alliance of Funds.
  - o Revenue sharing to the Plan is calculated as follows each year:

The weighted average total of 12(b)(1) fees and shareholder service fees is calculated each year. For the Custom Stable Value Fund contained in this proposal, the administrative allowance is .33% per annum (this is the portion of the .60% Fee that is attributable to administration). Therefore, on the Custom Stable Value Fund the Investment Management Fee is .27% and the administrative allowance is .33%. For variable funds, the weighted average of 12(b)(1) fees and shareholder service fees is determined. If the weighted average total on all plan assets exceeds the following breakpoints at the end of each calendar year, then the difference is paid to the Plan:

<u>Total Plan assets at year end:</u>	<b>Amounts collected in excess of the following % of variable assets: (excess above is paid to Plan)</b>
Less than \$150 million:	.33%
\$150 but less than \$175 million:	.30%
greater than \$175 million:	.27%

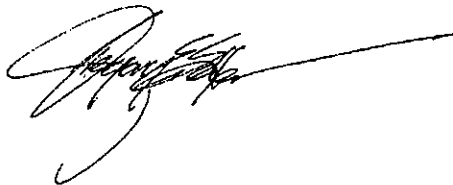
In summary, the administrative fee begins at .33% (as opposed to the .25% fee requested in your letter). However, as assets grow, the fee eventually reduces to .27% of assets per annum. Any excess funding from investment options (fixed and variable) in excess of the above amounts is refunded to the Plan each year. All revenue sharing from all investment options is fully disclosed to GGRF, as has been our practice since the inception of our relationship.

As outlined in our proposal, this pricing option assumes the Guam Custom Stable Value Fund as the sole fixed option, and that all variable options are selected from the Silver Alliance of Funds.

The above cost proposal eliminates fees charged directly to participant accounts, which is a significant advantage to all Plan participants. It also improves the yield and asset safety for the fixed assets, and provides revenue sharing to the Plan in excess of the fees noted above. In addition, it also eliminates the hard dollar cost outlays from GGRF, with the exception of possible additional charges for custody services in GGRF prefers to select a substitute for Orchard Trust.

Please let me know if you have additional questions. If our proposal is acceptable to GGRF, we can send you the new contract documents for review so these enhancements may be implemented as soon as possible.

Sincerely,



Gregory E. Seller  
Senior Vice President  
Government Markets  
GES/mp

Cc: Mr. Kent Morris, Vice President, Western Region  
Mr. Mike Perez, Regional Director, Guam

**R**  
GOVERNMENT OF GUAM  
**RETIREMENT FUND**  
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Lieutenant Governor

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Director

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Investment Committee, Vice-Chairman

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

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

**Katherine T.E. Taitano**  
Trustee

March 18, 2007

**VIA EMAIL TRANSMISSION**

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:

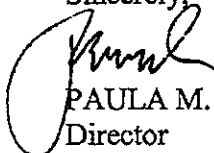
Thank you for your response dated March 12, 2007 in reference to the RFP for professional services related to providing Investment Management and Plan Administration Services related to the 401(a) Defined Contribution Plan, 457 Deferred Compensation Plan and Welfare Benefit Plan.

The cost pricing you submitted has been reviewed and has not been accepted. At this time, please provide me with your best and final offer.

Please provide your response to the Retirement Fund no later than Thursday, March 22, 2007.

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

EXHIBIT

C

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



**Gregory E. Seller**  
Senior Vice President, Government Markets  
18111 Von Karman Avenue, Suite 560  
Irvine, California 92612  
800.933.9808.  
eFax: 949.315.3428  
Fax: 949.474.1707  
Email: [gregory.seller@gwrs.com](mailto:gregory.seller@gwrs.com)

March 21, 2007

Ms. Paula M. Blas  
Director  
424 Route 8  
Maite, Guam 96910

**RE: RFP #GGRF-028-06 Investment Management & Plan Administrative Services related to the 401(a) Defined Contribution Plan , 457 Deferred Compensation Plan and Welfare Benefit Plan**

Dear Ms. Blas:

Thank you for your letter of March 18, 2007 requesting a best and final offer. We have reviewed our originally submitted cost proposal along with our March 12, 2007 letter and will modify our proposal as follows:

**Pricing: Fee of 0.27% of total plan assets**

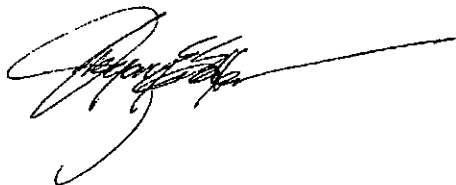
We have summarized this in the following table. You will notice that the amount required to provide our current local service model takes up a significant portion of this revenue. The impact is a shortfall in revenue for recordkeeping which we anticipate will be recovered through future plan growth at no cost to GGRF.

Date	Assets	Fee	Total Revenue	PPTs	Revenue Per PPT	Field Service Cost Without Overhead	Field Service Cost Per PPT	Difference
12/31/06	\$165,130,000	0.27%	\$445,851	9,873	\$45.16	\$334,000	\$33.83	\$11.33

We value our partnership with GGRF and look forward to continuing to serve your needs and those of your plan participants.

Please let me know if you have additional questions or need further clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory E. Seller", with a long horizontal flourish extending to the right.

Gregory E. Seller  
Senior Vice President  
Government Markets  
GES/mp

Cc: Mr. Kent Morris, Vice President, Western Region  
Mr. Mike Perez, Regional Director, Guam

  
 GOVERNMENT OF GUAM  
**RETIREMENT FUND**  
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Gerard A. Cruz  
Treasurer  
Audit & Operations Committee,  
Chairman

George A. Santos  
Members' & Benefits Committee,  
Chairman

Katherine T.E. Taitano  
Trustee

April 27, 2007

Gregory E. Seller  
Senior Vice President, Government Markets  
Great-West Retirement Services  
18111 Von Karman Avenue, Suite 560  
Irvine, California 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 Government of Guam Retirement Fund has communicated with your firm ranked as the best qualified offeror to negotiate your firm's compensation in connection with your proposal submitted in response to the above Request for Proposal.

We have determined that your firm's best and final offer is not fair and reasonable given the estimated value, scope, complexity and professional nature of the services to be rendered. At this time, the Fund will terminate negotiations with your firm pursuant to 4 GCA §5216(e) and GAR §3114(l)(A).

Negotiations will be undertaken with the next qualified firm to reach a contract at a fair and reasonable price.

Thank you for the time and effort you put into your proposal. Should you need additional information, please do not hesitate to contact me at (671) 475-8952/51 or by email at [dlulloa@ggrf.com](mailto:dlulloa@ggrf.com).

Sincerely,



DEBBIE I. ULLOA  
Administrative Assistant  
Procurement Section

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

EXHIBIT

E





**Gregory E. Seller**  
Senior Vice President, Government Markets  
18111 Von Karman Avenue, Suite 560  
Irvine, California 92612  
800.933.9808.  
eFax: 949.315.3428  
Fax: 949.474.1707  
Email: [gregory.seller@qwrs.com](mailto:gregory.seller@qwrs.com)

May 9, 2007

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

**RE: RFP #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 Ms. Blas

Great-West Retirement Services ("Great-West"), 424 Route 8, Maite, Guam, 96910-2010 hereby officially protests the determination by the Government of Guam Retirement Fund ("GGRF") that our firm's best and final offer is not "fair and reasonable" given the estimated value, scope, complexity and professional nature of the services to be rendered in accordance with the above-referenced RFP. This decision by GGRF, communicated to us in the April 27, 2007 letter from Ms. Ulloa, is not based on facts for the following reasons:

**1. Great-West is the #1 Provider of Services to States & US Territories**

Great-West is the largest provider of defined contribution services to state governments. Great-West serves 15 of the 50 states, which is more states than are served by any other competitor in the market.<sup>1</sup> While Guam is not a state, the Government of Guam, and the defined contribution plans maintained by GGRF would be viewed as being comparable to state plans in any comparison as to the scope, complexity

<sup>1</sup> According to a survey conducted by Great-West in January, 2007

and professional nature of the services to be rendered. In each of these 15 states, Great-West has been awarded services as a result of a competitive bidding process similar in nature to that conducted with respect to RFP #GGRF -028-06. Since Great-West was the winning bidder in each of these 15 states it would be hard for GGRF to justify that our pricing is not “fair and reasonable” given the volume of business Great-West has been awarded by entities very similar to GGRF.

## **2. Great-West Pricing is “Fair and Reasonable”**

As further evidence that the pricing offered to GGRF is “fair and reasonable”, we also refer to a decision by the State of Montana to renew Great-West earlier this year, during the same time period that GGRF was negotiating with Great-West following your determination that Great-West was the “best qualified” offeror. The comparisons between the State of Montana and GGRF are quite striking:

- The GGRF defined contribution plans have approximately 9,873 participants. The Montana defined contribution plans have approximately 10,000 distinct participants. Both Montana and GGRF have an existing contract with Great-West that was up for renewal, and subject to an open bidding process in the public market.
- Great-West submitted the most competitive pricing for Montana at \$57 per participant account, and was recently awarded the business. Great-West submitted a best and final price offer to GGRF in the amount of .27% of plan assets, which is mathematically equivalent to \$45.16 participant account.<sup>2</sup> Therefore, on two very similar plans, where Great-West maintains a local office with local staffing, and other plan services very comparable to each other, GGRF received a bid that was *even less* than the winning bid for the State of Montana.

## **3. GGRF Provided No Factual Basis for Their Determination**

The April 27, 2007 letter from Ms. Ulloa includes no factual basis for the determination by GGRF that the Great-West offer is not “fair and reasonable”. In order to make their determination that the best and final offer by Great-West was not “fair and reasonable”, GGRF will have to provide factual evidence for similar plans that is contrary to the above facts presented by Great-West.

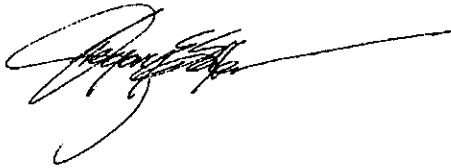
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<sup>2</sup> See my March 21, 2007 letter addressed to you

In accordance with 5GCA, section 5425(g), and GAR section 9101(e), the Territory shall not proceed further with solicitation or award of the contract prior to the final resolution of such protest, and any such further action is void. Great-West believes that the conclusions described in the April 27, 2007 letter are not based on facts and the GGRF is not acting in good faith to negotiate a fair and reasonable price with the best qualified bidder (Great-West).

Great-West requests that GGRF immediately resume negotiations regarding our compensation in good faith or we will be forced to take other steps to enforce our rights under Territory law and this bid process in particular.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory E. Seller', with a long horizontal line extending to the right.

Gregory E. Seller  
Senior Vice President  
Government Markets  
GES/mp

cc: Mr. Mike Perez, Regional Director, Guam/Micronesia  
Mr. Kent Morris, Vice President

  
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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

June 1, 2007

Mr. Gregory E. Seller  
Senior Vice President, Government Markets  
Great-West Retirement Services  
18111 Von Karman Avenue, Suite 560  
Irvine, CA 92612

Re: Protest to RFP #GGRF-028-06

Dear Mr. Seller:

Thank you for your letter dated May 9, 2007. As Director of the Government of Guam Retirement Fund ("GGRF"), the Purchasing Agency issuing RFP# GGRF-028-06 ("the RFP"), and pursuant to my authority under applicable procurement rules<sup>1</sup>, I am responding as follows.

I have reviewed and considered your arguments against our decision to terminate negotiations with your firm, as well as the written record of the GGRF selection panel's reasons prompting its decision to terminate negotiations with your firm. Based on the circumstances and governing procurement rules, I must deny your protest for the reasons below.

A. Background.

Great-West Retirement Services ("GWRS") submitted its proposal at or before the November 6, 2006 date and time announced for receipt of proposals. The proposal submitted by GWRS was determined to meet minimum qualifications, rendering the proposal eligible for further evaluation. After discussions with GWRS in January 2007, the procurement selection panel found that GWRS complied with the mandatory and material requirements of the solicitation and was evaluated based on the proposal's technical merits and price. In March 2007, GWRS was notified that it was determined by the selection panel to be the best qualified offeror to provide the required services. Negotiations took place during March, 2007 to further evaluate GWRS's cost proposal for the services to be performed.

<sup>1</sup> Chapter 5, Article 9 of Title 5 of the Guam Code Annotated and Division 4, Chapter 9 of Title 2 of the Guam Administrative Rules and Regulations (GAR)

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In its letter dated March 6, 2007, GGRF quantified key terms, which it deemed essential to an anticipated contract for Investment Management and Plan Administration Services related to the 401(a) Defined Contribution Plan, 457 Deferred Compensation Plan and Welfare Benefit Plan to be provided to GGRF. Specifically, GGRF requested the following items: (1) an independent custodian; (2) no fee for participant account balances; (3) a maximum charge of .25% of total assets as GWRS's fee; and (4) the remittance to GGRF of all re-allowances and rebates of the 12b-1 fees received from the investment option managers. GWRS's reply letter dated March 12, 2007 was deemed non-responsive to each of these items.

GGRF gave GWRS another opportunity in its letter dated March 18, 2007 to meet its required terms, requesting GWRS' "best and final offer". On March 21, 2007, GWRS responded with a reduced fee pricing but again failed to address the above-described material items. On April 27, 2007, GGRF notified GWRS that its "best and final offer is not fair and reasonable given the estimated value, scope, complexity and professional nature of the services rendered."

On May 10, 2007, you submitted a protest on three grounds:

1. GWRS is the #1 provider of services to U.S. states and territories, serving 15 states, which is more than any other provider in the market, according to a GWRS survey.
2. GWRS's pricing is "fair and reasonable," based on a comparison to the State of Montana's decision to renew GWRS's services, whereby Montana has a similar number of participants as GGRF.
3. GGRF provided no factual basis for its determination in its letter dated April 27, 2007.

**B. Governing Procurement Rules.**

The Guam procurement statute and regulations govern GGRF's conduct of this procurement process. To ensure equal treatment of competitors for award of any contract, the procurement regulations place rigid protocol that procuring agencies must exercise when handling proposals.

In particular, 2 GAR Section 3114.(f)(2) provides for the criteria by which all proposals are to be evaluated. 2 GAR Section 3114.(i)(1) restricts the scope of discussion between GGRF and offerors. 2 GAR Section 3114.(i)(2) prohibits disclosing any information from other offerors until after an award of the proposed contract is made. 2 GAR Section 3114.(l) outlines the negotiation process between GGRF and the best qualified offeror, including "agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity, and nature of such services."

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C. Analysis.

1. We applaud your success as being a provider of defined contribution services in various U.S. states and territories. While this success may substantiate GWRS's qualifications, it must be weighed not in isolation, but against the value (price) given the scope and complexity of services to be provided. Pursuant to 2 GAR Section 3114.(1)(2)(C), GGRF carefully considered the estimated value of the required services as set forth in the RFP, as well as the scope, complexity, and nature of such services, in comparison to the proposals submitted by other qualified offerors.

2. The fairness and reasonability of GWRS's pricing in its proposal to the RFP is to be compared only against the relevant pool of proposals from other qualified offerors. Contracts negotiated and awarded in other jurisdictions are relevant to GWRS's qualifications and experience but cannot be the basis to establish that GWRS's "best and final offer" is fair and reasonable for the scope of work proposed under the RFP. The determination of "fair and reasonable" is relative only to the other proposals submitted under the RFP based on the needs of GGRF in comparison to other proposals from other offerors.

3. GGRF is not authorized to provide GWRS at this juncture with its factual basis for determining that GWRS's proposal was not fair and reasonable because it would mean disclosing competitors' proposals prior to award. While 2 GAR Section 3114.i(2) prohibits disclosing any information from other offerors, please be assured that both the evaluation process and the negotiation process are well documented with factual evidence supporting each decision the GGRF selection panel has made in relation to the RFP. This includes the systematic approach of selecting you as the best offeror as well as the unfortunate determination that Great-West was non-responsive to GGRF's good faith attempt to reach mutually beneficial contract terms.

D. Conclusion.

For the reasons above, your protest is denied. This is a final decision on GWRS's protest. Pursuant to Public Law No. 28-68:IV:65, you may appeal this decision.

I thank you sincerely for your interest in providing services to GGRF, and I hope you will compete again for future requirements.

Sincerely,



Paula M. Blas

cc: Attorney General Alicia Limtiaco