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FILE No. OPA-PA 09-010

10 OFFICE OF PUBLIC ACCOUNTABILITY
11 PROCUREMENT APPEAL

12 IN THE APPEAL OF) APPEAL NO. OPA-PA-09-010
13)
14 ASC TRUST CORPORATION,)
15) APPELLANT ASC TRUST
16) CORPORATION'S COMMENTS
17) ON FUND'S ANALYSIS OF
18) FEE PROPOSALS
19)
20)
21)
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24)

25 Appellant **ASC TRUST CORPORATION** ("ASC") respectfully submits
26 the following comments on the Analysis of Fee Proposals
27 ("Analysis") filed with the Office of Public Accountability on
28 December 23, 2009, pursuant to the request of the Public Auditor
made at the December 21, 2003 hearing in this matter. ASC notes
that the Analysis was not filed with the Fund as part of the
procurement record and, therefore, ASC had no prior opportunity
to review or comment upon this document.

1. ASC's protest and this appeal were based on the scoring
of its original price proposal by one of the members of the
evaluation panel in the initial evaluation stage of the
procurement which is the subject of this appeal. That occurred

COPY

1 in February 2007. The Analysis compares fees based on
2 information with regard to the number of plan participants and
3 total plan assets for the period March to July 2008, presumably
4 after the appeal of Great-West Retirement Services ("GWRS") had
5 been upheld by the OPA and the Fund was ordered to recommence
6 negotiations with GWRS. The Analysis is not relevant to the
7 issues raised by ASC in its appeal.
8

9 2. In analyzing GWRS' pricing option I, the Analysis uses
10 an estimate of \$250,000 for GWRS' local staff and communication
11 services expense. That estimate is not consistent with the
12 evidence adduced at the hearing and significantly understates
13 GWRS' historic expense levels. As shown by The Fund's responses
14 provided during the RFP process (ASC Hearing Exh. 2, p. 1) the
15 annual expenses charged by GWRS for the year ended September 30,
16 2005, totaled \$312,106. GWRS itself asserted that its "field
17 service cost without overhead" totaled \$334,000 for 2006. See
18 GWRS letter dated March 21, 2007 (ASC Hearing Exh. 11).
19

20 The Analysis thus underestimates the costs under GWRS'
21 pricing option I by at least \$50,000 a year.
22

23 3. The Analysis confirms that ASC's price proposal was
24 substantially more favorable to the Fund than either of GWRS'
25 original pricing options. ASC's price proposal was hundreds of
26 thousands of dollars less than GWRS' pricing option I. It was
27 less than but closer to GWRS' pricing option II, but the
28 testimony of the two members of the evaluation panel at the

1 hearing established that, for various reasons, neither of them
2 gave GWRS' option II any consideration at all.

3 4. The Analysis does not show the pricing counterproposal
4 submitted by the Fund in 2007, first to GWRS and then to ASC,
5 after the Fund's evaluation panel determined that neither of
6 GWRS' pricing options was acceptable. The Fund counterproposed
7 that there be no participant fee and that annual fee would be
8 based on .25% of total plan assets. See Termination of
9 Negotiations Memorandum, dated April 30, 1997 (ASC Hearing Exh.
10 12, p. 2); March 6, 2007 letter from Fund to GWRS (ASC Hearing
11 Exh. 9). Using the same information for the months set forth in
12 the Analysis, the total fees that would have been payable under
13 the Fund's counterproposal (which must necessarily be assumed to
14 have been considered acceptable to the Fund at the time) would
15 have been as follows: \$423,655; \$442,995; \$450,418; \$429,590;
16 \$428,730; and \$750,000.

17 18 19 20 21 22 23 24 25 26 27 28
5. ASC stated its willingness to accept the Fund's pricing
counterproposal (.25% of total plan assets) in 2007 after the
Fund had terminated negotiations with GWRS and commenced
negotiations with ASC. See May 14, 2007 letter from ASC to Fund
(Procurement Record, Tab 20, filed under seal). There is, thus,
every reason to believe that, but for the protest and appeal of
GWRS, ASC would have successfully concluded negotiations with the
Fund and been awarded the contract instead of GWRS—in 2007. The
Analysis does not reflect the huge cost to the Fund that would

1 have been avoided if a new contract had been awarded to ASC in
2 2007, as it should have been.¹

3 6. As was established in the GWRS appeal, the Fund
4 terminated negotiations with GWRS because it was said to be
5 "overpriced." The Fund apparently was able to negotiate a lower
6 price with GWRS based on the lower price proposal submitted by
7 ASC in response to the RFP or ASC's stated willingness to accept
8 the Fund's original pricing counterproposal.
9

10 **DATED** this 30th day of December, 2009.

11 **BLAIR STERLING JOHNSON**
12 **MARTINEZ & LEON GUERRERO**
13 **A PROFESSIONAL CORPORATION**

14
15 BY: 

WILLIAM J. BLAIR

Appellant's Duly Authorized Representative

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18 OF FEE PROPOSALS RE ASC TRUST CORPORATION.DOC

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23 ¹ Per the audited financial statements of the Fund posted on its website, for
24 the year ended September 30, 2008, the Fund paid third party administrator fees
25 of \$910,442 for its defined contribution fund. This amount was net of 12b-1
26 fees of approximately \$300,000 that were credited by the third party
27 administrator. The calculations of the fees that would have been payable to
28 ASC under its proposal as set forth in the Analysis, by way of comparison, did
not reflect any credit for 12b-1 fees. Compared on an apples-to-apples basis,
the gross fees payable by the Fund to the third party administrator (GWRS) in
FY 2008 were over \$1.2 million versus \$513,119, the highest annualized fee that
would have been payable to ASC under its price proposal according to the
Analysis, or \$450,418, the highest amount that would have been payable to ASC
under the Funds pricing counterproposal which ASC had been willing to accept.