



South Carolina Child Support Enforcement System  
(CSES). (Record p. 121).

Prior to issuing the RFP, ITMO issued a Request For Information seeking input about the future RFP for the CSES. At that time, Digital Equipment Corporation asked if the State was "interested in details on the implementation of a voice response system", and the State responded that "we do not know how to answer this question at present." (Record p. 816-817). A voice response system is not required by the federal government in the Family Support Act of 1988, but is required in the RFP issued by ITMO.

Appendix E of the RFP titled "CSES Requirements" contains three sections: operational requirements, functional requirements, and technical requirements. Appendix E-31(C)(2) of the RFP, under the functional requirements section, provides:

Voice response technology must be incorporated within the system to expedite the delivery of various services to the APs [absent parents] and CPs [custodial parents].  
(Record p. 408)

The exact specifications for the voice response hardware are not listed in the RFP. The State desired the Offeror to determine what software and hardware would best meet the needs of the State.

The preproposal conference was held on March 23, 1993, and questions were received. On April 5, 1993, ITMO issued Amendment #001 containing the questions posed by the potential Offerors and the State's answers, which are given to clarify the questions about the RFP. Question #47 in Amendment #001 provides:

Appendix E-31 (C)(2) states that "voice response technology must be incorporated within the system: yet no sizing information for the configuration of such a system is specified. What are the requirements for

a voice response system (e.g., number of lines, supported scripts, etc.)

[Response:] The Offeror should design a voice response system which will meet the needs of the State, given the state's caseload and the Offeror's experience in meeting CSES system voice response needs in other locales or the Offeror's other sources of practical knowledge.

(Record p. 718)

Offerors could ask questions about answers to previous questions or procedural matters. Amendment # 002, issued on April 22, 1993, extended the opening date to June 1, 1993, and ended the question and answer time. Andersen, Unisys, and Network Solution, Inc. (NSI) each submitted proposals which were opened on June 1, 1993.

Andersen's proposal, concerning the voice response requirement, states:

[t]he RFP asks for VRU technology to be incorporated. Amendment One, Question 47, page 27 asks that the vendor "design" the VRU system, but does not specifically require the Contractor to procure or install the system. Therefore, our proposal only contains the work effort and the cost to design the VRU facility. VRU hardware, development and implementation are, at your request, beyond the scope of this proposal. (Record p. 812).

ITMO issued a letter to Andersen on June 22, 1993, informing Andersen that its proposal was nonresponsive for its failure to include hardware delivery and installation for the voice response requirement in the RFP.

## **CONCLUSIONS OF LAW**

### **I. Responsiveness of Andersen's proposal to the voice response requirement in the RFP**

Andersen argues that the RFP and Amendments are ambiguous as to the voice response requirements. Andersen interprets the RFP and Amendment #001 to require voice response system software design only, which does not

include hardware or implementation. Andersen further argues that it's interpretation of the voice response requirement is reasonable based on the structure of the RFP, the language of Amendment #001, and its experience in preparing CSES proposals in other states. The Panel has held that "when a specification is of uncertain meaning and can reasonably be interpreted in more than one way, it is ambiguous." In re: Protest of Pitney Bowes, Inc., Case No. 1988-14, Decisions of the SC Procurement Review Panel 1982-1988, at 553.

The Panel finds that the language of the RFP clearly indicates the State's requirement for an implemented voice response system. It is necessary in this case to read the RFP and Amendments as a whole document. The RFP clearly contemplates the use of voice response hardware, where it states: "[o]fferors must list and describe, by site, all the proposed data processing equipment...that will be procured and installed at each site...." Record p. 273. The RFP continues by listing "voice response equipment" as part of the data processing equipment to be included. The RFP also requires voice response "technology" to be "incorporated within the system to expedite the delivery of various inquiry services". Record p. 408. Mr. Spicer, executive manager with the State's Information Technology Management Office, testified that you cannot incorporate voice response without implementation. Ms. Ellis, project manager of the South Carolina CSES, testified that services could not be delivered without implementation of the voice response system. Mr. Berton, a partner at Andersen who worked on the RFP proposal, agreed that the voice response system design would have to be implemented to provide expedited inquiry services. The lack of the word implement does not change the clear intent of the specification. The use of the word "incorporated" and the need for the delivery of services indicate a requirement for the installation of the voice response system.

The Panel finds that Amendment #001 does not change the clear intent of the RFP to procure an installed voice response system composed of software and hardware. Mr. Sims, who worked on the Unisys proposal and has experience in information technology in the procurement of CSES's, characterized the question as requesting more specific sizing information for the configuration of both the software and hardware of the voice response system. The State's answer to question #47 requires the offeror to "design a voice response system which will meet the needs of the State" based on the information provided in the RFP and the offeror's experience. The answer to question #47 in Amendment #001 must be read in conjunction with the question.

The Panel finds that the answer to question #47 in Amendment #001 requires the offeror to craft a solution for the State, based on the caseload sizing information in the RFP and the offeror's experience. Ms. Ellis testified that the State relied on the offeror to design a voice response solution for incorporation within the system, because the State does not already have a voice response system for child support enforcement and therefore detailed information for the sizing of the voice response system does not exist. Mr. Sims testified that the caseload information in the RFP, combined with experience in CSES's, is sufficient to propose a functioning voice response solution for incorporation in the system. Ms. Keller, a consultant to Andersen who has experience in voice response technology but did not work on this RFP proposal, testified that based on the caseload information and its experience in other states Andersen could "guesstimate" sizing information needed to design and implement a voice response system.

The Panel finds that Andersen's interpretation of the RFP is not reasonable and does not prove an ambiguity in the RFP's voice response system requirement. As explained previously, the RFP clearly requires the

hardware and implementation of the voice response system, so Andersen's reliance on the structure of the RFP is misplaced. Also as discussed previously, #47 in Amendment #001 of the RFP does not change the RFP requirements, but clarifies what sizing information to use in configuring the voice response system for incorporation into the SCES. As discussed below, Andersen mistakenly places a great deal of weight on the word "design" as used in the context of the question and answer in Amendment #001 as well as in the context of the RFP.

In Andersen's proposal, immediately preceding its explanation that it provided only "the work effort and the cost to design" the voice response system, Andersen states that "several assumptions have been made". If Andersen had to make assumptions about the requirements of the RFP in its proposal, then it did not properly avail itself of the question and answer time provided for in the RFP. Mr. Berton testified that Andersen had some questions about the RFP's requirement for the voice response system and whether it included hardware and implementation, but Amendment #001's use of the word "design" clarified for Andersen that hardware and implementation were not required. If Andersen wasn't sure if hardware and implementation were required, it should have asked that specific question at the preproposal conference so it would not have to make assumptions in its proposal. Mr. Berton testified that the use of the word "design" in Amendment #001 clarified any questions Andersen had about the voice response system. Yet, Andersen still indicated in its proposal that it made an assumption. An "assumption" does not indicate that Andersen was sure after Amendment #001 that "design" was all that was required for the voice response system. If not sure of the voice response requirements after Amendment #001, Andersen should have requested clarification. The Panel finds that Andersen did not take the proper steps necessary to clarify questions it had about the RFP and Amendment #001, and therefore cannot now claim an ambiguity.

Based on the preceding findings, the Panel holds that Andersen's failure to provide the software and hardware necessary to incorporate the voice response system into the CSES makes its proposal nonresponsive to the voice response requirements of the RFP and Amendments.

**II. Materiality of Andersen's failure to provide the required hardware and software for the voice response system**

Andersen argues that its failure to provide the hardware, or voice response unit (VRU) is a minor irregularity which should be waived by the State. Regulation 19-445.2080 allows the waiver of an immaterial variation from the requirements of the RFP. However, an essential element of the RFP is not immaterial and may not be waived. The immaterial variation must have little or no effect on "price, quality, quantity or delivery of the supplies or performance of the services being procured".

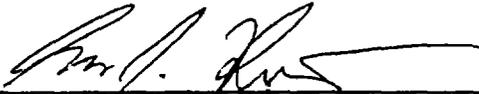
The Panel finds that the requirement for hardware and software for an implemented voice response system is an essential requirement of the RFP. Although the federal government does not mandate the use of a voice response system in the CSES, the State required a voice response system to more efficiently provide services to the public. Ms. Ellis testified to the cost savings in having an implemented voice response system, which would allow current personnel resources to be directed to other areas.

Andersen argues that the cost of the VRU or hardware component is negligible compared to the entire cost of the CSES. However, Andersen proposed only the design of a voice response system. It is unclear from the record or testimony what the additional cost of hardware, software and implementation would be. The VRU, or hardware, was estimated to cost from \$50,000.00 to \$200,000.00. The cost of software and implementation would presumably be an additional cost. Although a small percentage of the total cost,

the Panel does not believe several hundreds of thousands of dollars is insignificant. Furthermore, the delivery of services to the custodial and absent parents is one of the purposes of the CSES, and certainly considered essential by HHS in procuring the CSES. The effect of not having an implemented voice response system on the delivery of the services required is not trivial. A parents ability to call in and receive information, any time, by automation rather than by human effort is an essential aspect of the CSES.

For the reasons stated above, the Panel affirms the August 3, 1993 decision of the CPO and dismisses the protest of Andersen Consulting.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL

  
By: Gus J. Roberts, Chairman

Columbia, SC

August 30, 1993