

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND	)	CASE NO. 2000-8
	)	
	)	
In re:	)	<b>ORDER</b>
Protest of General Revenue Corporation;	)	
Appeal by Conserve Receivable Manage-	)	
ment & Continental Services Group, Inc.,	)	
Todd, Bremer, & Lawson, Inc., & Williams	)	
& Fudge, Inc.	)	

This case came before the South Carolina Procurement Review Panel (Panel) for a hearing on May 8, 2000 on appeal by Conserve Receivable Management & Continental Services Group, Inc. (Conserve), Todd, Bremer & Lawson, Inc. (Todd), and Williams & Fudge, Inc. (Williams) of a decision by the Chief Procurement Officer (CPO) finding General Revenue Corporation's (GRC) omission of the management assertions letter from its proposal a minor informality, granting GRC's protest to be reinstated as responsive, directing the Materials Management Office (MMO) to reinstate three nonprotesting offerors, and directing MMO to discard the entire evaluation and ordering a new evaluation of all responsive proposals. Present at the hearing were Conserve, represented by John E. Schmidt, III, Esquire and Melissa J. Copeland, Esquire; Todd, represented by Herbert Hamilton, Esquire; Williams, represented by Daniel T. Brailsford, Esquire; GRC, represented by M. Elizabeth Crum, Esquire and the office of General Services of the Budget and Control Board (General Services), represented by Keith McCook, Esquire.<sup>1</sup>

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<sup>1</sup> Robert Y. Knowlton, Esquire, counsel for Windham Professionals, Inc., was present at the hearing before the Panel. Mr. Knowlton made a motion before the Panel to be heard on the issues in the above appeal. The motion was denied because the Panel lacked jurisdiction to hear from a party who neither protested nor appealed the actions of General Services below. Mr. Knowlton was allowed to remain in the hearing as an observer.

## FINDINGS OF FACT

On April 2, 1999, MMO issued a request for proposals (RFP) to procure debt collection services for various State institutions of higher learning. On April 4, 1999 all offers were rejected and the solicitation was canceled. On November 10, 1999 MMO issued RFP No. S2700 for the above mentioned services. On November 30, 1999 MMO issued Amendment No. 1 and Amendment No. 2 was issued on December 14, 1999. On February 8, 2000 MMO issued the notice of intent to award four contracts to Conserve Receivable Management (Conserve), NCO Financial Systems (NCO), Todd, Bremer & Lawson (Todd), and Williams & Fudge (Williams). On February 22, 2000 the CPO received GRC's protest.

The relevant portion of the RFP states "Proposals that fail to include a complete copy of the most current annual compliance attestation report will be ruled non-responsive and removed from further consideration. For the purposes of this RFP, a complete copy of the compliance attestation audit report consists of:

1. Auditor's Letter Report of Independent Auditor,
2. Management Assertions Letter
3. Servicer Information Sheets (includes Division of Responsibility for Compliance Requirements)
4. Schedule of any Findings and Questioned Costs and
5. Independent Auditor's Comments on Prior Year Findings."

GRC failed to submit a management assertions letter and was found nonresponsive. GRC protested on the grounds that the auditor's letter clearly contained GRC's management assertions and that their audit report contained the necessary, detailed information for the State to determine that GRC is in compliance with all of the requirement of the Audit Guide and is in compliance with all Federal laws and regulations.

The CPO granted GRC's protest finding that the failure submit a management assertions letter was a minor informality, directed MMO to cancel the notice of intent to award and to reinstate GRC and three other nonprotesting offerors as responsive bidders. The CPO further ordered MMO to discard the entire evaluation and to reconvene the evaluation committee to evaluate all of the responsive proposals.

Conserve, Todd, and Williams appeal the CPO's decision on the following grounds: 1) GRC's failure to submit a management assertions letter was not a minor informality under S.C. Code Of Laws Annotated § 11-35-1520 (13). 2) The CPO did not have the authority to grant the relief he provided by directing MMO to allow GRC to cure the deficiency or to waive the deficiency in the RFP and that the CPO further did not have the authority to grant relief not sought by the protest letter. 3) The CPO improperly granted relief to parties that did not protest.

## **CONCLUSIONS OF LAW**

### **ISSUE 1 - MINOR INFORMALITY**

GRC's proposal was initially rejected as non-responsive for their failure to submit a management assertions letter. [Record p. 39] The CPO found the above omission to be a minor informality and decided GRC was responsive. S. C. Code Of Laws Annotated § 11-35-1520 (13) states in part the following:

A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial effect on total bid price, quality, quantity, or delivery of the supplies or performance of the

contract, and the correction or waiver of which would not be prejudicial to bidders.

The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to: (i) failure of a bidder furnish financial statements ...

David Stocker, corporate attorney for GRC, testified at the hearing that the Report of Independent Certified Public Accountants (Auditors Report which was submitted in GRC's proposal) included what would be in a management assertions letter. [Record pp. 109-110] When asked whether the State could look through the proposal submitted by GRC and find the information contained in the management assertions letter, Carrie Hackett, supervisor in the College of Charleston's accounts receivable department, testified that the information could be found. It was further determined through the testimony of Mr. Stocker that the management assertions letter is needed by the auditors only to inform them what the company asserts they have complied with so that the auditors may sufficiently check compliance.

The Panel has decided numerous cases on the issue of minor informalities. See *Protest of American Sterilizer Co. Case No. 1983-2* (failure to include a mandatory, enforceable affidavit of non-collusion is a minor informality) and *Protest of Gregory Electric Company Case No. 19-89-17(II)* (failure to include documents regarding vendor's qualifications is a minor informality, despite being mandatory).

See also *Protest of National Computer Systems, Inc. Case No. 1989-13* (a requirement is not essential simply because the RFP states that it is mandatory).

The Panel finds that GRC's failure to submit a management assertions letter is a minor informality. Pursuant to 11-35-1520 (13) the Panel must also determine whether the correction or waiver of a minor informality would be prejudicial to bidders. Chris Rollins, Conserve's vice president, testified that as a bidder they would absolutely be prejudiced because they could lose their standing as the number two company if the proposals were re-evaluated.

The Panel has recently addressed this issue in *Protest of Coastal Rapid Public Transit Authority and Anderson-Oconee Council on Aging Case No. 2000-4* (although failure to submit a mandatory Appendix of the RFP was found to be a minor informality no waiver or cure was allowed because of prejudice to another bidder). In the present case the RFP states "It is the intent of the State to award a contract to the top four (4) highest scored Offerors..." A re-evaluation in the present case would prejudice bidders in that the status of the top four vendors could possibly change resulting in the loss of a contract to a vendor in complete compliance with the RFP. The Panel finds that GRC's failure to submit the management assertions letter cannot be waived or cured without prejudice to Conserve, NCO, Todd, and Williams.<sup>2</sup>

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<sup>2</sup> Because the decision on Issue 1 is determinative of the final disposition of this case, the Panel finds that Issue 2, the CPO's Authority In Deciding A Protest, and Issue 3, Relief To Non-protesting Parties, need not be addressed.

**CONCLUSION**

For the foregoing reasons, the State is hereby ordered to reinstate the award of Solicitation 00-S2700 to Conserve, NCO, Todd, and Williams. The decision of the CPO is upheld in part and reversed in part in as much as it is consistent with the Panel's findings.

**IT IS SO ORDERED.**

**SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL**

BY: \_\_\_\_\_

*Gus J. Roberts*  
Gus J. Roberts, Chairman

Columbia, SC

*June 6, 2000*