

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

BEFORE THE SOUTH CAROLINA  
PROCUREMENT REVIEW PANEL  
CASE NO. 1993-22

In re: )

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)  
In re: Protest of Network Solutions, Inc.; )  
Appeals by Network Solutions, Inc. and )  
Unisys Corp. (Consolidated) )

**ORDER**

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**FINDINGS OF FACT**

On February 25, 1993, the Information Technology Management Office (ITMO) issued an RFP for the Health and Human Service Finance Commission (HHSFC) for a Child Support Enforcement System. The RFP states that its purpose is:

to secure the services of a contractor to comply with the standards of the Family Support Act of 1988 which require the State to have a Level II certified operational automated child support data processing and information retrieval system in effect by October 1, 1995. The automated system shall be called the South Carolina Child Support Enforcement System (CSES). (Record p. 54)

Prior to issuing the RFP, ITMO issued a Request For Information seeking further knowledge about the future RFP for the Child Support Enforcement System. On March 23, 1993, the preproposal conference was conducted and questions were received. On April 5, 1993, ITMO issued Amendment #001 responding to the questions submitted at the preproposal conference. Amendment # 002, issued on April 22, 1993, extended the date for opening the proposals to June 1, 1993. Andersen Consulting (Andersen), Unisys Corporation (Unisys), and Network Solution, Inc. (NSI) each submitted proposals on June 1, 1993. On August 9, 1993, the State issued an Intent to Award to Unisys, with an effective date of August 25, 1993.

ITMO issued a letter to Andersen on June 22, 1993, informing Andersen that its proposal was determined to be nonresponsive. Andersen protested the decision to the CPO on June 25, 1993, and appealed the CPO's decision to the Panel in Case No. 1993-18. By Order dated August 30, 1993, the Panel held that Andersen was nonresponsive. Andersen filed an administrative appeal of the Panel's decision on September 29, 1993, which is pending at the time of this Order.

NSI filed a protest of the Intent to Award to Unisys on August 25, 1993, on the grounds that Unisys' proposal is nonresponsive, Unisys is not a responsible offeror, and Unisys did not act in good faith as required by the Code. NSI filed a supplemental protest letter on August 30, 1993, with additional reasons to support its grounds for protest. NSI withdrew its protest ground concerning Unisys' good faith at the hearing. Andersen also protested the Intent to Award to Unisys, but did not appeal the CPO decision to the Panel.

The Acting CPO, Michael Spicer, conducted hearings on the protests of NSI and Andersen on September 8, 1993. The CPO issued his decision on September 17, 1993, finding Unisys nonresponsive and canceling the solicitation. The CPO also stated his opinion that precedent required the procurement to be resolicited, but that resolicitation may not be in the best interests of the State, a decision he felt was best left to the appropriate State authority. (Record p. 26). The procurement of a CSES is in the process of being resolicited.

Unisys filed a protest with the Panel on the grounds that Unisys' proposal is responsive to the RFP in the three areas the CPO found it nonresponsive, and therefore award to Unisys is proper.

## CONCLUSIONS OF LAW

### I. PREHEARING MOTION

At the beginning of the hearing, the State made a motion to find the protests moot. The Panel held the issue of mootness in abeyance, and proceeded to hear the merits of Unisys' appeal issues. Because of Federal mandates, and the possibility of losing millions of matching federal funds if this procurement is not implemented within a specific time frame, the Panel proceeded to hear the merits of this case, to avoid any time delays in a possible appeal and remand. The following decision on the merits makes the State's motion moot.

### II. NONRESPONSIVENESS OF UNISYS' PROPOSAL

A. Unisys alleges it did not fail to meet a mandatory requirement of the RFP by requiring operator intervention at the local site. (Record p. 2 & 21).

The RFP states that "backup and restoration of local data must not require operator intervention at the local site. (Record p. 59). In response, Unisys' proposal, at page 1128, states "the only operator intervention necessary would be to load the tape." Unisys now argues that loading the tape is not operator intervention. However, the language of Unisys' proposal admits operator intervention at the local site. Further, several witnesses testified about other backup procedures available which do not require changing tapes or other operator intervention. The Panel finds that Unisys' proposal clearly requires operator intervention at the local site and is therefore nonresponsive to the RFP requirement.

Unisys further argues that the requirement is waivable as a minor irregularity under Regulation 19-445.2080, which states:

A minor informality or irregularity is one which is merely a matter of form or is some immaterial

variation from exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to bidders.

The testimony presented by all parties indicates that the backup and retrieval of data is not minor or inconsequential. The lack of operator intervention in the backup and retrieval of data is important to avoid human error which could cause the loss of data. Mr. Donahue, HHSFC Chief of the Bureau of Resource Information Services, testified that human intervention is the weak link in the backup process which enhances the possibility of errors or lost data. Human intervention is not a minor or immaterial variation from the requirement of the RFP for no operator intervention. The Panel finds that the lack of operator intervention is essential and may not be waived.

B. Unisys alleges that its proposal does not fail to meet the mandatory response time requirements. (Record p. 2 & 8).

The RFP requires the offeror to ensure that response times meet the minimum standards provided in the RFP. The RFP Glossary defines "Response Time" as:

The elapsed time between the user-keyed on-line entry on a CRT to begin a transaction and completion of that transaction by the automated system (updated screen returned). (Record p. 55)

The minimum standard for remote inquiries, such as Sheriff's Offices in some counties, "must be within seven (7) seconds for ninety-eight percent (98%) of all these transactions." (Record p. 57). Remote Inquiries is defined as:

Inquiries requiring access which is not indigenous to the inquiring county. This would not include data at the State central processor that is not normally

required for county operation, inquiries requiring information residing in systems external to CSES, or information residing in other counties. (Record p.56)

Mr. Spicer testified that use of a dial modem system as proposed by Unisys adds considerable time and establishes a minimum response time beyond the seven (7) seconds required by the RFP. The testimony of Mr. Morgan detailed the enhanced capabilities of the specific modem proposed by Unisys, and its ability to meet the time response requirements. The Panel finds Unisys' solution to the time response requirement is responsive based on its proposed use of a modem with enhanced capabilities.

C. Unisys alleges it did not fail to meet the requirement of the RFP for replacement of hardware. (Record p. 3 & 23).

The RFP requires the following:

The State reserves the right to demand and receive Contractor replacement of any system or system component which, after repeated or multiple service calls, fails to effectively perform or function in an acceptable manner. The Contractor should be prepared to replace said defective system or system component within 24 hours of receiving the request from the State. (Record p. 60)

Unisys' proposal response acknowledges the stated reservation of rights and then states:

In the event that a machine provided under this contract is inoperative due to Unisys equipment failure, and the total number of hours down time exceeds 15 percent of the total operational-hours use time for three consecutive months, the State reserves the right to require Unisys to replace the machine. (Record p. 23)

Unisys argues that this language does not limit the replacement of hardware, but refers to Unisys' additional intention to track and replace defective

equipment without the State's intervention. The language of the response does not indicate the meaning Unisys argues, but rather indicates a limitation on when equipment will be replaced. The language of Unisys' proposal does not indicate that an extra or additional replacement plan is being proposed. The plain meaning of the words in the context of the paragraph indicate that a limitation is being placed on the State's reserved right to unconditional replacement of defective equipment. The Panel finds that Unisys is nonresponsive to the RFP requirement for unconditional replacement of defective hardware at the State's request.

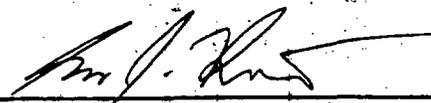
### III. NSI APPEAL ISSUES

NSI withdrew its appeal ground that the contract should not have been resolicited but awarded to NSI as the only responsive offeror. NSI further appeals on the grounds that the CPO erred in denying certain of NSI's protest issues and finding certain of NSI's protest grounds too vague to state a grievance. Because of the above conclusions of law, NSI's protest grounds are moot.

For the foregoing reasons, the Panel upholds the decision of the CPO and dismisses Unisys' and NSI's appeals as meritless.

IT IS SO ORDERED.

**SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL**

  
By: Gus J. Roberts, Chairman

Columbia, SC  
November 10, 1993.