

In November, 1994, a Request For Proposals (RFP) for a Claims Management System for the State Accident Fund (SAF) was issued. PW submitted a proposal on the project. The RFP was subsequently canceled in May, 1995, because all of the offers exceeded the available funds for the project. [Record p. 59]. Also in 1994, the U. S. Post Office changed PW's address from Marietta, Georgia, to Atlanta, Georgia, with the street address remaining the same. [Record p. 33]. Mail with the old address was forwarded to PW until August of 1995. PW sent change of address information to several businesses, including the "State Workers Compensation Fund" at the address for SAF. [Record p. 34-37]. Neither the Office of General Services nor ITMO are on the list of entities sent change of address information. As a part of the procurement process, a Request For Qualifications (RFQ) was issued in September, 1994, prior to the initial RFP. The RFQ required potential bidders to provide a contact person and address. PW provided its new Atlanta address and zip code. After discussions concerning the budget, changes were made to the RFP and a new solicitation was issued.

On August 22, 1995, Information Technology Management Office (ITMO) issued a revised RFP for a Claims Management System for the State Accident Fund. [Record p. 14-15]. On September 5, 1995, questions were accepted, which were subsequently answered in Amendment No. 1, and a pre-proposal site visit conducted. Five amendments to the RFP were issued. [Record p. 13]. The original opening date for the proposals was October 2, 1995. The opening date was changed to November 6, 1995, at 2:30 p.m., by Amendment No. 4 to the RFP, issued October 17, 1995. [Record p. 22-26]. Amendment No. 5 to the RFP, which required the cost of Phase One to include all costs for the first two years and remain within the stated 5 million limit, has a run date of October 27, 1995. [Record p. 20-21].

PW admits it submitted its proposal "a couple of minutes late". [Record p. 4]. PW does not dispute that the State properly rejected the late proposal as required by law. PW contends that it was late due to the State's failure to send Amendment No. 5 to the proper address, thereby not allowing PW sufficient time to complete the changes required by the Amendment and file a timely bid.

Gordon Ellison, PW's proposal manager for this bid, testified that he was involved with the bid when the initial RFP was issued in 1994. Mr. Ellison received the letter from ITMO, addressed to the correct Atlanta address, concerning the cancellation of the initial RFP due to lack of funds. [Record p. 59]. The second RFP was express mailed to Mr. Ellison at his request and at PW's expense. PW also requested special delivery of Amendment No. 1 to the RFP, at its Maryland office. Since PW is a partnership, PW had frequent contact with ITMO while discussing liability concerns. At one point Mr. Ellison faxed to ITMO some information from his home office using a fax cover sheet with PW's old Marietta address. [Record p. 41].

Mr. Ellison testifies that he spoke with David Foshee, an employee of ITMO and the buyer on this RFP, on Thursday, November 2, 1995, and was told to include the first two years of maintenance in Phase One, which was the first twelve months. If PW simply moves maintenance from the second year into the first year, Phase One, it causes the cost to go over the budget of five million. Mr. Ellison testified the change was much more complicated than it appeared to be because of the cost. PW changed the terms of maintenance it proposed, and requested new quotes from its service providers. Other changes to the proposal were involved. [Record p. 27]. On Monday, November 6, 1995, the day of bid opening, Mr. Ellison called ITMO and requested an extension of time, which ITMO denied. Some of PW's maintenance service providers did not have quotes to PW by Monday morning, so Mr. Ellison flew to Columbia, and went

directly to the PW office to contact the service providers and work on the cost spread sheets for the proposal. Mr. Ellison finished working on the cost spread sheets at 2:16 p.m., and walked the bid to ITMO's office. [Record p. 29]. Mr. Ellison testified that he was directed to the wrong place, which caused him to be a few minutes late in filing PW's bid. Mr. Ellison also acknowledges that PW's proposal was incomplete at the time he attempted to file it. PW's proposal was contained in a box labeled with PW's old Marietta address. [Record p. 42]. Mr. Ellison explained that the box was simply the easiest box he could get to carry the more than 300 pages of the proposal. Mr. Ellison testified that the cover page for both RFP proposals had the correct Atlanta address.

CONCLUSIONS OF LAW

PW raises the issue that the State's use of an old address caused it to file a late bid. It is undisputed that PW filed its bid late. PW argues that the fact it did not receive written Amendment No. 5 as it should have, caused it to have insufficient time to file its bid by the opening time. The State counters that it is not the State's responsibility to assure receipt of documents, while it is the vendor's responsibility to provide changes in addresses.

The Panel has previously discussed the issue of the state's duty concerning the change of address of a vendor in Panel Case No. 1993-9, Protest of Eastern Data; Appeal by Eastern Data. The State relies on the Eastern Data case, in which the Panel held that the State does not have a duty to assure that a solicitation document is received by the vendor, because this would put too much burden on the State. PW argues that PW's case is different because in Eastern Data, the correct address was used and no explanation was given for why the solicitation was not received, whereas in PW's case, PW's correct address was not used. Eastern Data is distinguishable on the facts of

the case. The Eastern Data case contained testimony that the documents in question were mailed to both the correct and incorrect address. No testimony was presented in this case concerning to what address Amendment No. 5, the document at issue, was mailed. PW's case touches on the issue of the vendor's duty to provide the correct address when an address is changed. Clearly the vendor has the duty to inform the State of a change of address, and it is questionable whether PW's address change information, which was sent to the State Accident Fund, qualifies for informing ITMO, which is clearly the contact for the solicitation. However, the correct address was provided to ITMO in PW's response to the Request For Qualifications. PW provided ITMO with the Atlanta address as PW's contact address.¹ Although some confusion may have arisen with the different addresses being used by PW, or the different documents containing PW's new and old address, all correspondence to PW should have been sent to the Atlanta address, unless PW indicated a change in that address.

The Panel finds that PW contributed to its failure to receive Amendment No. 5 of the RFP prior to the opening of the bids. In August, 1995, PW requested ITMO send the new RFP by express mail at PW's expense, and ITMO complied. ITMO also sent Amendment No. 1 of the RFP by fax to PW's Maryland office, upon request. PW also acknowledges that it received part of Amendment No. 4 to the RFP. During discussions concerning liability issues, all pages of Amendment No. 4, except the first page, were transmitted to PW. Mr. Ellison testified that he reviewed the information, which was part of discussions concerning liability, but was unaware that the information was part of an amendment. However, Amendment No. 4, on the top left corner of each page, contains a notation of the bid number and an abbreviation for amendment 4,

¹ The Panel commends ITMO for requesting a contact address, which clearly indicates the address that all documents should be sent unless changed by the prospective bidder or offeror.

"B600160 amend 004". [Record p. 23-26]. Also, the first line on the pages received by PW states "[p]lease note that the opening date is now 11/06/95 at 2:30 PM". Further, the second line states "[t]he following sections of the RFP are amended as follows...." [Record p. 23]. Even if PW did not recognize the abbreviation for amendment four, it should have realized the document was an amendment. Changes to a RFP, especially a change in the opening date and time, can only be accomplished through written amendment to the RFP. Not only does the RFP state that an Amendment is necessary, but S.C. Regulation 19-445.2050(B), requires the change in an opening date be accomplished through written amendment.

Also, Mr. Ellison testified that Mr. Foshee called him on Thursday, November 2, 1995, and told him that the maintenance costs must be in Phase One. Such a change is required to be a written amendment to the RFP. Mr. Ellison did not ask to see this change in the form of a written amendment to the RFP. If PW did not receive important information that it knew about in the form of a written amendment to the RFP, it should have known to request the information in the form of a written amendment. Mr. Ellison knew about the changes contained in Amendment No. 4 of the RFP and some of the changes contained in Amendment No. 5 of the RFP, but did not request these changes in writing until the day after the bid opening. Mr. Ellison acknowledges that he did not follow up on the fact that he did not receive the changes in Amendment No. 4 as an official amendment to the RFP, and that it was his job to make sure he had all relevant documents to the RFP. The Panel finds that the PW has not proven that the State caused PW to fail to receive Amendment No. 5 of the RFP and that caused PW to submit a nonresponsive, untimely proposal.

The bottom line in this case is that PW filed a late bid. PW attempts to place the blame for its tardiness on the State, but the fact remains that PW knew

the date and time of the bid opening, and could have filed a timely bid. Mr. Ellison did not suggest that more time would be needed to make the verbally communicated changes, until the day of bid opening. As Mr. Ellison testified, the changes looked to be a simple matter of moving the maintenance to Phase One. Even after almost two days, on Friday, November 3, 1995, Mr. Ellison did not contact Mr. Foshee to indicate the process was more complicated than it appeared and PW would need to request an extension of time based on the changes. PW did not request an extension of time to make these changes until the day of the proposal opening, two working days after verbally receiving information on the changes. Mr. Ellison admits he was given wrong directions and showed up late to the bid opening. The Panel finds that the State did not cause PW to file its proposal late, and PW has failed to carry its burden of proof on this issue.

The Panel further finds, based on the above, that the CPO did not abuse his discretion in declining to cancel and order resolicitation of this RFP under S.C. Code Ann. section 11-35-1710. Neither has PW proven that this RFP should be canceled and resolicited pursuant to the purposes and policies of the Consolidated Procurement Code stated in section 11-35-20.

For the foregoing reasons, the Panel grants the motions of IBM and General Services to dismiss the protest of Price Waterhouse for failure to prove its issues of protest.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: _____

Gus J. Roberts, Chairman

Columbia, SC
June 28, 1996.