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Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850
COMMISSION CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: September 8, 2011

TO: Office of Commission Clerk (Cole) *RR*

FROM: Division of Regulatory Analysis (Kennedy)
Office of the General Counsel (Miller) *CM/JMC* *MW*

RE: Docket No. 110013-TP – Request for submission of proposals for relay service, beginning in June 2012, for the deaf, hard of hearing, deaf/blind, or speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

AGENDA: 09/20/11 – Regular Agenda – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: Current contract with Sprint expires on May 31, 2012

SPECIAL INSTRUCTIONS: Please place at the beginning of the agenda or at a time certain to reduce interpreter costs.

FILE NAME AND LOCATION: S:\PSC\RAD\WP\110013.RCM.DOC

Case Background

The Telecommunications Access System Act of 1991 (TASA), Chapter 427, Part II, Florida Statutes, charges the Commission with the responsibility of selecting a relay provider and overseeing the administration of the system.

The Commission currently contracts with Sprint for the provision of relay service. The contract with Sprint is scheduled to expire on May 31, 2012. Accordingly, a Notice of Bid/Request for Proposal (Notice) was published in the Florida Administrative Weekly on

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FPSC-COMMISSION CLERK

February 4, 2011. Six company representatives contacted staff, seeking to have their companies' names on the list to receive a copy of the request for proposal.

At the April 26, 2011 Agenda Conference, the Commission approved, with modifications, the Request for Proposals to Provide a Telecommunications Relay Service System in Florida (RFP) and approved its issuance. The item was on the Regular Agenda and interested persons were allowed to participate. There was no participation other than Commissioners and staff.

On April 29, 2011, Commission staff issued the RFP, via e-mail and first class post, to the six companies that had previously requested it. On the same day, as required by Section 120.57(3), Florida Statutes, staff posted a link to the RFP on the home page of the Commission's website under Hot Topics, along with a link to the following statement:

Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

Any person, who was adversely affected by the RFP, could file a notice of protest in writing within 72 hours (Saturday/Sunday not included) after the posting of the notice and the RFP on the Commission's website. No protests were received.

On February 6, 2011, a Notice of Meeting/Workshop Hearing scheduled for May 20, 2011, was published in the Florida Administrative Weekly. The purpose of the meeting was to discuss bidders' questions relating to the RFP. There were several questions asked by potential bidders related to minor clarifications and requests for more data from the existing contract. The bidders also raised questions about: the RFP language in A-24 allowing the Commission to terminate the contract upon 24 hours notice for a breach of contract; the amount of liquidated damages in B-59-a; the Evaluation Method wherein the per minute price for captioned telephone would be weighted five percent and per minute price for basic relay would be weighted 35 percent; language in C-6 about customer references for the subcontractor; and possible amendments to the Terms and Conditions.

The RFP's Section C, Technical Bid Proposal Format, subparagraph 2., requires a bidder, in the transmittal letter, to state that it will comply with all requirements of the RFP or identify the sections of the RFP with which it cannot comply and expand on that in its proposal. As discussed later in this recommendation, two bidders identified requirements within the RFP with which they could not comply or with which they offered alternative terms or conditions.

The deadline for filing proposals was set at July 13, 2011. AT&T Corp. (AT&T), Hamilton Telephone Company d/b/a Hamilton Telecommunications (Hamilton), and Sprint Communications Company, L.P. (Sprint) submitted proposals in response to the Commission's RFP.

A proposal review committee (PRC) was established which consisted of six members, one from the TASA Advisory Committee and five members from staff. Two of the staff members served as accountants reviewing the financial information of the companies. Four staff members, which included one of the accountants, plus a TASA member, reviewed and scored the technical aspects of the proposals. A sixth staff member was selected by the Director of Regulatory Analysis to serve as the PRC Chairman. To remain independent, the PRC Chairman did not participate in the scoring of the financial or technical proposals. The role of the PRC Chairman was to coordinate and oversee the procurement process, to gather materials from references specified by the bidders, to interface with the bidders regarding clarifications and questions about their proposals, and to tabulate scores to identify the winning bidder.

The PRC Chairman contacted the bidders' references identified in the proposals. After gathering inputs from the references, the information was supplied to the PRC personnel conducting the technical evaluations. Evaluation of the proposals began with a pass/fail evaluation of 29 quasi-technical (non-financial) and two financial aspects of the proposals. This was followed by evaluation, with the assignment of numerical scores, of 33 technical aspects of the proposals. A weighting of 60 percent was applied to the technical aspect of the proposals and a weight of 40 percent was applied to the price aspect of the proposals. The price proposals were submitted in sealed envelopes separate from the companies' technical proposals and were opened on August 15, 2011, after the technical scoring was completed.

This recommendation addresses which provider the Commission should select as the relay services provider. The Commission has jurisdiction pursuant to Section 427.704, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission select Hamilton as the relay service provider and direct the Commission's Executive Director or designee to: (1) issue the attached letter of intent, Attachment A; (2) provide notice on the agency's website of the Commission's decision to award a three-year contract to Hamilton to be the provider of the statewide telecommunications relay service in Florida; and (3) finalize and sign a contract with Hamilton to provide the Florida Relay Service?

Recommendation: Yes, based upon the RFP evaluation process, the Commission should select Hamilton as the relay service provider and direct the Commission's Executive Director or designee to: (1) issue the attached letter of intent, Attachment A; (2) provide notice on the agency's website of the Commission's decision to award a three-year contract to Hamilton to be the provider of the statewide telecommunications relay service in Florida; and (3) finalize and sign a contract with Hamilton to provide the Florida Relay Service. (**Kennedy, Miller**)

Staff Analysis: The RFP encompassed the factors set out in Section 427.704(3)(a), Florida Statutes, as to how the provider of the telecommunications relay service should be selected by the Commission. Section E. of the RFP, entitled "The Evaluation Method to be Used and Filing Checklist," provides specific instructions and guidelines for the evaluation of bidders' proposals. In accordance with the instructions, each bidder's weighted percentage score for its technical proposal and for its price proposal were added together and the bidder with the highest total was recommended by the PRC to the Commission. Section E. also provides that the Commission reserves the right to reject the PRC's recommendation.¹

Evaluation of Bidders

The PRC evaluated the technical proposals using a pass/fail criterion for some items and a point rating system for other items. After evaluating the pass/fail items the evaluators scored the remaining items. The price proposals were not opened until after the technical evaluations were completed.

The evaluators received specific forms on which to record their evaluations. The forms included an affidavit that each evaluator signed agreeing with the conflict of interest requirement contained in Section 427.704(3)(c), Florida Statutes. Also, each page of the forms included a place for the evaluator to indicate the date the evaluation was performed and a signature line, and a place to score the points or pass/fail, whichever was appropriate for the item under evaluation.

The evaluators identified some failures during the pass/fail portion of the evaluation process. Once those failures were identified, the next step was to assess whether those failures would be considered "minor irregularities" and whether the bidder would be allowed to correct them. "Minor Irregularity" is defined in the RFP in Section A, paragraph 6, subparagraph (q) as:

¹ As with all Commission decisions, the Commission is not bound by staff's recommendation. If the Commission chooses to reject staff's recommendation, its decision should be based on the factors set forth in Section 427.704, Florida Statutes, the Request for Proposals, and the information provided in response to the Request for Proposals.

A variation from the request for proposal terms and conditions which does not affect the price of the proposal, does not give the bidder a significant advantage or benefit not enjoyed by other bidders, and does not adversely impact the interests of the agency.

The RFP specifically provides that the Commission reserves the right to waive a minor irregularity in a proposal. Minor irregularities were brought to the attention of the bidders on August 4, 2011, and they were given until August 11, 2011, to correct them. Table A is a list of irregularities identified by the evaluators and provided to the companies.

Table A
Notification of Irregularities

| Company Name | Check List Item Number and RFP Reference | Item Title | Reason for Failure |
|--------------|--|-----------------------|---|
| AT&T | 70 C-7 | Bid Security Deposit | Valid date not clearly specified. |
| Hamilton | None | None | None |
| Sprint | 67 C-4 | Financial Information | Provided an Internet link to financial information but did not identify which data should be used for the evaluation and did not supply a hard copy of the data to be evaluated. Did not provide primary banking source letter of reference. |
| | 70 C-7 | Bid Security Deposit | Valid date not clearly specified. |

AT&T

Staff notified AT&T that it was not clear that the bid security deposit, in the form of a surety bond, was valid through at least October 28, 2011. AT&T was asked to explain how the bond is valid through that date. In response, AT&T submitted a notarized Verification Certificate from the surety company, Liberty Mutual Insurance Company, certifying that the bond remains in effect per the terms of the RFP, through at least October 28, 2011. Staff is satisfied that this meets the RFP requirement.

Sprint

Staff notified Sprint that as set forth in the RFP, Sprint should submit financial data and submit a primary banking source letter of reference. Sprint's proposal provided a website address and referred the Commission to the website for its Annual Report and SEC 10-K filings. Sprint failed to identify which financial information should be evaluated and did not provide a hard copy in the proposal. In its response to staff, Sprint electronically submitted SEC Forms 10-K for the years 2009 and 2010, which staff printed, evaluated and added to the docket file. Also, Sprint failed to provide a primary banking source letter of reference. Citibank submitted a banking letter of reference on Sprint's behalf. Staff believes the data Sprint and Citibank provided meets the RFP requirements.

Further, staff notified Sprint that it was not clear that the bid security deposit, in the form of a surety bond, was valid through at least October 28, 2011. Sprint was asked to explain how the bond is valid through that date. In response, Sprint's surety company, Berkley Regional Insurance Company, submitted a letter to the Commission. The letter confirms that the bond will remain in effect until October 28, 2011, and will continue to support Sprint's bid should there be any postponements after October 28, 2011. Staff is satisfied with this response.

Bidders Exceptions to the RFP – Transmittal Letter – RFP Section C.2

The RFP requires bidders to state in their transmittal letters that they will comply with all requirements of the RFP or identify the sections of the RFP with which they cannot comply and expand on that in their proposals. In their transmittal letters, AT&T and Sprint identified sections of the RFP with which they cannot comply and offered explanations within the proposal. Hamilton certifies that it will comply with all provisions of the RFP. The evaluation of responses to Section C.2 of the RFP was rated on a pass/fail basis. All evaluators rated each company as a pass on Section C.2 of the RFP. AT&T's and Sprint's exceptions to the RFP are discussed below.

AT&T

AT&T stated that it will comply with all requirements of the RFP with the exception of C-6, Subcontractors, due to the inability of Ultratec to provide the information in Section C-5. Section C-6, among other things, requires the bidder to provide three customer references for its subcontractor. Because AT&T negotiated a contract with Ultratec for captioned telephone service for the first time in April 2011, it is unable to provide references for its subcontractor. Staff notes that Captel, Inc., an Ultratec company, is the exclusive provider for captioned telephone service over the public switched telephone network. In fact, all three bidders have proposed Captel, Inc. for the provider of captioned telephone service.

In response to reference checks conducted by staff for all bidders, the agencies contacted stated that they did not have a contractual relationship with Captel, Inc. Their contracts were with either, AT&T, Hamilton, or Sprint. Thus, the agencies' responses to staff's requests were limited to the three bidders, e.g., the prime contractors. Staff believes that AT&T's failure to comply with the subcontractor reference checks is not critical because all three bidders proposed

the same provider for captioned telephone service. Section C-6 is a pass/fail evaluation item and AT&T was scored as pass.

Sprint

Sprint states that it will comply with all technical requirements of the RFP. Sprint proposed clarifications and/or additional language for three sections of the RFP, which are 1) Section A.21, Contract Document, 2) Section A.22, Limitations on Liability, and 3) Section A.24 Cancellation/Availability of Funds. Sections A.21, A.22, and A.24 were not items evaluated either on a pass/fail or score basis.

For Section A.21, Contract Document, Sprint provides that, if awarded the contract, it will negotiate in good faith to execute a definitive agreement for the equipment and services contemplated by the solicitation that will incorporate elements of the solicitation, Sprint's solicitation responses and services agreement, and any additional commercially reasonable terms and conditions negotiated by the parties.

Sprint offers language in a draft version of its Government TRS Master Services Agreement (provided as part of the proposal) dealing with limits of liability and indemnification. Sprint offers the draft language and expects that it will fulfill the requirements of Section A.22, Limitations on Liability.

Sprint takes exception to the language in Section A.24 of the RFP wherein the Commission can terminate the agreement for cause with 24-hour notice. Sprint requests a 30-day cure period be provided to both parties in case of a breach. Further, Sprint requests that the termination provision within its draft version of the Government TRS Master Services Agreement apply to this provision.

The RFP allows bidders to take exception to the RFP requirements. If the Commission were to select Sprint as the relay services provider, the Commission will need to address the exceptions described above.

Assignment of Points

Each technical evaluator independently assigned points within the RFP allotted range to 33 items. The items rated had point values ranging from 25 to 200 points. The total points from each evaluator were added together to produce the total technical score for each bidder.

The technical and price proposals were evaluated, as described in Section E of the RFP, using a weighting of 60% for the technical and 40% for the price (broken down into 35% for TRS and 5% for CapTel). The weighted percentage scores for the technical proposal and the price proposal were then added together to produce a total score for each bidder. Table B below shows the results of the scoring.

TABLE B
Summary of the Technical and Price Proposals

| | AT&T | Hamilton | Sprint |
|---|---------------|---------------|-----------------|
| Total Technical Points | 11,778.5 | 12,475.9 | 12,726.6 |
| Highest Score - Sprint | | | 12,726.6 |
| Technical Evaluation (Bidder's score/highest score) X 0.6 | 0.5553 | 0.5882 | 0.6000 |
| Price Per Minute for TRS | \$0.90 | \$0.79 | \$0.84 |
| Lowest Price - Hamilton | | | \$0.79 |
| Price Evaluation for TRS (Lowest Price/Bidder's Price) X 0.35 | 0.3072 | 0.3500 | 0.3292 |
| Price Per Minute for Captioned Telephone | \$1.53 | \$1.805 | \$1.54 |
| Lowest Price – AT&T | | | \$1.53 |
| Price Evaluation for Captioned Telephone (Lowest Price/Bidder's Price) X 0.05 | 0.0500 | 0.0424 | 0.0497 |
| Total Score - Hamilton (Technical Evaluation + Price Evaluation) | 0.9125 | 0.9806 | 0.9788 |

Analysis of the Scoring

As shown in Table B, Sprint received the highest technical rating with 12,726.6 points, followed by Hamilton with 12,475.9 points. Four of five evaluators scored Sprint the highest, with one evaluator scoring Hamilton the highest. All evaluators scored AT&T lower than both Hamilton and Sprint. Hamilton offered the lowest price per session minute for TRS at \$0.79, followed by Sprint at \$0.84 and AT&T at \$0.90. AT&T offered the lowest price per minute for captioned telephone at \$1.53, followed by Sprint at \$1.54, and Hamilton at \$1.805. Hamilton and AT&T offered pricing options which are discussed below. Sprint did not offer pricing options.

Hamilton proposed \$0.79 per session minute for TRS and offered two pricing options for captioned telephone. In its Option 1, Hamilton proposed \$1.75 per session minute for captioned telephone and for an additional \$0.025 per minute, Hamilton will establish and maintain a Florida captioned telephone service customer profile database of call setup and handling

preferences of Florida captioned telephone users and called parties. These rates are based on the elimination of the contractual provisions for liquidated damages. Hamilton offered an Option 2, in which the contractual provisions for liquidated damages would be applicable to the contract. The rates for Option 2 are \$1.78 per session minute, plus an additional \$0.025 for the establishment of a customer profile database. For the purpose of evaluating Hamilton's price proposal, staff used the Option 2 numbers, which together came to \$1.805 per session minute for captioned telephone. Sprint offered the customer profile database within the prices it bid and AT&T's proposal appears to be silent regarding any customer profile database. Staff believes that the liquidated damages requirement should be retained and that Florida captioned telephone users should benefit from the customer profile database services.

AT&T proposed two pricing options which were \$0.90 per session minute or \$0.94 per session minute for TRS, and \$1.53 or \$1.58 per session minute for captioned telephone. The lower prices of each service were based upon AT&T supporting Florida relay services with its existing call centers. For the price evaluation, staff used \$0.90 for TRS and \$1.53 for captioned telephone. For the higher per minute rates for TRS and captioned telephone, AT&T proposed to locate a new call center in Florida that would provide an estimated 40 new jobs represented by 38 Communications Assistants and two supervisors. Staff notes that using the higher prices in the evaluation would reduce AT&T's score from that shown in Table B for TRS and captioned telephone, further distancing AT&T's total score from the other bidders.

Highlights of Hamilton's Proposal

- Hamilton will process Florida relay calls from a combination of its Relay Centers located in Nebraska, Georgia, Louisiana, Maryland, Massachusetts and Wisconsin. Hamilton processes Speech-to-Speech and Spanish calls from its Wisconsin, Louisiana and Maryland centers. Because of Hamilton's size, all call centers follow the same call procedures so no matter where a call is handled, Florida Relay users will receive the same high quality service, according to Hamilton.
- Hamilton states that it is "unmatched in its ability to deliver personalized service to every relay call." It says that it is unmatched by its competition when it comes to answer performance and blockage and that its "size allows us to be responsive to all standards and unique requirements of the individual State programs." Further, it states that its "philosophy of quality, personalized relay services has been tested in several states." Hamilton has been selected as the relay provider 89 out of 93 times considering renewals and RFP successes.
- The company states that its past record of performance, dedication to providing state-of-the-art features and services and willingness to "go the extra mile" for relay and CapTel users in 21 States and U.S. territories has allowed it to satisfy many relay customers.
- Hamilton states that because Relay makes up 51% of Hamilton's business, "corporate personnel know and understand relay and all our business lines are dedicated to the success of our relay division." Hamilton asserts that it has a customer driven focus as it

continually listens to their customers and develops technology and services to provide them with more choices.

- Hamilton Relay says it offers its customers a variety of services as well as the ability to choose how they want their calls handled. These services include a customer database with customer preferences for all answer modes, call restrictions, customized calling, interpretation, billing preferences and more.
- Hamilton says it can ensure the Commission that it will maintain its relay certification. Hamilton states that it has a record of meeting or exceeding all FCC related standards and readily responding to all FCC regulations, including exceeding the standards established by the FCC for maintaining certification.

Hamilton also included information on optional features in its proposal such as Internet Relay Service and Video Relay Service. Staff does not recommend including any optional services other than those included in the basic price for relay service at this time. If any of these optional services become mandated by the Federal Communications Commission, staff will bring any additional requirements to the Commission for consideration.

Conclusion

Of the three bidders, the one with the highest total score is Hamilton (see Table B). As required by Section E. of the RFP, staff recommends that the Commission contract with Hamilton to provide the Florida Relay service for the next three years (6/12 – 5/15) with the option of four additional one-year periods upon mutual agreement.

Based on the evaluation by the PRC of the technical and price proposals, staff recommends that a letter of intent be issued to all the bidders that Hamilton should be awarded the contract of Provider for the Florida Telecommunications Relay system. Staff should be directed to meet with Hamilton to finalize a contract for the Executive Director's or designee's signature.

FINALIZATION OF THE CONTRACT

After Commission vote on this recommendation, the Commission will post on the agency website the notice of its decision. Persons will have 72 hours after the posting of the notice to protest the decision. In addition, the attached letter of intent (Attachment A) to contract with Hamilton for relay service will be sent by facsimile and certified mail to the three bidders. If no protest is filed in accordance with Section 120.57(3), Florida Statutes, using the electronic posting as the start date, staff should be directed to work with Hamilton to finalize contract language and incorporate Hamilton's response to the RFP as the contract. The contract is to be signed by an authorized Hamilton representative, and the Commission's Executive Director or designee. Two originals would be signed so each party has an original signed contract.

Docket No. 110013-TP
Date: September 8, 2011

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open for the life of the contract. (**Miller**)

Staff Analysis: This docket will be used to address all matters related to the relay service throughout the life of the contract. Therefore, this docket should remain open for the life of the contract.

September xx, 2011

DELIVERED VIA FAX AND
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

(ADDRESSEE)

Dear (addressee):

It is the intent of the Florida Public Service Commission to award a 3 year contract as provider of the statewide telecommunications relay system in Florida to Hamilton. Please accept our sincere appreciation for participating in the RFP process.

You are reminded that pursuant to Section 120.57(3), Florida Statutes, any party choosing to file a protest of the Commission's intent to award the contract to Hamilton must do so within 72 hours after the decision is posted on the agency website and shall file a formal written protest within 10 days after filing the initial protest. Such formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a protest within the presubscribed time shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

All documents should be filed in Docket No. 110013-TP and addressed to Ann Cole, Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Attention: Cindy Miller.

Sincerely,

Executive Director or Designee