

State of Florida



Public Service Commission

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

DATE: December 21, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Moses, Casey)
Office of the General Counsel (Rojas) *RC*

RE: Docket No. 040763-TP – Request for submission of proposals for relay service, beginning in June 2005, for the hearing and speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

AGENDA: 01/04/05 – Regular Agenda - Participation Limited To Commissioners and Staff

CRITICAL DATES: Current contract with Sprint expires on May 31, 2005 *DATA*

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\CMP\WP\040763.RCM.DOC

Case Background

The Commission's contract with Sprint for the provision of relay service expires on May 31, 2005. Accordingly, on September 21, 2004, the Commission issued a Request for Proposal (RFP) for relay service. Each bidder was required to submit a proposal for a three-year contract period with the option of up to four, one-year extensions upon mutual agreement. Proposals were due to be filed by November 18, 2004.

The Commission received three proposals from the companies shown in Table A.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

TABLE A
LIST OF BIDDERS

Company Name	Began Providing Relay	Current Number of Jurisdictions Served	Current Number of Relay Centers
Hamilton	January 1, 1991	11	3 TRS ¹ 1 VRS ²
MCI	June 1992	3	5 TRS
Sprint	September 1, 1990	34	14 TRS centers 10 VRS centers 1 CapTel center 1 Relay Conference Captioning center ³

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.

A proposal review committee (PRC) was established which consisted of two members from the TASA Advisory Committee and four members from staff. Two of the staff members served as accountants reviewing the financial information of the companies. One of these accountants also reviewed the technical aspects of the proposals. One staff member contacted the bidders' references and the results of these contacts were used by the PRC in the evaluation process. Evaluation of the proposals began with a pass/fail evaluation of certain aspects of the proposals. This was followed by awarding points to the proposals. A weight of 60% was given to the technical aspect of the proposal and a weight of 40% was given to the price aspect of the proposal. The price proposals were submitted in sealed envelopes separate from the companies' technical proposals and were opened on December 14, 2004, after the technical scoring was completed.

¹ TRS or Telecommunications Relay Service is a service whereby a relay operator interfaces with a hearing impaired person and relays information to the hearing person. In the reverse, the relay operator types the hearing person's message to the hearing impaired person.

² VRS or Video Relay Service is a service which a hearing impaired person can use American Sign Language over a video link to the relay operator which in turn voices the conversation to the hearing person.

³ Relay Conferencing Center is a service that provides the ability for hearing impaired persons to establish conference calls.

Discussion of Issues

Issue 1: Should the Commission select Sprint as the relay service provider and direct the Commission's Executive Director to: (1) issue the attached letter of intent (Attachment A, Page 9) notifying all bidders of the Commission's decision to award a three-year contract to Sprint to be the provider of the statewide telecommunications relay service in Florida; and (2) finalize and sign a contract with Sprint to provide the Florida Relay Service?

Recommendation: Yes, based upon the RFP evaluation process, the Commission should select Sprint as the relay provider and direct the Commission's Executive Director to: (1) issue the letter of intent notifying all bidders that Sprint has been awarded a three-year contract as the provider of the statewide telecommunications relay service in Florida; and (2) finalize and sign a contract with Sprint to provide the Florida Relay Service. **(Moses, Casey)**

Staff Analysis:

EVALUATION OF BIDDERS

The PRC evaluated the technical proposals using a pass/fail criterion for some items and using a point rating system for other items. After evaluating the pass/fail items the evaluators began to score 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 evaluation. 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 did identify 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:

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 November 24, 2004, and they were given until December 6, 2004, to correct them. Table B is a list of irregularities provided to the companies.

**TABLE B
 NOTIFICATION OF IRREGULARITIES**

Company Name	Check List Item Number and RFP Reference	Item Title	Reason for Failure
Hamilton	3 C-8 and E	Check List	Company name not specified on the check list
	71 C-7	Bid Security Deposit	Valid date not specified.
MCI	2	Transmittal Letter	Letter not signed
	3 C-8 and E	Check List	Bidder did not initial each item.
	5 A-28	Conflict of Interest	Did not state that no conflict exists.
	60 B-56	Performance Bond	The Performance Bond is supposed to be provided at the execution of the contract. MCI erroneously responded to this section as if it were the bid security deposit.
	68 C-4	Financial Information	Failed to provide bank references.
	71 C-7	Bid Security Deposit	Bond not signed by a Florida licensed agent. Also needs a valid date referenced on the bond.
Sprint	5 A-28	Conflict of Interest	Needs a statement that there are no known conflicts.
	71 C-7	Bid Security Deposit	Valid date not specified. Also, the Bond is not signed by a Florida licensed agent.
	38 B-34	Measuring Equipment Accuracy	No statement of acknowledgment of the RFP requirement.

HAMILTON

Hamilton was notified that its check list did not contain the company's name. This is not a requirement of the RFP, but was cited by one of the evaluators as a failure. Hamilton refiled the check list to include its name as requested. Hamilton was also notified that its bid security deposit bond did not have a valid date. Hamilton, in the interest of time, instead submitted a cashier's check in the amount of \$500,000 to the Florida Telecommunications Relay, Inc. to be held as a bid security deposit. The bid bond is also still on file. Staff believes this satisfies the requirement.

MCI

MCI was notified that its transmittal letter was not signed and its check list was not initialed. MCI responded that it filed an "original" which did contain the signature and initials. Staff verified that the "original" was in the docket file and did contain the required signature and initials. Staff believes this meets the requirements.

MCI was also notified that its response to the "Conflict of Interest" section did not reflect that it acknowledged there were no known conflicts. MCI responded that no known conflicts exist. This appears to meet the requirement.

The Performance Bond section was also noted as a failure because MCI responded that it submitted a \$500,000 bond. Evidently, there was some confusion on MCI's part because the \$500,000 was in reference to the bid security deposit. MCI responded that upon execution of a contract, it would provide a Performance Bond in the amount of the estimated total first year price of the contract and the bond would remain in effect for the entire duration of the contract. This appears to meet the requirement.

MCI was also notified that its bid bond for its bid security deposit needed a valid date through February 28, 2005, and that the bond needed to be signed by a Florida licensed agent. MCI responded that the bid bond is valid through February 28, 2005, and the person that signed the bond is licensed to do business in the state of Florida. Staff is satisfied with this response.

However, MCI failed to provide the banking references as required by the RFP in Section C, paragraph 4. Upon being notified of the failure to meet this requirement, MCI responded that due to internal controls put into effect following MCI's emergence from bankruptcy, it is against company policy to provide banking letters of reference. MCI included its Dun and Bradstreet number along with three independent companies which MCI contracts with that could vouch for MCI's financial stability. MCI respectfully requested that the Commission accept these references in lieu of a formal bank reference.

The RFP specifically requires that a Primary Banking source letter of reference be provided. MCI did not raise this requirement as a concern when the Commission considered the draft RFP on September 21, 2004, or during the bidders' conference which was held on October 1, 2004. MCI was notified on November 24, 2004, of the irregularity and was given until December 6, 2004, to amend its filing, but MCI chose not to comply. Since MCI never raised the banking reference letter requirement as a concern and failed to correct the irregularity when

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given the opportunity, staff considers the failure to provide a banking reference letter a major failure. Therefore, MCI's proposal should be rejected from further consideration as provided for in Section A, paragraph 14 of the RFP which states:

The PRC Chairman and the FPSC reserve the right to reject any or all proposals. The PRC Chairman and the FPSC also reserve the right to accept proposals despite minor irregularities and to allow a bidder to correct such minor irregularities.

SPRINT

Sprint was notified that it did not specify whether there is a conflict of interest as required in Section A, paragraph 28. Sprint responded that there are no known conflicts of interests as specified in Chapter 112 of the Florida Statute. Staff believes this satisfies the requirement.

Sprint was notified that its bid security deposit bond did not contain a date through which it was valid. Also, the bond was not signed by a Florida licensed agent. Sprint refiled the bond with the valid date and the signature of a Florida licensed agent.

Sprint was also notified regarding its failure to comply with the "measuring equipment accuracy" requirement of the RFP. Sprint did not acknowledge the requirement in its initial response to the RFP. Sprint responded to the notification of failure and indicated that it would comply with the requirements.

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 C below shows the results of the scoring.

	Hamilton	Sprint
Total Technical Points	10,908.1	10,842.4
Highest Score	10,908.1	
Technical Evaluation (Bidder's score/highest score) X 0.6	0.6000	0.5964
Price Per Minute for TRS	\$0.78	\$0.75
Lowest Price	\$0.75	
Price Evaluation for TRS (Lowest Price/Bidder's Price) X 0.35	0.3365	0.3500
Price Per Minute for CapTel	\$1.30	\$1.40
Lowest Price	\$1.30	
Price Evaluation for CapTel (Lowest Price/Bidder's Price) X 0.05	0.0500	0.0464
Total Score (Technical Evaluation + Price Evaluation)	0.9865	0.9928

Based on failures in the pass/fail portion of the evaluation, one bidder (MCI) should be disqualified and not considered when selecting a provider, due to a major defect in its proposal. Of the two remaining bidders, the one with the highest total score is Sprint (see Table C). Therefore, staff recommends that the Commission contract with Sprint to provide the Florida Relay service for the next three years (6/05 – 5/08) 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 Sprint should be awarded the contract of Provider for the Florida Telecommunications Relay system. Staff will meet with Sprint to finalize a contract, including any standardized contract language needed, for the Executive Director's signature.

HIGHLIGHTS OF SPRINT'S PROPOSAL

- A new TRS Center will be located in Jacksonville dedicated to Florida relay traffic.
- The TRS Center in Miami will remain functional and will support overflow traffic and other Sprint TRS customers in other states.
- Sprint will provide a full time Account Manager located in Florida at no additional cost.
- A Sprint Quality Manager will also be located in Florida at no additional cost.
- A third party independent evaluation service testing live calls for typing speed assessment is provided at no additional cost.

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- A one-year trial of relay conferencing service will be provided at no cost. This service provides a hearing impaired person the ability to establish conference calls. Staff will determine after the trial whether to recommend contracting for the service in the future.
- Sprint included a 60% long distance discount and the first 3 minutes free on all Sprint carried Intrastate long distance calls.

Sprint 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 it to the Commission for consideration.

FINALIZATION OF THE CONTRACT

Upon Commission approval of this recommendation, the attached letter of intent (Attachment A) to contract with Sprint 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 start date as the delivery date on the returned certified mail receipt, staff will work with Sprint to finalize any standard language and incorporate Sprint's response to the RFP as the contract. The contract is to be signed by an authorized Sprint representative, and the Commission's Executive Director. Two originals will be signed so each party has an original signed contract.

Issue 2: Should this docket be closed?

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

Staff Analysis: This docket is 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.

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Attachment A

January xx, 2005

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 Sprint. 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 Sprint may do so within 72 hours after receipt of the notice of agency decision 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. 040763-TP and addressed to Blanca Bayó, Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Attention: Rick Moses.

Sincerely,

Dr. Mary Andrews Bane
Executive Director