



STATE OF ILLINOIS

OFFICE OF THE AUDITOR GENERAL

**MANAGEMENT AUDIT
OF THE
STATE'S PROCUREMENT OF
INMATE TELEPHONE SERVICE VENDORS**

AUGUST 2014

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*To the Legislative Audit Commission, the Speaker
and Minority Leader of the House of Representatives,
the President and Minority Leader of the Senate, the
members of the General Assembly, and the Governor:*

This is our report of the management audit of the State's procurement of inmate telephone service vendors for the Department of Corrections' inmate telephone service program.

The audit was conducted pursuant to Senate Resolution Number 122 which was adopted May 14, 2013. This audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310.

The audit report is transmitted in conformance with Section 3-14 of the Illinois State Auditing Act.

A handwritten signature in blue ink that reads "William G. Holland". To the right of the signature, there is a blue ink flourish or bracket-like mark.

WILLIAM G. HOLLAND
Auditor General

Springfield, Illinois
August 2014



STATE OF ILLINOIS
**OFFICE OF THE
AUDITOR GENERAL**

William G. Holland, Auditor General

SUMMARY REPORT DIGEST

STATE'S PROCUREMENT OF INMATE TELEPHONE SERVICE VENDORS

MANAGEMENT AUDIT

Release Date: August 2014

SYNOPSIS

Senate Resolution Number 122 directed the Auditor General to conduct a management audit of the State's procurement of inmate telephone service vendors. A vendor provides inmate collect calling services and pays the State a commission on all completed calls. Both the Department of Central Management Services (CMS) and the Department of Corrections (Corrections) receive a portion of the commission payments. During the 29-month period we examined, Corrections received \$13.4 million in commission payments while CMS received \$18.1 million.

In June 2012, CMS awarded the inmate collect calling contract through an invitation for bids process. The procurement resulted in lower costs to users under the new contract compared to the previous contract. During the 29-month period we examined, the average cost under the previous contract was \$5.82 per call while the average cost under the new contract was \$3.87 per call.

Our audit of the procurement found several issues, including the following:

- CMS failed to follow a requirement in the solicitation document by not providing written responses to all vendor questions. CMS failed to respond to 28 of the 101 questions submitted and missed two of its own deadlines to publish answers to vendor questions.
- The pricing table in the solicitation document, which was not created until just prior to publication, was flawed which allowed vendors to tailor their bids to receive maximum points. The way pricing was structured, and since there were no caps on rates specified in the invitation for bids, a vendor could have bid any amount (\$20 per call, \$50 per call, \$1,000 per call, etc.) under set up charges and still had the highest point total to be awarded the contract.
- The Illinois Commerce Commission (ICC) issued a declaratory ruling on April 9, 2013, stating that rate caps on operator services would apply to inmate collect calling services. CMS amended its contract with the winning vendor to comply with the ICC order. The contract amendment lowered the charges from \$4.10 per call to \$3.55 per call. The contract amendment also lowered the commission rate that the vendor paid to the State from 87.1 percent to 76.0 percent.
 - The decision to lower the commission rate in the contract amendment was not adequately supported or documented. It was unclear why the commission rate was lowered and it was unclear how the rate of 76.0 percent was derived.
 - While the amendment to the contract resulted in a lower cost per call for inmates and their families, it also resulted in a significant increase in the amount of revenue earned by the vendor. CMS erred in the method used to lower the commission rate which resulted in the vendor's revenue per call increasing by 61 percent (\$0.53 per call to \$0.85 per call). Based on the average calls per month, this change would result in the vendor's revenue increasing by over \$1.3 million per year.

Two protests were filed related to the procurement of inmate collect calling services which were handled by the Chief Procurement Officer for General Services. The decisions concerning the resolution of the protests were adequately supported and documented. In addition, the protests and the resolution of the protests followed applicable laws and rules.

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

REPORT CONCLUSIONS

During the 29-month period we examined, Corrections received \$13.4 million in commission payments while CMS received \$18.1 million.

The cost per call decreased 33.5 percent from \$5.82 per call to \$3.87 per call under the new contract.

CMS experienced delays in issuing the solicitation document.

The State contracts with a vendor to provide inmate collect calling services. The vendor provides, installs, and maintains the telephone equipment at no cost to the State. The vendor is responsible for billing and collecting for all calls made and pays the State a commission on all completed calls. Both the Department of Central Management Services (CMS) and the Department of Corrections (Corrections) receive a portion of the commission payments. **During the 29-month period we examined, Corrections received \$13.4 million in commission payments while CMS received \$18.1 million** which equates to a 57/43 split in favor of CMS. According to Corrections officials, Corrections uses its portion to help fund inmate programs. While CMS formerly used its portion to purchase items such as public safety equipment, it now uses it to pay for services provided through the Communications Revolving Fund.

In June 2012, CMS awarded the inmate collect calling contract to Securus Technologies (Securus) through an invitation for bids process. For the previous 10 years, the contract had been held by Consolidated Communications Public Services (Consolidated). Under the contract with Securus, the number of calls per month has increased as well as the total minutes. On a per call basis, the average minutes per call has increased from 16.8 minutes under Consolidated to 23.1 minutes under Securus, an increase of 37.4 percent. While calls and minutes have increased, the charges for calls have decreased. The cost per call has decreased 33.5 percent from \$5.82 per call to \$3.87 per call under the new contract.

Senate Resolution Number 122 directed the Auditor General to conduct a management audit of the State's procurement of inmate telephone service vendors. A timeline of the procurement is shown in Digest Exhibit 1.

The Procurement Process

The inmate collect calling contract with Consolidated was set to expire on June 30, 2012. **Timing on this procurement was critical** because implementation with a new vendor must be coordinated with the old vendor. The new service had to be phased in to minimize interruption in service. However, CMS experienced delays in issuing the solicitation document. These delays included last-minute changes to the solicitation document up to and including the day it was published.

Digest Exhibit 1
TIMELINE OF THE PROCUREMENT FOR INMATE CALLING SERVICES

| Date | Description |
|----------|---|
| 06-16-11 | CMS and Corrections meet to begin the process of developing a solicitation document for the upcoming procurement. |
| 01-23-12 | Earliest dated document in the procurement file – internal CMS email inquiring about specifications for the inmate collect calling invitation for bids (IFB). |
| 03-29-12 | State Purchasing Officer at the Chief Procurement Office approves procurement method. State Purchasing Officer receives draft solicitation document and approves draft solicitation. |
| 03-29-12 | CMS issues the IFB for an inmate collect calling contract. Bids due April 12. |
| 04-05-12 | Due date for bids extended from April 12 to April 19 to provide time to respond to vendor questions. |
| 04-16-12 | Due dates for bids extended from April 19 to May 24 to allow for addition of mandatory site visits on May 3 and 4 at four correctional facilities and one youth center. |
| 04-24-12 | CMS issues a revised version of the IFB (IFB version 2). |
| 05-01-12 | CMS issues another revised version of the IFB (IFB version 3). |
| 05-03-12 | First day of the two-day mandatory site visits. |
| 05-16-12 | CMS issues vendor questions and answers. |
| 05-24-12 | Public opening of bids. Three vendors submit bids: <ul style="list-style-type: none"> • Consolidated Communications Public Services • Securus Technologies • Public Communications Services |
| 05-31-12 | Consolidated protests the bids submitted by Securus and Public Communications Services alleging that the bids are in direct violation of rate caps established by the Illinois Commerce Commission (ICC or Commission). |
| 06-25-12 | The Chief Procurement Officer for General Services (CPO) denies Consolidated's protest. The CPO finds, based on previous cases at the ICC, that the services are not subject to regulation by the ICC and the rate caps do not apply. |
| 06-27-12 | State Purchasing Officer approves award notice and CMS issues intent to award contract to Securus. |
| 07-03-12 | Consolidated files a second protest, protesting the award of the contract to Securus. Consolidated alleges that Securus had violated Illinois laws and made significant misrepresentations in its bid proposal. |
| 07-03-12 | Consolidated files a petition for a declaratory ruling with the ICC seeking a determination on whether the rate caps would apply. |
| 07-03-12 | Consolidated files a complaint with the Circuit Court of Sangamon County to prevent CMS from awarding the contract to Securus. |
| 07-31-12 | Prehearing conference held. |
| 08-09-12 | The Chief Procurement Officer for General Services denies Consolidated's second protest. |

Digest Exhibit 1
TIMELINE OF THE PROCUREMENT FOR INMATE CALLING SERVICES

| Date | Description |
|--|--|
| 08-23-12 | Securus files its response to Consolidated's petition requesting that the petition be dismissed. |
| 08-31-12 | ICC staff files response recommending that the Commission grant Consolidated's petition. |
| 10-19-12 | Consolidated's circuit court case dismissed. |
| 10-19-12 | State Purchasing Officer approves contract. Contract with Securus signed by the Director of CMS. The contract had an initial term through June 30, 2015, with renewal options of up to six years. |
| 10-23-12 | Administrative Law Judge at the ICC issues a Proposed Order finding that the operator services included in inmate calling services are "operator services" as defined in the Public Utilities Act and should be regulated. Therefore, the rate caps would apply. |
| 11-13-12 | Administrative Law Judge at the ICC denies Securus' motion to set a discovery schedule. |
| 01-09-13 | ICC denies Securus' request for oral arguments. |
| 01-29-13 | ICC denies Securus' petition for interlocutory review. |
| 04-09-13 | ICC enters a Final Order granting Consolidated's request for a declaratory ruling. The Final Order states that an entity providing telephone calling services accessible to inmates of corrections facilities is providing "operator services" as defined in the Public Utilities Act. Sections 770.20(a) and 770.40 (Restrictions on Billing and Charges) would therefore apply. |
| 06-04-13 | Securus files a petition for review of the orders of the ICC with the Appellate Court of Illinois for the First Judicial District. |
| 08-22-13 | State Purchasing Officer approves amendment to the contract. |
| 09-13-13 | Contract with Securus amended to comply with ICC rate caps. Charges reduced from \$4.10 per call to \$3.55 per call. Commission percentage paid to State also lowered from 87.1 percent to 76 percent. |
| 02-13-14 | Contract with Securus amended to comply with Federal Communications Commission ruling on interstate inmate calling rates. For interstate calls, the surcharge of \$3.55 per call is eliminated. It is replaced with a per minute rate of \$0.1183. The amendment also eliminates commission payments for interstate calls. |
| 05-16-14 | The Appellate Court of Illinois for the First Judicial District rules that the Illinois Commerce Commission's April 9, 2013 order must be vacated because the ICC lacked jurisdiction to enter the order. |
|  Invitation for Bids/Contract |  Protests |
|  ICC Filings |  Circuit Court Case and Appellate Court Case |
| Source: OAG summary of procurement documents, protest file, and ICC filings. | |

Furthermore, after publishing the invitation for bids on March 29, 2012, CMS twice issued revised versions of the invitation for bids and extended the due date for bids from April 12, 2012, to May 24, 2012. The due date was extended to provide time to respond to vendor questions and due to the addition of mandatory site visits.

One of the changes in the revised solicitation document was a wording change regarding the criteria used to award the contract. The original version stated that the contract would be awarded to the vendor “*...that offers the state the most money.*” This was changed in the revised solicitation to say that the contract would be awarded to the vendor “*...whose offer has the highest point total.*” (pages 23-27)

CMS failed to follow a requirement in the solicitation document by not providing written responses to all vendor questions.

CMS failed to respond to 28 of the 101 questions submitted.

The solicitation documents did not specify who was required to attend mandatory site visits which allowed vendors to meet the requirement through attendance by a subcontractor.

CMS failed to follow a requirement in the solicitation document by not providing written responses to all vendor questions. Seven different vendors submitted a total of 101 questions to CMS. Of those 101 questions, 73 (72%) were answered either in the revised solicitation document or in the question and answer document published by CMS. **CMS failed to respond to 28 of the 101 questions submitted.** In addition, CMS was not timely in responding, missing two of its own deadlines to publish answers to vendor questions:

- CMS stated that it would answer vendor questions in an addendum published the week of April 16 **but never issued the addendum.**
- CMS later stated it would publish answers to vendor questions no later than Friday, May 11 **but did not publish answers until five days later** on Wednesday, May 16. (pages 27-30)

The solicitation documents, which were approved by CMS and the State Purchasing Officer at the Chief Procurement Office, did not specify who was required to attend the mandatory site visits which allowed vendors to meet the requirement through attendance by a subcontractor. **Two of the three vendors that submitted bids, Securus and Public Communications Services (PCS), were not listed as vendors that submitted information to attend the mandatory site visits.** However, the proposed subcontractor for each (G5Tek for both Securus and PCS) did attend the site visits. In addition, a representative from the parent company of PCS attended the site visits signing in as the representative for three different companies. The procurement file lacked documentation making it unclear who made the final determination to allow subcontractors to meet the requirement for mandatory attendance. (pages 31-33)

The contract for inmate collect calling services was properly awarded based on the evaluation factors outlined in the invitation for bids.

The bidder that offered the lowest per phone call charge was not awarded the contract because a greater emphasis was placed on the amount of money the winning vendor would pay the State in commission payments.

The contract for inmate collect calling services was properly awarded based on the evaluation factors outlined in the invitation for bids. However, because of how the evaluation factors were structured, the lowest bidder – the bidder that offered the lowest per phone call charge – was not awarded the contract because a greater emphasis was placed on the amount of money the winning vendor would pay the State in commission payments. Since the contract was not awarded to the lowest bidder, the procurement did not adhere to the competitive sealed bidding section of the Procurement Code.

The Procurement Code and Standard Procurement Rules allow award to other than the lowest bidder upon a written determination that award to another bidder is in the State's best interest. However, the State Purchasing Officer did not utilize this exception when approving the award. Also, the Procurement Code section on concessions allows the award of a contract to the highest and best bidder. However, neither the invitation for bids nor the State Purchasing Officer's approval stated that this was a concession contract.

Even though the procurement was issued under the competitive sealed **bidding** section of the Procurement Code, the evaluation was more closely aligned to language under the competitive sealed **proposals** section of the Code. There were many factors that indicated the competitive sealed proposals method would have been more appropriate. One example is when evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise.

CMS made the decision on which procurement method to use and the State Purchasing Officer at the Chief Procurement Office approved the procurement method. **The procurement file lacked, however, information on the final decision and why that decision was made.** (pages 34-38)

The pricing table in the solicitation document was flawed which allowed vendors to tailor their bids to receive maximum points.

| Digest Exhibit 2 RATES SUBMITTED AND POINTS AWARDED | | | | | | | |
|--|--|---------|--------------|--------------|--------------|--------|--------------|
| Max Points | Category | Securus | | Consolidated | | PCS | |
| | | Rate | Points | Rate | Points | Rate | Points |
| 550 | Commission Rate | 87.1% | 550 | 72.5% | 457.8 | 75.5% | 476.8 |
| | | | | | | | |
| 200 | Rate in \$ per minute – domestic | \$0.00 | 200 | \$0.00 | 200 | \$0.00 | 200 |
| 50 | Rate in \$ per minute – international | \$0.00 | 50 | \$0.00 | 50 | \$1.25 | 0 |
| 70 | Rate in \$ per pre-paid account set up fee | \$0.00 | 70 | \$0.00 | 70 | \$0.00 | 70 |
| 80 | Rate in \$ per fund transfer into pre-paid account | \$0.00 | 80 | \$6.95 | 0 | \$4.75 | 0 |
| 30 | Rate in \$ set up charges per call – domestic | \$4.10 | 25.5 | \$3.49 | 30 | \$4.25 | 24.6 |
| 20 | Rate in \$ set up charges per call – international | \$4.10 | 0 | \$5.95 | 0 | \$0.00 | 20 |
| 1000 | Totals | | 975.5 | | 807.8 | | 791.4 |

Source: OAG analysis of offers submitted and scoring of the offers.

The pricing table in the solicitation document was flawed which allowed vendors to tailor their bids to receive maximum points.

- There were six categories in the pricing table that involved charges and fees for the phone services and these categories were worth a total of 450 points. (See Digest Exhibit 2.) The winning vendor bid \$0 for 4 of the 6 categories. Tailoring its bid this way guaranteed that it would receive maximum points in those four categories thus assuring at least 400 points of the 450 available for charges and fees. All of its phone charges were placed in two categories that were worth only 50 of the 1000 points available. The other vendors bid similarly by bidding \$0 for 3 of the 6 categories. **The way pricing was structured, and since there were no caps on rates specified in the invitation for bids, a vendor could have bid any amount (\$20 per call, \$50 per call, \$1,000 per call, etc.) under set up charges and still had the highest point total to be awarded the contract.**
- CMS should have structured the evaluation of pricing differently to avoid the inherent flaws in the pricing table. An alternate method would be to determine the cost for a call of a pre-defined length (for example, a 15 minute call) by combining set up fees and per minute charges and then assign points proportionately. This would prevent a vendor from placing all of its costs into a single category solely to maximize points.

The pricing table was not created until just prior to publication.

Even though work on developing the solicitation document had begun nine months prior to it being published, the pricing table, which was the sole basis for evaluating bids, was not created until just prior to publication. The pricing table was submitted to the State Purchasing Officer at the Chief

Procurement Office for review the same day the solicitation document was published. Waiting to develop the pricing table until just prior to publication likely contributed to its flaws. (pages 38-42)

Resolution of Protests

Following the opening of the bids on May 24, 2012, two protests were filed related to the procurement of inmate collect calling services. Both protests were filed by Consolidated Communications. The first protest was filed on May 31, 2012, and the second protest was filed on July 3, 2012.

The decisions concerning the resolution of the protests were adequately supported and documented.

Both protests were handled by the Chief Procurement Officer for General Services. The decisions concerning the resolution of the protests were adequately supported and documented. In addition, the protests and the resolution of the protests followed applicable laws and rules.

In the first protest, Consolidated alleged that the bids were in direct violation of rate caps on maximum charges established by the Illinois Commerce Commission (ICC or Commission). After reviewing the ICC cases cited in responses provided by CMS, Securus, and Public Communications Services, the Chief Procurement Officer concluded that the inmate telephone services were not subject to regulation by the ICC. Therefore, the services were not subject to the maximum rate requirements established by the ICC. The protest was denied on June 25, 2012.

In the second protest, Consolidated alleged that Securus was not a responsible bidder because it had violated Illinois laws and made significant misrepresentations in its bid proposal. The Chief Procurement Officer determined that Securus did not violate any laws and there was inadequate evidence to support the other points raised by Consolidated. The protest was denied on August 9, 2012. (pages 45-51)

Illinois Commerce Commission Ruling

On July 3, 2012, Consolidated filed a petition for a declaratory ruling with the Illinois Commerce Commission seeking clarification on whether maximum rates on operator services applied to inmate telephone calling services. On April 9, 2013, the ICC issued a Final Order in response to Consolidated's petition for a declaratory ruling. In its order, the ICC ruled that an entity providing telephone calling services accessible to inmates of corrections facilities is providing "operator services" as defined under the Public Utilities Act. Therefore, the rate caps on operator services would apply.

The ruling further stated that, as a matter of public policy, the charges for operator services within inmate calling services

The decision to lower the commission rate in the first amendment to the contract was not adequately supported or documented.

should be regulated. The members of the public who are its customers, and must pay for service, are captive customers with no service options. (pages 54-61)

On September 13, 2013, CMS amended its contract with Securus to comply with the ICC order. The contract amendment lowered the charges from \$4.10 per call to \$3.55 per call. The contract amendment also lowered the commission rate that Securus paid to the State from 87.1 percent to 76.0 percent. (See Digest Exhibit 3.) **The decision to lower the commission rate in the first amendment to the contract was not adequately supported or documented. It was unclear why the commission rate was lowered and it was unclear how the rate of 76.0 percent was derived.**

| Digest Exhibit 3 SECURUS CONTRACT CHANGES | | |
|---|-------------------|--------------|
| | Original Contract | Amendment #1 |
| Commission rate | 87.1% | 76.0% |
| Charge per call | \$4.10 | \$3.55 |
| State commission (per call) | \$3.57 | \$2.70 |
| Securus revenue (per call) | \$0.53 | \$0.85 |

Source: OAG analysis of Securus contract.

The amendment resulted in a significant increase in the amount of revenue earned by Securus.

While the amendment to the contract resulted in a lower cost per call for inmates and their families, **it also resulted in a significant increase in the amount of revenue earned by Securus.** The amendment resulted in Securus' revenue per call increasing by 61 percent (\$0.53 per call to \$0.85 per call). **Based on the average calls per month, this change would result in Securus' revenue increasing by over \$1.3 million per year.**

CMS erred in the method used to lower the commission rate. If CMS was going to change the commission rate, it should have been lowered to an amount that generated the same revenue for Securus as under the original contract. Amending a revenue-based contract in this manner to generate additional revenue for the vendor and to make the contract more lucrative for the vendor undermines the principles of competitive bidding that form the foundation of the Procurement Code.

The only documented review conducted by the Chief Procurement Office was the approval of the amendment by a State Purchasing Officer. **In addition, the State Purchasing**

Officer that approved the amendment was one of the former project contacts for CMS during the procurement and protest processes. Having someone in the Chief Procurement Office, who was involved in the original procurement and protest processes on behalf of the procuring agency, approve the contract amendment on behalf of the Chief Procurement Officer, undermines the independence of the Chief Procurement Office's review. (pages 61-66)

On June 4, 2013, Securus filed a petition for review with the Appellate Court of Illinois for the First Judicial District seeking vacature of the ICC's April 9, 2013 order. On May 16, 2014, the Appellate Court ruled that the ICC's April 9, 2013 order must be vacated because the ICC lacked jurisdiction to enter the order. The Court determined that the ICC's order was not a declaratory ruling as the party requesting the order was not an "affected person" and there was no controversy or uncertainty within the meaning of the ICC's regulations. The Court's ruling did not address the actual merits of the ICC's order that inmate phone services should be regulated but only that the ICC lacked jurisdiction to enter the order. (page 66)

Other Issues

In drafting the invitation for bids for the inmate collect calling procurement, CMS considered the cost impact on users in two ways. The first was changing the billing structure to eliminate different calling rates based on the distance of the phone call. The State wanted one rate so that all families would pay the same rate regardless of where the inmate was being housed. The second was awarding evaluation points (45 percent of the points available) based on the rates charged to the users of the service. **The procurement resulted in lower costs to users under the new contract compared to the previous contract.** The average cost under the previous contract was \$5.82 per call while the average cost under the new contract was \$3.87 per call.

While the State considered the cost to the user in its evaluation criteria, the invitation for bids assigned a higher percentage of evaluation points (55 percent of the points available) to the amount of commission the State would receive from the vendors. This indicates that the revenue to the State was considered more important than the cost to the user. (pages 68-69)

In a recent ruling on rates for interstate inmate calling services, the Federal Communications Commission (FCC) found that inmate phone rates vary widely and greatly exceed the reasonable costs of providing the service. The FCC stated that a significant factor driving these excessive rates is the widespread use of site commission payments – fees paid by providers to departments of corrections in order to win the

There was no formal interagency agreement or language in the contract that specified the breakdown of commission payments between CMS and Corrections.

exclusive right to provide inmate phone service. The FCC ruling noted that seven states no longer allow commission payments. (pages 69-70)

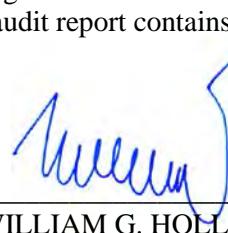
We compared Illinois' rates to the seven states identified by the FCC that no longer allow commission payments. The cost of a 15 minute call in Illinois is \$3.55 while the cost in these states ranged from \$0.49 for New Mexico to \$1.75 for Missouri. Illinois' cost for a 15 minute call was more than twice as high as Missouri and over seven times more than New Mexico. (pages 70-73)

Both Corrections and CMS receive a portion of the commission payments paid by the inmate collect calling vendor. Corrections receives \$466,000 per month and CMS receives the remainder which has traditionally been the larger amount. However, there was no formal interagency agreement or language in the contract that specified the breakdown of commission payments between CMS and Corrections. This lack of formal agreement resulted in a change in the commission amount paid to Corrections under the new contract (\$441,666 increased to \$466,000) due to a clerical error.

The current contract did not contain language as strong on commission payments and reporting requirements compared to the previous contract. The monitoring of this contract could also be strengthened. This is a CMS contract but most of the services are provided at correctional facilities. It was unclear whether anyone was monitoring the monthly call reports and corresponding commission payments to ensure their accuracy. (pages 73-76)

RECOMMENDATIONS

The audit report contains six recommendations. Four recommendations are directed to both CMS and the CPO, one recommendation is addressed to both CMS and Corrections, and one recommendation is directed only to CMS. The agencies generally agreed with the recommendations. Appendix D to the audit report contains the agency responses.



WILLIAM G. HOLLAND
Auditor General

WGH:DJB

AUDITORS ASSIGNED: This Management Audit was performed by the Office of the Auditor General's staff.

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Chapter One

INTRODUCTION AND BACKGROUND

REPORT CONCLUSIONS

The State contracts with a vendor to provide inmate collect calling services. The vendor provides, installs, and maintains the telephone equipment at no cost to the State. The vendor is responsible for billing and collecting for all calls made and pays the State a commission on all completed calls. Both the Department of Central Management Services (CMS) and the Department of Corrections (Corrections) receive a portion of the commission payments. **During the 29-month period we examined, Corrections received \$13.4 million in commission payments while CMS received \$18.1 million** which equates to a 57/43 split in favor of CMS. According to Corrections officials, Corrections uses its portion to help fund inmate programs. While CMS formerly used its portion to purchase items such as public safety equipment, it now uses it to pay for services provided through the Communications Revolving Fund.

In June 2012, CMS awarded the inmate collect calling contract to Securus Technologies (Securus) through an invitation for bids process. For the previous 10 years, the contract had been held by Consolidated Communications Public Services (Consolidated). Under the contract with Securus, the number of calls per month has increased as well as the total minutes. On a per call basis, the average minutes per call has increased from 16.8 minutes under Consolidated to 23.1 minutes under Securus, an increase of 37.4 percent. While calls and minutes have increased, the charges for calls have decreased. The cost per call has decreased 33.5 percent from \$5.82 per call to \$3.87 per call under the new contract.

Senate Resolution Number 122 directed the Auditor General to conduct a management audit of the State's procurement of inmate telephone service vendors.

The Procurement Process

The inmate collect calling contract with Consolidated was set to expire on June 30, 2012. **Timing on this procurement was critical** because implementation with a new vendor must be coordinated with the old vendor. The new service had to be phased in to minimize interruption in service. However, CMS experienced delays in issuing the solicitation document. These delays included last-minute changes to the solicitation document up to and including the day it was published.

Furthermore, after publishing the invitation for bids on March 29, 2012, CMS twice issued revised versions of the invitation for bids and extended the due date for bids from April 12, 2012, to May 24, 2012. The due date was extended to provide time to respond to vendor questions and due to the addition of mandatory site visits.

One of the changes in the revised solicitation document was a wording change regarding the criteria used to award the contract. The original version stated that the contract would be awarded to the vendor “*...that offers the state the most money.*” This was changed in the revised solicitation to say that the contract would be awarded to the vendor “*...whose offer has the highest point total.*”

CMS failed to follow a requirement in the solicitation document by not providing written responses to all vendor questions. Seven different vendors submitted a total of 101 questions to CMS. Of those 101 questions, 73 (72%) were answered either in the revised solicitation document or in the question and answer document published by CMS. **CMS failed to respond to 28 of the 101 questions submitted.** In addition, CMS was not timely in responding, missing two of its own deadlines to publish answers to vendor questions:

- CMS stated that it would answer vendor questions in an addendum published the week of April 16 **but never issued the addendum.**
- CMS later stated it would publish answers to vendor questions no later than Friday, May 11 **but did not publish answers until five days later** on Wednesday, May 16.

The solicitation documents, which were approved by CMS and the State Purchasing Officer at the Chief Procurement Office, did not specify who was required to attend the mandatory site visits which allowed vendors to meet the requirement through attendance by a subcontractor. **Two of the three vendors that submitted bids, Securus and Public Communications Services (PCS), were not listed as vendors that submitted information to attend the mandatory site visits.** However, the proposed subcontractor for each (G5Tek for both Securus and PCS) did attend the site visits. In addition, a representative from the parent company of PCS attended the site visits signing in as the representative for three different companies. The procurement file lacked documentation making it unclear who made the final determination to allow subcontractors to meet the requirement for mandatory attendance.

The contract for inmate collect calling services was properly awarded based on the evaluation factors outlined in the invitation for bids. However, because of how the evaluation factors were structured, the lowest bidder – the bidder that offered the lowest per phone call charge – was not awarded the contract because a greater emphasis was placed on the amount of money the winning vendor would pay the State in commission payments. Since the contract was not awarded to the lowest bidder, the procurement did not adhere to the competitive sealed bidding section of the Procurement Code.

The Procurement Code and Standard Procurement Rules allow award to other than the lowest bidder upon a written determination that award to another bidder is in the State's best interest. However, the State Purchasing Officer did not utilize this exception when approving the award. Also, the Procurement Code section on concessions allows the award of a contract to the highest and best bidder. However, neither the invitation for bids nor the State Purchasing Officer's approval stated that this was a concession contract.

Even though the procurement was issued under the competitive sealed **bidding** section of the Procurement Code, the evaluation was more closely aligned to language under the

competitive sealed **proposals** section of the Code. There were many factors that indicated the competitive sealed proposals method would have been more appropriate. One example is when evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise.

CMS made the decision on which procurement method to use and the State Purchasing Officer at the Chief Procurement Office approved the procurement method. **The procurement file lacked, however, information on the final decision and why that decision was made.**

The pricing table in the solicitation document was flawed which allowed vendors to tailor their bids to receive maximum points.

- There were six categories in the pricing table that involved charges and fees for the phone services and these categories were worth a total of 450 points. The winning vendor bid \$0 for 4 of the 6 categories. Tailoring its bid this way guaranteed that it would receive maximum points in those four categories thus assuring at least 400 points of the 450 available for charges and fees. All of its phone charges were placed in two categories that were worth only 50 of the 1000 points available. The other vendors bid similarly by bidding \$0 for 3 of the 6 categories. **The way pricing was structured, and since there were no caps on rates specified in the invitation for bids, a vendor could have bid any amount (\$20 per call, \$50 per call, \$1,000 per call, etc.) under set up charges and still had the highest point total to be awarded the contract.**
- CMS should have structured the evaluation of pricing differently to avoid the inherent flaws in the pricing table. An alternate method would be to determine the cost for a call of a pre-defined length (for example, a 15 minute call) by combining set up fees and per minute charges and then assign points proportionately. This would prevent a vendor from placing all of its costs into a single category solely to maximize points.

Even though work on developing the solicitation document had begun nine months prior to it being published, the pricing table, which was the sole basis for evaluating bids, was not created until just prior to publication. The pricing table was submitted to the State Purchasing Officer at the Chief Procurement Office for review the same day the solicitation document was published. Waiting to develop the pricing table until just prior to publication likely contributed to its flaws.

Resolution of Protests

Following the opening of the bids on May 24, 2012, two protests were filed related to the procurement of inmate collect calling services. Both protests were filed by Consolidated Communications. The first protest was filed on May 31, 2012, and the second protest was filed on July 3, 2012.

Both protests were handled by the Chief Procurement Officer for General Services. The decisions concerning the resolution of the protests were adequately supported and documented. In addition, the protests and the resolution of the protests followed applicable laws and rules.

In the first protest, Consolidated alleged that the bids were in direct violation of rate caps on maximum charges established by the Illinois Commerce Commission (ICC or Commission). After reviewing the ICC cases cited in responses provided by CMS, Securus, and Public Communications Services, the Chief Procurement Officer concluded that the inmate telephone services were not subject to regulation by the ICC. Therefore, the services were not subject to the maximum rate requirements established by the ICC. The protest was denied on June 25, 2012.

In the second protest, Consolidated alleged that Securus was not a responsible bidder because it had violated Illinois laws and made significant misrepresentations in its bid proposal. The Chief Procurement Officer determined that Securus did not violate any laws and there was inadequate evidence to support the other points raised by Consolidated. The protest was denied on August 9, 2012.

Illinois Commerce Commission Ruling

On July 3, 2012, Consolidated filed a petition for a declaratory ruling with the Illinois Commerce Commission seeking clarification on whether maximum rates on operator services applied to inmate telephone calling services. On April 9, 2013, the ICC issued a Final Order in response to Consolidated’s petition for a declaratory ruling. In its order, the ICC ruled that an entity providing telephone calling services accessible to inmates of corrections facilities is providing “operator services” as defined under the Public Utilities Act. Therefore, the rate caps on operator services would apply.

The ruling further stated that, as a matter of public policy, the charges for operator services within inmate calling services should be regulated. The members of the public who are its customers, and must pay for service, are captive customers with no service options.

On September 13, 2013, CMS amended its contract with Securus to comply with the ICC order. The contract amendment lowered the charges from \$4.10 per call to \$3.55 per call. The contract amendment also lowered the commission rate that Securus paid to the State from 87.1 percent to 76.0 percent. **The decision to lower the commission rate in the first amendment to the contract was not adequately supported or documented. It was unclear why the commission rate was lowered and it was unclear how the rate of 76.0 percent was derived.**

While the amendment to the contract resulted in a lower cost per call for inmates and their families, **it also resulted in a significant increase in the amount of revenue earned by Securus.** The amendment resulted in Securus’ revenue per call increasing by 61 percent (\$0.53 per call to \$0.85 per call). **Based on the average calls per month, this change would result in Securus’ revenue increasing by over \$1.3 million per year.**

CMS erred in the method used to lower the commission rate. If CMS was going to change the commission rate, it should have been lowered to an amount that generated the same revenue for Securus as under the original contract. Amending a revenue-based contract in this manner to generate additional revenue for the vendor and to make the contract more lucrative for the vendor undermines the principles of competitive bidding that form the foundation of the Procurement Code.

The only documented review conducted by the Chief Procurement Office was the approval of the amendment by a State Purchasing Officer. **In addition, the State Purchasing Officer that approved the amendment was one of the former project contacts for CMS during the procurement and protest processes.** Having someone in the Chief Procurement Office, who was involved in the original procurement and protest processes on behalf of the procuring agency, approve the contract amendment on behalf of the Chief Procurement Officer, undermines the independence of the Chief Procurement Office’s review.

On June 4, 2013, Securus filed a petition for review with the Appellate Court of Illinois for the First Judicial District seeking vacature of the ICC’s April 9, 2013 order. On May 16, 2014, the Appellate Court ruled that the ICC’s April 9, 2013 order must be vacated because the ICC lacked jurisdiction to enter the order. The Court determined that the ICC’s order was not a declaratory ruling as the party requesting the order was not an “affected person” and there was no controversy or uncertainty within the meaning of the ICC’s regulations. The Court’s ruling did not address the actual merits of the ICC’s order that inmate phone services should be regulated but only that the ICC lacked jurisdiction to enter the order.

Other Issues

In drafting the invitation for bids for the inmate collect calling procurement, CMS considered the cost impact on users in two ways. The first was changing the billing structure to eliminate different calling rates based on the distance of the phone call. The State wanted one rate so that all families would pay the same rate regardless of where the inmate was being housed. The second was awarding evaluation points (45 percent of the points available) based on the rates charged to the users of the service. **The procurement resulted in lower costs to users under the new contract compared to the previous contract.** The average cost under the previous contract was \$5.82 per call while the average cost under the new contract was \$3.87 per call.

While the State considered the cost to the user in its evaluation criteria, the invitation for bids assigned a higher percentage of evaluation points (55 percent of the points available) to the amount of commission the State would receive from the vendors. This indicates that the revenue to the State was considered more important than the cost to the user.

In a recent ruling on rates for interstate inmate calling services, the Federal Communications Commission (FCC) found that inmate phone rates vary widely and greatly exceed the reasonable costs of providing the service. The FCC stated that a significant factor driving these excessive rates is the widespread use of site commission payments – fees paid by providers to departments of corrections in order to win the exclusive right to provide inmate phone service. The FCC ruling noted that seven states no longer allow commission payments.

We compared Illinois’ rates to the seven states identified by the FCC that no longer allow commission payments. The cost of a 15 minute call in Illinois is \$3.55 while the cost in these states ranged from \$0.49 for New Mexico to \$1.75 for Missouri. Illinois’ cost for a 15 minute call was more than twice as high as Missouri and over seven times more than New Mexico.

Both Corrections and CMS receive a portion of the commission payments paid by the inmate collect calling vendor. Corrections receives \$466,000 per month and CMS receives the remainder which has traditionally been the larger amount. However, there was no formal interagency agreement or language in the contract that specified the breakdown of commission payments between CMS and Corrections. This lack of formal agreement resulted in a change in the commission amount paid to Corrections under the new contract (\$441,666 increased to \$466,000) due to a clerical error.

The current contract did not contain language as strong on commission payments and reporting requirements compared to the previous contract. The monitoring of this contract could also be strengthened. This is a CMS contract but most of the services are provided at correctional facilities. It was unclear whether anyone was monitoring the monthly call reports and corresponding commission payments to ensure their accuracy.

INTRODUCTION

On May 14, 2013, Senate Resolution Number 122 was adopted directing the Auditor General to conduct a management audit of the State’s procurement of inmate telephone service vendors for the Department of Corrections’ inmate telephone service program. Specifically, the resolution asks that the audit determine:

- Whether all aspects of the procurement process were conducted in accordance with applicable laws, rules, regulations and policies;
- Whether the evaluative criteria guiding the selection by the Department of Central Management Services of vendors were adequate and uniformly applied to competing vendors;
- Whether decisions concerning the selection of vendors and resolution of protests are adequately supported and documented;
- Whether the bids submitted by vendors and evaluated by the Department of Central Management Services were in compliance with the terms set forth in the solicitation document; and
- Whether or not the Department of Central Management Services in the course of the procurement process or resolution of the protests, took into consideration the cost impact the solicitation might place on the family members, friends and general public who are responsible for paying for the calls.

BACKGROUND

One service offered to inmates of correctional facilities is the use of telephones. Studies have found a link between prisoners’ contact with families back home and lower recidivism rates. Access to telephones is also important from a security standpoint. Correctional staff have indicated that the lack of access to telephones for the prison population can lead to inmates

becoming disruptive which presents security issues for both correctional staff and the inmates themselves.

The most recent invitation for bids, issued in March 2012, noted that there were approximately 2,100 phones installed at 32 Department of Corrections facilities, 8 Department of Juvenile Justice facilities, and 1 Department of Human Services facility. The average daily inmate population during fiscal year 2012 was 47,349 at Department of Corrections facilities and 1,068 at Department of Juvenile Justice facilities.

Inmates cannot receive telephone calls but can make collect calls to those on their approved calling list. Upon entry into a correctional facility, inmates are required to complete a form called the Offender Telephone Number List Request. On the form, each inmate lists individual names and phone numbers which become the inmate's calling list. Once approved, these are the only individuals the inmate is allowed to call. All inmate telephone calls are subject to monitoring and recording except for prior special arrangements made for calls with an attorney. All requests for unmonitored attorney calls are processed by a member of Corrections' legal staff.

Inmates have scheduled times when they can make calls and the calls are subject to time limits as follows:

- 30 minutes for general population offenders;
- 15 minutes for administrative detention offenders;
- 15 minutes for offenders in segregation; and
- 10 minutes for offenders in segregation at closed maximum security facilities.

The State contracts with an outside vendor to provide the collect calling service. The vendor provides, installs, and maintains the telephone equipment at no cost to the State. The vendor also provides the collect calling control system as well as telephone calling operator services. The vendor is responsible for billing and collecting for all calls made and pays the State a commission on all completed calls. The vendor that provided this service prior to the most recent invitation for bids was Consolidated Communications Public Services (Consolidated). The vendor that currently provides the service is Securus Technologies (Securus).

Contract History

In 2002, CMS issued a request for proposals with the stated purpose to establish a contract with a single experienced provider of inmate collect calling services. Prior to that, inmate telephone services were provided by four different vendors at a total of 44 locations. The 2002 procurement combined these services into one all inclusive contract.

Consolidated was awarded the five-year contract which was effective through June 30, 2007. The contract also contained renewal options for up to an additional five years. The contract was renewed for one additional year and then was renewed for the remaining four

renewal years through June 30, 2012. As part of this second renewal, Consolidated agreed to lower its rates and also install a new recording system at its own expense.

In March 2012, CMS issued an invitation for bids to establish a new inmate collect calling contract. Three vendors submitted bids in response to the invitation for bids. The contract was awarded to Securus. This procurement is the subject of the audit and is discussed in more detail in subsequent chapters. A timeline of the procurement is shown in Exhibit 1-1.

Exhibit 1-1

TIMELINE OF THE PROCUREMENT FOR INMATE CALLING SERVICES

| Date | Description |
|-------------|---|
| 06-16-11 | CMS and Corrections meet to begin the process of developing a solicitation document for the upcoming procurement. |
| 01-23-12 | Earliest dated document in the procurement file – internal CMS email inquiring about specifications for the inmate collect calling invitation for bids (IFB). |
| 03-29-12 | State Purchasing Officer at the Chief Procurement Office approves procurement method. State Purchasing Officer receives draft solicitation document and approves draft solicitation. |
| 03-29-12 | CMS issues the IFB for an inmate collect calling contract. Bids due April 12. |
| 04-05-12 | Due date for bids extended from April 12 to April 19 to provide time to respond to vendor questions. |
| 04-16-12 | Due dates for bids extended from April 19 to May 24 to allow for addition of mandatory site visits on May 3 and 4 at four correctional facilities and one youth center. |
| 04-24-12 | CMS issues a revised version of the IFB (IFB version 2). |
| 05-01-12 | CMS issues another revised version of the IFB (IFB version 3). |
| 05-03-12 | First day of the two-day mandatory site visits. |
| 05-16-12 | CMS issues vendor questions and answers. |
| 05-24-12 | Public opening of bids. Three vendors submit bids: <ul style="list-style-type: none"> • Consolidated Communications Public Services • Securus Technologies • Public Communications Services |
| 05-31-12 | Consolidated protests the bids submitted by Securus and Public Communications Services alleging that the bids are in direct violation of rate caps established by the Illinois Commerce Commission (ICC or Commission). |
| 06-25-12 | The Chief Procurement Officer for General Services (CPO) denies Consolidated's protest. The CPO finds, based on previous cases at the ICC, that the services are not subject to regulation by the ICC and the rate caps do not apply. |
| 06-27-12 | State Purchasing Officer approves award notice and CMS issues intent to award contract to Securus. |
| 07-03-12 | Consolidated files a second protest, protesting the award of the contract to Securus. Consolidated alleges that Securus had violated Illinois laws and made significant misrepresentations in its bid proposal. |
| 07-03-12 | Consolidated files a petition for a declaratory ruling with the ICC seeking a determination on whether the rate caps would apply. |
| 07-03-12 | Consolidated files a complaint with the Circuit Court of Sangamon County to prevent CMS from awarding the contract to Securus. |
| 07-31-12 | Prehearing conference held. |
| 08-09-12 | The Chief Procurement Officer for General Services denies Consolidated's second protest. |

Exhibit 1-1
TIMELINE OF THE PROCUREMENT FOR INMATE CALLING SERVICES

| Date | Description |
|--|---|
| 08-23-12 | Securus files its response to Consolidated's petition requesting that the petition be dismissed. |
| 08-31-12 | ICC staff files response recommending that the Commission grant Consolidated's petition. |
| 10-19-12 | Consolidated's circuit court case dismissed. |
| 10-19-12 | State Purchasing Officer approves contract. Contract with Securus signed by the Director of CMS. The contract had an initial term through June 30, 2015, with renewal options of up to six years. |
| 10-23-12 | Administrative Law Judge at the ICC issues a Proposed Order finding that the operator services included in inmate calling services are “operator services” as defined in the Public Utilities Act and should be regulated. Therefore, the rate caps would apply. |
| 11-13-12 | Administrative Law Judge at the ICC denies Securus' motion to set a discovery schedule. |
| 01-09-13 | ICC denies Securus' request for oral arguments. |
| 01-29-13 | ICC denies Securus' petition for interlocutory review. |
| 04-09-13 | ICC enters a Final Order granting Consolidated's request for a declaratory ruling. The Final Order states that an entity providing telephone calling services accessible to inmates of corrections facilities is providing “operator services” as defined in the Public Utilities Act. Sections 770.20(a) and 770.40 (Restrictions on Billing and Charges) would therefore apply. |
| 06-04-13 | Securus files a petition for review of the orders of the ICC with the Appellate Court of Illinois for the First Judicial District. |
| 08-22-13 | State Purchasing Officer approves amendment to the contract. |
| 09-13-13 | Contract with Securus amended to comply with ICC rate caps. Charges reduced from \$4.10 per call to \$3.55 per call. Commission percentage paid to State also lowered from 87.1 percent to 76 percent. |
| 02-13-14 | Contract with Securus amended to comply with Federal Communications Commission ruling on interstate inmate calling rates. For interstate calls, the surcharge of \$3.55 per call is eliminated. It is replaced with a per minute rate of \$0.1183. The amendment also eliminates commission payments for interstate calls. |
| 05-16-14 | The Appellate Court of Illinois for the First Judicial District rules that the Illinois Commerce Commission's April 9, 2013 order must be vacated because the ICC lacked jurisdiction to enter the order. |
| | <div style="display: flex; justify-content: space-around;">  Invitation for Bids/Contract  Protests </div> <div style="display: flex; justify-content: space-around;">  ICC Filings  Circuit Court Case and Appellate Court Case </div> |
| Source: OAG summary of procurement documents, protest file, and ICC filings. | |

Agencies Involved With This Procurement

Two State agencies were involved with this procurement – CMS and Corrections. In addition, there was involvement from the Chief Procurement Office for General Services. The involvement of each agency is highlighted below:

- CMS – CMS issued the invitation for bids. The resulting contract was between CMS (acting on behalf of the State) and Securus and was signed by the Director of CMS. CMS provided a written response to the Protest Officer for both the first protest and the second protest. CMS also handled the two amendments to the contract with Securus. Those involved included staff from the Bureau of Strategic Sourcing and the Bureau of Communications and Computer Services.
- Corrections – While this is a CMS contract, the service is provided predominantly at Department of Corrections’ facilities. (There are also phones at eight Department of Juvenile Justice facilities and at one Department of Human Services facility.) Officials at Corrections assisted in the development of the invitation for bids. Corrections is also responsible for monitoring repairs and specifications related to the phone lines.
- Chief Procurement Office for General Services – The Chief Procurement Office reviewed the procurement process at various stages. This review, performed by the State Purchasing Officer for CMS, involved approving the procurement method, the invitation for bids, the award notice, the contract, and the amendments. The Chief Procurement Office was also primarily responsible for resolving the protests.

PROGRAM INFORMATION

The contract with Securus was signed in October 2012. In January 2013, services began transitioning from Consolidated to Securus. The transition was fully completed by April 2013. We examined call volume and the cost per call from August 2011 through December 2013. August 2011 was the first month that detailed reports were available. (See Exhibit 1-2.)

Exhibit 1-2
CALL VOLUME AND COST PER CALL
August 2011 – December 2013

| Vendor | Month | Number of Calls | Total Minutes | Minutes per Call | Dollars Billed | Cost per Call |
|-------------------------|---------------------|------------------------|----------------------|-------------------------|-----------------------|----------------------|
| Consolidated | Aug-11 ¹ | 307,482 | 5,168,825 | 16.8 | \$1,800,340 | \$5.86 |
| Consolidated | Sep-11 | 296,871 | 5,020,811 | 16.9 | \$1,745,557 | \$5.88 |
| Consolidated | Oct-11 | 315,852 | 5,391,296 | 17.1 | \$1,863,450 | \$5.90 |
| Consolidated | Nov-11 | 313,145 | 5,340,276 | 17.1 | \$1,853,913 | \$5.92 |
| Consolidated | Dec-11 | 339,593 | 5,703,712 | 16.8 | \$1,988,153 | \$5.85 |
| Consolidated | Jan-12 | 321,378 | 5,463,883 | 17.0 | \$1,890,940 | \$5.88 |
| Consolidated | Feb-12 | 357,583 | 6,089,266 | 17.0 | \$2,095,898 | \$5.86 |
| Consolidated | Mar-12 | 380,323 | 6,446,888 | 17.0 | \$2,220,977 | \$5.84 |
| Consolidated | Apr-12 | 344,488 | 5,819,140 | 16.9 | \$2,007,406 | \$5.83 |
| Consolidated | May-12 | 345,424 | 5,671,211 | 16.4 | \$1,977,335 | \$5.72 |
| Consolidated | Jun-12 | 320,319 | 5,247,817 | 16.4 | \$1,826,699 | \$5.70 |
| Consolidated | Jul-12 | 316,415 | 5,174,955 | 16.4 | \$1,808,721 | \$5.72 |
| Consolidated | Aug-12 | 313,033 | 5,186,588 | 16.6 | \$1,799,174 | \$5.75 |
| Consolidated | Sep-12 | 308,893 | 5,191,485 | 16.8 | \$1,788,809 | \$5.79 |
| Consolidated | Oct-12 | 309,272 | 5,170,918 | 16.7 | \$1,793,375 | \$5.80 |
| Consolidated | Nov-12 | 315,996 | 5,355,245 | 16.9 | \$1,844,187 | \$5.84 |
| Consolidated | Dec-12 | 341,184 | 5,770,683 | 16.9 | \$1,982,634 | \$5.81 |
| 17 Month Average | | 326,309 | 5,483,118 | 16.8 | \$1,899,269 | \$5.82 |

Transition months

| | | | | | | |
|------------------------|---------------------|----------------|------------------|-------------|--------------------|---------------|
| Consolidated | Jan-13 | 314,904 | 5,369,867 | 17.1 | \$1,839,034 | \$5.84 |
| Securus | Jan-13 | 7,959 | 149,332 | 18.8 | \$32,632 | \$4.10 |
| | <i>Jan Total</i> | <i>322,863</i> | <i>5,519,199</i> | <i>17.1</i> | <i>\$1,871,666</i> | <i>\$5.80</i> |
| Consolidated | Feb-13 | 299,857 | 5,160,999 | 17.2 | \$1,760,542 | \$5.87 |
| Securus | Feb-13 | 24,773 | 502,175 | 20.3 | \$101,569 | \$4.10 |
| | <i>Feb Total</i> | <i>324,630</i> | <i>5,663,174</i> | <i>17.4</i> | <i>\$1,862,111</i> | <i>\$5.74</i> |
| Consolidated | Mar-13 | 98,690 | 1,706,288 | 17.3 | \$589,521 | \$5.97 |
| Securus | Mar-13 | 266,593 | 5,837,844 | 21.9 | \$1,093,031 | \$4.10 |
| | <i>Mar Total</i> | <i>365,283</i> | <i>7,544,132</i> | <i>20.7</i> | <i>\$1,682,552</i> | <i>\$4.61</i> |
| Securus | Apr-13 | 346,353 | 7,799,743 | 22.5 | \$1,420,047 | \$4.10 |
| Securus | May-13 | 349,398 | 7,921,908 | 22.7 | \$1,432,532 | \$4.10 |
| Securus | Jun-13 | 342,386 | 7,769,614 | 22.7 | \$1,403,783 | \$4.10 |
| Securus | Jul-13 | 340,527 | 7,786,289 | 22.9 | \$1,396,161 | \$4.10 |
| Securus | Aug-13 | 328,101 | 7,566,635 | 23.1 | \$1,345,214 | \$4.10 |
| Securus | Sep-13 ² | 325,759 | 7,555,169 | 23.2 | \$1,222,519 | \$3.75 |
| Securus | Oct-13 | 352,627 | 8,264,451 | 23.4 | \$1,251,826 | \$3.55 |
| Securus | Nov-13 | 369,581 | 8,747,782 | 23.7 | \$1,312,013 | \$3.55 |
| Securus | Dec-13 | 351,597 | 8,295,154 | 23.6 | \$1,248,169 | \$3.55 |
| 9 Month Average | | 345,148 | 7,967,416 | 23.1 | \$1,336,918 | \$3.87 |

¹ August 2011 was the first month that detailed reports were available.² Rates went from \$4.10 per call to \$3.55 per call and the commission percentage changed from 87.1 percent to 76 percent due to an amendment to the contract.

Source: OAG analysis of monthly reports filed by Consolidated and Securus and check stubs provided by CMS and Corrections.

As shown in Exhibit 1-2, under the contract with Securus, the number of calls per month has increased as well as the total minutes. The average calls per month have increased 5.8 percent (326,309 to 345,148) and the average minutes per month have increased 45.3 percent (5,483,118 to 7,967,416). On a per call basis, the average minutes per call has increased 37.4 percent from 16.8 minutes under Consolidated to 23.1 minutes under Securus.

While calls and minutes have increased, the charges for calls have decreased. Charges per month have decreased 29.6 percent (\$1,899,269 to \$1,336,918) under the contract with Securus. The cost per call has decreased 33.5 percent from \$5.82 per call to \$3.87 per call. (Note: the cost per call prior to a contract amendment was \$4.10 and is now \$3.55 while \$3.87 is the average resulting from using those two amounts.)

The structure for the way users are charged for phone calls changed with the new contract. Under the contract with Consolidated, charges depended on the length of the phone call (number of minutes) and the distance between the correctional facility where the phone call originated and the person called. Under the contract with Securus, for calls within the State, each user is charged a flat amount per phone call which does not vary based on the length of the phone call or the distance between the callers.

We asked Corrections about the length of calls increasing and whether this was good or bad from their perspective. Corrections officials stated that they had not heard of or experienced any negative effects related to the length of the calls. The increase in average length of call was likely due to the rates being the same for a 15 minute call as a 30 minute call.

We also examined, based on the dollars billed to users, how much revenue the vendors received and how much commission was paid to the State. (See Exhibit 1-3.) Vendor revenue has dropped substantially under the contract with Securus. This is due to two factors: 1) a lower charge per call, and 2) a higher commission percentage to the State. Vendor revenue averaged \$835,678 per month under Consolidated which decreased to \$228,480 under Securus. The monthly revenue for Securus increased because of a contract amendment, effective September 13, 2013, that lowered the commission percentage from 87.1 percent to 76 percent. This is discussed more in Chapter Four.

While the dollars billed to users have decreased, the commissions paid to the State have stayed relatively the same. The commissions paid to the State are divided into two State Funds:

- Fund 523 – Department of Corrections Reimbursement and Education Fund
- Fund 312 – Communications Revolving Fund (administered by CMS)

During the contract with Consolidated, Corrections received a flat amount of \$441,666 per month which was deposited into Fund 523. The remainder was deposited into Fund 312 which is administered by CMS. Under the contract with Securus, the amount paid to Corrections changed to \$466,000. **For the 29-month period shown in Exhibit 1-3, Corrections received \$13.4 million while CMS received \$18.1 million** which equates to a 57/43 split in favor of CMS. That split has narrowed in the most recent months shown due to the reduction in rates charged and the reduced commission percentage.

Exhibit 1-3
VENDOR REVENUE AND COMMISSIONS PAID TO THE STATE
August 2011 – December 2013

| Vendor | Month | Dollars Billed | Vendor Revenue | Commissions Paid to State | Commission % | Paid to DOC – Fund 523 | Paid to CMS – Fund 312 |
|-------------------------|---------------------|--------------------|------------------|---------------------------|--------------|------------------------|------------------------|
| Consolidated | Aug-11 ¹ | \$1,800,340 | \$792,150 | \$1,008,191 | 56.0% | \$441,666 | \$566,525 |
| Consolidated | Sep-11 | \$1,745,557 | \$768,045 | \$977,512 | 56.0% | \$441,666 | \$535,846 |
| Consolidated | Oct-11 | \$1,863,450 | \$819,918 | \$1,043,532 | 56.0% | \$441,666 | \$601,866 |
| Consolidated | Nov-11 | \$1,853,913 | \$815,722 | \$1,038,191 | 56.0% | \$441,666 | \$596,525 |
| Consolidated | Dec-11 | \$1,988,153 | \$874,787 | \$1,113,366 | 56.0% | \$441,666 | \$671,700 |
| Consolidated | Jan-12 | \$1,890,940 | \$832,014 | \$1,058,926 | 56.0% | \$441,666 | \$617,260 |
| Consolidated | Feb-12 | \$2,095,898 | \$922,195 | \$1,173,703 | 56.0% | \$441,666 | \$732,037 |
| Consolidated | Mar-12 | \$2,220,977 | \$977,230 | \$1,243,747 | 56.0% | \$441,666 | \$802,081 |
| Consolidated | Apr-12 | \$2,007,406 | \$883,258 | \$1,124,147 | 56.0% | \$441,666 | \$682,481 |
| Consolidated | May-12 | \$1,977,335 | \$870,027 | \$1,107,308 | 56.0% | \$441,666 | \$665,642 |
| Consolidated | Jun-12 | \$1,826,699 | \$803,747 | \$1,022,951 | 56.0% | \$441,666 | \$581,285 |
| Consolidated | Jul-12 | \$1,808,721 | \$795,837 | \$1,012,884 | 56.0% | \$441,666 | \$571,218 |
| Consolidated | Aug-12 | \$1,799,174 | \$791,636 | \$1,007,537 | 56.0% | \$441,666 | \$565,871 |
| Consolidated | Sep-12 | \$1,788,809 | \$787,076 | \$1,001,733 | 56.0% | \$441,666 | \$560,067 |
| Consolidated | Oct-12 | \$1,793,375 | \$789,085 | \$1,004,290 | 56.0% | \$441,666 | \$562,624 |
| Consolidated | Nov-12 | \$1,844,187 | \$811,442 | \$1,032,745 | 56.0% | \$441,666 | \$591,079 |
| Consolidated | Dec-12 | \$1,982,634 | \$872,359 | \$1,110,275 | 56.0% | \$441,666 | \$668,609 |
| 17 Month Average | | \$1,899,269 | \$835,678 | \$1,063,590 | 56.0% | \$441,666 | \$621,924 |

Transition months

| | | | | | | | |
|------------------------|---------------------|--------------------|------------------|--------------------|--------------|------------------|------------------|
| Consolidated | Jan-13 | \$1,839,034 | \$809,175 | \$1,029,859 | 56.0% | \$441,666 | \$588,193 |
| Securus | Jan-13 | \$32,632 | \$3,959 | \$28,673 | 87.9% | \$28,673 | - |
| | <i>Jan Total</i> | <i>\$1,871,666</i> | <i>\$813,134</i> | <i>\$1,058,532</i> | <i>56.6%</i> | <i>\$470,339</i> | <i>\$588,193</i> |
| Consolidated | Feb-13 | \$1,760,542 | \$774,639 | \$985,904 | 56.0% | \$441,666 | \$544,238 |
| Securus | Feb-13 | \$101,569 | \$13,099 | \$88,470 | 87.1% | - | \$88,470 |
| | <i>Feb Total</i> | <i>\$1,862,111</i> | <i>\$787,737</i> | <i>\$1,074,374</i> | <i>57.7%</i> | <i>\$441,666</i> | <i>\$632,708</i> |
| Consolidated | Mar-13 | \$589,521 | \$259,389 | \$330,132 | 56.0% | \$330,132 | - |
| Securus | Mar-13 | \$1,093,031 | \$141,001 | \$952,030 | 87.1% | \$466,000 | \$486,030 |
| | <i>Mar Total</i> | <i>\$1,682,552</i> | <i>\$400,390</i> | <i>\$1,282,162</i> | <i>76.2%</i> | <i>\$796,132</i> | <i>\$486,030</i> |
| Securus | Apr-13 | \$1,420,047 | \$183,186 | \$1,236,861 | 87.1% | \$466,000 | \$770,861 |
| Securus | May-13 | \$1,432,532 | \$184,797 | \$1,247,735 | 87.1% | \$466,000 | \$781,735 |
| Securus | Jun-13 | \$1,403,783 | \$181,088 | \$1,222,695 | 87.1% | \$466,000 | \$756,695 |
| Securus | Jul-13 | \$1,396,161 | \$180,105 | \$1,216,056 | 87.1% | \$466,000 | \$750,056 |
| Securus | Aug-13 | \$1,345,214 | \$173,533 | \$1,171,681 | 87.1% | \$466,000 | \$705,681 |
| Securus | Sep-13 ² | \$1,222,519 | \$238,731 | \$983,788 | 80.5% | \$466,000 | \$517,788 |
| Securus | Oct-13 | \$1,251,826 | \$300,438 | \$951,388 | 76.0% | \$466,000 | \$485,388 |
| Securus | Nov-13 | \$1,312,013 | \$314,883 | \$997,130 | 76.0% | \$466,000 | \$531,130 |
| Securus | Dec-13 | \$1,248,169 | \$299,561 | \$948,609 | 76.0% | \$466,000 | \$482,609 |
| 9 Month Average | | \$1,336,918 | \$228,480 | \$1,108,438 | 82.9% | \$466,000 | \$642,438 |

¹ August 2011 was the first month that detailed reports were available.

² Rates went from \$4.10 per call to \$3.55 per call and the commission percentage changed from 87.1 percent to 76 percent due to an amendment to the contract.

Note: Amounts may not add due to rounding.

Source: OAG analysis of monthly reports filed by Consolidated and Securus and check stubs provided by CMS and Corrections.

Use of Funds

As noted above, during the 29-month period shown in Exhibit 1-3, Corrections received \$13.4 million in commission payments while CMS received \$18.1 million. Corrections uses its portion to help fund inmate programs. While CMS formerly used its portion to purchase items such as public safety equipment, it now uses it to pay for services provided through the Communications Revolving Fund.

There has been much debate over the use of commission payments. Critics contend that commission payments unfairly drive up the cost of phone calls to inmate families. A recent Federal Communications Commission (FCC) ruling stated that commission payments cannot be included in rates for interstate inmate phone calls. (Illinois amended its contract to comply with the FCC ruling but it applied only to interstate calls which are a small percentage of the overall calls made.)

However, correctional institutions and providers of inmate calling services have defended the use of commission payments. The FCC ruling noted: *“The record reflects that site commission payments may be used for worthwhile causes that benefit inmates by fostering such objectives as education and reintegration into society. Law enforcement and correctional facilities assert that some or all of these programs would cease or be reduced if commission payments were not received as no other funding source would be available.”*

A 2011 Government Accountability Office report noted that the federal Bureau of Prisons *“...uses the profits (the amount of revenue that exceeds expenses) from operating the inmate telephone service...to provide inmate amenities, such as employment opportunities and educational and recreational activities, that are not currently supported through appropriations.”*

While the Department of Corrections uses its portion of commission payments to support inmate programs, CMS does not. Since this is a service at correctional facilities, we asked CMS why it receives a split of the commission payments. CMS responded: *“By statute, CMS provides for and coordinates all Telecommunications services for State agencies.”*

Department of Corrections' Use of Funds

Corrections deposits its portion of the inmate telephone commissions into the Department of Corrections Reimbursement and Education Fund (Fund 523). For fiscal year 2013, telephone commissions accounted for \$5,794,665 of the \$30,268,134 (19%) deposited in the fund. Other revenue comes from a variety of sources including federal funds and profits from inmate commissary sales. Since the telephone commissions are only a portion of the revenue in the fund, expenditures from the fund cannot be tied to a specific revenue source. However, Corrections officials stated that telephone commissions are directed back to the inmate population. Funds are spent for a variety of different purposes including medications and care for inmates with HIV and Hepatitis C and legal updates for mandated legal law libraries at institutions. Exhibit 1-4 shows revenues and expenditures for the fund for fiscal year 2013. A large portion of other expenditures goes toward salaries and benefits for employees.

Exhibit 1-4

**REVENUES AND EXPENDITURES FOR THE DEPARTMENT OF CORRECTIONS
REIMBURSEMENT AND EDUCATION FUND (FUND 523)**

Fiscal Year 2013

| Description | Amount |
|---|---------------------|
| Revenues | |
| Telephone commissions | \$5,794,665 |
| All other revenue | \$24,473,469 |
| Total revenue | \$30,268,134 |
| Expenditures | |
| Expenditures benefitting inmates | |
| Medication and care for inmates with HIV and Hepatitis C | \$8,307,916 |
| Certificate of participation payments for inmate living quarters at four facilities | \$3,280,071 |
| Legal updates for mandated legal law libraries at institutions | \$1,599,429 |
| Payments for inmate buses | \$457,876 |
| Extradition costs for officers to pick up inmates and costs for inmates' travel | \$196,029 |
| HIV peer education salaries - work associated with inmates with HIV | \$164,662 |
| Travel and Allowance start-up money which pays for inmate gate money and bus/train tickets upon departure | \$85,400 |
| Renovations costs for Cook County Jail to hold inmates | \$75,000 |
| Food for Southern Illinois Adult Transition Center | \$36,940 |
| Money spent on travel, training, equipment for investigations people and apprehension people | \$19,784 |
| Total expenditures benefitting inmates | \$14,223,107 |
| Other expenditures (salaries, retirement, group insurance, computer software, etc.) | \$17,556,764 |
| Total expenditures | \$31,779,871 |

Source: OAG analysis of Comptroller (revenue and expenditures) and Corrections (expenditures) data.

Central Management Services' Use of Funds

CMS deposits its portion of the inmate telephone commissions into the Communications Revolving Fund (Fund 312). For fiscal year 2013, telephone commissions accounted for \$7,926,975 of the \$121,225,445 (7%) deposited in the fund. Again, since the telephone commissions are only a portion of the revenue in the fund, expenditures from the fund cannot be tied to a specific revenue source. We followed up with CMS and requested additional detail and support regarding the expenditure of telephone commission revenue. CMS stated the following: “With revolving funds, revenues are not typically segregated for a specific purpose. In earlier

years, CMS used to purchase public safety equipment and services, such as mobile computers for police cars. Because of fund sweeps in the 2000's and other factors, the CRF [Communications Revolving Fund] fund had its “cushion” depleted and now the money is used to supplement the fund and pay for the services provided through the fund.”

PROCUREMENT LAWS AND RULES

The primary statutes and rules applicable to this audit are the Illinois Procurement Code (30 ILCS 500) and the General Services Standard Procurement Rules (44 Ill. Adm. Code 1). The Procurement Code and Procurement Rules govern the procurement process to be followed.

The inmate collect calling contract was procured under the **competitive sealed bidding** section of the Procurement Code (30 ILCS 500/20-10). Conversely, the previous inmate collect calling contract was procured under the **competitive sealed proposals** section of the Procurement Code (30 ILCS 500/20-15). Exhibit 1-5 compares the two methods and outlines some of the differences.

Under competitive sealed bidding, an invitation for bids is used that outlines specifically what is needed and the vendors submit bids. The evaluation of bids is based primarily on the price. Conversely, under competitive sealed proposals, vendors submit proposals for the work to be performed. The evaluation of the proposals is based not only on price but on other factors such as the experience of the vendor and the ability of the vendor to perform.

According to the Procurement Rules, the competitive sealed proposals method differs from competitive sealed bidding in two ways:

- The competitive sealed proposals method permits discussions with competing offerors and changes in their proposals, including price; and
- The competitive sealed proposals method allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract. (44 Ill. Adm. Code 1.2015 (c))

Competitive sealed bidding, which was used in this procurement, is the default procurement that is used unless another method is authorized by law. The Procurement Rules list certain categories where competitive sealed proposals may be used instead of competitive sealed bidding. One of the categories is electronic data processing equipment, software and services.

The Procurement Rules list factors to be considered in determining whether competitive sealed bidding is either not practical or advantageous. These factors include:

- When evaluation factors involve the relative abilities of offerors to perform; when types of supplies or services may require the use of comparative, judgmental evaluations; or when the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration;

- Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- Whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- Whether award may need to be based upon a comparative evaluation, as stated in the request for proposals, of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State;
- Whether the primary consideration in determining award may not be price; and
- If prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State. (44 Ill. Adm. Code 1.2015 (c))

| <p>Exhibit 1-5</p> <p>COMPARISON OF COMPETITIVE SEALED BIDDING TO COMPETITIVE SEALED PROPOSALS</p> | | |
|--|---|--|
| | Competitive Sealed Bidding | Competitive Sealed Proposals |
| Type of procurement document: | Invitation for Bids (IFB) | Request for Proposals (RFP) |
| When to use: | Unless otherwise authorized by law, all State contracts shall be awarded by competitive sealed bidding. | When the use of competitive sealed bidding is either not practicable or not advantageous to the State such as: <ul style="list-style-type: none"> • when evaluation factors involve the relative abilities of offerors to perform. • whether the primary consideration in determining award may not be price. |
| Evaluation factors: | Primarily price and other factors that affect price such as discounts and transportation costs. | The RFP shall state the relative importance of price and other evaluation factors. The factors other than price are evaluated and ranked independently of price. |
| Bid opening: | Bids are opened publicly and the amount of each bid is recorded. | Proposals are opened publicly. However, price is submitted separately and not publicly revealed. |
| Discussion with responsible bidder/offerors: | Not allowed. | May be conducted for the purpose of clarifying and assuring full understanding of the solicitation requirements. |
| Use of comparative judgmental evaluations: | Not allowed. | Allows comparative judgmental evaluations to be made when selecting among acceptable proposals. |
| Award: | The contract is awarded to the lowest responsible bidder. | The contract is awarded to the responsible offeror whose proposal is determined to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the RFP. |

Source: OAG analysis of Procurement Code and General Services Standard Procurement Rules.

AUDIT SCOPE AND METHODOLOGY

This management audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit objectives for this audit were those as delineated in Senate Resolution Number 122 (see Appendix A), which directed the Auditor General to conduct a management audit of the State’s procurement of inmate telephone service vendors for the Department of Corrections’ inmate telephone service program. The audit objectives are listed in the Introduction section of this chapter. Fieldwork for this audit ended in March 2014.

In conducting the audit, we reviewed applicable State statutes and rules. We reviewed compliance with those laws and rules to the extent necessary to meet the audit’s objectives. Any instances of non-compliance we identified are noted in this report. We also reviewed management controls and assessed risk related to the audit’s objectives. A risk assessment was conducted to identify areas that needed closer examination. Any significant weaknesses in those controls are included in this report.

We met with officials with CMS, Corrections, the Chief Procurement Office for General Services, and the Illinois Commerce Commission. We examined the procurement file maintained at CMS and the protest file maintained at the Chief Procurement Office. We examined the bids submitted by all three vendors to determine compliance with the terms set forth in the solicitation document. We examined all of the filings related to Consolidated’s petition for a declaratory ruling filed with the Illinois Commerce Commission. We examined similar procurements in other states to compare to Illinois. Appendix B contains a more detailed audit methodology.

REPORT ORGANIZATION

The remainder of this report is organized into the following chapters:

- Chapter Two – The Procurement Process
- Chapter Three – Resolution of Protests
- Chapter Four – Illinois Commerce Commission Ruling
- Chapter Five – Other Issues

Chapter Two

THE PROCUREMENT PROCESS

CHAPTER CONCLUSIONS

The inmate collect calling contract with Consolidated Communications Public Services (Consolidated) was set to expire on June 30, 2012. **Timing on this procurement was critical** because implementation with a new vendor must be coordinated with the old vendor. The new service had to be phased in to minimize interruption in service. However, CMS experienced delays in issuing the solicitation document. These delays included last-minute changes to the solicitation document up to and including the day it was published.

Furthermore, after publishing the invitation for bids on March 29, 2012, CMS twice issued revised versions of the invitation for bids and extended the due date for bids from April 12, 2012, to May 24, 2012. The due date was extended to provide time to respond to vendor questions and due to the addition of mandatory site visits.

One of the changes in the revised solicitation document was a wording change regarding the criteria used to award the contract. The original version stated that the contract would be awarded to the vendor “*...that offers the state the most money.*” This was changed in the revised solicitation to say that the contract would be awarded to the vendor “*...whose offer has the highest point total.*”

CMS failed to follow a requirement in the solicitation document by not providing written responses to all vendor questions. Seven different vendors submitted a total of 101 questions to CMS. Of those 101 questions, 73 (72%) were answered either in the revised solicitation document or in the question and answer document published by CMS. **CMS failed to respond to 28 of the 101 questions submitted.** In addition, CMS was not timely in responding, missing two of its own deadlines to publish answers to vendor questions:

- CMS stated that it would answer vendor questions in an addendum published the week of April 16 **but never issued the addendum.**
- CMS later stated it would publish answers to vendor questions no later than Friday, May 11 **but did not publish answers until five days later** on Wednesday, May 16.

The solicitation documents, which were approved by CMS and the State Purchasing Officer at the Chief Procurement Office, did not specify who was required to attend the mandatory site visits which allowed vendors to meet the requirement through attendance by a subcontractor. **Two of the three vendors that submitted bids, Securus and Public Communications Services (PCS), were not listed as vendors that submitted information to attend the mandatory site visits.** However, the proposed subcontractor for each (G5Tek for both Securus and PCS) did attend the site visits. In addition, a representative from the parent company of PCS attended the site visits signing in as the representative for three different

companies. The procurement file lacked documentation making it unclear who made the final determination to allow subcontractors to meet the requirement for mandatory attendance.

The contract for inmate collect calling services was properly awarded based on the evaluation factors outlined in the invitation for bids. However, because of how the evaluation factors were structured, the lowest bidder – the bidder that offered the lowest per phone call charge – was not awarded the contract because a greater emphasis was placed on the amount of money the winning vendor would pay the State in commission payments. Since the contract was not awarded to the lowest bidder, the procurement did not adhere to the competitive sealed bidding section of the Procurement Code.

The Procurement Code and Standard Procurement Rules allow award to other than the lowest bidder upon a written determination that award to another bidder is in the State's best interest. However, the State Purchasing Officer did not utilize this exception when approving the award. Also, the Procurement Code section on concessions allows the award of a contract to the highest and best bidder. However, neither the invitation for bids nor the State Purchasing Officer's approval stated that this was a concession contract.

Even though the procurement was issued under the competitive sealed **bidding** section of the Procurement Code, the evaluation was more closely aligned to language under the competitive sealed **proposals** section of the Code. There were many factors that indicated the competitive sealed proposals method would have been more appropriate. One example is when evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise.

CMS made the decision on which procurement method to use and the State Purchasing Officer at the Chief Procurement Office approved the procurement method. **The procurement file lacked, however, information on the final decision and why that decision was made.**

The pricing table in the solicitation document was flawed which allowed vendors to tailor their bids to receive maximum points.

- There were six categories in the pricing table that involved charges and fees for the phone services and these categories were worth a total of 450 points. The winning vendor bid \$0 for 4 of the 6 categories. Tailoring its bid this way guaranteed that it would receive maximum points in those four categories thus assuring at least 400 points of the 450 available for charges and fees. All of its phone charges were placed in two categories that were worth only 50 of the 1000 points available. The other vendors bid similarly by bidding \$0 for 3 of the 6 categories. **The way pricing was structured, and since there were no caps on rates specified in the invitation for bids, a vendor could have bid any amount (\$20 per call, \$50 per call, \$1,000 per call, etc.) under set up charges and still had the highest point total to be awarded the contract.**
- CMS should have structured the evaluation of pricing differently to avoid the inherent flaws in the pricing table. An alternate method would be to determine the cost for a call of a pre-defined length (for example, a 15 minute call) by combining set up fees

and per minute charges and then assign points proportionately. This would prevent a vendor from placing all of its costs into a single category solely to maximize points.

Even though work on developing the solicitation document had begun nine months prior to it being published, the pricing table, which was the sole basis for evaluating bids, was not created until just prior to publication. The pricing table was submitted to the State Purchasing Officer at the Chief Procurement Office for review the same day the solicitation document was published. Waiting to develop the pricing table until just prior to publication likely contributed to its flaws.

INTRODUCTION

This chapter examines the State’s procurement of inmate telephone service vendors through the opening of bids and up to the filing of the first protest. Exhibit 2-1 shows a timeline covering this period. Chapter Three examines the protests that were filed and Chapter Four examines the order issued by the Illinois Commerce Commission as well as an Appellate Court decision on that order. An exhibit showing the complete timeline of events can be found in Chapter One. A more detailed timeline is in Appendix C.

PROCUREMENT TIMELINE

The inmate collect calling contract with Consolidated was set to expire on June 30, 2012. **Timing on this procurement was critical** because implementation with a new vendor must be coordinated with the old vendor. The new service had to be phased in to minimize interruption in service. The solicitation document provided for a conversion period of 180 days. With the contract with Consolidated expiring on June 30, 2012, it was important to issue the new solicitation as early as possible to ensure a smooth transition if a new vendor was selected.

According to interviews with agency staff involved with the procurement, **work on the new procurement began approximately one year prior** to the end of Consolidated’s contract. An initial meeting was held on June 16, 2011. Corrections officials worked with CMS to draft the specifications for the procurement document, such as the infrastructure needed. Once the procurement document was drafted, the solicitation was primarily CMS’ responsibility.

Prior to Issuing the Invitation for Bids

CMS experienced delays in issuing the solicitation document. These delays included: 1) waiting to conduct research on what other states were doing until after CMS had already developed a solicitation document; 2) deciding whether to do an invitation for bids or a request for proposals; 3) establishing a Business Enterprise Program (BEP) goal; and 4) last-minute changes to the solicitation document. As noted in the emails discussed below, the CMS project contact was frustrated both with waiting for decisions to be made and in receiving feedback from multiple participants.

| Exhibit 2-1 TIMELINE OF THE PROCUREMENT UP TO THE FILING OF THE FIRST PROTEST | |
|--|--|
| Date | Description |
| 06-16-11 | CMS and Corrections meet to begin the process of developing a solicitation document for the upcoming procurement. |
| 01-23-12 | Earliest dated document in the procurement file – internal CMS email inquiring about specifications for the inmate collect calling Invitation for Bids (IFB). |
| 03-29-12 | State Purchasing Officer at the Chief Procurement Office approves procurement method. State Purchasing Officer receives draft solicitation document and approves draft solicitation. |
| 03-29-12 | CMS issues the IFB for an inmate collect calling contract. Bids due April 12. |
| 04-05-12 | Due date for bids extended from April 12 to April 19 to provide time to respond to vendor questions. |
| 04-16-12 | Due dates for bids extended from April 19 to May 24 to allow for addition of mandatory site visits on May 3 and May 4 at four correctional facilities and one youth center. |
| 04-24-12 | CMS issues a revised version of the IFB (IFB version 2). |
| 05-01-12 | CMS issues another revised version of the IFB (IFB version 3). |
| 05-03-12 | First day of the two-day mandatory site visits. |
| 05-16-12 | CMS issues vendor questions and answers. |
| 05-24-12 | Public opening of bids. Three vendors submit bids: <ul style="list-style-type: none"> • Consolidated Communications Public Services • Securus Technologies • Public Communications Services |
| 05-31-12 | Consolidated protests the bids submitted by Securus and Public Communications Services alleging that the bids are in direct violation of rate caps established by the Illinois Commerce Commission. |

Source: OAG summary of procurement documents.

The earliest communication in the procurement file was an internal CMS email dated January 23, 2012, which was a little over two months prior to the issuance of the invitation for bids. Below are dates and subject matter discussed from emails in the procurement file leading up to the initial issuance of the solicitation document:

- January 23, 2012 – The CMS project contact emailed a CMS employee in the Bureau of Communications and Computer Services: “*Do you have specs yet for Inmate Collect Calling?*” The employee replied, “*We have the specs (always have) and are putting them into the IFB template which is what is outstanding. Should have it this week.*”
- January 26, 2012 – The CMS project contact emailed a CMS employee in the Bureau of Strategic Sourcing: “[The CMS Deputy Director for the Bureau of Strategic Sourcing] *asked me to have you research...what other states are doing as far as Inmate Collect Calling? I will talk to you more about it but the solicitation is coming up for rebid and BCCS currently has it as an IFB and she wants me to do an RFP.*”

- February 7, 2012 – A CMS employee in the Bureau of Communications and Computer Services emailed the CMS project contact: “*Did this get worked out yet, are we doing an IFB or an RFP? DOC is calling about an update and seem to be getting nervous.*”
- February 14, 2012 – The CMS project contact emailed the agency’s State Purchasing Officer at the Chief Procurement Office: “*Can you take a look at this and let me know if you believe this should remain an IFB or be changed to an RFP?*” The State Purchasing Officer did not respond directly to the question but instead responded: “*Were you able to get a hold of [CMS’ Chief Administrative Officer]?*”
- February 21, 2012 – The State Purchasing Officer emailed the CMS project contact: “*...did you ever receive a response on this?*”
- March 6, 2012 – The CMS project contact emailed other officials at CMS: “*I am still waiting on a goal for Inmate Collect Calling. We could still get this done in time if I can get it issued. Please advise.*” The CMS Deputy Director for the Bureau of Strategic Sourcing replied, “*I spoke with [the Assistant Director at Corrections] yesterday and she's meeting with her staff to update the SOW [Scope of Work].*”

In response, the CMS project contact emailed the CMS Chief Administrative Officer: “*The scope does not need to be updated. She is the one that decided she wanted to expand the scope. We are at ten years now. We cannot extend the current contract. This is not the time to be getting creative. The contract we have is working and we have no issues. Why add to it when we are under short deadlines. This is so frustrating!*”

- March 15, 2012 – The CMS project contact emailed the CMS Deputy Director for the Bureau of Strategic Sourcing: “*Any word back from Corrections on Inmate Collect Calling?*” She replied, “*No, I thought PBC [Procurement Business Case] was ready and 20% BEP [Business Enterprise Program] has been established.*” The CMS project contact replied, “*You had told me that Corrections was making some changes to the IFB after a meeting you had with [the Assistant Director at Corrections]. Is that not the case?*”
- March 19, 2012 – Corrections provided some changes to the solicitation document.

Over the next 10 days, CMS incorporated Corrections’ changes and made other changes to the solicitation document including adding the pricing table. On March 29, 2012, the CMS project contact submitted the solicitation document to the State Purchasing Officer for review and approval. After approval, the invitation for bids was officially published that same day.

After Issuing Invitation for Bids but Prior to Bid Opening

After publishing the invitation for bids on March 29, 2012, CMS made multiple changes which included twice extending the due date for bids, and issuing two amended versions of the solicitation document to correct deficiencies. Originally, offers were due April 12, 2012, two

weeks after the invitation for bids was first published. On April 5, the due date was extended one week to April 19, 2012. The reason for the extension was to provide time to respond to vendor questions. On April 16, the due date was extended again, this time by five weeks to May 24, 2012. The reason for the extension was the addition of mandatory site visits.

Changes to the Solicitation Document

After publishing the invitation for bids on March 29, 2012, CMS twice issued revised versions of the invitation for bids. The first revision (version 2) was issued on April 24 and contained many substantive changes:

- The CMS project contact was changed.
- The changes published the previous week adding mandatory site visits and extending the due date were incorporated into the invitation for bids.
- Section 2.3 of the invitation for bids, which related to the awarding of the contract, was changed as follows (bold added for emphasis):

IFB Version 1 (issued 03-29-12)

Section 2.3 Award

We will award to the Responsible Vendor whose Offer passes Administrative review, is Responsive, and **The vendor that offers the state the most money.**

IFB Version 2 (issued 04-24-12)

Section 2.3 Award

We will award to the Responsible Vendor whose Offer passes Administrative review, is Responsive, and **whose offer has the highest point total.**

- In the contract section, the term of the contract was extended from June 30, 2014, to June 30, 2015.
- The renewal terms for the contract were changed from the original version which just said “3” without specifying anything further, to renewal for up to six years which could be one renewal of six years, individual one-year renewals, or any combination up to six years.
- Multiple changes were made under the supplies and services section of the contract. Changes were made to the mandatory specifications and the section was reformatted so that the bidders could indicate clearly whether the requirement was met or not met.
- The pricing section was changed. These changes are discussed in the Evaluative Criteria section of this Chapter.

The second revision (version 3) was published one week later on May 1, 2012. This version contained only minor revisions. Two sections in the mandatory specifications section of the contract were added which were inadvertently deleted from version 2. Additional changes were also made to the pricing section.

Questions Submitted by Vendors

CMS failed to follow a requirement in the solicitation document by not providing written responses to all vendor questions. The invitation for bids was published on Thursday, March 29, 2012. Immediately after publishing, CMS began receiving questions from prospective bidders. Within the first week, CMS received a total of 59 questions from seven different vendors. Vendors that submitted questions included:

- E.I.B. Communication – Submitted two questions on March 30;
- Securus – Submitted seven questions on April 2 and one question on April 3;
- ShawnTech Communications – Submitted seven questions on April 3 and one question on April 5;
- Consolidated Communications – Submitted 13 questions on April 3;
- Global Tel* Link – Submitted 23 questions on April 4;
- CJIS Group – Submitted one question on April 4; and
- Telmate – Submitted four questions on April 5.

On Thursday, April 5, CMS issued an addendum to the invitation for bids extending the due date for bids by one week to April 19, 2012. CMS stated in the addendum:

The Illinois Department of Central Management Services [is] issuing an addendum for the Inmate Collect Calling bid in order to extend the due date to April 19, 2012 at 3:00 PM. The extension is necessary to provide time to respond to vendor questions. Please continue to monitor the bulletin for questions and answers. [emphasis added]

One of the prospective bidders, Global Tel* Link, sent a letter dated April 12, 2012, to CMS. The letter began by stating: “*I write this letter to remind you that we still have not received answers to the questions regarding the recently released ‘Inmate Collect Calling’ Invitation for Bid....*” Global Tel* Link also alleged that the invitation for bids was drafted to favor the incumbent vendor. The letter outlined several issues including the short timeline for bids, the lack of a walk-through at the correctional facilities, and being denied critical data related to the number of phones to be serviced.

On Monday, April 16, CMS issued an addendum to the invitation for bids adding site visits and extending the due date for bids by five weeks to May 24, 2012. By this time, 68 questions had been submitted by vendors. CMS also stated in the addendum:

The final date for vendors to submit questions will be close of business Tuesday May 8. Vendor questions that have already been submitted will be answered in an addendum that will be published this week. [emphasis added]

CMS did not publish answers to questions during the week of April 16. On Tuesday, April 24, CMS issued a revised version of the invitation for bids. In the revised version, CMS stated: “*We will provide written responses to questions and only those written responses shall be binding.*” However, **CMS had still not provided written responses to any questions despite its earlier statement that it would do so.**

On Tuesday, May 1, 2012, CMS issued an addendum further revising the invitation for bids document. By this time, 81 questions had been submitted by vendors. In the addendum, CMS stated:

Vendor questions, with the exception of those that pertain to BEP, should have been answered with the revised bid document. Additional questions may be submitted by Tuesday, May 8 at 5pm. A list of the vendors participating in the site visits and requesting the collective bargaining agreement, along with answers to vendor questions, shall be posted in an addendum that will be published no later than Friday, May 11. [emphasis added]

On Wednesday, May 16, CMS published answers to vendor questions. **This was more than three weeks after its initial deadline and five days after its new deadline.** We examined questions submitted by vendors to determine if the questions were answered either in the published answers or in the revised solicitation document.

Vendors submitted a total of 101 questions to CMS. Of those 101 questions, 73 (72%) were answered either in the revised solicitation document or in the question and answer document published by CMS. **CMS failed to respond to 28 of the 101 questions submitted.** The number of questions submitted by each vendor is shown in Exhibit 2-2 and the results are discussed in the bullets following.

- **Questions submitted prior to May 1** – A total of 81 questions were submitted prior to May 1. Of these 81, 68 were submitted prior to April 16 at which time CMS indicated that it would soon publish answers to questions. However, CMS did not publish those answers. On May 1, CMS published a revised version of the solicitation document and stated that questions should have been answered in the revised document. We determined that only 42 of the 81 questions (52%) were answered in the revised solicitation document.
- **Questions submitted May 1 or later** – A total of 20 questions were submitted after the revised solicitation document was issued. Eight of the 20 questions were either the same or virtually the same as a question that had been submitted previously but remained unanswered. All 20 of these questions were answered in the question and answer document published on May 16.

Exhibit 2-2
QUESTIONS SUBMITTED BY VENDORS

| Vendor | Total Submitted | Answered in Revised IFB | | Answered in Q&A Document | | Total Answered | | |
|------------------------------------|-----------------|-------------------------|-----------|--------------------------|----------------|-----------------------|-----------|-----------|
| | | Y | N | Y | N ¹ | Y | N | |
| Global Tel* Link | | | | | | | | |
| Q. submitted prior to May 1 | 24 | 16 | 8 | 8 | 0 | 24 | 0 | |
| Q. submitted May 1 or later | 17 | - | - | 17 | 0 | 17 | 0 | |
| Consolidated Communications | | | | | | | | |
| Q. submitted prior to May 1 | 34 | 16 | 18 | 3 | 15 | 19 | 15 | |
| Q. submitted May 1 or later | - | - | - | - | - | - | - | |
| Securus | | | | | | | | |
| Q. submitted prior to May 1 | 8 | 3 | 5 | 0 | 5 | 3 | 5 | |
| Q. submitted May 1 or later | 3 | - | - | 3 | 0 | 3 | 0 | |
| ShawnTech Communications | | | | | | | | |
| Q. submitted prior to May 1 | 8 | 3 | 5 | 0 | 5 | 3 | 5 | |
| Q. submitted May 1 or later | - | - | - | - | - | - | - | |
| Telmate | | | | | | | | |
| Q. submitted prior to May 1 | 4 | 2 | 2 | 0 | 2 | 2 | 2 | |
| Q. submitted May 1 or later | - | - | - | - | - | - | - | |
| E.I.B. Communication | | | | | | | | |
| Q. submitted prior to May 1 | 2 | 1 | 1 | 0 | 1 | 1 | 1 | |
| Q. submitted May 1 or later | - | - | - | - | - | - | - | |
| CJIS Group | | | | | | | | |
| Q. submitted prior to May 1 | 1 | 1 | 0 | - | - | 1 | 0 | |
| Q. submitted May 1 or later | - | - | - | - | - | - | - | |
| Grand Total | | 101 | 42 | 39 | 31 | 28¹ | 73 | 28 |

¹ For seven questions, the exact question from the vendor was not answered but a similar question from another vendor was answered.

Source: OAG analysis of vendor questions, revised IFB document, and Q&A document.

- **Initial questions that remained unanswered** – As noted in the first bullet, 39 questions submitted prior to May 1 remained unanswered. Of these 39, 11 were answered in the question and answer document. The majority of these (8 of 11) were because the vendors resubmitted the questions after May 1 when the questions were not answered in the revised solicitation document. For example, on April 4, Global Tel* Link asked “*Is the state aware of any facility or facilities requiring new wiring and cabling and/or modification of existing wiring and cabling necessary to operate the inmate telephone system?*” When this question went unanswered, Global Tel* Link resubmitted the question on May 8.

By not issuing a formal question and answer document in April and instead answering vendor questions by revising the solicitation document, CMS made it difficult to determine if questions were answered. For example, one question submitted by Telmate on April 5, 2012, was as follows: “*Please provide phone counts, by facility if possible, for at least the past year.*” In the revised solicitation document, CMS included the total number of phones (2,100) at all facilities but not by individual facility. By not providing a specific answer to this question, it was unclear whether CMS either could not provide the requested information or chose not to provide the requested information.

In summary, CMS did not publish answers to questions during the week of April 16 as it stated in an addendum. CMS also did not publish answers to questions by its new deadline of May 11; answers were published five days late on Monday, May 16, 2012. Finally, CMS did not respond to all questions submitted. Answering vendor questions promptly and fully is important to ensure that vendors understand the requirements of the solicitation.

| RESPONDING TO VENDOR QUESTIONS | |
|--------------------------------|---|
| RECOMMENDATION NUMBER | <i>The Department of Central Management Services should respond timely in writing to all questions submitted by vendors.</i> |
| CMS RESPONSE | CMS agrees that all questions submitted by vendors should be responded to in writing in a timely manner. As noted in the findings, the solicitation was revised twice, with an extension of related timelines. Some of the revisions to the solicitation were intended to provide clarification to areas being raised during the question and answer period. Nevertheless, CMS agrees that this could have been documented more clearly to ensure vendor understanding. |

Site Visits

The solicitation documents, which were approved by CMS and the State Purchasing Officer at the Chief Procurement Office, did not specify who was required to attend the mandatory site visits which allowed vendors to meet the requirement through attendance by a subcontractor.

The original version of the invitation for bids, published on March 29, 2012, did not include as a requirement either a vendor conference or site visits at correctional facilities. However, when prospective bidders asked CMS to consider allowing the vendors to tour some facilities, site visits were added. On April 16, 2012, an addendum to the invitation for bids was published which established site visits to four correctional facilities and one youth center. The dates for the site visits covered two days, May 3 and May 4, and **attendance was mandatory**.

For security clearance purposes, vendors were required to submit information for each person attending the site visits. Information was required to be submitted by 5:00 p.m. on Friday, April 27. The addendum specified, “*Any individual that does not submit their information will not be permitted into the facility.*” Representatives from four companies submitted information and were approved for attendance: Global Tel* Link; G5Tek; Telmate; and Consolidated. **Two of the three vendors that submitted bids, Securus and PCS, were not listed as vendors that submitted information to attend the mandatory site visits.**

Two vendors sought permission to attend the site visits but did not submit the requested information by the required deadline:

- **ShawnTech Communications** – On Sunday, April 29, ShawnTech Communications sent an email request to have one individual approved for security clearance. The CMS project contact, the Corrections project contact, and the State Purchasing Officer worked together to consider the request and concluded that it should be denied. The CMS project contact replied to the vendor, “*The deadline for submission of personal information to obtain security clearance was close of business Friday, April 27. Your email was not sent until Sunday, and as such, we are unable to process your request.*” ShawnTech then asked the State to consider waiving the mandatory site requirement to allow a vendor to bid without attending.
- **Securus Technologies** – On Monday, April 30, a representative from Securus emailed CMS to see if his information for a security clearance had been received by the State. The individual alluded to a mix up at his company that led to his information not being submitted by the deadline. He asked if he would be allowed to send the information that day. The CMS project contact replied that the deadline had passed and they were unable to process his request. The individual at Securus asked the State to reconsider since the site visits were initially not mandatory and inquired about an appeals process. The CMS project contact referred him to the protest office information in the solicitation document.

Later that same day, the individual from Securus sent another email to CMS. He said that he was out of the country the previous week which was why he didn’t send his

information by the Friday deadline. He also stated that Securus would meet the mandatory site visit requirement through its Business Enterprise Program partner company: *"To be clear, Securus will have a representative from our BEP partner company in attendance at the site visits and they will be representing Securus from a technical site survey perspective. Our representative has already received notification of approved individual and received other details of the site visit. Therefore, Securus will be in compliance with the mandatory site visits."* The email concluded by stating: *"My concern was and is whether or not I will personally be allowed to attend given the circumstances of my submission. If I am unable to attend, Securus will still be represented, however, I would not have the personal benefit of understanding the State's requirements from the sites perspective."*

After receiving the emails from Securus, CMS realized that it had not been clear whose attendance would be required at the mandatory site visits. The CMS project contact emailed the State Purchasing Officer: *"I should have made clear in the notice of the site visits whose attendance would be required in order to satisfy the mandatory attendance requirement- if the sub attends is that sufficient? If we have subs, should we make them declare their Prime?"* The State Purchasing Officer replied, *"I'm not sure how I feel about a sub meeting the prime's duty to attend since it is the prime that we will be contracting with. We should develop sign in sheets that would be able to get this type of information."*

The sign in sheet developed for the site visits was a handwritten piece of paper with four headings written in: Name, Vendor, Prime or Sub, and Contact Info. The representative from G5Tek signed in using Securus as the vendor name but also added under 'Prime or Sub' that it was the sub for Securus. The representative from Global Tel* Link signed in three times under three different vendor names: Global Tel* Link, PCS, and VAC (Value Added Communications). Under 'Prime or Sub' he indicated Prime for all three.

The procurement file lacked documentation on the decision for whose attendance was required at the mandatory site visits. However, it appears that CMS decided that a vendor met the mandatory site visit requirement if its subcontractor attended. Two vendors that submitted bids, Securus and PCS, did not attend the mandatory site visits. However, in the formal bids submitted, both PCS and Securus listed G5Tek as their proposed subcontractor who did attend the site visits. Further, PCS disclosed in its bid that PCS is a wholly owned subsidiary of Global Tel* Link. It was unclear if having a representative from a parent company would qualify as meeting the mandatory site visit requirement.

Since the procurement file lacked documentation on the decision, it was unclear who made the final decision to allow subcontractors to meet the requirement for mandatory attendance. It was also unclear what the Chief Procurement Office's position was on this decision.

| MANDATORY SITE VISITS | |
|------------------------------|--|
| RECOMMENDATION NUMBER | |
| 2 | <p><i>The Department of Central Management Services and the Chief Procurement Officer for General Services should ensure that the solicitation document specifies, for procurements that include mandatory site visits, whose attendance is required to meet the mandatory attendance requirement.</i></p> |
| CMS RESPONSE | <p>CMS agrees that the solicitation should seek to define whose attendance is required to satisfactorily meet a mandatory attendance requirement. When this question was raised, it was appropriately taken to the CPO's assigned State Purchasing Officer to render a decision.</p> <p>It is not an uncommon practice for non-local vendors to have other representatives and agents attend mandatory meetings on their behalf. This may include subcontractors, consultants, or legal representatives, depending on the nature and the complexity of the procurement. A mandatory requirement is intended to promote a full understanding of the specific procurement, and a degree of flexibility in actual representation has historically been allowed to not unduly or unfairly limit competition.</p> |
| CPO RESPONSE | <p>CPO administrative rule provides for pre-submission conferences to enhance potential vendors understanding of the procurement requirements for a particular solicitation. See 44 Ill. Admin. Code 1.2005 (y). The solicitation template provides for identification of whether a vendor conference or site visit will occur and whether attendance is mandatory. The solicitation template further provides that if attendance is mandatory, that a bidder will be disqualified and considered non-responsive if a bidder does not attend, is not on time, leaves early or fails to sign the attendance sheet. Bidders are advised to allow adequate time to accommodate security screenings.</p> <p>The CPO agrees the State should clearly identify the level of vendor representation required to successfully meet the attendance requirements when there are mandatory pre-submission conferences.</p> |

Bid Opening

On May 24, 2012, CMS publicly opened the bids. Three vendors, Consolidated, Securus, and PCS, submitted bids. Based on the points specified in the invitation for bids, Securus was identified as the winning bidder. One week later, Consolidated filed a protest of the other vendors' bids alleging that the bids violated rate caps established by the Illinois Commerce Commission. The protests filed by Consolidated are discussed in Chapter Three.

Emergency Purchases

Even though the process of developing a solicitation document had begun more than a year earlier, CMS needed to extend its contract with Consolidated through emergency purchases.

The State Purchasing Officer for CMS, on behalf of the Chief Procurement Office for General Services, filed an emergency purchase affidavit on June 15, 2012. The affidavit listed the circumstances requiring the emergency purchase which included an unresolved protest. It noted that a disruption in service could result in violence and potential physical harm to both inmates and State employees. The emergency purchase covered the period from July 1, 2012, to September 28, 2012.

On August 14, 2012, the State Purchasing Officer filed a second emergency purchase affidavit. The emergency purchase extended the covered period from September 28, 2012, to March 31, 2013.

The following sections discuss our assessment of whether the procurement followed applicable laws and rules, whether evaluative criteria were uniformly applied, and whether bids were in compliance with the invitation for bids.

FOLLOWING APPLICABLE PROCUREMENT LAWS AND RULES

The contract for inmate collect calling services was properly awarded based on the evaluation factors outlined in the invitation for bids. However, because of how the evaluation factors were structured, the lowest bidder – the bidder that offered the lowest per phone call charge – was not awarded the contract because a greater emphasis was placed on the amount of money the winning vendor would pay the State in commission payments. Since the contract was not awarded to the lowest bidder, the procurement did not adhere to the competitive sealed bidding section of the Procurement Code.

Senate Resolution Number 122 asked us to determine whether all aspects of the procurement process were conducted in accordance with applicable laws and rules. We tested 31 requirements in the Procurement Code and Standard Procurement Rules. Two of the requirements were determined to be not applicable to this procurement. We determined that the procurement met 28 of the 29 (97%) remaining requirements tested.

The one provision with which the procurement did not comply was the competitive sealed bidding requirement in the Procurement Code that the contract be awarded to the lowest responsible bidder:

*The contract shall be awarded with reasonable promptness by written notice to the **lowest responsible and responsive bidder** whose bid meets the requirements and criteria set forth in the invitation for bids, except when a State purchasing officer determines it is not in the best interest of the State and by written explanation determines another bidder shall receive the award. (30 ILCS 500/20-10(g)) [emphasis added]*

The General Services Standard Procurement Rules go on to state: “...bids will be evaluated to determine which bidder offers the **lowest cost to the State** in accordance with the evaluation criteria set forth in the IFB.” (44 Ill. Adm. Code 1.2010(f)(4)) [emphasis added]

The Rules also state: “*The SPO [State Purchasing Officer], but not a designee, may authorize the State to award to other than the lowest responsible and responsive bidder upon a written determination that award to another bidder is in the State's best interest.*” (44 Ill. Adm. Code 1.2010(g))

This solicitation was a no cost contract for the State; the cost to the State for all bids was zero. The State Purchasing Officer for CMS, when approving the award, did not note any exceptions to awarding to other than the lowest bidder but checked the box indicating that the contract was awarded to the lowest priced responsive and responsible bidder.

The only other cost associated with the contract was the cost charged to the users. However, the criteria for the evaluation of bids in the solicitation document was not based solely on the cost to the users. In fact, cost to users comprised only 45 percent of the evaluation points; the commission paid to the State comprised 55 percent of the points. Furthermore, the contract was not awarded to the lowest bidder because one of the unsuccessful vendors bid a lower per phone call charge than the winning bidder. Instead, the contract was awarded to the bidder that received the highest point total as specified in the invitation for bids. However, the section in the Procurement Code on competitive sealed bidding does not discuss the option of using a point structure to evaluate the bids under that section.

There is a section in the Procurement Code that allows the award of a contract to the vendor that offers the State the highest bid. The Procurement Code section on concessions (an authorization allowing use of property for the purpose of selling directly or indirectly to the public) states that contracts “*...shall be awarded to the highest and best bidder or offeror.*” (30 ILCS 500/53-10(b)) However, neither the invitation for bids nor the State Purchasing Officer’s approval stated that this was a concession contract. Further, the Standard Procurement Rules require that all concessions contracts include “*...concessionaire qualification requirements applicable to purchase contracts.*” (44 Ill. Adm. Code 1.5310(c))

Since the contract was not awarded to the lowest bidder, the procurement did not adhere to the competitive sealed bidding section of the Procurement Code. This issue was noted in an internal email from a CMS official: “*I think the only issue might be that we are awarding to a vendor that charges the inmates more per call...That's just a function of how we set up the evaluation, and I am glad we got the higher commission.*”

Competitive Sealed Bidding vs. Competitive Sealed Proposals

Since cost was not the determining factor in this procurement, it is questionable whether the competitive sealed **bidding** method was the proper procurement method to use. Under the competitive sealed **proposals** section, the Code states the following:

Awards shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals. (30 ILCS 500/20-15(g))

Even though the procurement was issued under the competitive sealed bidding section of the Procurement Code, the evaluation was more closely aligned to language under the

competitive sealed proposals section of the Code. There were many factors that indicated the competitive sealed proposals method would have been more appropriate. Looking strictly at the Procurement Code and Standard Procurement Rules, the following issues stand out:

- While competitive sealed bidding (which was used in this procurement) is the default method that is used, the Standard Procurement Rules list categories where the competitive sealed proposals method can be used. One of the categories is **telecommunications equipment, software, and services**. This procurement fell under that category.
- The Standard Procurement Rules list several factors to be considered in determining whether competitive sealed bidding is either not practical or advantageous. One factor is when evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise. In this procurement, the vendor that supplies this service does not simply act as a telephone carrier. This service requires the vendor to have expertise in this area which includes providing a software system to record calls. The system also requires the use of authorization codes that only allows calls to certain numbers and coordinates with an inmate calling database. The experience of the vendor and the vendor's ability to perform are critical in providing inmate collect calling services. Both of these factors could be evaluated and scored using a request for proposals. By using an invitation for bids and evaluating solely on price, there was a greater risk of awarding to an unqualified vendor.
- The competitive sealed bidding process is predicated on obtaining a good or service at the lowest price. As discussed earlier, the most heavily weighted evaluation criteria in this proposal was not cost or price, rather it was the amount of commission received by the State. The Procurement Rules list factors to be considered in determining whether competitive sealed bidding is either not practical or advantageous. One factor listed is whether the primary consideration in determining award may not be price.

Two other factors support the use of competitive sealed proposals in this procurement: 1) when this contract was procured previously, that was the method that was used; and 2) many of the other states we looked at used a request for proposals process and the evaluation of the proposals included an evaluation of the experience of the vendors.

In interviews with various State officials, we asked why the decision was made to use an invitation for bids instead of a request for proposals. One reason given was that the State was very specific on the infrastructure that was needed. Another reason was a lack of personnel with capabilities to evaluate different proposals that would be submitted under the request for proposals process. Lastly, from the State's perspective this was a price-based procurement and the State wanted the best price which in this case was the highest commission.

An examination of emails in the procurement file indicated that CMS debated which method to use up to only a few weeks prior to issuing the invitation for bids. **The procurement file lacked, however, information on the final decision and why that decision was made.** The State Purchasing Officer at the Chief Procurement Office approved the procurement method.

However, the procurement method was approved on March 29, 2012, which was the same day the solicitation document was approved and issued. Logically, the procurement method should have been approved weeks prior to the date it was issued and the approval should have documented the reasons why that method was selected.

| PROCUREMENT METHOD | |
|-----------------------|--|
| RECOMMENDATION NUMBER | |
| 3 | <p><i>The Department of Central Management Services and the Chief Procurement Officer for General Services should evaluate the different options available, determine the appropriate procurement method to use, and document the reasons the procurement method was selected.</i></p> |
| CMS RESPONSE | <p>CMS agrees that the appropriate procurement approach should be considered for every procurement. Under the Illinois Procurement Code, this consideration occurs in conjunction with the Chief Procurement Office and is subject to the CPO's ultimate approval. As noted in the audit report, the appropriate procurement approach for this specific procurement was considered, and was ultimately determined to be an Invitation for Bids (competitive sealed bidding).</p> <div style="border: 1px solid black; padding: 5px;"> <p><u>Auditor Comment #1</u></p> <p><i>The audit does <u>not</u> note that the appropriate procurement approach was an Invitation for Bids. The audit questions whether this method was the proper procurement method to use and outlines several factors that supported the use of the competitive sealed proposals method.</i></p> </div> <p>That was a decision that was collaboratively made and implemented with the approval and under the authority of the CPO's Office.</p> <p>We appreciate that the auditor's test of 31 procurement requirements yielded only one question – that being whether a commission based contract carrying no cost to the State can essentially be viewed in the context of a “negative” price, meaning that the bid generating the most benefit to the State would be successful. While we respectfully believe that this was an appropriate procurement method for this procurement, we will consider this in conjunction with the CPO's Office when similar situations arise in the future.</p> |
| CPO RESPONSE | <p>The CPO agrees its staff, in consultation with purchasing agencies, should evaluate and determine the appropriate procurement method to use for a particular solicitation, in compliance with the requirements of the Procurement Code.</p> <p>The OAG found all provisions of the Code it tested were followed by the CPO except for Section 20-10(g), which requires IFBs to be awarded to the lowest responsible and responsive bidder. However, the OAG recognized in its discussion the Code provides direction on conducting procurements for concessions. Procurements for concessions are conducted in accordance with Article 20 of the Code, except the contract</p> |

| | |
|-------------------------------------|---|
| CPO RESPONSE (continued) | <p>is awarded to the highest and best bidder or offeror. 30 ILCS 500/53-10(a). The OAG also acknowledged the solicitation that was issued made clear the award would be to the vendor who was the highest and best bidder. The OAG found that the award was made to the vendor who was the highest and best bidder.</p> <p>The CPO further agrees with the OAG that the procurement method should be determined on a timely basis, once an agency has determined its need. The CPO has instructed agencies once need is determined, Step 1 of the approval form (approval of procurement method) should be completed so as to not to unnecessarily delay procurements. The purchasing agency should have submitted the approval form much sooner than what was done in this instance.</p> |
|-------------------------------------|---|

EVALUATIVE CRITERIA

Senate Resolution Number 122 asked us to determine whether the evaluative criteria guiding the selection of vendors by CMS were adequate and uniformly applied to competing vendors. We concluded that the criteria used were applied correctly to the competing vendors. However, the criteria were not adequate for two reasons. As discussed previously, since this procurement was issued as an invitation for bids, the criteria did not contain a component to evaluate the vendors’ experience and relative ability to perform the services required. The second reason was that the pricing table in the solicitation document was flawed which allowed vendors to tailor their bids to receive maximum points.

Experience of Vendors

The invitation for bids did not require vendors to submit information on their experience in providing inmate collect calling services and the evaluative criteria did not contain a component to evaluate experience. As noted previously, this service requires the vendor to have expertise in this area which includes providing a software system to record calls. By evaluating solely on price, there was a greater risk of awarding to an unqualified vendor.

The 2002 solicitation required vendors to be experienced in performing this type of work and required vendors to submit references for projects of similar size and scope. Other states we examined all required vendors to submit information on qualifications and experience.

Developing the Pricing Table

Even though work on developing the solicitation document had begun nine months prior to it being published, the pricing table was not created until just prior to publication.

- March 20, 2012 (Nine days prior to publication) – The CMS project contact emailed a CMS employee in the Bureau of Communications and Computer Services: “*I need the pricing table. There is no pricing table in this.*”

- March 22, 2012 – The CMS employee replied, “*We are seeing if [name omitted] can assist. [Name omitted] was doing this and no [sic] nobody can find it.*”
- March 28, 2012 (1 day prior to publication) – A CMS employee in the Bureau of Communications and Computer Services emailed the CMS project contact and other CMS employees: “*FYI, the current document, with updated comments, is now in the document repository. [CMS project contact], can you look at it and see what you think? [Name omitted] and I will take a stab at creating the pricing template.*”
- March 29, 2012 (Day of publication) – The CMS project contact emailed the agency’s State Purchasing Officer: “*Attached is the Inmate Collect Calling IFB. I will send you the pricing table shortly.*” The CMS project contact later emailed the pricing table to the State Purchasing Officer and the solicitation document was published shortly after.

After the solicitation document was published, CMS received several questions from vendors related to pricing. When CMS issued a revised version of the invitation for bids document, a new pricing table was included. The new pricing table included changes to the evaluation categories and the percentages assigned. The next section describes the evaluation criteria in the final solicitation document.

Evaluation Criteria in the Solicitation Document

Section 2 of the invitation for bids outlined how CMS would evaluate the offers. Four categories of information would be evaluated:

1. Administrative Compliance – determine whether the offer complied with the instructions for submitting offers.
2. Responsibility – determine whether the vendor is a “Responsible” vendor; a vendor with whom the State can or should do business. A “Responsible” vendor must exist as a legal entity and must be authorized to do business in Illinois. Other factors that may be evaluated to determine Responsibility include, but are not limited to: certifications, conflict of interest, financial disclosures, taxpayer identification number, past performance, references (including those found outside the offer), compliance with applicable laws, financial stability, and the perceived ability to perform completely as specified.
3. Responsiveness – determine whether the offer meets the stated requirements.
4. Price – identify the lowest priced offer that meets Administrative, Responsibility, and Responsiveness requirements.

The invitation for bids stated that the contract would be awarded “*...to the Responsible Vendor whose Offer passes Administrative review, is Responsive, and whose offer has the highest point total.*” **The only points to be assigned related to pricing.** A total of 1000 points were available broken down as follows:

- Commission Rate – **550 points** awarded to the vendor offering the **highest** commission rate to the State. Other vendors would receive points based on a percentage (vendor's commission/highest commission). For example, if a vendor offered a commission rate of 60 percent and the highest commission was 75 percent, the vendor would receive 440 points ($0.60/0.75 = 0.8$; 0.8 multiplied times 550 = 440).
- Rate per minute – **250 points** awarded to the vendor offering the **lowest** rate per minute. The rate per minute points were broken out between domestic (200 points) and international (50 points). Similar to the commission rate points but conversely, the other vendors would receive points based on a percentage (lowest rate/vendor's rate). For example, if a vendor offered a rate per minute of \$0.10 and the lowest rate was \$0.05, the vendor would receive 125 points ($.05/.1 = 0.5$; 0.5 multiplied times 250 = 125).
- Fees – **200 points** awarded to the vendor offering the **lowest** fees. Fees were broken out into four categories: pre-paid account set up fee (70 points); fund transfer into pre-paid account (80 points); set up charges per domestic call (30 points); and set up charges per international call (20 points). Similar to the rate per minute, the other vendors would receive points based on a percentage.

Evaluation of Offers

Exhibit 2-3 shows pricing submitted by the three vendors that submitted offers and the corresponding points awarded. Securus received a total of 975.5 points and received the maximum points in 5 of the 7 categories.

| Exhibit 2-3 RATES SUBMITTED AND POINTS AWARDED | | | | | | | |
|---|--|---------|--------------|--------------|--------------|--------|--------------|
| Max Points | Category | Securus | | Consolidated | | PCS | |
| | | Rate | Points | Rate | Points | Rate | Points |
| 550 | Commission Rate | 87.1% | 550 | 72.5% | 457.8 | 75.5% | 476.8 |
| 200 | Rate in \$ per minute – domestic | \$0.00 | 200 | \$0.00 | 200 | \$0.00 | 200 |
| 50 | Rate in \$ per minute – international | \$0.00 | 50 | \$0.00 | 50 | \$1.25 | 0 |
| 70 | Rate in \$ per pre-paid account set up fee | \$0.00 | 70 | \$0.00 | 70 | \$0.00 | 70 |
| 80 | Rate in \$ per fund transfer into pre-paid account | \$0.00 | 80 | \$6.95 | 0 | \$4.75 | 0 |
| 30 | Rate in \$ set up charges per call – domestic | \$4.10 | 25.5 | \$3.49 | 30 | \$4.25 | 24.6 |
| 20 | Rate in \$ set up charges per call – international | \$4.10 | 0 | \$5.95 | 0 | \$0.00 | 20 |
| 1000 | Totals | | 975.5 | | 807.8 | | 791.4 |

Source: OAG analysis of offers submitted and scoring of the offers.

An examination of the bids revealed a flaw in the way the pricing table was constructed. There were six categories in the pricing table that involved charges and fees for the phone services and these categories were worth a total of 450 points. Securus bid \$0 for four of the six categories. Tailoring its bid this way guaranteed that Securus would receive maximum points in those four categories thus assuring at least 400 points of the 450 available for charges and fees. All of Securus' phone charges were placed in two categories that were worth only 50 of the 1000 points available. The other vendors bid similarly by bidding \$0 for three of the six categories. **The way pricing was structured, and since there were no caps on rates specified in the invitation for bids, a vendor could have bid any amount (\$20 per call, \$50 per call, \$1,000 per call, etc.) under set up charges and still had the highest point total to be awarded the contract.**

An alternate method would be to structure the pricing differently to calculate the cost for a call of a pre-defined length (for example, a 15 minute call) by combining set up fees and per minute charges and then assign points proportionately. This would prevent a vendor from placing all of its costs into a single category solely to maximize points. As an example, in 2010, Montana issued a request for proposals which included a cost formula. It required the vendors to submit 1) a connect fee; 2) a rate per minute; and 3) the corresponding total cost of an 18 minute phone call. Maximum points were awarded to the vendor with the lowest 18 minute call cost.

CMS should have structured the evaluation of pricing differently to avoid the inherent flaws in the pricing table. Waiting to develop the pricing table until just prior to publication likely contributed to its flaws. The State Purchasing Officer at the Chief Procurement Office received, reviewed, and approved the pricing table the day the invitation for bids was published.

| PRICING EVALUATION FACTORS | |
|--|---|
| RECOMMENDATION NUMBER 4 | <i>For future solicitations involving inmate collect calling services, the Department of Central Management Services and the Chief Procurement Officer for General Services should ensure that the factors used to evaluate pricing are developed in a timely fashion and adequately tested to avoid flaws in the pricing table.</i> |
| CMS RESPONSE | CMS agrees that the agency, in conjunction with the Chief Procurement Office should ensure that elements of pricing evaluation are developed prior to a solicitation opening, and ideally, prior to the solicitation publishing. If additional information is received that might cause the evaluation methodology to be revisited to protect State interests or the integrity of the procurement, revising the solicitation and if necessary the pricing evaluation methodology would likewise be done collaboratively with the Chief Procurement Office and under their authority. Lastly, as the approved procurement approach was an “Invitation for Bids” scoring of only pricing factors would be appropriate. The technical specifications were listed as mandatory requirements. If a mandatory requirement is not met, that failure causes the vendor’s offer to not be considered. |
| CPO RESPONSE | The CPO agrees that for future solicitations involving inmate collect calling services it and the purchasing agency should ensure the factors used to evaluate pricing are developed in a timely fashion and are adequately tested to avoid flaws in the pricing table. |

COMPLIANCE OF BIDS

Senate Resolution Number 122 asked us to determine whether the bids submitted by vendors and evaluated by CMS were in compliance with the terms set forth in the solicitation document. We tested 23 requirements in the solicitation document to determine if bids were in compliance. We examined the bids submitted by the three vendors that submitted bids: Securus, Consolidated, and PCS. We determined that the bids submitted by Consolidated and by PCS were in full compliance with all 23 requirements while the bid submitted by Securus was in compliance with 20 of 23 (87%) requirements.

The bid submitted by Securus did not fully comply with three of the requirements tested. Each of the three instances of non-compliance was minor in nature.

- **Section 2.3.1 Routine Reporting** – This section required vendors to describe standard and custom reports that it would provide. The section also required vendors to provide examples of standard reports. While reports were described in great detail, Securus did not provide examples of reports as required.

- **Section 2.3.2 Ad-Hoc Reporting** – Similarly, this section required vendors to describe data elements by which ad-hoc reports could be sorted such as called number, inmate authorization code, and call duration. The section also required vendors to provide examples of typical reports available. While reports were described in great detail, Securus did not provide examples of reports as required.
- **Section 2.7 Where Services are to be Performed** – This section required vendors to disclose the locations where services would be performed and the anticipated value of the services at each location. Securus failed to provide a detailed response. Instead of listing each specific location in its bid, Securus answered, “*All services will be performed in the United States.*” For value of services at each location, Securus answered, “*100% of the value of the contract will be performed in the United States.*” By comparison, the other two vendors provided much more detail. Consolidated’s bid listed each correctional facility and an estimated monthly dollar value. PCS’s bid listed different types of services, such as technical support, and the location of that service.

CMS failed to follow up with Securus to obtain the missing information. However, the Procurement Code and Standard Procurement Rules allow corrections to bids if not deemed prejudicial to the interest of the State or fair competition and also allow minor informalities to be waived.

A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation from the exact requirement of the solicitation, the correction or waiver of which would not be prejudicial to the State (i.e., the effect on price, quality, quantity, delivery or contractual conditions is negligible). The SPO shall waive these informalities or allow the bidder to correct them depending on which is in the best interest of the State. (44 Ill. Adm. Code 1.2038 (b))

Chapter Three

RESOLUTION OF PROTESTS

CHAPTER CONCLUSIONS

Following the opening of the bids on May 24, 2012, two protests were filed related to the procurement of inmate collect calling services. Both protests were filed by Consolidated Communications. The first protest was filed on May 31, 2012, and the second protest was filed on July 3, 2012.

Both protests were handled by the Chief Procurement Officer for General Services (CPO). The decisions concerning the resolution of the protests were adequately supported and documented. In addition, the protests and the resolution of the protests followed applicable laws and rules.

In the first protest, Consolidated alleged that the bids were in direct violation of rate caps on maximum charges established by the Illinois Commerce Commission (ICC or Commission). After reviewing the ICC cases cited in responses provided by CMS, Securus, and Public Communications Services, the Chief Procurement Officer concluded that the inmate telephone services were not subject to regulation by the ICC. Therefore, the services were not subject to the maximum rate requirements established by the ICC. The protest was denied on June 25, 2012.

In the second protest, Consolidated alleged that Securus was not a responsible bidder because it had violated Illinois laws and made significant misrepresentations in its bid proposal. The Chief Procurement Officer determined that Securus did not violate any laws and there was inadequate evidence to support the other points raised by Consolidated. The protest was denied on August 9, 2012.

INTRODUCTION

Senate Resolution Number 122 asked us to determine whether decisions concerning the resolution of protests were adequately supported and documented. We also assessed whether the protest process followed applicable laws and rules.

Two protests were filed related to the procurement of inmate collect calling services. Both protests were filed by Consolidated Communications. The first protest was filed on May 31, 2012, and the second protest was filed on July 3, 2012. Exhibit 3-1 shows the timeline of the protests. The protests are discussed in the following two sections.

Exhibit 3-1
TIMELINE OF THE PROTESTS

| Date | Description |
|----------|---|
| 05-24-12 | Public opening of bids. Three vendors submit bids: <ul style="list-style-type: none">• Consolidated Communications• Securus Technologies• Public Communications Services |
| 05-31-12 | Consolidated protests the bids submitted by Securus and Public Communications Services alleging that the bids are in direct violation of rate caps established by the Illinois Commerce Commission. |
| 06-25-12 | The Chief Procurement Officer for General Services (CPO) denies Consolidated's protest. The CPO finds, based on previous cases at the ICC, that the services are not subject to regulation by the ICC and the rate caps do not apply. |
| 06-27-12 | State Purchasing Officer approves award notice and CMS issues intent to award contract to Securus. |
| 07-03-12 | Consolidated files a second protest, protesting the award of the contract to Securus. Consolidated alleges that Securus had violated Illinois laws and made significant misrepresentations in its bid proposal. |
| 08-09-12 | The Chief Procurement Officer for General Services denies Consolidated's second protest. |
| 10-19-12 | State Purchasing Officer approves contract. Contract with Securus signed by the Director of CMS. The contract had an initial term through June 30, 2015, with renewal options of up to six years. |

Source: OAG summary of procurement documents and protest file.

PROTEST TIMELINE

On May 24, 2012, the bids submitted for the inmate collect calling contract were publicly opened. Three vendors submitted bids:

- Consolidated Communications (Consolidated);
- Securus Technologies (Securus); and
- Public Communications Services (PCS).

First Protest

On May 31, one week after the bids were opened, Consolidated filed a protest which protested the bids submitted by Securus and PCS. In its protest, Consolidated alleged that the other two responding bidders were not “responsible” vendors as defined in section 2.2 of the invitation for bids. Specifically, Consolidated alleged that the bids were in direct violation of rate caps on maximum charges established by the Illinois Commerce Commission.

In its protest letter, Consolidated said that to be a “responsible” vendor you must comply with applicable laws. The other vendors’ violation of the ICC order on rate caps constituted a lack of compliance with applicable laws. Consolidated contended that the maximum charge allowed for surcharges as established by the ICC was \$3.49 per call. Consolidated bid \$3.49, while Securus and PCS bid \$4.10 and \$4.25 respectively. Consolidated also noted that a staff person at the ICC confirmed that prison payphone providers are required to comply with the rate caps. Consolidated asked that the bids offered by Securus and PCS be rejected.

As specified in the invitation for bids, Consolidated filed the protest with the Protest Review Office of the Chief Procurement Officer for General Services. The protest was handled by the Deputy General Counsel for the Executive Ethics Commission who acted as the protest officer. Following is the timeline after the protest was received:

- May 31, 2012 – The protest officer forwarded the protest to the State Purchasing Officers for both CMS and Corrections (who are both employees of the CPO) and asked “*...whomever's agency is the most appropriate should prepare a response.*” That same day, the State Purchasing Officer for CMS forwarded the protest to the CMS project contact.
- June 7, 2012 – An official within the CMS Bureau of Strategic Sourcing asked the CMS project contact to reach out to Securus and PCS to obtain their response to the protest. The CMS project contact emailed each vendor and asked each to explain how its proposed rate complies with the ICC ruling.
- June 11, 2012 – Both PCS and Securus responded to CMS regarding Consolidated’s protest. Both stated that the rate caps do not apply to pay telephone service to inmates and cited previous rulings issued by the ICC that supported their positions.
- June 13, 2012 – The official within the CMS Bureau of Strategic Sourcing asked another official within the bureau to research the ICC rulings referenced in the responses received from Securus and PCS to see if the rulings were still in effect.
- June 14, 2012 – The research was completed and the CMS official concluded that the rulings remained in effect and were legally enforceable and should be granted the full force and effect of law.
- June 20, 2012 – The official within the CMS Bureau of Strategic Sourcing provided CMS’ official response to the protest to the protest officer. CMS agreed with Securus and PCS that the rate caps did not apply. CMS recommended that the protest be denied.
- June 25, 2012 – The protest officer contacted an official in the Illinois Commerce Commission’s General Counsel’s Office. The ICC official said that opinions from employees are personal and are not official opinions of the Commission. He added that there is a formal mechanism called a declaratory ruling which allows the ICC to issue opinions as to the applicability of its rules.

On June 25, 2012, the Chief Procurement Officer for General Services denied Consolidated’s protest. In his decision letter, the Chief Procurement Officer discussed each of the responses received from CMS, Securus, and PCS. This was followed by the Chief Procurement Officer’s determination. In his determination the Chief Procurement Officer stated:

The key inquiry here is whether the services at issue fall within the regulatory jurisdiction of the Illinois Commerce Commission. If they do, and they are not otherwise exempt, then the restrictions of Section 770 apply and the award must be rescinded. However, if the services are exempt or outside the regulatory jurisdiction of the Commission, then the award must stand.

After reviewing the Illinois Commerce Commission cases cited in responses provided by CMS, Securus, and PCS, the Chief Procurement Officer concluded that the inmate telephone services were not subject to regulation by the ICC. Therefore, the services were not subject to the maximum rate requirements established by the ICC. (The ICC cases are discussed in more detail in Chapter Four.) The Chief Procurement Officer found no evidence of a violation of the Procurement Code, applicable rules, or the invitation for bids.

On June 27, 2012, CMS issued its intent to award the contract to Securus.

Second Protest

On July 3, 2012, Consolidated filed a second protest which protested the contract award. In this protest, Consolidated alleged that Securus was not a responsible bidder because it had violated Illinois laws and made significant misrepresentations in its bid proposal. Specifically, Consolidated alleged that:

- Securus violated State ethics laws related to lobbyist registration;
- Securus would be unable to fulfill its financial obligations as it had bid to pay 87 percent of its revenue to the State and 20 percent of the contract to its Business Enterprise Program subcontractor thus proposing to pay 107 percent of its revenue to others;
- Securus had not shown a commitment to honor the current collective bargaining agreement as specified in the invitation for bids; and
- Securus’ bid contained a number of questionable statements.

Consolidated requested that Securus’ bid be rejected and all steps to advance the contract award and performance of the contract be stayed. Following is the timeline after the second protest was received:

- July 3, 2012 – The protest officer forwarded the protest to several individuals including the State Purchasing Officers for both CMS and Corrections and to the official within the CMS Bureau of Strategic Sourcing.

- July 9, 2012 – The CMS project contact emailed Securus asking for its response to the issues raised in Consolidated’s protest.
- July 12, 2012 – Securus provided its response refuting the allegations made by Consolidated to both the CMS project contact and to the protest officer.
- July 18, 2012 – The official within the CMS Bureau of Strategic Sourcing provided CMS’ official response to the protest to the protest officer. CMS recommended that the protest be dismissed as untimely because the protest was not filed by noon of the seventh calendar day Consolidated “*...knew or should have known of the facts giving rise to the protest.*” Both CMS and Securus contend that date would be no later than June 15 when Consolidated received a response to a Freedom of Information Act request. As to the points raised by Consolidated, CMS found no basis to recommend disqualification of Securus.

On August 9, 2012, the Chief Procurement Officer denied Consolidated’s protest. In his decision letter, the Chief Procurement Officer discussed the points raised by Consolidated, the response from Securus, and the response from CMS. The Chief Procurement Officer ruled that the protest should not be dismissed as untimely because it was a protest of the award which was made June 27, 2012, and was received within seven days of the award. The Chief Procurement Officer then went through the points raised by Consolidated. He determined that Securus did not violate any laws related to hiring a lobbyist and there was inadequate evidence to support the other points raised by Consolidated and, therefore, the protest was denied.

Consolidated’s Circuit Court Case

On July 3, 2012, the same day it filed its second protest, Consolidated filed a complaint with the Circuit Court of Sangamon County to prevent CMS from awarding the inmate collect calling contract to Securus. Consolidated sought a review of CMS’ decision to award the contract to Securus and the Chief Procurement Officer’s determination to deny Consolidated’s protest. The issues raised in the complaint were similar to the issues raised in Consolidated’s first protest. Consolidated asked that the decision of the Chief Procurement Officer denying Consolidated’s protest be reversed and the intent to award the contract to Securus be withdrawn.

On August 28, 2012, after its second protest had been denied, Consolidated filed an amended complaint. The amended complaint incorporated the issues raised by Consolidated in its second protest.

Consolidated’s complaint was dismissed by the Circuit Court on October 19, 2012. The written order stated that not only did Consolidated lack standing to challenge the State’s decision, sovereign immunity barred Consolidated from seeking judicial review of a procurement decision. Consolidated’s appeal of the Circuit Court’s decision was dismissed by the Appellate Court of Illinois for the Fourth Judicial District in August 2013.

The contract with Securus was signed by the Director of CMS on October 19, 2012. The contract had an initial term through June 30, 2015, with renewal options of up to six years. Consolidated’s filing with the Illinois Commerce Commission seeking clarification on whether

maximum rates on operator services applied to inmate telephone calling services is discussed in Chapter Four.

ASSESSMENT OF THE PROTEST PROCESS

The decisions concerning the resolution of the protests were adequately supported and documented. In addition, the protests and the resolution of the protest followed applicable laws and rules.

First Protest

The Chief Procurement Officer maintained a file for each protest that documented the protest and the decisions made. For the first protest, the Chief Procurement Officer reviewed information provided from the protester (Consolidated), CMS, the Illinois Commerce Commission, and publicly available solicitation documents in making his determination. Securus and PCS also provided information to CMS responding to the protest which was reviewed by the Chief Procurement Officer.

The Chief Procurement Officer based his decision on the information gathered. The primary factor in his determination was whether the services fall within the regulatory jurisdiction of the Illinois Commerce Commission. In its protest, Consolidated included an email from an employee at the ICC who stated that inmate phones were exempt from a portion of the requirements in question but were not exempt from the maximum rate requirements. The Chief Procurement Officer made an inquiry to the ICC to clarify because this conflicted with the published rulings. An ICC official stated that the opinion of any single employee should not be construed as the opinion of the Commission and did not outweigh published opinions on this issue.

The Chief Procurement Officer concluded that, based on previous cases at the ICC, that the services are not subject to regulation by the ICC and therefore not subject to the rate caps. As discussed in Chapter Four, the ICC later issued a new order on this issue which indicated that the rate caps would apply. However, the Chief Procurement Officer’s decision was based on rulings in place at the time the decision was issued.

We met with officials from the Illinois Commerce Commission in March 2014, and asked them to comment on the protest decision. ICC officials noted that Commission decisions are not precedential in the sense of court decisions. Also, the decisions cited did not involve the parties to the protest, so the application of ICC decisions to those parties is conjectural rather than certain. So from this aspect, according to ICC officials, the Chief Procurement Officer’s decision was not on firm ground in its reliance on “Commission precedent.” The ICC officials stated, however, that the Chief Procurement Officer cannot be faulted for his decision at the time it was issued. There were no other ICC decisions that could have been relied upon.

Second Protest

For the second protest, the Chief Procurement Officer reviewed information provided from the protester (Consolidated), CMS, Securus, and publicly available solicitation documents

in making his determination. The Chief Procurement Officer based his decision on the information gathered. The decision was straightforward and supported.

Compliance with Applicable Laws and Rules

The Procurement Code states that the chief procurement officers shall by rule establish procedures to be followed in resolving protested solicitations and awards. We tested compliance with eight requirements in the administrative rules (44 Ill. Adm. Code 1.5550). Requirements were directed at the party filing the protest and at the State. Requirements included:

- An aggrieved party must deliver the protest by noon of the seventh calendar day after the aggrieved party knew or should have known of the facts giving rise to the protest.
- When a protest has been timely filed and before an award has been made, the Procurement Officer shall make no award of the contract until the protest has been resolved.
- The Protest Review Office will resolve the protest as expeditiously as possible after receiving all relevant, requested information.

For both protests, we determined that all applicable requirements were met.

Chapter Four

ILLINOIS COMMERCE COMMISSION RULING

CHAPTER CONCLUSIONS

On July 3, 2012, Consolidated Communications Public Services (Consolidated) filed a petition for a declaratory ruling with the Illinois Commerce Commission (ICC or Commission) seeking clarification on whether maximum rates on operator services applied to inmate telephone calling services. On April 9, 2013, the ICC issued a Final Order in response to Consolidated's petition for a declaratory ruling. In its order, the ICC ruled that an entity providing telephone calling services accessible to inmates of corrections facilities is providing "operator services" as defined under the Public Utilities Act (the Act). Therefore, the rate caps on operator services would apply.

The ruling further stated that, as a matter of public policy, the charges for operator services within inmate calling services should be regulated. The members of the public who are its customers, and must pay for service, are captive customers with no service options.

On September 13, 2013, CMS amended its contract with Securus Technologies (Securus) to comply with the ICC order. The contract amendment lowered the charges from \$4.10 per call to \$3.55 per call. The contract amendment also lowered the commission rate that Securus paid to the State from 87.1 percent to 76.0 percent. **The decision to lower the commission rate in the first amendment to the contract was not adequately supported or documented. It was unclear why the commission rate was lowered and it was unclear how the rate of 76.0 percent was derived.**

While the amendment to the contract resulted in a lower cost per call for inmates and their families, **it also resulted in a significant increase in the amount of revenue earned by Securus.** The amendment resulted in Securus' revenue per call increasing by 61 percent (\$0.53 per call to \$0.85 per call) and **the State's revenue decreasing by 24 percent (\$3.57 per call to \$2.70 per call).** **Based on the average calls per month, this change would result in Securus' revenue increasing by over \$1.3 million per year.**

CMS erred in the method used to lower the commission rate. If CMS was going to change the commission rate, it should have been lowered to an amount that generated the same revenue for Securus as under the original contract. Amending a revenue-based contract in this manner to generate additional revenue for the vendor and to make the contract more lucrative for the vendor undermines the principles of competitive bidding that form the foundation of the Procurement Code.

The only documented review conducted by the Chief Procurement Office was the approval of the amendment by a State Purchasing Officer. **In addition, the State Purchasing Officer that approved the amendment was one of the former project contacts for CMS during the procurement and protest processes.** Having someone in the Chief Procurement Office, who was involved in the original procurement and protest processes on behalf of the

procuring agency, approve the contract amendment on behalf of the Chief Procurement Officer undermines the independence of the Chief Procurement Office’s review.

On June 4, 2013, Securus filed a petition for review with the Appellate Court of Illinois for the First Judicial District seeking vacature of the ICC’s April 9, 2013 order. On May 16, 2014, the Appellate Court ruled that the ICC’s April 9, 2013 order must be vacated because the ICC lacked jurisdiction to enter the order. The Court determined that the ICC’s order was not a declaratory ruling as the party requesting the order was not an “affected person” and there was no controversy or uncertainty within the meaning of the ICC’s regulations. The Court’s ruling did not address the actual merits of the ICC’s order that inmate phone services should be regulated but only that the ICC lacked jurisdiction to enter the order.

ILLINOIS COMMERCE COMMISSION TIMELINE

Consolidated’s first protest was denied on June 25, 2012. In his decision, the Chief Procurement Officer (CPO) cited two previous cases at the Illinois Commerce Commission as precedent for his determination on whether rate caps apply to inmate telephone services. In addition, an official at the ICC stated that there is a formal mechanism called a declaratory ruling which allows the ICC to issue opinions as to the applicability of its rules.

On July 3, 2012, Consolidated filed a petition for a declaratory ruling with the ICC. Exhibit 4-1 shows a timeline for the filing with the ICC. The ICC sets maximum rates and charges for using an operator’s service. The petition asked whether certain sections of the Public Utilities Act and corresponding administrative rules applied to inmate telephone services. Specifically, Consolidated requested a declaratory ruling as to whether an entity providing inmate telephone calling services, which include “**operator services**,” is an “**operator services provider**” under the Public Utilities Act and is therefore subject to its requirements. These terms are defined below:

- **Operator service provider** (220 ILCS 5/13-901(a)(1)) means every telecommunications carrier that provides operator services or any other person or entity that the ICC determines is providing *operator services*.
- **Operator services** (220 ILCS 5/13-901(a)(3)) means any telecommunications service that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call between points within this State that are specified by the user through a method other than: automatic completion with billing to the telephone from which the call originated; completion through an access code or a proprietary account number used by the consumer, with billing to an account previously established with the carrier by the consumer; or completion in association with directory assistance services.

If the ICC ruled that an entity providing inmate telephone calling services was an operator services provider, the rate caps would apply. Following the Exhibit is a brief explanation of the two previous ICC cases used as precedent in the resolution of the protest. This is followed by a walkthrough of the petition for a declaratory ruling filed by Consolidated and other subsequent filings related to the petition.

Exhibit 4-1
ILLINOIS COMMERCE COMMISSION TIMELINE

| Date | Description |
|----------|--|
| 06-25-12 | The Chief Procurement Officer for General Services denies Consolidated's protest. The Chief Procurement Officer finds, based on previous cases at the ICC, that the services are not subject to regulation by the ICC and the rate caps do not apply. |
| 06-27-12 | State Purchasing Officer approves award notice and CMS issues intent to award contract to Securus. |
| 07-03-12 | Consolidated files a second protest, protesting the award of the contract to Securus. |
| 07-03-12 | Consolidated files a petition for a declaratory ruling with the ICC seeking a determination on whether the rate caps would apply. |
| 07-31-12 | Prehearing conference held. |
| 08-09-12 | The Chief Procurement Officer for General Services denies Consolidated's second protest. |
| 08-23-12 | Securus files its response to Consolidated's petition requesting that the petition be dismissed. |
| 08-31-12 | ICC staff files response recommending that the Commission grant Consolidated's petition. |
| 10-19-12 | State Purchasing Officer approves contract. Contract with Securus signed by the Director of CMS. |
| 10-23-12 | Administrative Law Judge at the ICC issues a Proposed Order finding that the operator services included in inmate calling services are "operator services" as defined in the Public Utilities Act and should be regulated. Therefore, the rate caps would apply. |
| 11-13-12 | Administrative Law Judge at the ICC denies Securus' motion to set a discovery schedule. |
| 01-09-13 | ICC denies Securus' request for oral arguments. |
| 01-29-13 | ICC denies Securus' petition for interlocutory review. |
| 04-09-13 | ICC enters a Final Order granting Consolidated's request for a declaratory ruling. The Final Order states that an entity providing telephone calling services accessible to inmates of corrections facilities is providing "operator services" as defined in the Public Utilities Act. Sections 770.20(a) and 770.40 (Restrictions on Billing and Charges) would therefore apply. |
| 06-04-13 | Securus files a petition for review of the orders of the ICC with the Appellate Court of Illinois for the First Judicial District. |
| 08-22-13 | State Purchasing Officer approves amendment to the contract. |
| 09-13-13 | Contract with Securus amended to comply with ICC rate caps. Charges reduced from \$4.10 per call to \$3.55 per call. Commission percentage paid to State also lowered from 87.1 percent to 76 percent. |
| 05-16-14 | The Appellate Court of Illinois for the First Judicial District rules that the Illinois Commerce Commission's April 9, 2013 order must be vacated because the ICC lacked jurisdiction to enter the order. |

 Protests
  Contract
  ICC Filings
  Appellate Court Case

Source: OAG summary of procurement documents and ICC filings.

Previous Illinois Commerce Commission Cases

The Chief Procurement Officer cited two previous cases at the ICC as precedent for his determination that rate caps did not apply to inmate telephone services.

Docket No. 96-0131 Inmate Communications Corporation

The ICC in its order from June 5, 1996, granted Inmate Communications Corporation a Certificate of Service Authority. This authorized the company to provide public pay telephone services and resell local exchange and interexchange services from public locations. The ICC in its order was of the opinion that the company was “*...not a telecommunications carrier under the Act with respect to telephones in non-public areas of detention and correctional facilities.*”

The ICC cited Docket 84-0442 from June 11, 1986, where the Commission stated that telecommunication providers that do not locate pay telephones in public areas are not public utilities and are not subject to regulation by the ICC. The ICC found that prisoners were not members of the public and the provider of telephone services located in non-public areas of detention and correctional facilities would not be a public utility or telecommunications carrier under Section 13-202 of the Public Utilities Act, as it relates specifically to those phones, even though they are reselling telecommunications services.

The ICC went on to state that it “*...considers operator services associated with the provision of non-public telephones in correctional institutions to be exempt from the operator service requirements of 83 Ill. Adm. Code 770.*” This phrase was specifically quoted by the CPO in his determination as justification for denying Consolidated’s protest.

Docket No. 05-0429 Infinity Networks

On July 07, 2005, Infinity Networks, Inc. (Infinity) filed an application with the ICC for a Certificate of Service Authority to become a Telecommunications Carrier. The ICC staff concluded that the Commission could grant Infinity a certificate based on the same reasoning it had used prior to grant one to Inmate Communications. Although Infinity had no immediate plans to provide any services in public areas of correctional facilities, this did not rule out the possibility that a correctional facility may request those services from it at a later date. Staff concluded that the ICC should grant Infinity its certificate. However, to the extent that Infinity was providing payphone services specifically and only to inmates of correctional facilities, a certificate was not required.

The ICC in its order from October 19, 2005, granted Infinity a Certificate of Service Authority using the reasoning that “*...payphone providers may request certification for present or future public-use operations (and shall be awarded such certification if they can demonstrate the technical, financial and managerial resources and abilities required by statute), but do not need (and the Commission cannot grant) certification for private-use payphones.*” In the order, the ICC acknowledged that it had not been consistent in analyzing petitions involving prison payphones. The ICC used this case to clarify the distinction between public and private use payphones when requesting certification.

Consolidated's Verified Petition for Declaratory Ruling

On July 3, 2012, Consolidated Communications filed a petition for a declaratory ruling with the Illinois Commerce Commission. Consolidated sought a ruling on whether the rate caps established by the ICC apply to inmate telephone services.

Prehearing Conference

On July 31, 2012, a prehearing conference was held. The Administrative Law Judge assigned to the case presided over the hearing which was attended by representatives from Consolidated, Securus, and the ICC. The purpose of the prehearing conference was to set a schedule for the matter. During the hearing, an off-the-record discussion was held on the timing for filing responses. After going back on the record, the Administrative Law Judge stated that the parties agreed that testimony would not be necessary. A timeline was established whereas the first filing due was from Securus. Securus would first need to file a petition to intervene to participate in the proceeding. Securus could then file a response which was due on August 22, 2012.

Securus' Response and Petition to Intervene

On August 23, 2012, Securus filed its response to Consolidated's petition for a declaratory ruling. The response was filed one day after it was due. In its response, Securus requested the ICC dismiss the petition and listed three reasons for dismissal: 1) Consolidated had brought the rate issue before a court; 2) The ICC had already ruled on and resolved the rate issue raised by Consolidated; and 3) Consolidated was not an affected person with standing to request a declaratory ruling.

In addition to filing its response one day late, Securus also failed to first file its petition to intervene. On August 30, 2012, Securus filed a petition to intervene and to be treated as a party in the case filed by Consolidated. In the petition Securus argued that it was the existing position of the ICC from rulings in 1996 (Inmate Communications Corporation – Docket 96-0131) and 2005 (Infinity Networks, Inc. – Docket 05-0429) that inmate telephone services were not subject to certain sections of the Public Utilities Act and corresponding administrative rules. Securus argued that Consolidated initiated the case with the ICC as a way of bolstering its claims in a Circuit Court lawsuit it had filed on the same day. Securus also stated that, as the winning bidder, it had a direct interest in this issue, whereas Consolidated was requesting a declaratory ruling on services which it was soon to transfer over to Securus.

Illinois Commerce Commission Staff Response

On August 31, 2012, ICC staff filed its response to the petition for a declaratory ruling. Staff recommended that the ICC grant Consolidated's petition. ICC staff stated that the telephone devices located in correctional facilities are not in a public location and are not required to be certified under ICC rules and regulations. However the operator service providers offering collect calls from those facilities are subject to the rules and regulations.

ICC staff found that the Commission had previously focused its attention “...on the fact that one end of each call is located in a prison and would be utilized by an incarcerated person.”

ICC staff pointed out that this overlooked that on the other side of the call is a member of the general public who pays for the call and does not have the option of choosing a provider. ICC staff expressed its concern that a lack of regulation would lead to “*...an annual race between bidders to the highest bid and thus rates.*”

ICC staff indirectly addressed the issue raised by Securus, of whether the Commission had already ruled on and resolved the issues raised by the petition. ICC staff pointed out that the Commission is free to reach a different result in a subsequent case even if the same set of issues is involved, provided that it gives a rational reason for reaching a different result. ICC staff, however, said that the petition did not involve the same set of issues. ICC staff stated that the issue presented by Consolidated’s petition was whether the operator services in prisons should be regulated, an issue which they claimed had not yet been addressed by the ICC.

Consolidated’s Reply Memorandum

On September 7, 2012, Consolidated submitted a reply memorandum in support of its petition for declaratory ruling as a response to Securus’ and ICC staff’s responses. Consolidated refuted the three arguments for dismissal presented in Securus’ response. Consolidated argued that in filing its petition with the ICC it had used the appropriate procedural vehicle for determining if the rate caps applied to inmate collect calling services. Consolidated also pointed out that Securus did not contest any of the substantive facts on which the petition was based.

According to Consolidated, ICC staff, in its response to the petition, did not take issue with anything in the petition for declaratory ruling. Consolidated, in turn, agreed with the entirety of the ICC staff response.

Illinois Commerce Commission Proposed Order

On October 23, 2012, the ICC Administrative Law Judge issued a Proposed Order finding the following:

- Consolidated had standing to request a declaratory ruling;
- There were no issues of fact in dispute;
- Regardless of the ICC’s past rulings its orders are not *res judicata* (the legal principle “*...that a matter may not, generally, be relitigated once it has been judged on the merits.*”) The ICC is free to reach a different result in this case; and
- Entities providing telephone calling services accessible to inmates of corrections facilities that include operator services were subject to the Act and corresponding administrative rules.

The Proposed Order found that the operator services included in inmate calling services are “operator services” as defined in the Public Utilities Act and should be regulated. Therefore, the rate limits would apply. The Proposed Order stated “*The Commission hereby grants Petitioner’s request for a declaratory ruling....*” The Proposed Order still needed to be approved

as a Final Order by the ICC. The Proposed Order also set a schedule for Briefs on Exceptions and Reply Briefs on Exceptions.

Actions and Filing Subsequent to Proposed Order

After the issuance of the Proposed Order on October 23, 2012, and prior to the Final Order issued on April 9, 2013, there were a number of other actions and filings. These included:

- October 26, 2012 – Securus filed a motion to set discovery schedule;
- November 13, 2012 – The Administrative Law Judge at the ICC denied Securus' motion to set a discovery schedule;
- November 16, 2012 – Securus filed its brief on exceptions and on November 26, 2012, Securus filed a petition for interlocutory review;
- December 3, 2012 – ICC staff requested that the Commission deny Securus' petition for interlocutory review;
- December 20, 2012 – Securus filed a revised brief on exceptions following the Administrative Law Judge's ruling to strike portions of its original filing; and
- January 8, 2013 – Securus filed a second petition for interlocutory review.

Securus made other filings leading up to the ICC's approval of the Final Order in April 2013. These filings included:

- Motion for ruling on its request for hearing;
- Motion for leave to file reply to Administrative Law Judge's incorrect explanation for ruling; and
- Motion to dismiss as moot.

The ICC also made a number of rulings during its Commission meetings and heard testimony regarding the case. These included:

- January 9, 2013 – Denial of Securus' request for oral arguments;
- January 29, 2013 – Denial of Securus' petition for interlocutory review;
- February 14, 2013 – A representative from Securus presented public comments to the ICC;
- March 6, 2013 – A representative from the Department of Corrections and a representative from Securus presented public comments to the ICC;

- March 6, 2013 – The Administrative Law Judge answered questions from Commission members on the case. The case was held for disposition at a future meeting; and
- March 20, 2013 – A representative from Consolidated presented public comments to the ICC.

Illinois Commerce Commission Final Order

On April 9, 2013, the ICC entered a Final Order granting Consolidated’s request for a declaratory ruling. The ICC found that an entity providing telephone calling services accessible to inmates of corrections facilities that include operator services is subject to Section 13-901 of the Public Utilities Act (220 ILCS 5/13-901) and Sections 770.20(a) and 770.40 of the administrative rules (83 Ill. Adm. Code 770).

The ICC stated that the issue was whether inmate telephone services include “operator services.” The ICC acknowledged that its previous statement in the Inmate Communications Corporation order (Docket 96-0131), which said that operator services in correctional institutions are exempt from the requirements in the administrative rules, was not accompanied by any analysis. The ICC in effect reversed that ruling stating the following:

“The Commission finds that operator services included in the inmate calling services described herein are "operator services" as defined by the Act and Part 770. The Commission finds, based on the record in this docket, that the operator services provided with these inmate calling services are provided to members of the general public. The purpose of inmate calling services is to enable members of the general public to communicate with inmates. The operator services that are provided as part of the inmate calling services described herein are provided to members of the general public located outside the corrections facility.”

The ruling further stated that as a matter of public policy, the charges for operator services within inmate calling services, as described herein, should be regulated. The members of the public who are its customers, and must pay for service, are captive customers with no service options. The ruling further stated that this does not affect the services provided to the inmates, does not impose other duties on the service provider, and does not impose limitations or additional requirements on the Department of Corrections.

On April 24, 2013, Securus filed a petition for rehearing with the ICC arguing six main points:

- The ICC was not authorized to issue a declaratory ruling in the proceeding, and the declaratory ruling was moot at the time of the Commission’s ruling since Consolidated no longer provided the services at issue in its petition;
- The proceeding was required to be conducted as a rulemaking proceeding;

- To the extent the ICC refused to conduct the proceeding as a rulemaking proceeding, it was required but failed to conduct it as a contested case;
- The proceeding was conducted in violation of numerous other ICC rules that fundamentally prejudiced the outcome;
- The order was contrary to all existing authority; and
- The ICC’s determination that rate caps “should” apply to inmate-only telephone service providers for policy reasons is devoid of any evidentiary support.

On May 1, 2013, the ICC denied Securus’ petition for rehearing.

EFFECT OF THE ILLINOIS COMMERCE COMMISSION RULING

Strictly speaking, the order issued by the ICC applied to Consolidated and any future bids it would submit for inmate telephone services. However, in effect, the order clarified the ICC’s position on inmate telephone services stating that the rate caps on operator services would apply.

Securus and CMS had entered into a contract in October 2012, that specified a surcharge of \$4.10 per call. This exceeded the maximum rate of \$3.55 established by the ICC. CMS had two options: 1) rebid the contract, or 2) amend the contract with Securus to comply with the maximum rate. CMS elected to amend the contract.

The procurement file did not contain any documentation on whether rebidding the contract was considered. We asked CMS if there was thought given to rebidding the contract and why the decision was made to not rebid. A CMS official stated:

After the ICC decision, we did the calculation which revealed that even at the lower rate, Securus would have been the winning bidder – primarily because the commission back to the State was higher than the other 2 bidders. Therefore, there was no need to rebid. The CPO agreed and signed off on the amendment which capped the rate to the rate the ICC said applied, and the lower commission.

First Amendment to the Contract with Securus

Effective September 13, 2013, the contract with Securus was amended. The amendment made two major changes:

- The contract amendment lowered the charges from \$4.10 per call to \$3.55 per call; and
- The contract amendment lowered the commission rate that Securus paid to the State from 87.1 percent to 76.0 percent.

The amendment stated that the pricing provisions of the contract were amended in consideration of the Illinois Commerce Commission orders. However, only the first bulleted change above was needed to comply with the ICC orders. **There was no documentation on**

why the commission rate was lowered. Therefore, it was unclear why the commission rate was lowered and it was unclear how the rate of 76.0 percent was derived. While the amendment to the contract resulted in lower cost per call for inmates and their families, **it also resulted in a significant increase in the amount of revenue earned by Securus.** This was a significant departure from the original terms in the contract.

The State Purchasing Officer for CMS, from the Chief Procurement Office for General Services, approved the contract amendment. The only comment on the contract approval form was: “*See amendment for an explanation of the necessity of the change. Securus is still the low-price vendor.*” This was the only documented review conducted by the Chief Procurement Office.

In addition, the State Purchasing Officer that approved the amendment was one of the former project contacts for CMS during the procurement and protest processes. According to the Chief Procurement Officer’s website, the State Purchasing Officer “*...is an employee of the EEC [Executive Ethics Commission] and appointed by the CPO, thereby achieving independence from the agency to which he or she is assigned.*” The State Purchasing Officer’s approval on behalf of the Chief Procurement Officer of an amendment for a contract where she was previously the project contact on behalf of the procuring agency undermines the independence of the Chief Procurement Office’s review.

Effect of the Amendment on the State’s Revenue and on Securus’ Revenue

The amendment resulted in Securus’ revenue per call increasing by 61 percent (\$0.53 per call to \$0.85 per call) and **the State’s revenue decreasing by 24 percent** (\$3.57 per call to \$2.70 per call). (See Exhibit 4-2.)

We analyzed the effect this change had on both the State’s revenue and Securus’ revenue. We also analyzed the impact on revenue under two different scenarios: 1) if the commission rate remained unchanged at 87.1 percent, and 2) if the commission rate was lowered to an amount that generated the same revenue per call for the vendor. The revenue projections made are based on an average of 345,148 calls per month which is the number of calls Securus averaged during the first nine months of the contract. This analysis is explained in the following bullets:

| Exhibit 4-2 SECURUS CONTRACT CHANGES | | |
|---|--------------------------|---------------------|
| | Original Contract | Amendment #1 |
| Commission rate | 87.1% | 76.0% |
| Charge per call | \$4.10 | \$3.55 |
| State commission (per call) | \$3.57 | \$2.70 |
| Securus revenue (per call) | \$0.53 | \$0.85 |

Source: OAG analysis of Securus contract.

- **Actual Changes made in Amendment #1 (Lowering the Charge per Call and Lowering the Commission Rate to 76 percent)** – The actual changes made in Amendment #1 lowered the charge per call from \$4.10 to \$3.55 and lowered the commission rate from 87.1 percent to 76 percent. Reducing the charge per call would lower the State’s revenue share per call but since the commission rate was also lowered to 76 percent, the reduction in the State’s revenue was even greater. The

reduced commission rate coupled with the reduction in the charge per call resulted in the State's share being reduced from \$3.57 per call to \$2.70 per call. Based on the average number of calls per month of 345,148, this decreased the State's revenue by over \$3.6 million per year. However, at the same time the State's revenue was drastically decreased by the amendment, **the reduced commission rate substantially increased the revenue for Securus**. Securus' revenue per call increased from \$0.53 to \$0.85. Based on the average calls per month, Securus' revenue would increase by \$111,517 per month (\$182,549 per month to \$294,066 per month). Using this projection, **Securus' revenue would increase by over \$1.3 million per year.**

- **Scenario 1 – Lowering the Charge per Call but Leaving the Commission Rate Unchanged** – If the commission rate had remained unchanged, the reduction in the charge per call from \$4.10 to \$3.55 would have reduced the State's share received from \$3.57 per call to \$3.09 per call and Securus' share from \$0.53 per call to \$0.46 per call. Based on the average number of calls per month of 345,148, this would have reduced the State's revenue over \$1.9 million per year and reduced Securus' revenue \$294,000 per year.
- **Scenario 2 – Lowering the Charge per Call and Lowering the Commission Rate to 85.1 percent** – By lowering the commission rate, CMS appears to have been attempting to hold harmless the vendor from losing revenue due to the reduced calling rate. However, if this was the case, CMS erred in the method used to lower the commission rate. If CMS was going to change the commission rate, it should have been lowered to an amount that generated the same revenue for Securus as under the original contract. In this instance, the commission rate should have been lowered to 85.1 percent. This commission rate would have resulted in Securus maintaining the same amount of revenue per call of \$0.53. If the commission rate was lowered to 85.1 percent, the State's revenue per call would have been reduced from \$3.57 per call to \$3.02 per call. Based on the average number of calls per month of 345,148, this would have reduced the State's revenue nearly \$2.3 million per year. Securus' revenue would have remained unchanged.

The third determination of Senate Resolution Number 122 asked whether decisions were adequately supported and documented. **The decision to lower the commission rate in the first amendment to the contract was not adequately supported or documented.** Since there was no documentation in the file, we asked CMS why the commission rate was lowered and what support they had for choosing the rate of 76.0 percent. CMS stated:

The commission percentage was lowered to further reduce the financial burden on the inmates' families.

Lowering the charge per call reduced the financial burden of inmates' families. However, lowering the commission percentage had no effect on the financial burden of inmates' families. CMS went on to state:

The percentage that the commission was lowered is approximately the same as the call cost reduction (13%). It was rounded to an even number.

While this is true, that method was not the correct way to calculate a reduction in commission percentage. Using that method changed the economic balance of the contract and resulted in a substantial increase in revenue for Securus. Amending a revenue-based contract in this manner to generate additional revenue for the vendor and to make the contract more lucrative for the vendor undermines the principles of competitive bidding that form the foundation of the Procurement Code.

| CONTRACT AMENDMENT | |
|-----------------------|--|
| RECOMMENDATION NUMBER | |
| 5 | <p><i>The Department of Central Management Services and the Chief Procurement Officer for General Services should fully document the rationale for amending the contract rates as well as its effect on the original competitive procurement. Should CMS and the Chief Procurement Officer determine that the contract amendment significantly altered the terms of the competitive procurement, they should take the necessary actions to restore the contract to its original economic balance.</i></p> <p><i>For future contract amendments, CMS and the Chief Procurement Officer should ensure that decisions to change contract terms and conditions are adequately supported and documented.</i></p> <p><i>Finally, the Chief Procurement Officer should avoid situations where CPO employees make decisions on procurements in which they were previously involved on behalf of the procuring agency.</i></p> |
| CMS RESPONSE | <p>CMS agrees that the integrity of the procurement process must be protected and any decision to change contract terms or conditions should be fully understood by all parties, as well as approved by the Chief Procurement Officer.</p> <p>This particular procurement involved complex litigation, and ultimately escalated to the Illinois Commerce Commission (ICC) and the courts to rule on what rates would be allowable.</p> <p>The described reduction in rates followed an ICC order, and an agreement was negotiated with the vendor to have its call rates comply with that order. The new call and commission rates were reviewed in the context of the original bid evaluation to ensure that had these rates been proposed by the vendor, it would not have changed the original award. Ultimately, it was determined that proceeding with the awarded vendor was consistent with the evaluation methodology contained within the final solicitation. This decision was made in collaboration with the CPO’s Office, and its required approval was granted to proceed.</p> <p>The result of the amendment further reduced the cost of the calls to the inmates and to their families, a desired and hoped for result from the onset of the procurement process.</p> <p>The agency plans to revisit factors of the economic balance within the</p> |

| | |
|-------------------------------------|--|
| CMS RESPONSE (Continued) | contract, in consideration of budgetary constraints and an overall desire to further reduce the cost incurred by inmates and their families for telephone calls made through this program. |
| CPO RESPONSE | <p>The CPO agrees that the procurement file should be documented as required by law and rule. Each purchasing agency, under the direction of the SPO, is required to maintain in the procurement or associated contract file all substantive documents and records of communications that pertain to the procurement and any resulting contract. This also includes documentation of changes to or amendments to contracts. 44 Ill. Admin. Code 1.2080(c).</p> <p>For contract amendments or change orders which increase or decrease the cost of a contract by a total of \$10,000 or more or the time for completion by a total of 30 days or more, the procurement file is required to contain a written determination which affirms that (1) the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed, or (2) the change is germane to the original contract as signed, or (3) the change order is in the best interest of the unit of State and authorized by law. See 720 ILCS 5/33E-9.</p> <p>The CPO is in agreement that the rationale for the contract amendment should be documented appropriately in the procurement file, but the CPO disagrees that CMS or the CPO should restore contracts to its original economic balance when contract amendments are necessary. The Criminal Code specifically recognizes that changes to contracts may not be reasonably foreseeable. In this instance, the CPO would assert the Illinois Commerce Commission's ruling was not reasonably foreseeable. The emphasis of the OAG's finding is on how much the contract amendment increased the amount of revenue to the vendor. It has not been the practice of the State in evaluating bids or offers to determine the profit or revenue to the vendor; rather, the emphasis has been on the best value to the State (i.e. in a IFB situation, the lowest price to the State, and with a RFP, the most responsible and responsive vendor). The State does not determine, nor is it equipped to determine, whether a vendor's revenue or profit on a contract is appropriate or just. Rather than focusing on how much the vendor's revenue increased under this contract amendment, the CPO believes the importance of this finding should be on the effect the amendment had on the State's revenue, i.e. how much did the State decrease its income from the contract.</p> |

Auditor Comment #2

We are not suggesting that the State determine whether the vendor's revenue is "appropriate or just". Rather, we note that the contract amendment significantly reduced the amount of commission revenue received by the State (the commission rate was the highest rated scoring criteria in the invitation for bids), and significantly increased the revenue

| | | |
|---|---|--|
| CPO RESPONSE (Continued) | <i>received by the vendor. We further note that there was no documentation supporting the rationale for this change. As such, the auditors believe that CMS and the CPO should have more closely examined the amendment and documented the rationale for accepting a significant reduction in the amount of commission.</i> | |
| <p>The CPO further believes it is the duty of CPO employees to act in a manner that maintains the integrity and public trust of State government. 30 ILCS 500/50-1.</p> | | |

APPELLATE COURT DECISION

On June 4, 2013, Securus filed a petition for review with the Appellate Court of Illinois for the First Judicial District seeking a reversal of the ICC’s May 1, 2013 order denying Securus’ petition for rehearing and vacature of the ICC’s April 9, 2013 order. On May 16, 2014, the First District of the Illinois Appellate Court issued an opinion on Securus’ appeal.

The Appellate Court ruled that the Illinois Commerce Commission’s April 9, 2013 order must be vacated because the Commission lacked jurisdiction to enter the order at issue. The Court’s reasoning was as follows:

- A declaratory ruling must involve a “controversy or uncertainty” and be requested by an “affected person.” The Court found that Consolidated’s petition for a declaratory ruling was contrary to the central purpose of seeking declaratory relief. Consolidated’s petition was untimely as it sought a ruling regarding a course of action it had already undertaken. Thus any actual controversy or uncertainty was moot. Accordingly, the Court concluded that Consolidated’s petition can only be construed as seeking an abstract opinion on the applicability of the existing regulations under some set of unknown future circumstances. **The Court determined that the ICC’s order was not a declaratory ruling as the party requesting the order was not an “affected person” and there was no controversy or uncertainty within the meaning of the Commission’s regulations.**
- Since Consolidated was not an “affected person” entitled to request a declaratory ruling from the ICC and Consolidated failed to clearly state an actual controversy or uncertainty, the Court concluded that the order was outside the Commission’s authority. Accordingly, the order must be vacated.

The Court’s ruling did not address the actual merits of the ICC’s order that inmate phone services should be regulated. The ruling was that the ICC lacked jurisdiction to enter the order. The Court’s decision concluded by saying that since the ICC lacked jurisdiction to enter the order, the Court need not address the merits of the Commission’s ruling.

Chapter Five

OTHER ISSUES

CHAPTER CONCLUSIONS

In drafting the invitation for bids for the inmate collect calling procurement, CMS considered the cost impact on users in two ways. The first was changing the billing structure to eliminate different calling rates based on the distance of the phone call. The State wanted one rate so that all families would pay the same rate regardless of where the inmate was being housed. The second was awarding evaluation points (45 percent of the points available) based on the rates charged to the users of the service. **The procurement resulted in lower costs to users under the new contract compared to the previous contract.** The average cost under the previous contract was \$5.82 per call while the average cost under the new contract was \$3.87 per call.

While the State considered the cost to the user in its evaluation criteria, the invitation for bids assigned a higher percentage of evaluation points (55 percent of the points available) to the amount of commission the State would receive from the vendors. This indicates that the revenue to the State was considered more important than the cost to the user.

In a recent ruling on rates for interstate inmate calling services, the Federal Communications Commission (FCC) found that inmate phone rates vary widely and greatly exceed the reasonable costs of providing the service. The FCC stated that a significant factor driving these excessive rates is the widespread use of site commission payments – fees paid by providers to departments of corrections in order to win the exclusive right to provide inmate phone service. The FCC ruling noted that seven states no longer allow commission payments.

We compared Illinois' rates to the seven states identified by the FCC that no longer allow commission payments. The cost of a 15 minute call in Illinois is \$3.55 while the cost in these states ranged from \$0.49 for New Mexico to \$1.75 for Missouri. Illinois' cost for a 15 minute call was more than twice as high as Missouri and over seven times more than New Mexico.

Both Corrections and CMS receive a portion of the commission payments paid by the inmate collect calling vendor. Corrections receives \$466,000 per month and CMS receives the remainder which has traditionally been the larger amount. However, there was no formal interagency agreement or language in the contract that specified the breakdown of commission payments between CMS and Corrections. This lack of formal agreement resulted in a change in the commission amount paid to Corrections under the new contract (\$441,666 increased to \$466,000) due to a clerical error.

The current contract did not contain language as strong on commission payments and reporting requirements compared to the previous contract. The monitoring of this contract could also be strengthened. This is a CMS contract but most of the services are provided at correctional facilities. It was unclear whether anyone was monitoring the monthly call reports and corresponding commission payments to ensure their accuracy.

CONSIDERATION OF THE COST IMPACT

Senate Resolution Number 122 asked us to determine whether or not CMS, in the course of the procurement process or resolution of the protests, took into consideration the cost impact the solicitation might place on the family members, friends, and general public who are responsible for paying for the calls. To answer this determination, we examined the inmate collect calling invitation for bids and also talked to officials with both CMS and Corrections. We also compared the cost structure in Illinois to other states.

Invitation for Bids Wording/ Scoring Criteria

While the State considered the cost to the user in its evaluation criteria, the invitation for bids assigned a higher percentage of evaluation points to the amount of commission the State would receive from the vendors. The evaluation criteria in the invitation for bids consisted of two pricing components. One component, worth 55 percent of the points, was the commission percentage paid to the State. The other component, worth 45 percent of the points, was the cost of the service to the users. By comparison, in the previous solicitation in 2002, the request for proposals did not include the cost to the user as part of the evaluation. So from that perspective, the cost impact to the user was considered in the most recent invitation for bids. However, in the invitation for bids, the commission paid to the State was assigned more points which indicates that the revenue to the State was considered more important than the cost to the user.

Information from Correspondence/Interviews

Under the current contract with Securus Technologies (Securus) the distance of a call no longer factors into its cost. A Corrections official we spoke to indicated that the billing structure was changed at least in part because of complaints received from users about the complicated rate structure. The State wanted to limit additional fees since charges were the biggest complaint from constituents. Under the previous contract with Consolidated Communications (Consolidated) the cost of a call varied depending on the distance. An example given was when inmates would move to a prison in another part of the State they would end up paying higher rates because their calls were no longer local. The same Corrections official had explained in an email to other officials at Corrections and CMS that a CMS Bureau of Computer and Communications Services official had contacted the states of Indiana and Missouri and found that those states had gone with one rate for their inmate calls. In that email the rationale for the State of Illinois also going with one rate was so that “*...all families pay the same rate regardless of where the inmate is being housed.*”

The following example illustrates how the cost of a call under the prior contract would differ depending on the distance between the two parties. Under the prior contract with Consolidated, InterLata/Intrastate (a call made outside the local calling area but within the state) call rates were based on mileage. The cost for a 15 minute call placed between two locations up to 10 miles apart was \$5.35. The cost for a 15 minute call placed between two locations at least 293 miles apart was \$6.40. The difference between the two rates for a 15 minute call (\$6.40-\$5.35) was \$1.05. (See Exhibit 5-1 below.)

| Exhibit 5-1 INTERLATA/INTRASTATE CALL RATES 2002 CONSOLIDATED CONTRACT | | | |
|--|------------------------|------------------|---|
| Mileage | Per Minute Rate | Surcharge | Calculated Cost (for 15 minute call) |
| 1-10 | \$0.19 | \$2.50 | \$5.35 |
| 11-22 | \$0.20 | \$2.50 | \$5.50 |
| 23-55 | \$0.21 | \$2.50 | \$5.65 |
| 56-124 | \$0.23 | \$2.50 | \$5.95 |
| 125-292 | \$0.25 | \$2.50 | \$6.25 |
| 293-430 | \$0.26 | \$2.50 | \$6.40 |

Source: OAG analysis of the 2002 Consolidated contract.

Under the current contract with Securus all InterLata/Intrastate calls cost \$3.55 (as of September 2013). This rate is comprised of a surcharge which is charged per call. There are no additional per minute charges.

The new contract with Securus resulted in lower costs to users compared to the previous contract with Consolidated. When comparing the months in which only Consolidated or Securus operated the State's inmate collect calling service (excluding transition months in which both vendors were operating inmate collect calling services), the data showed that the minutes per call increased while at the same time the cost per call decreased under the Securus contract. The average cost per call for all types of calls under Consolidated's contract from August 2011, to December 2012, was \$5.82. The average minutes per call for all types of calls were 16.8. The average cost per call for all types of calls under Securus' contract from April 2013, to December 2013, was \$3.87. The average minutes per call for all types of calls were 23.1.

Federal Communications Commission (FCC) Findings

In its ruling on rates for interstate inmate calling services which took effect on February 11, 2014, the FCC found that “...inmate phone rates today vary widely, and in far too many cases greatly exceed the reasonable costs of providing the service.” The ruling went on to state:

“A significant factor driving these excessive rates is the widespread use of site commission payments – fees paid by ICS [Inmate Calling Service] providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone service. These site commission payments, which are often taken directly from provider revenues, have caused inmates and their friends and families to subsidize everything from inmate welfare to salaries and benefits, states’ general revenue funds, and personnel training.”

The ruling cited the example of several states that have ended commission payments on their inmate calling services; those states have seen significant reductions in their costs per call. The FCC stated that commission payments are not costs that directly relate to the provision of inmate calling services because they are payments made to correctional facilities for a wide

range of purposes, most of which have no direct relation to providing those services. If Illinois eliminated commission payments, it would have a positive cost impact on the family members, friends, and general public who are responsible for paying for the calls.

The FCC also found that rates charged to users are but one of many factors used to judge competing bids. Some selections are based largely on the amount of cash and/or in-kind inducement offered rather than being driven by proposals focused on high quality service at the most affordable rates for consumers. The FCC ruling is discussed in more detail in a later section of this chapter.

PROCUREMENTS IN OTHER STATES

We compared the way Illinois structured its evaluation of proposals to other states that have done recent procurements. We also compared rates charged in Illinois to seven states that have eliminated commission payments.

Procurements in Other States

In early February 2012, prior to issuing its invitation for bids, Illinois contacted other states to see how they were handling inmate collect calling services. CMS obtained responses from six states: Alaska, California, Colorado, Idaho, North Dakota, and Wisconsin. We used these states to compare to Illinois. However, for two states, Colorado and Wisconsin, not enough information was provided to make comparisons. In addition, we were able to obtain information on recent procurements from two other states: Montana and Maryland.

Exhibit 5-2 compares Illinois’ procurement with the procurements in six other states. Illinois and California were the only procurements that were issued as an invitation for bids. Since an invitation for bids was used, Illinois and California were the only states that did not assign any weight to the evaluation of the vendors’ technical proposal and/or evaluate components other than price. Illinois was the only procurement that did not require vendors to submit information on experience and qualifications.

| Exhibit 5-2 PROCUREMENT COMPARISON BETWEEN ILLINOIS AND OTHER STATES | | | | | | | |
|---|--|---|---------------------------------|----------------------------------|---|--|---|
| | Illinois | Alaska | California | Idaho | Maryland | Montana | North Dakota |
| Type of procurement: | IFB | RFP | IFB | RFP | RFP | RFP | RFP |
| Date issued: | 03-29-12 | 12-19-07 | 07-07-11 | 9-29-05 | 07-12-12 | 07-28-10 | 02-09-09 |
| Did procurement require vendors to submit information on experience and qualifications and to provide references? | No | Yes | Yes | Yes | Yes | Yes | Yes |
| Evaluation Criteria/Scoring Components: | | | | | | | |
| • Technical evaluation/experience/qualifications | 0% (Met/Not met) | 40% | 0% (Pass/Fail) | 79% | 50% | 75% | 60% |
| • Price/cost/commission percentage | 100% (55% revenue to State; 45% cost to consumer) | 60% (100% revenue to State) | 100% (100% cost to consumer) | 21% (Did not further specify) | 50% (45% revenue to State; 55% cost to consumer) | 25% (100% cost to consumer) | 40% (combination of best revenue to State and best cost to consumer) |
| Contract awarded to: | Securus | Securus | Global Tel* Link | Unknown | Global Tel* Link | Telmate | Securus |
| Commission percentage: | 87.1% (Later amended to 76%) | 15% for first year then 0%-32.1% (depending on revenue) | No Commission Payments | 42% | Not available | 25% (or \$23,000 whichever is greater) | 40% |

Source: OAG analysis of Illinois and other states' procurements.

The evaluation of price varied significantly. All of Illinois' points went towards price and were split between the cost to the consumer (45%) and the commission revenue to the State (55%). All of California's points also went to price but unlike Illinois, all of the points went to the cost to the consumer. The other states divided points between the technical evaluation and price. Looking at just the pricing component of these states, the methods differed. In Alaska, all of the pricing points went to the amount of revenue to the State. Conversely, in Montana, all of the pricing points went to the cost to the consumer. Some states combined these factors.

The commission rates in the states that made their figures publicly available, ranged from a variable rate of 0 percent to 32.1 percent (depending on revenue) in Alaska to 42 percent in Idaho. At the time of the contract's award, Illinois' commission rate of 87.1 percent was more than double that of Idaho's. Illinois' rate was later lowered to 76 percent by an amendment to the contract.

Illinois' decision to utilize an invitation for bids for the procurement did not allow it the flexibility to consider any factors other than cost, and within those constraints, it did not place as high an emphasis on cost to the user as it did on commission to the State.

States that Have Eliminated Commission Payments

According to the FCC Order and Rulemaking Notice on Rates for Interstate Inmate Calling Services released on September 26, 2013, there were seven states (Michigan, Missouri, Nebraska, New Mexico, New York, Rhode Island, and South Carolina) which collect no commissions on their inmate collect calling services. The FCC excluded California stating:

“Although California expressly does not include commission payments in its ICS rates, analysis of its ICS contract indicates its ICS rates recover the costs of significant in-kind contributions that, under the contract, the ICS provider is required to make, in addition to the costs of ICS.”

The states without commissions charged significantly less for a 15 minute call compared to Illinois. Exhibit 5-3 compares the seven states without commissions to Illinois. The exhibit shows the rates for each state and the cost of a 15 minute collect call for calls within the state (intrastate). This includes calls both within the calling area (IntraLata) and outside the calling area (InterLata). We excluded prepaid and debit calls as not all states offered both services. The exhibit shows the cost for a 15 minute call, in the states that do not use commissions, ranged from \$0.49 for New Mexico to \$1.75 for Missouri. This is a range of \$1.80 to \$3.06 less for the non-commission states compared to Illinois.

| Exhibit 5-3 COLLECT CALL PHONE RATES – ILLINOIS COMPARED TO NON-COMMISSION STATES | | | | | | | | |
|---|----------|----------|----------|----------|------------|----------|--------------|----------------|
| Description | Illinois | Michigan | Missouri | Nebraska | New Mexico | New York | Rhode Island | South Carolina |
| Surcharge | \$3.55 | \$0 | \$1.00 | \$0.70 | \$0 | \$0 | \$0.70 | \$0.99 |
| Rate/minute | \$0 | \$0.0393 | \$0.05 | \$0.05 | \$0.0325 | \$0.048 | \$0 | \$0 |
| Cost for a 15 minute call | \$3.55 | \$0.59 | \$1.75 | \$1.45 | \$0.49 | \$0.72 | \$0.70 | \$0.99 |

Note: Rates are for intrastate collect calls for calls both within the calling area (IntraLata) and outside the calling area (InterLata). Rates are from the most recent contracts available.

Source: OAG analysis of Illinois and other states inmate collect calling contracts.

How New York Addressed High Rates for Inmate Calls

The State of New York passed a law that took effect April 1, 2008, which dealt with what the bill's supporting documentation described as excessive costs of collect calls made from inmates to their families and friends. That law, New York Correction Law, Article 22, Section 623, addressed inmate telephone services as follows:

“Telephone services contracts for inmates in state correctional facilities shall be subject to the procurement provisions as set forth in article eleven of the state finance law provided, however, that when determining the best value of such telephone service, the lowest possible cost to the telephone user shall be emphasized... The department shall

not accept or receive revenue in excess of its reasonable operating cost for establishing and administering such telephone system services....”

The rate from the most recent contract available for all local and long distance inmate calls from New York state correctional facilities is \$0.048 (**less than five cents**) per minute with no connection fees; a 15 minute call costs \$0.72 (**less than a dollar**).

MONITORING OF THE CONTRACT

While this is a CMS contract, the majority of the services are to the Department of Corrections. We examined the contract and the monitoring of the contract to assess the process involved.

Contract Language

Although the previous contract contained specific vendor instructions about commission payment requirements including deadlines and repercussions, the current contract did not contain these requirements. In addition, the current contract contained weaker reporting requirements compared to the previous contract. The current contract stated that the vendor must provide reports and listed the types of reports required but did not contain the minimum data elements listed in the previous contract.

The previous and current contracts for this procurement both contained a statement noting that the vendor will pay monthly commissions based on completed inmate calls and provide monthly reports indicating usage, revenues, and commissions. However, the previous vendor’s contract contained more specific contract requirements related to the commissions and reports. These requirements, which do not appear in the current contract, included the following instructions for the vendor:

- Payment to Corrections and the CMS Revolving Fund within 60 days following each 30 day billing cycle;
- Late fees of 1 percent of the total commission paid per month if commission payments were past due; and
- Reporting requirements designating minimum data elements that must be included in the reports (for example, usage revenue, commissions due, etc.).

The previous contract’s requirements support the end result of obtaining the desired payments and reports from the vendor. Although the current contract did not contain these requirements, an examination of reports and payments from the current vendor revealed no issues. However, if the current vendor became in default of these requirements, it may be difficult for the agencies to enforce and obtain desired payments and reports.

Monitoring Process

The monitoring of this contract could be strengthened. The current monitoring process involves both agencies. According to CMS, CMS procures and establishes the contract. According to Corrections, Corrections ensures the phones are functioning from a service perspective.

When we first made inquiries, it was unclear which agency or who at the agencies was responsible for monitoring the contract. As a result, we followed up with both agencies and asked them to provide the name of the person(s) responsible for monitoring the contract and to identify their specific responsibilities.

- According to Corrections, “*This is a CMS led contract and monitoring it should be there [sic] responsibility.*” Corrections is only responsible “*...for repairs and new/modification of phone lines. From the fiscal perspective, we just confirm receipt of funds...[and communicate] repair and enhancement/expansion needs.*” Corrections identified two of its employees that communicate these needs to the vendor.
- According to CMS, CMS has one employee that manages the section that administers the contract and one employee that works with the technical issues related to the contract. In addition, CMS notes that Corrections has one employee that is the overall manager of the program and one employee that works with the technical issues.

A more comprehensive monitoring process would ensure the accuracy of the information provided. Both agencies currently receive monthly reports and obtain their portion of the commissions. However, the current process does not oversee and compare the information provided from the vendor to both agencies. Each agency only receives and reviews the information for its own agency. During discussions with CMS and Corrections, references were made to retired or transferred employees that were previously more involved in the monitoring of this contract.

We followed up with the agencies to obtain additional information. According to Corrections, one of two employees in Accounts Receivable receives the commission checks. This employee does not complete any comparisons with CMS. The employee simply deposits the checks into the proper account and forwards the monthly report to another employee in Accounting. According to CMS, an employee that works for the Bureau of Communications and Computer Services’ Chief Fiscal Officer “*...receives the checks, compares them to the report, makes copies and sends them to Shared Services for deposit.*” CMS stated that DOC receives the same monthly report as CMS and it is assumed that Corrections also matches its checks to this monthly report. CMS is not aware of any discrepancies that have occurred with regards to information provided from the vendor to the two agencies.

Although both agencies are receiving monthly reports and commission checks, it is not clear if anyone is ensuring their accuracy. The current vendor lists the total amount of commissions for the month on its checks and provides this information to each agency on the check stub. We found the amounts on the CMS check stubs did not match the amounts on the Corrections check stubs in six of ten (60%) cases from March 2013 to December 2013. For

example, in April 2013, the check stub to CMS states that the total commissions for the month were \$770,861.31 while the check stub to Corrections states that the total commissions for the month were \$770,861.25. Although these discrepancies are minor, it is unclear if the agencies would know if significant discrepancies existed. A stronger monitoring process could prevent such discrepancies from occurring and allow follow-up with the vendor if necessary.

Interagency Agreement

There was no formal interagency agreement or language in the contract that specified the breakdown of commission payments between CMS and Corrections. The vendor currently pays a portion of its commission payment to both CMS and Corrections. The contract specifies the total commission percentage but not the breakdown between the agencies.

When we inquired about an interagency agreement, CMS provided two memos in response. The first memo, dated February 25, 2003, was from CMS to the previous vendor. It required monthly commission payments of \$441,666 to be paid to Corrections and the remainder to be paid to CMS. The second memo, dated March 21, 2013, was from CMS to the current vendor. It required monthly commission payments of \$466,000 to be paid to Corrections and the remainder to be paid to CMS. Corrections was carbon copied on the first memo but was not included on the second memo.

We followed up with CMS to determine the rationale behind establishing the set amount of commissions for the Department of Corrections. According to CMS, “*The split of the commission was decided when this program was established (1990's?). The rationale was to provide Corrections with a fixed amount of funding (\$5.3M) they could plan on in addition to their appropriations. Since CMS is funded through Revolving Funds, our revenue fluctuates anyway, so it wasn't as important to receive a set amount. This rationale was still true in 2013, so the amounts were not changed.*”

CMS and Corrections need to enter into a formal interagency agreement that stipulates the requirements and breakdown of the vendor payments for the commissions. The agencies have been operating off of agency memos that are not formalized and the current informal process has resulted in errors. According to CMS, the amount paid to Corrections changed from \$441,666 to \$466,000 due to a clerical error when drafting the new memo. This error resulted in almost \$300,000 more annually being paid to Corrections and supports the need for a formalized interagency agreement between the two agencies.

| MONITORING OF THE CONTRACT | |
|-----------------------------------|---|
| RECOMMENDATION NUMBER | |
| 6 | <p><i>The Department of Central Management Services and the Department of Corrections should work together to improve the process surrounding the establishment and oversight of the inmate collect calling contract. This process could be strengthened by improving the current contract language as well as the monitoring process. In addition, the agencies should establish a formal interagency agreement regarding the breakdown of the commissions paid to each agency related to this contract.</i></p> |
| CMS RESPONSE | <p><u>Contract Language:</u></p> <p>CMS agrees with the finding regarding the contractual language.</p> <p>Regarding reporting requirements and the data elements required, the contract allows the State to run detailed adhoc reports with over 30 data fields, specified in the contract, directly from the vendor's system. This provides the State with detailed call records, from which payments can be verified at a call level. Additionally, the "Call Detail Report," specified in the contract, includes 18 fields that provide all the information necessary to verify payments. With the number of completed calls from the "Call Detail Report," commissions due can be calculated by multiplying the number of calls times the flat per call rate times the commission percentage.</p> <p>CMS has committed to revisit the contract rates and will look to clarify the timing of payments due the State, and if possible late payment penalties, with the vendor. CMS will look to include these requirements in any future RFPs/contracts for this program.</p> <p><u>Monitoring Process / Interagency Agreement:</u></p> <p>CMS agrees with this finding and is working with the Department of Corrections on an IGA that details not only the split of commissions on the contract, but also the roles and responsibilities related to the monitoring process.</p> |
| CORRECTIONS RESPONSE | <p><u>Monitoring Process</u></p> <p>As of June 16, 2014 the IDOC manager position over Telecom was filled, which responsibilities will include the monitoring process of this contract such as payments, repairs, expansions and upgrades.</p> <p><u>Interagency Agreement</u></p> <p>CMS and IDOC recognize the benefits of formalizing their respective vendor commission payments under the contract. To that end, the two agencies have agreed to enter into a formal interagency agreement which stipulates the requirements and breakdown of the vendor payments for the commissions. The two agencies are in the process of drafting the agreement.</p> |

FCC RULING

As discussed previously, the Federal Communications Commission recently issued rule changes on interstate inmate calling service. The final rule became effective on February 11, 2014. The purpose of the rule changes was to bring high interstate inmate calling service rates into compliance with the statutory mandate of being just, reasonable, and fair. This action was intended to bring relief to inmates and their friends and families who have historically been required to pay above-cost rates for interstate inmate calling service.

The federal Communications Act requires that interstate rates be just, reasonable, and fair for all Americans with no exception for the incarcerated or their families. While some states had taken action to reduce inmate calling service rates, the majority had not. The FCC's order highlighted the following additional support for providing relief from long-distance calling rates at correctional facilities:

- Studies have shown that family contact during incarceration is associated with lower recidivism rates;
- Evidence demonstrated that inmate phone rates greatly exceeded the reasonable costs of providing inmate calling service in far too many cases;
- A significant factor driving excessive rates is the widespread use of site commission payments – fees paid by providers to correctional facilities in order to win the exclusive right to provide inmate phone services; and
- Deaf prisoners and family members were paying much higher rates than hearing prisoners in some instances.

The order contained several changes in an attempt to ensure rates for interstate inmate calling services were just, reasonable, and fair. All rates, fees, and ancillary charges for interstate inmate calling service were required to be cost-based on the effective date of the order. Unreasonably high per-call charges and/or unnecessary dropped calls with multiple per-call charges were no longer considered reasonable. Site commission payments are not recoverable through inmate calling service rates. Also, significant rate reductions occurred for interstate calls made by deaf and hard of hearing inmates.

To the extent that contracts were affected by these changes, the order suggested that inmate calling service providers could renegotiate their contracts or terminate existing contracts so they could be rebid based on the revised terms that take these new requirements into account. As a result of the FCC ruling, CMS and Securus signed a second amendment to the contract for inmate calling services effective February 13, 2014. The second amendment contained two major changes that were a direct result of the FCC ruling. These changes, along with more detail on the FCC ruling are provided below.

Rate Structure

On the effective date of the order, all rates for interstate inmate calling services must be cost based. To help accomplish this, the FCC adopted interim rate caps of \$0.21 per minute for debit and prepaid interstate calls and \$0.25 per minute for collect interstate calls. Inmate calling service providers’ interstate rates were required to be at or below the rate caps by the effective date.

In addition, the FCC adopted interim safe harbor rates of \$0.12 per minute for debit and prepaid interstate calls and \$0.14 per minute for collect interstate calls. The difference between the interim rate caps and the interim safe harbor rates was that rates at or below the safe harbor rates were presumed to be cost based and therefore reasonable.

Also, while the order did not prohibit per-call charges, it noted that per-call charges are often extremely high and therefore unjust, unreasonable, and unfair. One reason was that short calls were much more expensive. Another reason was that callers were often charged more than one per-call charge due to dropped calls.

The second amendment to the contract between CMS and Securus changed interstate calling rates to comply with the FCC ruling. For interstate calls, the surcharge of \$3.55 per call was eliminated. It was replaced with a per minute rate of \$0.1183. The rates for intrastate and international calls were not changed. These remained as a \$3.55 surcharge per call with no per minute charges.

Commission Payments

The FCC ruling stated that site commission payments are not costs that are reasonably and directly related to inmate calling services. The payments are for a wide range of services most of which have no reasonable relation to providing inmate calling services. The ruling also stated that while site commission payments may be used for worthwhile causes that benefit inmates, the Communications Act does not provide a mechanism for funding social welfare programs or other costs no matter how successful or worthy. The ruling concluded that site commission payments were not compensable in interstate inmate calling service rates.

The second amendment to the contract between CMS and Securus eliminated commission payments for interstate calls. According to the amendment, “*...no commission shall be paid on revenues earned through the completion of interstate calls of any type received from the contract.*”

One effect of this change was higher revenue for Securus. Prior to the amendment, Securus was generating revenue of \$.085 per call. Under the new amendment, with no commission payments, any call that was eight minutes or longer would generate more revenue for Securus.

The FCC ruling applies only to interstate calls. In a meeting with the Illinois Commerce Commission, officials said that the FCC could exert constraints over intrastate calls as well but has not yet done so.

APPENDICES

APPENDIX A

SENATE RESOLUTION NUMBER 122

STATE OF ILLINOIS
NINETY-EIGHTH GENERAL ASSEMBLY
SENATE

Senate Resolution No. 122

Offered by Senators Righter & Manar

WHEREAS, Inmate telephone services are provided to inmates of corrections facilities operated by the Illinois Department of Corrections (Department) so inmates can communicate with family members, friends and legal counsel; these services are provided through telephone equipment placed in restricted areas at correctional facilities that are accessible to inmates; inmates are allowed to use the telephone equipment only for pre-paid collect or post-paid collect operator-assisted calls with members of the public at telephones located outside the facilities; the family members and friends of inmates are responsible for paying for the calls from their loved ones; and

WHEREAS, The Department has no incentive to select the telephone company that offers the lowest rates to allow inmates access to telephone use; rather, the Department has an incentive to reap the most profit by selecting the telephone company that provides the highest commission; and

WHEREAS, Exorbitant telephone rates are not only bad for incarcerated persons and their families, but are bad for society at large, in that they reduce incarcerated persons' ability to communicate with family, while family contact has been consistently shown to lower recidivism; exclusive contracts create

state-sanctioned monopolies that prey upon people who are least able to select alternative methods of communication and who are least able to sustain additional expenses; and

WHEREAS, It is difficult for many families of incarcerated persons to pay for phone calls because people in prison often come from low-income households; a study of people recently released from Illinois prisons found that the price of phone calls from prison was one of the two most significant barriers to maintaining family contact during their incarceration; and

WHEREAS, Illinois is one of 42 states in the United States that selects an inmate telephone service vendor based on the percentage of revenue the State will receive from that vendor; and

WHEREAS, The Department of Central Management Services, on behalf of the Department of Corrections, posted a solicitation for an Invitation for Bid (#12-67094) for inmate telephone services at all State correctional facilities in early 2012. IFB #12-67094 required each bidder to submit the following:

1. *the rate charged for each call;*
2. *the fees or surcharges charged;*
3. *the percent of revenues the bidder would pay to the Department of Corrections as a commission; and*

WHEREAS, The bid evaluation formula was structured to award the highest number of points to the bidder that submitted the highest commission to the Department of Corrections; the commission rate comprised 55% of the points awarded in the solicitation; and

WHEREAS, The State has incentive to award the contract to the highest bidder because it receives the largest commission from the highest bidder; and

WHEREAS, Three companies responded to IFB #12-67094, and on June 27, 2012, the Department of Central Management Services issued their intent to award the contract to Securus Technologies, a Texas-based company; and

WHEREAS, Consolidated Communications Public Services, an Illinois-based company, is the current provider of inmate telephone services for the Department of Corrections; Consolidated Communications Public Services has provided telephone services to the Department of Corrections since 2002; and

WHEREAS, Consolidated Communications Public Services filed a protest on May 31, 2012, with the Chief Procurement Officer of General Services; and

WHEREAS, Consolidated Communications Public Services protest alleged that the per call rate contained in the bid response submitted by Securus Technologies was above the Illinois Commerce Commission established caps on rates and charges under 83 Ill Adm. Code Sections 770.40(c) and (e); and

WHEREAS, The Chief Procurement Officer denied the protest and the Department of Central Management Services awarded the contract to Securus Technologies. However, in the Chief Procurement Officer's Final Determination letter to the attorney for Consolidated Communications Public Services on June 25, 2012, the Chief Procurement Officer stated the following:

"The key inquiry here is whether the services at issue fall within the regulatory jurisdiction of the Illinois Commerce Commission. If they do, and they are not otherwise exempt, then the restrictions of Section 770 apply and the award must be rescinded."

Consolidated Communications Public Services also filed a Verified Petition for a Declaratory Ruling with the Illinois Commerce Commission on July 3, 2012; Consolidated Communication Public Services protest alleged that the per call rate submitted by Securus Technologies above the Illinois Commerce Commission established caps on rates and charges under 83 Ill Adm. Code Sections 770.40(c) and (e); and

WHEREAS, The Illinois Commerce Commission's Administrative Law Judge and Illinois Commerce Commission's Staff issued a recommendation to the Commission and agreed that Securus' per call rate of \$4.10 exceeded the rate caps established by Illinois Commerce Commission rules and regulations. This matter is pending before the Commission; therefore, be it

RESOLVED, BY THE SENATE OF THE NINETY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that the Auditor General is directed to conduct a management audit of the State's procurement of inmate telephone service vendors for the Department of Corrections' inmate telephone service program; and be it further

RESOLVED, That the audit include, but not be limited to the following determinations:

Whether all aspects of the procurement process were conducted in accordance with applicable laws, rules, regulations and policies;

Whether the evaluative criteria guiding the selection by the Department of Central Management Services of vendors were adequate and uniformly applied to competing vendors;

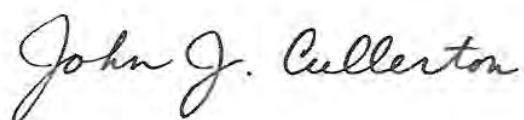
Whether decisions concerning the selection of vendors and resolution of protests are adequately supported and documented;

Whether the bids submitted by vendors and evaluated by the Department of Central Management Services were in compliance with the terms set forth in the solicitation document; and

Whether or not the Department of Central Management Services in the course of the procurement process or resolution of the protests, took into consideration the cost impact the solicitation might place on the family members, friends and general public who are responsible for paying for the calls; and be it further

RESOLVED, That the Auditor General commence this audit as soon as possible and report his findings and recommendations upon completion to the General Assembly.

Adopted by the Senate, May 14, 2013.



John J. Cullerton

President of the Senate



Tom

Secretary of the Senate

APPENDIX B

AUDIT METHODOLOGY

Appendix B

AUDIT METHODOLOGY

This management audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit objectives for this audit were those as delineated in Senate Resolution Number 122 (see Appendix A), which directed the Auditor General to conduct a management audit of the State's procurement of inmate telephone service vendors for the Department of Corrections' inmate telephone service program. The audit objectives are listed in the Introduction section of Chapter One. Fieldwork for this audit ended in March 2014.

In conducting the audit, we reviewed applicable State statutes and rules. We reviewed compliance with those laws and rules to the extent necessary to meet the audit's objectives. We developed a testing instrument to determine if the procurement process was conducted in accordance with applicable laws, rules, regulations, and policies. Any instances of non-compliance we identified were noted in this report.

We conducted individual interviews with officials from the Department of Corrections (Corrections) and Central Management Services (CMS). All individuals were asked to describe their role in the inmate collect calling procurement process. Most were also asked standard questions surrounding topic areas such as: the development of the procurement, the identification of significant employees in the process, and the designation of any concerns related to the process. We also met with the Illinois Commerce Commission and the Chief Procurement Office for General Services to discuss their roles in the process.

We reviewed the solicitation document utilized for this procurement including examining each of the three different versions as well as reviewing the scoring criteria utilized to evaluate the bids submitted. We reviewed the requirements established within the solicitation document as well. We examined whether all questions submitted by vendors were answered as required by the solicitation document. We also examined whether vendors submitted information and attended mandatory site visits by the deadlines specified in the solicitation document.

We examined the procurement file maintained at CMS. As part of this examination, we reviewed email files and obtained all three bids submitted for this procurement. We then created a testing instrument to determine if the bids submitted were in compliance with the requirements established in the solicitation document. We also recalculated the bid scores and examined whether scoring criteria were adequately and uniformly applied to all bids. We looked at the structure of the pricing table and the corresponding points awarded to vendors. We examined the decision to utilize a competitive sealed bid versus a competitive sealed proposal for this procurement.

We also examined the protest file maintained at the Chief Procurement Office. As part of this examination, we reviewed all documentation related to the two protests. We utilized a testing instrument to determine whether the resolution of the protests followed all applicable statutes and rules.

We examined all filings related to the petition for a declaratory ruling filed with the Illinois Commerce Commission. The petition addressed whether rate caps apply to inmate collect calling services. We also reviewed the two contract amendments related to this procurement. We used all this information to create a timeline of significant events in this procurement including the protests and the Illinois Commerce Commission filings.

We collected monthly reports submitted by the current and previous vendors and performed analysis on statistical information received through these reports. Using this information, we were able to provide historical information related to inmate collect calling services such as: number of calls, dollars billed, commissions received, and costs per call. We also reviewed Illinois Comptroller data to obtain a better understanding of the two State funds that receive commission revenues as a result of this procurement. After reviewing this information, we followed up with Corrections and CMS to obtain a better understanding of commission expenditures.

We examined similar procurements in other states to compare to Illinois. In early February 2012, CMS contacted other states prior to issuing the most recent procurement. CMS contacted these states to examine how they handled inmate collect calling services. We utilized the information received from four of the states contacted (Alaska, California, Idaho, and North Dakota). Two additional states (Colorado and Wisconsin) did not provide enough information to be included in our comparison. We also included information from Montana and Maryland in our comparison because procurement and contract information was easily obtained through each of the State's websites and included all necessary information for our comparison.

We determined there were seven states (Michigan, Missouri, Nebraska, New Mexico, New York, Rhode Island, and South Carolina) that do not collect commissions on their inmate collect calling services. We utilized associated cost information to compare the cost of a 15 minute collect call for these states to the cost of a 15 minute collect call for the State of Illinois. This also helped us examine the cost impact on inmates' family members, friends, and the general public for the State of Illinois.

We reviewed management controls and assessed risk related to the audit's objectives. A risk assessment was conducted to identify areas that needed closer examination. Any significant weaknesses in those controls are included in this report.

APPENDIX C

TIMELINE

| Date | Description |
|-----------------|--|
| 06-16-11 | <p>Invitation for Bids (IFB) The Illinois Department of Central Management Services (CMS) and the Illinois Department of Corrections (Corrections) meet to begin the process of developing a solicitation document for the upcoming procurement.</p> |
| 01-23-12 | <p>Invitation for Bids Earliest dated document in the procurement file – internal email inquiring about specifications for the inmate collect calling invitation for bids.</p> |
| 03-29-12 | <p>Approval of Invitation for Bids State Purchasing Officer at the Chief Procurement Office for General Services (CPO) approves procurement method. State Purchasing Officer receives draft solicitation document and approves draft solicitation.</p> |
| 03-29-12 | <p>Invitation for Bids CMS issues the IFB for an inmate collect calling contract. Bids due 04-12-12.</p> |
| 04-05-12 | <p>Solicitation Addendum #1 CMS issues an addendum for the inmate collect calling IFB to extend the due date to 04-19-12 to provide time to respond to vendor questions.</p> |
| 04-16-12 | <p>Solicitation Addendum #2 CMS issues an addendum for the inmate collect calling IFB to add mandatory site visits and to extend the due date to 05-24-12.</p> <ul style="list-style-type: none"> • Mandatory site visits would be on Thursday 05-03-12 and Friday 05-04-12. • Vendors were required to email or fax the required information for registration and security clearances related to the site visits by Friday 04-27-12. • Final date for vendors to submit questions was extended to Tuesday 05-08-12. |
| 04-24-12 | <p>Solicitation Addendum #3 CMS issues a revised version of the IFB document (IFB version 2).</p> |
| 05-01-12 | <p>Solicitation Addendum #4 CMS issues a second revision of the IFB document (IFB version 3).</p> <ul style="list-style-type: none"> • The addendum noted that vendor questions should have been answered with the revised bid document with the exception of those related to the Business Enterprise Program (BEP). • Additional vendor questions could still be submitted and were due by Tuesday 05-08-12. • The addendum also noted that a list of vendors participating in site visits and requesting the collective bargaining agreement, and answers to vendor questions were to be posted in an addendum to be published no later than Friday 05-11-12. |

Invitation for Bids/Contract 

Protests 

ICC Filings 

Court Filings 

Procurement Policy Board 

| Date | Description |
|----------|--|
| 05-03-12 | Site Visits First day of the two-day mandatory site visits. |
| 05-16-12 | Solicitation Addendum #5 CMS issues the vendor questions and answers. |
| 05-17-12 | Solicitation Addendum #6 CMS issues an addendum for the inmate collect calling IFB which listed the vendors that requested the collective bargaining agreement from Consolidated Communications: <ul style="list-style-type: none"> • Global Tel* Link Corporation; • Shawntech Communications, Inc.; and • G5 Tek Solutions, LLC. The addendum also listed the companies that sent representatives to the mandatory site visits: <ul style="list-style-type: none"> • Securus Technologies (Securus); • Telmate; • Consolidated Communications Public Services (Consolidated); • Public Communications Services (PCS); • Global Tel* Link; and • Value Added Communications. |
| 05-24-12 | Bids Opened at 11:00 AM Three vendors submit bids: <ul style="list-style-type: none"> • Consolidated; • Securus; and • PCS. |
| 05-31-12 | Protest of the Bids submitted by PCS and Securus Consolidated files a protest with the CPO of the bids submitted by PCS and Securus. <ul style="list-style-type: none"> • Consolidated argues that Securus' and PCS' bids were in violation of an Illinois Commerce Commission (ICC or the Commission) order which set the maximum allowable rate and charge for operator surcharges at \$3.49. • Consolidated argues that the competitors' bids proposed to generate unlawful excessive revenue and as a result skewed the bid evaluation process. • Consolidated requests that the bids offered by Securus and PCS be rejected as they were not "responsible" vendors as defined by Section 2.2 of the IFB. |
| 06-25-12 | Chief Procurement Officer for General Services denies Consolidated's protest The CPO's determination was based on previous cases at the ICC: Docket Nos. 05-429 and 96-0131. The CPO determined that the services are not subject to regulation by the ICC and the rate caps do not apply. |

Invitation for Bids/Contract 

Protests 

ICC Filings 

Court Filings 

Procurement Policy Board 

| Date | Description |
|-----------------|---|
| 06-27-12 | <p>Contract Award Notice State Purchasing Officer approves award notice and CMS issues intent to award the inmate collect calling contract to Securus.</p> |
| 07-03-12 | <p>Protest of the Contract Award Consolidated files a second protest with the CPO protesting the contract award to Securus.</p> <ul style="list-style-type: none"> • Consolidated claims that Securus violated State ethics laws by employing a lobbyist without registering him. • Consolidated claims that Securus proposed to pay out over 107 percent of its revenue combined to the State and BEP subcontractor (87 percent of revenue in commission to the state and 20 percent of the contract value to the BEP subcontractor). • Consolidated claims that Securus had not shown a commitment to assume the obligations of Consolidated's existing collective bargaining agreement as required by the IFB. • Consolidated claims that Securus made questionable statements when it stated it maintained a Regional Maintenance Center in Chicago and that its optional "Threads" product was intended to satisfy the link analysis component of the IFB requirement. |
| 07-03-12 | <p>Circuit Court Case – Filed by Consolidated Consolidated files a complaint with the Circuit Court of Sangamon County to prevent CMS from awarding the inmate collect calling contract to Securus.</p> <ul style="list-style-type: none"> • Consolidated asked for a review of CMS' decision to award the contract to Securus and of the CPO's determination to deny Consolidated's protest. • Consolidated asked that the decision of the CPO denying Consolidated's protest be reversed and the intent to award the contract to Securus be withdrawn. |
| 07-03-12 | <p>ICC Filing – Petition for a Declaratory Ruling Consolidated files a petition for a declaratory ruling on whether certain provisions of the Public Utilities Act apply to an entity providing telephone calling services accessible to inmates of corrections facilities (in other words, do the limits on the maximum rates chargeable apply).</p> |
| 07-31-12 | <p>Prehearing Conference The Administrative Law Judge for the ICC set the following briefing schedule:</p> <ul style="list-style-type: none"> • Intervener (Securus) response to be filed by 8-22-12. • Staff response to both petitioner and intervenor to be filed by 8-29-12. • Petitioner's (Consolidated's) reply to be filed by 9-12-12. |

Invitation for Bids/Contract 

Protests 

ICC Filings 

Court Filings 

Procurement Policy Board 

| Date | Description |
|-----------------|--|
| 08-09-12 | <p>Chief Procurement Officer for General Services denies Consolidated's Second Protest</p> <p>In his determination, the CPO refused to reconsider Consolidated's reiteration of its argument that the ICC order and Section 770.40 of Title 83 of the Administrative Code were violated by its competitor's bids.</p> <ul style="list-style-type: none"> • Found against CMS' and Securus' arguments that the second protest was not filed on time by Consolidated. • Found against Consolidated's assertion that an individual was hired by Securus as a lobbyist stating that he is referred to as a "Consultant" in Securus' bid documents. Consolidated presented no other facts to support its allegation that the individual was actually lobbying or had communicated with officials in the executive or legislative branches of the State government. • Found against Consolidated's argument that Securus' bid promised 107% profit distribution and that there was no factual basis to the arguments presented. • Found no basis in Consolidated's argument that Securus intended to not comply with the collective bargaining agreement by moving the customer care center to Texas. • Found no basis in Consolidated's arguments that Securus had made questionable statements when it claimed to have a Regional Maintenance Center in Chicago and that its "<i>Threads</i>" product was only available as an optional product. |
| 08-09-12 | <p>Circuit Court Case Assistant Attorney General files Motion to Dismiss.</p> |
| 08-14-12 | <p>Circuit Court Case Securus files Motion to Dismiss.</p> |
| 08-23-12 | <p>Securus Response to Consolidated's Petition Securus requests that the ICC dismiss Consolidated's petition because: 1) Consolidated had brought the rate issue before a court; 2) the Commission had already ruled on and resolved the rate issue raised by Consolidated; and 3) Consolidated is not an affected person with standing to request a declaratory ruling.</p> |
| 08-30-12 | <p>Petition to Intervene filed by Securus Securus files a petition to intervene and be treated as a party.</p> |
| 08-31-12 | <p>Response from ICC Staff ICC staff files a response to the verified petition for declaratory ruling filed by Consolidated Communications. ICC staff recommends that the Commission grant the petition for declaratory ruling. (in other words, staff agreed with Consolidated that the limits should apply)</p> <ul style="list-style-type: none"> • ICC staff recommends that the Administrative Law Judge declare that an |

Invitation for Bids/Contract 

Protests 

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| Date | Description |
|-----------------|---|
| | entity providing telephone calling services accessible to inmates of corrections facilities, which include operator services, is an operator services provider subject to the Public Utilities Act Section 13-901(a)(1) and 83 Ill. Adm. Code Sections 770.20(a) and 770.40. |
| 09-07-12 | Circuit Court Case Parties agree to a scheduling order • Hearing on Motion to Dismiss scheduled for 10-19-12. |
| 09-07-12 | Reply Memorandum of Consolidated Communications Consolidated agrees with the ICC staff recommendation supporting their verified petition for declaratory ruling and countered the points raised by Securus in its response. Consolidated requests the Commission grant its petition. |
| 10-19-12 | Circuit Court Case Defendant's motion to dismiss entire complaint is allowed – written order to follow. |
| 10-19-12 | Contract Executed • State Purchasing Officer approves contract. • Director of CMS signs contract. • Initial term of the contract to run through 06-30-15 with renewal options of up to six years. |
| 10-22-12 | Data Request Securus issues a data request to ICC staff. |
| 10-23-12 | Proposed Order Administrative Law Judge issues Proposed Order finding that the operator services included in inmate calling services are “operator services” as defined in the Public Utilities Act and should be regulated. Therefore, the rate limits would apply. The Proposed Order also set the following schedule: • Briefs on exceptions to be filed by November 7, 2012. • Reply briefs on exceptions to be filed by November 15, 2012. |
| 10-24-12 | Circuit Court Case Order to Dismiss signed by Judge. The written order states that not only did Consolidated lack standing to challenge the State’s decision, sovereign immunity bars Consolidated from seeking judicial review of a procurement decision. |
| 10-24-12 | Circuit Court Case – Notice of Appeal Consolidated files appeal with the Appellate Court of Illinois for the Fourth District of the Order and Final judgment entered by the Sangamon County Circuit Court. |
| 10-26-12 | Verified Motion to Set Discovery Schedule Securus files a motion to set a discovery schedule and continue the deadlines for briefing exceptions. |

Invitation for Bids/Contract



Protests



ICC Filings



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| Date | Description |
|-----------------|---|
| 11-01-12 | ICC Staff's Response to Securus' Verified Motion to Set Discovery Schedule ICC staff recommends that the Commission deny Securus' motion. |
| 11-02-12 | Consolidated's Response to Securus' Verified Motion to Set Discovery Schedule Consolidated agrees with ICC staff that the motion should be denied. Consolidated argues that Securus' data requests were not made in a timely fashion and were for the purpose of delay. Consolidated noted in its response that Consolidated had filed a complaint with the Procurement Policy Board on October 26, 2012. |
| 11-07-12 | Securus' Verified Reply in Support of Motion to Set Discovery Schedule Securus countered the points made by ICC staff and Consolidated and requests that the Administrative Law Judge grant its motion, set a discovery schedule in the proceeding, and continue the deadlines for briefing on exceptions to the Proposed Order issued October 23, 2012. |
| 11-13-12 | Administrative Law Judge Ruling on Discovery Schedule The Administrative Law Judge denies Securus' motion to set a discovery schedule. |
| 11-20-12 | Staff Motion to Strike Portions of Securus' Brief on Exceptions On November 16, Securus files its brief on exceptions. ICC staff filed a motion to strike substantial portions of Securus' brief on exceptions because Securus had included pages of new, unsupported, untested alleged facts and conclusions. |
| 11-26-12 | Securus' Petition for Interlocutory Review |
| 12-03-12 | Staff Response to Securus' Verified Petition for Interlocutory Review Staff recommends that the Commission deny Securus' verified petition for interlocutory review and offer of proof, in its entirety. <ul style="list-style-type: none"> • Staff argues Securus has not cited to any evidence, arguments, or orders of this Court that demonstrate that it was deprived of the right to discovery on issues of fact, as the record is clear that <i>no issues of fact exist</i> in this record. |
| 12-18-12 | Administrative Law Judge Ruling on Motion to Strike Portions of Securus' Brief on Exceptions The Administrative Law Judge issues an order granting staff's motion. The Administrative Law Judge orders that Securus strike portions of its brief on exceptions and file the revised version by December 20, 2012. |
| 12-19-12 | Commission Meeting for December 19, 2012 The Commission denies Securus' petition for interlocutory review. |
| 12-21-12 | Staff Reply to Brief on Exceptions Staff recommends that the Commission enter the Administrative Law Judge's Proposed Order as written. <ul style="list-style-type: none"> • Staff states that Securus' brief on exceptions implied that ICC staff had taken the position that the phones in the institution are "public." According to staff, this was not true. Staff, however, argued that the operator service rates |

Invitation for Bids/Contract 

Protests 

ICC Filings 

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| Date | Description |
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| | applied to these calls, which are assessed to members of the general public, are subject to the rate caps. |
| 01-08-13 | Securus' 2nd Petition for Interlocutory Review Securus files a second petition for interlocutory review seeking reversal of the Administrative Law Judge's December 18 ruling granting staff's motion to strike portions of its brief on exceptions. |
| 01-09-13 | Commission Meeting for January 9, 2013 ICC denies Securus' request for oral arguments. |
| 01-16-13 | Staff Response to Securus' 2nd Petition for Interlocutory Review ICC staff responds to Securus' second petition for interlocutory review and offer of proof. Staff recommends that the Commission deny the petition. |
| 01-29-13 | Commission Meeting for January 29, 2013 The Commission denies Securus' request for interlocutory review. |
| 02-07-13 | Procurement Policy Board Meeting for February 7, 2013 A Board member requested the item be put on the Board's agenda to get an update on the procurement. The Board's Director noted that there were vendor concerns over fees and Illinois tariff applicability. A number of different people representing the concerned parties gave testimony. <ul style="list-style-type: none"> • Consolidated's representative spoke on what it believed were Securus' violations of the Procurement Code (for example, rate caps, BEP statute, and registration of lobbyists.) • Securus' representative defended the awarding of the contract and cited the two protests to the CPO and dismissal of Consolidated's case in circuit court. • PCS's representative made an argument to stop the implementation of the contract until the rates issue was resolved by the ICC. • Corrections' representative stated that delaying the implementation of the contract could lead to security issues at the correctional facilities if inmates cannot make telephone calls. • The CPO's view was that procurement decisions were made under the laws at the time. All four Board members present at the meeting spoke on the topic. The Board did not vote or issue any ruling on the procurement. The Board's Chairman instructed staff to keep the board informed and the Board would keep the procurement under advisement. |
| 02-14-13 | Commission Meeting for February 14, 2013 <ul style="list-style-type: none"> • Securus gives testimony before the Commission arguing that Consolidated only wants one part, Section 770, to be applied by the Commission while ignoring the remaining four parts since they do not help its case, for example, requirements that operator service providers allow customers to use their |

Invitation for Bids/Contract 

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| Date | Description |
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| | <p>choice of carriers.</p> <ul style="list-style-type: none"> Later in the meeting, Consolidated's request for a declaratory ruling came before the Commission. The Administrative Law Judge recommended entry of an order by the Commission providing a declaratory ruling that the inmate calling services at issue are "operator services" under the law. One of the Commissioners noted that there was no deadline and asked that it be held. |
| 03-06-13 | <p>Commission Meeting for March 6, 2013</p> <ul style="list-style-type: none"> Corrections' Deputy Chief of Operations addressed the Commission stating that it was his understanding that any finding that inmate calling services constitutes operator services would also trigger the requirement of unblocked access to all providers. He argued that allowing inmates to select telephone providers of their choice will impede the Department's ability to record and monitor calls which according to him "<i>...would have a devastating effect on the safety and security of our facilities and the people that live and work there.</i>" Securus addressed the Commission and made the argument that Consolidated, ICC staff, and the Administrative Law Judge did not consider the security implications as mentioned by Corrections' representative and that "<i>...the new rates by Securus are on average significantly lower than those charged by Consolidated and the total rates allowed under the regulations at issue.</i>" The Administrative Law Judge later addressed questions from the Commission and stated that Consolidated asked for a declaratory ruling only on two specific provisions of Part 770. Only the restrictions on rates and billings would apply and it would not prevent Corrections from recording calls. The ruling was held for a future meeting. |
| 03-20-13 | <p>Commission Meeting for March 20, 2013</p> <ul style="list-style-type: none"> Consolidated addressed the Commission arguing that its petition does not request a ruling on 770.20(c) and (d) and 770.30 because Section 770.50 provides that the requirements in those sections for opening up access to other operators service providers "<i>...does not apply to telephones located in areas of corrections facilities that are not accessible to the public...</i>" The ruling was held for disposition at a future meeting. |
| 04-09-13 | <p>Final Order</p> <p>The Commission enters a Final Order granting Consolidated Communications' request for a declaratory ruling. The Final Order states that an entity providing telephone calling services accessible to inmates of corrections facilities is providing "operator services" as defined in the Public Utilities Act. Sections 770.20(a) and 770.40 (Restrictions on Billing and Charges) would therefore apply.</p> |

Invitation for Bids/Contract 

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| Date | Description |
|-----------------|--|
| 04-10-13 | <p>Memorandum to the Commission</p> <p>Securus files an emergency motion to stay the enforcement of the Commission's order. The Administrative Law Judge recommends that the Commission deny the emergency motion arguing that Securus' public safety concerns were unfounded since the Commission addressed them in the changes they made between the Proposed Order and Final Order. The Commission had done so by stating that the order applied only to requirements in Sections 770.20(a) and 770.40 and that there is no request before it for a ruling regarding any other provision of Part 770.</p> |
| 04-17-13 | <p>Commission Meeting for April 17, 2013</p> <p>The Commission, on the recommendation of the Administrative Law Judge, denies Securus' emergency motion for a stay of enforcement of its Final Order.</p> |
| 04-24-13 | <p>Petition/Application for Rehearing</p> <p>Securus seeks to have the order vacated and makes several arguments for rehearing including:</p> <ul style="list-style-type: none"> • Securus requests rehearing based on its argument that Consolidated no longer provides the services at issue and as such, its request was moot at the time of the Commission's ruling since the decision would no longer apply to Consolidated. • Securus argues that Consolidated does not fit the definition of an "affected person" according to 83 Ill. Adm. Code Section 200.220 of the Commission's Rules. • Securus argues that the order is too broad and generic and goes outside of the ICC's authority which they believe is "<i>limited to a declaration of the applicability of a statutory provision or Commission rule to the person(s) requesting the declaratory ruling.</i>" |
| 05-01-13 | <p>Commission Meeting for May 1, 2013</p> <p>The Commission, on the recommendation of the Administrative Law Judge, denies Securus' petition for rehearing.</p> |
| 06-04-13 | <p>Appellate Court Case – Filed by Securus</p> <p>Securus files a petition for review of the orders of the ICC with the Appellate Court of Illinois for the First Judicial District.</p> <ul style="list-style-type: none"> • Securus seeks reversal of the Commission's May 1, 2013 order denying Securus' petition for rehearing, and vacature of the Commission's April 9, 2013 order. |
| 08-22-13 | <p>Contract Amendment</p> <p>State Purchasing Officer approves amendment to the contract.</p> |
| 08-28-13 | <p>Circuit Court Case – Notice of Appeal</p> <p>Consolidated's appeal of the Circuit Court of Sangamon County decision to dismiss Consolidated's entire complaint is dismissed by the Appellate Court of Illinois for the</p> |

Invitation for Bids/Contract 

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| Date | Description |
|-----------------|---|
| | Fourth Judicial District. |
| 09-13-13 | Contract Amendment Contract with Securus amended to comply with ICC rate caps. Charges are reduced from \$4.10 per call to \$3.55 per call. The commission percentage paid to the State is also lowered from 87.1 percent to 76 percent. |
| 02-13-14 | Contract Amendment Contract with Securus amended to comply with Federal Communications Commission ruling on interstate inmate calling rates. For interstate calls, the surcharge of \$3.55 per call is eliminated. It is replaced with a per minute rate of \$0.1183. The amendment also eliminated commission payments for interstate calls. |
| 05-16-14 | Appellate Court Decision The Appellate Court of Illinois for the First Judicial District rules that the Illinois Commerce Commission's April 9, 2013 order must be vacated because the Commission lacked jurisdiction to enter the order. The Court determined that the Commission's order was not a declaratory ruling as the party requesting the order was not an "affected person" and there was no controversy or uncertainty within the meaning of the Commission's regulations. The Court's ruling did not address the actual merits of the Commission's order that inmate phone services should be regulated. |

Invitation for Bids/Contract 

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APPENDIX D

AGENCY RESPONSES

CMS

ILLINOIS
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES
Simone McNeil, Acting Director

Pat Quinn, Governor

July 16, 2014

Honorable William G. Holland
State of Illinois Auditor General
Iles Park Plaza
740 East Ash
Springfield, Illinois 62703

Dear Auditor General Holland:

Please find attached Central Management Services' responses to the management audit of the State's procurement of inmate telephone services pursuant to Senate Resolution Number 122. Central Management Services agrees with the recommendations.

The audit correctly identified this as a difficult procurement. Elements of vendor protest, vendor litigation, and even a filing and ultimately a ruling by the Illinois Commerce Commission directly related to allowable rates – were all experienced within the course of the procurement and the implementation of the service contract.

The procurement showcased the consistent collaborative effort between the Office of the Chief Procurement Officer and Central Management Services throughout the series of extraordinary circumstances that occurred within this challenging procurement.

Actions taken were clearly within the spirit and the intent of Public Act 096-0795; an Act that shifted procurement authority outside of the State agencies by creating the Office of the independent Chief Procurement Officer.

We would like to thank you and your staff for the issues identified in this audit. If you have any questions, please let me know.

Sincerely,


Simone McNeil
Acting Director

Attachment

| RESPONDING TO VENDOR QUESTIONS | |
|--------------------------------|---|
| RECOMMENDATION NUMBER | <i>The Department of Central Management Services should respond timely in writing to all questions submitted by vendors.</i> |
| CMS RESPONSE | CMS agrees that all questions submitted by vendors should be responded to in writing in a timely manner. As noted in the findings, the solicitation was revised twice, with an extension of related timelines. Some of the revisions to the solicitation were intended to provide clarification to areas being raised during the question and answer period. Nevertheless, CMS agrees that this could have been documented more clearly to ensure vendor understanding. |

| MANDATORY SITE VISITS | |
|-----------------------|--|
| RECOMMENDATION NUMBER | |
| 2 | <i>The Department of Central Management Services and the Chief Procurement Officer for General Services should ensure that the solicitation document specifies, for procurements that include mandatory site visits, whose attendance is required to meet the mandatory attendance requirement.</i> |
| CMS RESPONSE | <p>CMS agrees that the solicitation should seek to define whose attendance is required to satisfactorily meet a mandatory attendance requirement. When this question was raised, it was appropriately taken to the CPO's assigned State Purchasing Officer to render a decision.</p> <p>It is not an uncommon practice for non-local vendors to have other representatives and agents attend mandatory meetings on their behalf. This may include subcontractors, consultants, or legal representatives, depending on the nature and the complexity of the procurement. A mandatory requirement is intended to promote a full understanding of the specific procurement, and a degree of flexibility in actual representation has historically been allowed to not unduly or unfairly limit competition.</p> |
| CPO RESPONSE | |

| PROCUREMENT METHOD | |
|-----------------------|--|
| RECOMMENDATION NUMBER | |
| 3 | <i>The Department of Central Management Services and the Chief Procurement Officer for General Services should evaluate the different options available, determine the appropriate procurement method to use, and document the reasons the procurement method was selected.</i> |
| CMS RESPONSE | <p>CMS agrees that the appropriate procurement approach should be considered for every procurement. Under the Illinois Procurement Code, this consideration occurs in conjunction with the Chief Procurement Office and is subject to the CPO's ultimate approval. As noted in the audit report, the appropriate procurement approach for this specific procurement was considered, and was ultimately determined to be an Invitation for Bids (competitive sealed bidding).</p> <div style="border: 1px solid black; padding: 5px;"> <p><i>Auditor Comment #1</i></p> <p><i>The audit does not note that the appropriate procurement approach was an Invitation for Bids. The audit questions whether this method was the proper procurement method to use and outlines several factors that supported the use of the competitive sealed proposals method.</i></p> </div> <p>That was a decision that was collaboratively made and implemented with the approval and under the authority of the CPO's Office.</p> <p>We appreciate that the auditor's test of 31 procurement requirements yielded only one question – that being whether a commission based contract carrying no cost to the State can essentially be viewed in the context of a “negative” price, meaning that the bid generating the most benefit to the State would be successful. While we respectfully believe that this was an appropriate procurement method for this procurement, we will consider this in conjunction with the CPO's Office when similar situations arise in the future.</p> |
| CPO RESPONSE | |

| PRICING EVALUATION FACTORS | |
|----------------------------|--|
| RECOMMENDATION NUMBER | |
| 4 | <p><i>For future solicitations involving inmate collect calling services, the Department of Central Management Services and the Chief Procurement Officer for General Services should ensure that the factors used to evaluate pricing are developed in a timely fashion and adequately tested to avoid flaws in the pricing table.</i></p> |
| CMS RESPONSE | <p>CMS agrees that the agency, in conjunction with the Chief Procurement Office should ensure that elements of pricing evaluation are developed prior to a solicitation opening, and ideally, prior to the solicitation publishing. If additional information is received that might cause the evaluation methodology to be revisited to protect State interests or the integrity of the procurement, revising the solicitation and if necessary the pricing evaluation methodology would likewise be done collaboratively with the Chief Procurement Office and under their authority.</p> <p>Lastly, as the approved procurement approach was an “Invitation for Bids” scoring of only pricing factors would be appropriate. The technical specifications were listed as mandatory requirements. If a mandatory requirement is not met, that failure causes the vendor’s offer to not be considered.</p> |
| CPO RESPONSE | |

| CONTRACT AMENDMENT | |
|-----------------------|---|
| RECOMMENDATION NUMBER | |
| 5 | <p><i>The Department of Central Management Services and the Chief Procurement Officer for General Services should fully document the rationale for amending contract rates as well as its effect on the original competitive procurement. Should CMS and the Chief Procurement Officer determine that the contract amendment significantly altered the terms of the competitive procurement, they should take the necessary actions to restore the contract to its original economic balance.</i></p> <p><i>For future contract amendments, CMS and the Chief Procurement Officer should ensure that decisions to change contract terms and conditions are adequately supported and documented.</i></p> <p><i>Finally, the Chief Procurement Officer should avoid situations where CPO employees make decisions on procurements in which they were previously involved on behalf of the procuring agency.</i></p> |
| CMS RESPONSE | <p>CMS agrees that the integrity of the procurement process must be protected and any decision to change contract terms or conditions should be fully understood by all parties, as well as approved by the Chief Procurement Officer.</p> <p>This particular procurement involved complex litigation, and ultimately escalated to the Illinois Commerce Commission (ICC) and the courts to rule on what rates would be allowable.</p> <p>The described reduction in rates followed an ICC order, and an agreement was negotiated with the vendor to have its call rates comply with that order. The new call and commission rates were reviewed in the context of the original bid evaluation to ensure that had these rates been proposed by the vendor, it would not have changed the original award. Ultimately, it was determined that proceeding with the awarded vendor was consistent with the evaluation methodology contained within the final solicitation. This decision was made in collaboration with the CPO's Office, and its required approval was granted to proceed.</p> <p>The result of the amendment further reduced the cost of the calls to the inmates and to their families, a desired and hoped for result from the onset of the procurement process.</p> <p>The agency plans to revisit factors of the economic balance within the contract, in consideration of budgetary constraints and an overall desire to further reduce the cost incurred by inmates and their families for telephone calls made through this program.</p> |
| CPO RESPONSE | |

| MONITORING OF THE CONTRACT | |
|----------------------------|---|
| RECOMMENDATION NUMBER | |
| 6 | <i>The Department of Central Management Services and the Department of Corrections should work together to improve the process surrounding the establishment and oversight of the inmate collect calling contract. This process could be strengthened by improving the current contract language as well as the monitoring process. In addition, the agencies should establish a formal interagency agreement regarding the breakdown of the commissions paid to each agency related to this contract.</i> |
| CMS RESPONSE | <p><u>Contract Language:</u></p> <p>CMS agrees with the finding regarding the contractual language.</p> <p>Regarding reporting requirements and the data elements required, the contract allows the State to run detailed adhoc reports with over 30 data fields, specified in the contract, directly from the vendor's system. This provides the State with detailed call records, from which payments can be verified at a call level. Additionally, the "Call Detail Report," specified in the contract, includes 18 fields that provide all the information necessary to verify payments. With the number of completed calls from the "Call Detail Report," commissions due can be calculated by multiplying the number of calls times the flat per call rate times the commission percentage.</p> <p>CMS has committed to revisit the contract rates and will look to clarify the timing of payments due the State, and if possible late payment penalties, with the vendor. CMS will look to include these requirements in any future RFPs/contracts for this program.</p> <p><u>Monitoring Process / Interagency Agreement:</u></p> <p>CMS agrees with this finding and is working with the Department of Corrections on an IGA that details not only the split of commissions on the contract, but also the roles and responsibilities related to the monitoring process.</p> |
| DOC RESPONSE | |



CHIEF PROCUREMENT OFFICE

Matt Brown, General Services

July 16, 2014

Mr. Joe Butcher
Office of the Auditor General
740 East Ash
Springfield, IL 62703-3154

Re: Senate Resolution 122
Management Audit Inmate telephone Services

Dear Mr. Butcher:

Please find attached the Chief Procurement Office's response to the recommendations made by the Office of the Auditor General regarding the above referenced matter.

I am appreciative of the time expended by your office and the recommendations made. If there are any questions, please contact me at (217) 558-2231.

Sincerely,

A handwritten signature in black ink that reads "Matt Brown".

Matt Brown
Chief Procurement Officer for General Services

cc: Craig Williams, Chief Internal Auditor EEC
Chad Fornoff, Executive Director EEC
Whitney Rosen, Deputy Executive Director EEC

| MANDATORY SITE VISITS | |
|-----------------------|--|
| RECOMMENDATION NUMBER | |
| CMS RESPONSE | |
| 2 | <p><i>The Department of Central Management Services and the Chief Procurement Officer for General Services should ensure that the solicitation document specifies, for procurements that include mandatory site visits, whose attendance is required to meet the mandatory attendance requirement.</i></p> |
| CPO RESPONSE | <p>CPO administrative rule provides for pre-submission conferences to enhance potential vendors understanding of the procurement requirements for a particular solicitation. See 44 Ill. Admin. Code 1.2005 (y). The solicitation template provides for identification of whether a vendor conference or site visit will occur and whether attendance is mandatory. The solicitation template further provides that if attendance is mandatory, that a bidder will be disqualified and considered non-responsive if a bidder does not attend, is not on time, leaves early or fails to sign the attendance sheet. Bidders are advised to allow adequate time to accommodate security screenings.</p> <p>The CPO agrees the State should clearly identify the level of vendor representation required to successfully meet the attendance requirements when there are mandatory pre-submission conferences.</p> |

| PROCUREMENT METHOD | |
|-----------------------|---|
| RECOMMENDATION NUMBER | |
| CMS RESPONSE | |
| 3 | <p><i>The Department of Central Management Services and the Chief Procurement Officer for General Services should evaluate the different options available, determine the appropriate procurement method to use, and document the reasons the procurement method was selected.</i></p> |
| CPO RESPONSE | <p>The CPO agrees its staff, in consultation with purchasing agencies, should evaluate and determine the appropriate procurement method to use for a particular solicitation, in compliance with the requirements of the Procurement Code.</p> <p>The OAG found all provisions of the Code it tested were followed by the CPO except for Section 20-10(g), which requires IFBs to be awarded to the lowest responsible and responsive bidder. However, the OAG recognized in its discussion the Code provides direction on conducting procurements for concessions. Procurements for concessions are conducted in accordance with Article 20 of the Code, except the contract is awarded to <u>the highest and best</u> bidder or offeror. 30 ILCS 500/53-10(a). The OAG also acknowledged the solicitation that was issued made clear the award would be to the vendor who was the highest and best bidder. The OAG found that the award was made to the vendor who was the highest and best bidder.</p> <p>The CPO further agrees with the OAG that the procurement method should be determined on a timely basis, once an agency has determined its need. The CPO has instructed agencies once need is determined, Step 1 of the approval form (approval of procurement method) should be completed so as to not to unnecessarily delay procurements. The purchasing agency should have submitted the approval form much sooner than what was done in this instance.</p> |

| PRICING EVALUATION FACTORS | |
|------------------------------|--|
| RECOMMENDATION NUMBER | <i>For future solicitations involving inmate collect calling services, the Department of Central Management Services and the Chief Procurement Officer for General Services should ensure that the factors used to evaluate pricing are developed in a timely fashion and adequately tested to avoid flaws in the pricing table.</i> |
| CMS RESPONSE | |
| CPO RESPONSE | The CPO agrees that for future solicitations involving inmate collect calling services it and the purchasing agency should ensure the factors used to evaluate pricing are developed in a timely fashion and are adequately tested to avoid flaws in the pricing table. |

| CONTRACT AMENDMENT | |
|-----------------------|---|
| RECOMMENDATION NUMBER | |
| 5 | <p><i>The Department of Central Management Services and the Chief Procurement Officer for General Services should fully document the rationale for amending the contract rates as well as its effect on the original competitive procurement. Should CMS and the Chief Procurement Officer determine that the contract amendment significantly altered the terms of the competitive procurement, they should take the necessary actions to restore the contract to its original economic balance.</i></p> <p><i>For future contract amendments, CMS and the Chief Procurement Officer should ensure that decisions to change contract terms and conditions are adequately supported and documented.</i></p> <p><i>Finally, the Chief Procurement Officer should avoid situations where CPO employees make decisions on procurements in which they were previously involved on behalf of the procuring agency.</i></p> |
| CMS RESPONSE | |
| CPO RESPONSE | <p>The CPO agrees that the procurement file should be documented as required by law and rule. Each purchasing agency, under the direction of the SPO, is required to maintain in the procurement or associated contract file all substantive documents and records of communications that pertain to the procurement and any resulting contract. This also includes documentation of changes to or amendments to contracts. 44 Ill. Admin. Code 1.2080(c).</p> <p>For contract amendments or change orders which increase or decrease the cost of a contract by a total of \$10,000 or more or the time for completion by a total of 30 days or more, the procurement file is required to contain a written determination which affirms that (1) the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed, or (2) the change is germane to the original contract as signed, or (3) the change order is in the best interest of the unit of State and authorized by law. See 720 ILCS 5/33E-9.</p> <p>The CPO is in agreement that the rationale for the contract amendment should be documented appropriately in the procurement file, but the CPO disagrees that CMS or the CPO should restore contracts to its original economic balance when contract amendments are necessary. The Criminal Code specifically recognizes that changes to contracts may not be reasonably foreseeable. In this instance, the CPO would assert the Illinois Commerce Commission's ruling was not reasonably foreseeable. The emphasis of the OAG's finding is on how much the contract amendment increased the amount of revenue to the vendor. It has not been the practice of the State in evaluating bids or offers to determine the profit or revenue to the vendor; rather, the emphasis has been on the best value to the State (i.e. in a IFB situation, the lowest</p> |

price to the State, and with a RFP, the most responsible and responsive vendor). The State does not determine, nor is it equipped to determine, whether a vendor's revenue or profit on a contract is appropriate or just. Rather than focusing on how much the vendor's revenue increased under this contract amendment, the CPO believes the importance of this finding should be on the effect the amendment had on the State's revenue, i.e. how much did the State decrease its income from the contract.

Auditor Comment #2

We are not suggesting that the State determine whether the vendor's revenue is "appropriate or just." Rather, we note that the contract amendment significantly reduced the amount of commission revenue received by the State (the commission rate was the highest rated scoring criteria in the invitation for bids), and significantly increased the revenue received by the vendor. We further note that there was no documentation supporting the rationale for this change. As such, the auditors believe that CMS and the CPO should have more closely examined the amendment and documented the rationale for accepting a significant reduction in the amount of commission.

The CPO further believes it is the duty of CPO employees to act in a manner that maintains the integrity and public trust of State government. 30 ILCS 500/50-1.



**Illinois
Department of
Corrections**

1301 Concordia Court • P.O. Box 19277
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Pat Quinn
Governor

S. A. Godinez
Director

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TDD: (800) 526-0844

July 11, 2014

Honorable William G. Holland
Auditor General
740 East Ash Street
Springfield, IL 62703

Auditor General Holland:

Enclosed please find the Illinois Department of Corrections (IDOC) responses to the recommendations in the management audit of the State's Procurement of Inmate Telephone Service Vendors (SR122) draft report.

Yours truly,

A handwritten signature in black ink, appearing to read "Salvador A. Godinez".

Mr. Salvador A. Godinez, Director



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State's Procurement of Inmate Telephone Service Vendors

IDOC Monitoring of the Contract Responses

Monitoring Process

As of June 16, 2014 the IDOC manager position over Telecom was filled, which responsibilities will include the monitoring process of this contract such as payments, repairs, expansions and upgrades.

Interagency Agreement

CMS and IDOC recognize the benefits of formalizing their respective vendor commission payments under the contract. To that end, the two agencies have agreed to enter into a formal interagency agreement which stipulates the requirements and breakdown of the vendor payments for the commissions. The two agencies are in the process of drafting the agreement.