



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 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.

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

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

CMS experienced delays in issuing the solicitation document.

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.

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|--|---|
|  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.

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

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

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.**

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

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

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)

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

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.